

SCOMM

131:9

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

HB 22

Commercial Fish Permit Broker's Bond

// "Former boat & fishing permit broker has pleaded no contest to felony theft charges stemming from the loss of more than \$300,000 belonging to her clients. Owner of Northern Enterprises Permit and Boat Brokerage, Debbie Moore was arrested in January after several of her clients complained to authorities about missing money." Homer News, June 6, 2002 //

In Alaska, the commercial fishing community buys and sells their permits and quota shares on the open market. Due to the complexity, time involved, and the far-flung nature of the industry, the services of a professional broker is employed. Permit brokers act as agents in the sale and purchase of permits and quota shares. While their numbers are small, brokers transact a significant amount of business. In 2001, 13 brokering agents handled nearly half of 1,002 permanent permit transfers.

Surprisingly, there is no statutory regulation of brokering practices in Alaska beyond that of obtaining an Alaskan business license. Nonresident brokers don't even need that unless they establish locations in Alaska.

By requiring licensing and a bond established through the Dept. of Commerce & Economic Development, the state takes a modest measure to regulate the brokering practices of this business ~ it requires an actionable bond. The unethical activity most commonly cited is the improper use of the client trust fund. HB 22 requires some security for the client, that if a loss occurs, the injured party may make a claim to the Div. of Occupational Licensing against the bond.

While a bond amount of \$50,000 is not enough to cover the losses suffered by the clients of Northern Enterprises Permit and Boat Brokerage, it is start.

Last updated: February 1, 2003

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

SECTIONAL ANALYSIS

HB 22

Section 1. of this bill amends AS 08.01.010 by adding a new paragraph to provide that the provisions of AS 08.01 apply to the regulation of commercial fishing permit brokers.

Section 2. of this bill amends AS 08.01.050(a) by adding a new paragraph to provide that the Department of Community & Economic Development is to perform administrative and budgetary services relevant to the registration of commercial fishing brokers.

Section 3. of this bill amends AS 08.01.087(a) to provide that the Department of Community & Economic Development may conduct investigations to determine whether a person has violated provisions relating to the registration of commercial fishing permit brokers.

Section 4. of this bill amends AS 08.01.087(a) to provide that the Department of Community & Economic Development may take administrative action in response to apparent violations of provisions relating to the registration of commercial fishing permit brokers.

Section 5. of this bill amends AS 08.01.102 to provide that the Department of Community & Economic Development may issue citations for violations of the registration requirement for commercial fishing permit brokers.

Section 6. of this bill amends AS 16.10 by adding a new article relating to the registration of commercial fishing permit brokers.

SECTIONAL ANALYSIS

Sec. 16.10.570 provides for the registration of persons who engage in the business of purchasing, selling, leasing, or transferring commercial fishing permits on behalf of another person.

Sec. 16.10.575 provides that an applicant for registration as a commercial fishing permit broker shall post and maintain a \$50,000 corporate surety bond. Instead of a corporate surety bond, a registered commercial fishing permit broker may post a bond with at least two individual sureties that provide real property in excess of the amount of the bond as security.

Sec. 16.10.580 provides for a legal action against a commercial fishing permit broker's bond if a person is injured by the actions of the broker.

Sec. 16.10.585 provides that a knowing violation of the statutes governing commercial fishing permit brokers is a class A misdemeanor.

Sec. 16.10.589 sets out the definitions of "commercial fishing permit" and "department".

Sec. 7 of the bill provides that the Department of Community & Economic Development shall issue commercial fishing permit broker registrations for calendar years 2004 and 2005 before January 1, 2004.

Sec. 8 of the bill provides that the provisions of AS 16.10.570 that establish the requirement for registration of commercial fishing permit brokers takes effect January 1, 2004.

Sec. 9 of the bill provides that the remainder of the Act takes effect immediately.

Last updated: February 10, 2003

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Fishing permit broker pleads in theft case

by Sepp Jannotta
Staff Writer

Former boat and fishing permit broker Debbie Moore has pleaded no contest to felony theft charges stemming from the loss of more than \$300,000 belonging to her clients.

Owner of Northern Enterprises Permit and Boat Brokerage, Moore was arrested in January after several of her clients complained to authorities about missing money.

Commercial fishermen who had given Moore money to buy permits said when they asked about the permits, she didn't have them. When they asked where the money was, they were told it was gone. Fishermen who had given Moore permits to sell found while Moore had sold the permits, that money was also history.

When she is sentenced on July 29, Moore faces up to 10 years in prison and a \$50,000 fine. Moore has already declared bankruptcy, Assistant District Attorney John Wolfe told the Anchorage Daily News.

In the case of Matt Pancratz, that loss is reportedly \$158,000 — money he told Alaska State Troopers he was due after Moore sold his 20,000 halibut quota shares.

Moore claims she lost money belonging to her clients

when she was taken in by a money-laundering scam that promised to cut her in on a large fortune set to be smuggled out of Nigeria. Moore told investigators that her money was needed, the con artist told her, to bribe officials to expedite the deal. In a so-called Nigerian scam, victims are typically told that once the fortune is freed by successive and apparently increasingly large bribes, they will collect millions.

Court documents show that Moore withdrew money belonging to her clients from her company's trust account, where they typically deposited it for the purposes of buying quota shares or boats. Authorities investigating Moore found bank records showing Moore did send money out of the country, according to Wolfe.

Moore remains jailed at Hiland Mountain Correctional Center near Anchorage.

Dan Veerhusen, who gave Moore \$10,000 to buy quota shares, said he's pretty much kissed the money goodbye.

"You can't squeeze blood from a turnip," said Veerhusen, who remains friends with Moore's parents. "It's not worth my time to spend a dime on a phone call at



Homer News file photo
Debbie Moore

this point."

Veerhusen, who has fished commercially out of Homer for 40 years, said he's known Debbie Moore since she was a child and was hurt more by the personal betrayal than by the financial setback. He then added that others, like Pancratz, suffered a much more devastating financial hit than he did.

Heather Pancratz said her husband, who had hoped to cash in his halibut shares for quota shares in other fisheries, has hired on as a skipper for somebody else. He is currently fishing off Resurrection Bay.

Meanwhile, Pancratz's own boat, the 40-foot Nacona, sits in a local boatyard.

Despite the Moore scandal and the general economic malaise facing the fishing industry, Alaska commercial fishermen continue to use the services of boat and permit brokers.

"It hasn't changed the way people approach this business," said Glenn Caldwell, a broker with Alaska Boat and Permits Inc. of Homer. "People might be a bit more cautious. But it hasn't changed the way our customers are doing business with us. People are still buying or selling."

Pioneer blooms flower with volunteer help

by Joel Gay
Staff Writer

contribute even more, Hagerty said, but volunteers provide the bulk of the labor. She invites them into the greenhouse

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Story last updated at 2:15 p.m. Thursday, August 22, 2002

Boat broker gets four years for scam

by Sepp Jannotta
Staff Writer

Debbie Moore, the boat and permit broker who swindled more than \$330,000 from her clients sentenced to serve four years in prison Tuesday.

Moore also faces 10 years of probation and must pay restitution to her 15 victims upon release from prison. With time already served and time off her sentence for good behavior, Moore, a first-time offender, could be released on parole before the first of the year.

Several of the victims testified for the sentencing. According to Assistant District Attorney John Wolfe, the stories were those of lives in shambles, with houses repossessed or on the verge, or with quota shares to make the dry-docked boat pay the bills.

"What struck me was the amount of harm that was done," he said. "You don't typically think that money is the end of the world, but there were several who had seen their lives ruined by the thing."

Wolfe, who described how Moore was taken in by a Nigerian money-laundering scam, said that she addressed the court and expressed her regret for what she had done.

"She was kind of tongue-tied," said Matt Pancratz of Homer, perhaps the hardest hit of the victims by the loss of \$158,000 worth of halibut quota shares.

"As to whether or not she was remorseful, I don't necessarily agree," said Pancratz, who was under the impression that though investigators found evidence suggesting that money was wired overseas, they were unable to trace up to \$100,000 of the stolen money. "Miss Moore says she's a victim of a Nigerian scam, but what about the \$100,000 that's unaccounted for? Why hasn't she told any of the victims that money is?"

Pancratz said he was under the impression that involuntary bankruptcy proceedings against Moore hadn't located any assets that could be turned over to her creditors or victims. Both Wolfe and Moore said the victims aren't expecting much relief in the way of restitution.

According to Judge Harold Brown, Moore will be giving up her permanent fund dividend check as a portion of everything she makes once she's out of prison.

"I don't ever expect to get any significant amount of that money back," Pancratz said, who questioned whether Moore will ever be able to find lucrative employment. "All you have to do is add up the money and there's no way it'll ever be a significant amount."

In the meantime, Pancratz said, he is preparing to go to school to become a nurse as part of a sponsored vocational rehab.

The toughest part, according to Pancratz, who is raising a 12-year-old daughter, is the fact that he only lost the money he'd invested in the halibut shares, but since it was a transfer, he lost the potential that he would have had with his new shares. He guessed that given the price of halibut might have earned \$40,000 to \$50,000.

HEAD: Boat broker gets four years for scam by Sepp Jannotta Staff Writer Debbie Moore, the permit broker who swindled more than \$330,000 from her clients, was sentenced to serve four years in prison Tuesday. Moore also faces 10 years of probation and must pay restitution to her 15 victims before release from prison. With time already served and time off her sentence for good behavior, Moore, a first-time offender, could be released on parole before the first of the year. Several of the victims testified for the sentencing. According to Assistant District Attorney John Wolfe, the stories were of lives in shambles, with houses repossessed or on the verge, or with no fishing quota share and the dry-docked boat pay the bills. "What struck me was the amount of harm that was done," he said. "You don't typically think that the loss of money is the end of the world, but there were several victims whose lives were ruined by this whole thing." Wolfe, who described how Moore was taken in by a money-laundering scam, said that Moore addressed the court and expressed her regret for what she had done. "She was kind of tongue-tied," said Matt Pancratz of Homer, perhaps the hardest hit victim with the loss of \$158,000 worth of halibut quota shares. "As to whether or not she was remorseful, I don't necessarily agree," said Pancratz, who was under the impression that though investigators found evidence suggesting that money was wired overseas, they were unable to trace more than \$100,000 of the stolen money. "Miss Moore says she's a victim of the Nigerian scam, but what about the \$100,000 that's unaccounted for? Why hasn't she told anyone where that money is?" Pancratz said he was under the impression that involuntary bankruptcy proceedings against Moore hadn't located assets that could be turned over to her creditors or victims. Both Wolfe and Pancratz said they aren't expecting much relief in the way of restitution. According to Judge Harold Brown, Moore is giving up her permanent fund dividend checks as well as a portion of everything she makes out of prison. "I don't ever expect to get any significant amount of that money back," Pancratz questioned whether Moore will ever be able to find lucrative employment. "All you have to do is add up the numbers and there's no way it'll ever be a significant amount." In the meantime, Pancratz is preparing to go to school to become a nurse as part of a state-sponsored vocational rehab. The toughest part, according to Pancratz, who is raising a 12-year-old daughter, is the fact that he lost the money he'd invested in the halibut shares, but since it was a transfer, he lost the earning potential that he would have had with his new shares. He guessed that given the price of halibut might have earned \$40,000 to \$50,000.

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FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 22
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to commercial fishing permit
brokers; . . ." BRU Fair Business Practices
Sponsor Representative Weyhrauch Component _____
Requester House Special Committee on Fisheries Component No. 2206

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 22 adds commercial fishing permit brokers as a registered occupation regulated by the Department of Community and Economic Development. Any time a new profession is added to the occupational licensing statutes, new legal services may be required. For example, Department of Law assistance may be required in hearings resulting from the denial of a license or from license discipline. However, the amount of legal work that is likely to arise from the addition of this profession is not expected to be significant enough to cause a fiscal impact to the Department of Law.

Prepared by: Joan M. Kasson
Division: Attorney General's Office
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Agency: Department of Law

Phone (907) 465-5370
Date/Time 2/20/03 4:37 PM
Date 2/20/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB22
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish & Game
Title: Commercial Fishing Permit Brokers BRU: Comm Fish Entry Commission
Component: Comm Fish Entry Commission
Sponsor: Rep. Weyhrauch
Requester: House Fisheries Component No. 471

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by: Shirley Penrose Phone: 790-6960
Division: Commercial Fisheries Entry Commission Date/Time: 2/12/03 9:44 AM
Approved by: Mary McDowell, Commissioner Date: 02/12/2003
Agency: Commercial Fisheries Entry Commission

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 21, 2003

FURTHER REFERRALS: Resources
Finance

Date of Committee Action: MAY 16, 2003

The HOUSE SPECIAL COMMITTEE ON FISHERIES Committee considered:

HB 22

HOUSE BILL NO. 22

COMMERCIAL FISHING PERMIT BROKERS

"An Act relating to commercial fishing permit brokers; and providing for an effective date."

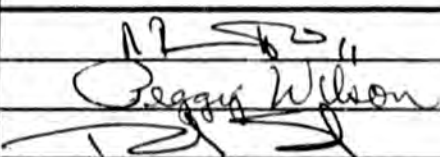
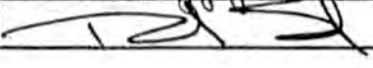
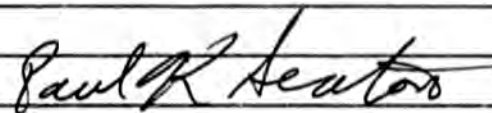
Recommends it be replaced with ☐ HCS or ☒ CS for HB 22 (FSH)
For Senate Bills with new title: ☐ Technical Title ☐ New Title: HCR ☐ Same Title ☒ New Title

- ☐ attach amendments
☐ add new referral to _____ Committee
☐ Letter of Intent _____ Committee

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UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
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DCED		X		
REV				X
DFG				X

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations		Printed Last Name	DP	DNP	NR	AM
		Ogg Wilson	✓		✓	
		SAMUELS			✓	
Chair:		SEATON	✓			
Chair:						

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House Special Committee on Fisheries

Attention George Utermohl.

Conceptual amendment made to CSHB 22 ()/ Version V.

Replace "handle and facilitate" with "broker" used as a verb.

Define "broker."

In version S you defined "broker" as "when used as verb, means to act as an intermediary or negotiator between a buyer, seller, lessor, lessee, transferor, transferee, holder, or owner of a commercial fishing permit, quota share, or commercial fishing vessel."

Thank you,

Cameron Yourkowski
Committee Aide
465-3306

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House Special Committee on Fisheries

MEMORANDUM

TO: All Fisheries Committee Members

FM: Representative Paul Seaton, Chair
House Fisheries Committee

DATE: May 15th, 2003

RE: CSHB22()

Please add this to your HB 22 file.

We will be considering this version and fiscal note tomorrow morning.

Please feel free to contact me with questions anytime x2689, or you can contact my Committee Aide, Cameron Yourkowski, x3306. Thank you.

23-LS0133\V

Utermohe

5/15/03

CS FOR HOUSE BILL NO. 22() *amend**Fish*

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE WEYHRAUCH

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to brokers of commercial fishing permits, quota shares, and
2 commercial fishing vessels; to the transfer of commercial fishing permits; amending
3 Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate
4 Procedure; and providing for an effective date."

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

6 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

7 (38) regulation of brokers of commercial fishing permits, quota shares,
8 and commercial fishing vessels under AS 16.10.570 - 16.10.589.

9 * Sec. 2. AS 08.01.050(a) is amended by adding a new paragraph to read:

10 (22) licensing of brokers of commercial fishing permits, quota shares,
11 and commercial fishing vessels under AS 16.10.570 - 16.10.589.

12 * Sec. 3. AS 08.01.087(a) is amended to read:

13 (a) The department may, upon its own motion, conduct investigations to
14 (1) determine whether a person has violated a provision of this chapter

1 or a regulation adopted under this chapter [IT], or a provision of AS 16.10.570 -
2 16.10.589 or a regulation adopted under AS 16.10.570 - 16.10.589, or a provision
3 of AS 43.70, or a provision of this title or regulation adopted under this title dealing
4 with an occupation or board listed in AS 08.01.010; or

5 (2) secure information useful in the administration of this chapter.

6 * Sec. 4. AS 08.01.087(b) is amended to read:

7 (b) If it appears to the commissioner that a person has engaged in or is about
8 to engage in an act or practice in violation of a provision of this chapter or a regulation
9 adopted under this chapter [IT], or a provision of AS 16.10.570 - 16.10.589 or a
10 regulation adopted under AS 16.10.570 - 16.10.589, or a provision of AS 43.70, or
11 a provision of this title or regulation adopted under this title dealing with an
12 occupation or board listed in AS 08.01.010, the commissioner may, if the
13 commissioner considers it in the public interest, and after notification of a proposed
14 order or action by telephone, telegraph, or facsimile to all board members, if a board
15 regulates the act or practice involved, unless a majority of the members of the board
16 object within 10 days,

17 (1) issue an order directing the person to stop the act or practice;
18 however, reasonable notice of and an opportunity for a hearing must first be given to
19 the person, except that the commissioner may issue a temporary order before a hearing
20 is held; a temporary order remains in effect until a final order affirming, modifying, or
21 reversing the temporary order is issued or until 15 days after the person receives the
22 notice and has not requested a hearing by that time; a temporary order becomes final if
23 the person to whom the notice is addressed does not request a hearing within 15 days
24 after receiving the notice; the commissioner or the commissioner's designee shall be
25 the hearing officer at the hearing and shall issue a final order within 10 days after the
26 hearing;

27 (2) bring an action in the superior court to enjoin the acts or practices
28 and to enforce compliance with this chapter, a regulation adopted under this chapter
29 [IT], an order issued under this chapter [IT], or with a provision of this title or
30 regulation adopted under this title dealing with business licenses or an occupation or
31 board listed in AS 08.01.010;

(3) examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records, and other documents.

* Sec. 5. AS 08.01.102 is amended to read:

Sec. 08.01.102. Citation for unlicensed practice or activity. The department may issue a citation for a violation of a license requirement under this chapter, AS 16.10.570 - 16.10.589, or AS 43.70 if there is probable cause to believe a person has practiced a profession or engaged in business for which a license is required without holding the license. Each day a violation continues after a citation for the violation has been issued constitutes a separate violation.

* Sec. 6. AS 16.10 is amended by adding new sections to read:

Article 11. Commercial Fishing Permit, Quota Share, and Vessel Brokers.

Sec. 16.10.570. Broker license. (a) A person may not, for compensation, handle or facilitate the transfer of a commercial fishing permit, a quota share, or a commercial fishing vessel on behalf of a buyer, seller, lessor, lessee, transferor, transferee, holder, or owner of the permit, quota share, or vessel unless the person holds a license issued by the Department of Community and Economic Development to act as a broker of commercial fishing permits, quota shares, and commercial fishing vessels.

(b) If a broker receives money on behalf of a party to a transaction for which a broker license is required under this section, the broker shall deposit the money in a escrow account pending completion or termination of the transaction and distribution of the money in accordance with the agreement with the parties to the transaction. If the broker receives a document, property, or item of value other than money on behalf of a party to a transaction, the broker shall hold and keep safe the document, property, or item pending completion or termination of the transaction and distribution of the money in accordance with the agreement with the parties to the transaction.

(c) An applicant for a broker license under (a) of this section shall file an

1 application and an application fee established by the department by regulation with the
2 department.

3 (d) The department shall prescribe and furnish the form of application for a
4 broker license. The application must contain

5 (1) the name of the applicant and the name of the business under which
6 the applicant operates;

7 (2) the address of the main office of the applicant; and

8 (3) other information the department requires.

9 (c) The department shall approve an application for a broker license under this
10 section if the applicant satisfies the requirements of (c) and (d) of this section.

11 (f) A broker shall renew the license required under (a) of this section every
12 two calendar years by filing a request for renewal and a renewal fee with the
13 department.

14 **Sec. 16.10.580. Claims against broker.** (a) In an action for damages arising
15 from the performance of the duties of a broker licensed under AS 16.10.570 -
16 16.10.589, a violation of AS 16.10.570 - 16.10.589, or of regulations adopted under
17 AS 16.10.570 - 16.10.589, is negligence per se if the violation is a proximate cause of
18 the loss to the claimant.

19 (b) A person aggrieved by the actions of a broker licensed under AS 16.10.570
20 - 16.10.589 is entitled to full actual attorney fees and costs incurred in bringing an
21 action for damages, if the person is the prevailing party in the action.

22 **Sec. 16.10.585. Penalty.** (a) A person who knowingly violates AS 16.10.570
23 - 16.10.589 is guilty of a class A misdemeanor.

24 (b) In this section, "knowingly" has the meaning given in AS 11.81.900.

25 **Sec. 16.10.589. Definitions.** In AS 16.10.570 - 16.10.589,

26 (1) "commercial fishing permit" means an entry permit, vessel permit,
27 license, or other authorization issued by the state or federal government that is a legal
28 prerequisite for a person or commercial fishing vessel to engage in commercial fishing
29 or in processing of a commercial fishing resource;

30 (2) "commercial fishing vessel" means a vessel used or to be used for
31 commercial fishing activities for which a vessel license is required under

1 AS 16.05.490;

2 (3) "department" means the Department of Community and Economic
3 Development;

4 (4) "escrow account" means a federally insured account held at a
5 financial institution in the name of the depositor and an escrow agent that is returnable
6 to the depositor or paid to a third person on the fulfillment of escrow conditions;

7 (5) "quota share" has the meaning given in AS 16.10.360;

8 (6) "transfer" means purchase, sale, lease, or other transfer.

9 * Sec. 7. AS 16.43.100 is amended by adding a new subsection to read:

10 (c) The commission may not transfer an entry permit or vessel permit under
11 this chapter unless

12 (1) the parties to the transfer disclose to the commission whether the
13 transfer is being handled or facilitated by a broker and, if so, then provide the name of
14 the broker to the commission; and

15 (2) if the transfer is being handled or facilitated by a broker, the broker
16 provides proof of a valid broker license under AS 16.10.570 and provides a sworn
17 statement that money for the transfer for which application is being made have been
18 deposited into an escrow account.

19 * Sec. 8. AS 25.27.244(s)(2) is amended to read:

20 (2) "license"

21 (A) means, except as provided in (B) of this paragraph, a
22 license, certificate, permit, registration, or other authorization that, at the time
23 of issuance, will be valid for more than 150 days and that may be acquired
24 from a state agency to perform an occupation, including the following:

25 (i) license relating to boxing or wrestling under
26 AS 05.10;

27 (ii) authorization to perform an occupation regulated
28 under AS 08 or AS 16.10.570 - 16.10. 589;

29 (iii) teacher certificate under AS 14.20;

30 (iv) authorization under AS 18.08 to perform
31 emergency medical services;

- 1 (v) asbestos worker certification under AS 18.31;
2 (vi) boiler operator's license under AS 18.60.395;
3 (vii) certificate of fitness under AS 18.62;
4 (viii) hazardous painting certification under AS 18.63;
5 (ix) security guard license under AS 18.65.400 -
6 18.65.490;
7 (x) license relating to insurance under AS 21.27;
8 (xi) employment agency permit under AS 23.15.330 -
9 23.15.520;
10 (xii) registration as a broker-dealer, an agent, a state
11 investment adviser, or an investment adviser representative under
12 AS 45.55.030;
13 (xiii) certification as a pesticide applicator under
14 AS 46.03.320;
15 (xiv) certification as a storage tank worker or contractor
16 under AS 46.03.375;
17 (xv) certification as a water and wastewater works
18 operator under AS 46.30; and
19 (xvi) commercial crewmember fishing license under
20 AS 16.05.480 other than an entry permit or interim-use permit under
21 AS 16.43;
22 (B) does not include
23 (i) a vessel license issued under AS 16.05.490 or
24 16.05.530;
25 (ii) a license issued under AS 14.37 or AS 47.35;
26 (iii) a business license issued under AS 43.70;
27 (iv) an entry permit or interim-use permit issued under
28 AS 16.43; or
29 (v) a driver's license issued under AS 28.15;
30 * Sec. 9. The uncoded law of the State of Alaska is amended by adding a new section to
31 read:

1 INDIRECT COURT RULE CHANGE. (a) The provisions of AS 16.10.580(b),
2 added by sec. 6 of this Act, have the effect of amending Rule 82, Alaska Rules of Civil
3 Procedure, and Rule 508, Alaska Rules of Appellate Procedure, by providing for the award of
4 full actual attorney fees to a person aggrieved by actions of a broker licensed under
5 AS 16.10.570 - 16.10.589.

6 (b) AS 16.10.580(b), added by sec. 6 of this Act, takes effect only if (a) of this section
7 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
8 of the State of Alaska.

9 * Sec. 10. The uncoded law of the State of Alaska is amended by adding a new section to
10 read:

11 IMPLEMENTATION. The Department of Community and Economic Development
12 shall issue the initial licenses for brokers of commercial fishing permits, quota shares, and
13 commercial fishing vessels for calendar years 2004 and 2005 to qualified applicants before
14 January 1, 2004.

15 * Sec. 11. AS 16.10.570(a), added by sec. 6 of this Act, and sec. 7 of this Act take effect
16 January 1, 2004.

17 * Sec. 12. Except as provided in sec. 11 of this Act, this Act takes effect immediately under
18 AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 22 (FSH)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title: Commercial Fishing Permit Brokers BRU: Occupational Licensing (117)
Component: Occupational Licensing
Sponsor: Representative Weyhrauch
Requestor: House Fish Committee Component No.: 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	3.0	3.0	3.0	3.0	3.0	3.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	3.0	3.0	3.0	3.0	3.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	6.0	0.0	6.0	0.0	6.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	3.0	3.0	3.0	3.0	3.0	3.0
TOTAL	3.0	3.0	3.0	3.0	3.0	3.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 22 (FSH) creates a registration process for Commercial Fishing Permit Brokers. As with other regulatory programs under Centralized Licensing (AS 08.01.010), the Commercial Fishing Permit Brokers will be expected to pay its full regulatory costs through registration fees. The division has learned that there will be approximately 13 individuals who seek licensure under this program. The costs identified above provide for printing, postage, communication, advertising and standard operating costs necessary to implement the new program.

REVENUE: Revenue will be generated by Commercial Fishing Permit Broker biennial registration fees sufficient to cover direct and indirect program costs.

Prepared by: Jennifer Strickler, Administrative Manager Phone: 907-465-2144
Division: Occupational Licensing Date/Time: 3/19/03 11:35 AM
Approved by: Edgar Blatchford, Commissioner Date: 3/19/2003
Agency: Department of Community & Economic Development

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway
Juneau, AK 99801



Phone 907-586-6652

Fax 907-586-5648

E-mail: seafa@gci.net

March 27, 2003

House Special Committee on Fisheries
Representative Paul Seaton, Chair
State Capitol
Juneau, AK 99801

RE: HB 22 version 23-LS0133\Q 3/18/03

The Southeast Alaska Fishermen's Alliance appreciates Representative Weyhrauch's attempt to deal with an unfortunate affair that occurred last year when a broker foolishly invested money in a scam and lost the money entrusted to them by clients. What needs to be asked is if this has occurred enough that legislation is necessary and does the legislation truly protect the fishermen from future occurrences? The costs associated with this legislation will be passed on to the fishermen.

This legislation will be creating more restrictive measures for the transfer of limited entry permits, quota shares and commercial fishing vessels than is currently required in this state for real estate transactions.

If our association understands this legislation correctly, the only true protection is for limited entry permits where CFEC is obligated to check that an escrow account is used. This protection is not in place for vessels or quota shares and we don't believe that you can require an out of state broker to use an escrow account for quota shares or vessels and this will leave the fishermen under the false impression that they are totally protected when they are not.

This legislation falls short in protecting the fishermen from unscrupulous brokers in that at some point in time prior to creating the individual escrow account the check will still be made out to the broker and he will still have the ability to cash the check and disappear with the money.

Many Alaskan permit brokers are at a disadvantage in conducting business already. They are disadvantaged when the Alaskan broker lives in a city with sales tax

required on the commission which they have to pay out of their commission in order to compete with the out of state brokers.

The costs of transferring a permits is already increasing. Recently, CFEC instituted new fees for the transfer of permits that the fishermen are paying. We checked what the cost of escrow accounts would be and how easy it is to set up escrow accounts. We contacted 8 banks listed in the Juneau phone directory and 6 of the banks would not even set up or deal with this kind of escrow account. The two banks that would set up escrow accounts were 1st National Bank of Alaska and Wells Fargo Bank. 1st National Bank of Alaska quoted the cost at \$200 originally and later called back and corrected it to \$175 if they facilitate the paperwork and \$100 if they only hold the funds and disburses them (use to be \$80 but has increased to \$100 to cover the \$20 wire fund fee). They currently do escrow accounts for limited entry permits, and quota shares and are in the process of setting up to do vessels. Wells Fargo quoted \$200 and would do entry permits, vessels and quota shares.

The cost of these escrow accounts would be the same for a lower value permit compared to a higher value permit and therefore the lower valued permits would pay a substantially higher % of the total permit price. For example, the fishermen is selling a hand troll permit for \$3,000 he will now have to pay a commission of approx \$500, a \$100 administrative cost for some brokers (covers the cost of the new CFEC transfer fee of \$50 and the approximate cost of express mailing documents to and from the clients and CFEC) and now the fishermen would have to pay an additional \$100 - \$200 for an escrow account.

If this legislation is to move forward, we suggest that you delete the references to commercial fishing vessels and quota shares. As the State cannot obligate the Coast Guard or NMFS to check that escrow accounts are being used it is better to not provide the false impression that the fishermen are protected. If this is left in what is the definition of commercial fishing vessel?

Other items that need to be looked at are:

How will 1031 IRS exchanges be dealt with or affected by this legislation. We have a phone call into the company that does the majority of these exchanges but have not heard back yet.

How will earnest money be handled with this requirement? Will the broker have to set up an escrow account to receive the earnest money the buyer would have to pay the \$200 fee or the broker absorb the cost of the escrow fee if the seller doesn't accept the offer?

The Southeast Alaska Fishermen's Alliance does not believe that this legislation is necessary. We feel that educating the fishermen to ways to protect themselves as

a buyer or seller would be more appropriate. Two ways that this can be done are to request in the earnest money document that an escrow account be used or that a cashier's check be written in the sellers name by the buyer and the broker holds the check until the transfer is completed. This actually protects the buyer and seller the best.

Again we appreciate the attempt to protect the commercial fisherman but feel that this has not happened enough times in the history of CFEC limited entry permits to require licensing and escrow accounts. More money has probably been lost by fishermen in the process of boat builders going out of business and keeping the money on account for the boat than in the transfer of permits. As much as we would like the Government to protect us, life does carry some risks.

Sincerely,

Kathy Hansen

FAXSIMILE TRANSMISSION COVER

Tidewater Brokerage, Inc.

Owner/Broker ~ Bruce Tulloch

PO Box 1440 ~ Petersburg, AK 99833-1440

Phones: 907-772-4848/800-772-4845 ~ Fax: 907-772-3726

Email: tidewatr@alaska.net ~ Website: www.tidewater-bkg.com

DATE: 3-27-2003
TO: Representative Bruce Weyhrauch
FAX: 907-465-2273 PHONE: 907-465-3744
FROM: Bruce Tulloch
PAGES: Cover + 2
SUBJECT: HB 22

The purpose of this communication is to address some of the issues arising from the proposed HB 22 pertaining to the licensing of and stipulations regarding the marine brokerage business.

Personal Fisheries Related Background: I flew a corporate contract for Icicle Seafoods for 11 years and was their Southeast Alaska Fleet manager for all their salmon, herring, crab and longline fisheries for 6 years. My wife and I ran a salmon gillnet operation here in Southeast one summer and I have flown fish spotting contracts for several groups of seiners (when they could afford the "overhead") I have now owned and operated Tidewater Brokerage, Inc. for the past 8 years. This is a home office sort of business where my wife helps me when she can.

Issue At Hand: My understanding is that HB 22 has been promoted as a way to address the illegal, unethical and damaging manner and result caused by the deliberate acts of one individual. It appears as though the intent of HB 22 is the financial protection of sellers of commercial fishing vessels, limited entry permits and quota share/IFQ as well as a program of legal accountability for those persons or firms who broker said properties.

Implementation Issues:

1. Regulation/Licensing –
 - a. I would appreciate clarification as to the authority of the State to regulate the sales of that which falls under Federal regulation, i.e. federally documented vessels and federally regulated QS/IFQ... especially since much of this fishing takes place in Federal waters.
 - b. Another issue deals with the authority over the brokering of vessels or permits that never come to Alaska.
 - c. Do these provisions only apply to those who broker "commercial fishing" vessels, or also to those who handle pleasure vessels and work boats as well?
 - d. What really defines a "broker"? It became evident in the hearing of 3-19-2003 that attorneys expected to be exempted from these provisions – even

though some of them do process transfers, match buyers and sellers and advertise as such. Such an exemption would be most inequitable.

- e. How does this all apply to brokers who do not even have a business license in this State?
- f. Beyond the already required State business license, what specifically is accomplished in creating another license? Will any level of knowledge be required and tested for? Will this licensing truly help solve HB 22's concerns in any practical, tangible manner? Will this licensing solve any legal problems or criminal prosecution capability not addressed by the jurisdiction already in place via a State business license?

2. Bonding Issues -

It appears as though this issue has been put to rest as not practically applicable. To the extent of my research I have only found that one must have available, unencumbered assets in the amount of the desired bond. That of course is impossible for a number of us; perhaps for most. Most brokers will handle hundreds of thousands of dollars while a few may have, from time to time, millions of dollars in their trust or escrow accounts. The only reason I re-visit the bonding issue is that some might have a tendency to come back to this matter, in the search for a seemingly "fail safe" means of accomplishing HB 22's intent.

3. Escrow Accounts -

- a. At present it is my assumption that nearly all the brokers currently handling limited entry permits, vessels and QS/IFQ's maintain a non-interest bearing Trust Account at the bank of their choice. Though these accounts are Federally insured, there are limits. F.D.I.C. only insures up to \$100,000 per account holder - not per account. Most of us will have a separate business account as well as the trust account.
- b. When I spoke to my branch manager at Wells Fargo Bank about a multitude of escrow accounts, one per client, he informed me that it was both impractical and expensive. He mentioned that even Title companies do not handle client accounts in such a manner. I spoke with a local real estate broker and he only has to maintain a trust account as well. He does pay a nominal sum into some sort of realtor's bonding program, but nothing really significant.
- c. One vessel or significant QS/IFQ transaction can easily exceed the maximum amount of F.D.I.C. coverage for that client. The balance would then be "at risk".
- d. For some of us many of our transactions are small - from \$3500 to \$50,000. However, we may have only a few to as many as 12-15 transactions in the "pipeline" at any one time during the primary buying/selling times of the year.

Summary:

- 1. No matter what business we observe it always eventually comes back to TRUST, regardless of the bonding, escrow accounts, privacy acts, regulations and licenses. There are always people involved at some level somewhere. The foundation of "protection" is consistent adherence to an objective moral standard of conduct. We can encourage that in others but not absolutely

control it. I'm a bit leery of creating the appearance of protection without its reality, only to end up creating more hardship than actually solving root problems.

2. We can and should promote professionalism and education. I would like to see some business practices standardized and a code of ethics formulated, but these will never really "protect" people any more than those adopted in other professions. They only really deal with a matter after damage has become evident. Though I know all too well that it's easy to be against something and difficult to put forth solutions, I'm at a loss as to how we can practically and realistically bring about a really failsafe protection program. It ALWAYS eventually comes back to human character and trust. Certainly some sort of licensing, requiring some educational standards – as in real estate – could be implemented. However someone would need to create such and administer it.
3. Our industry is indeed small... and shrinking, because the financial rewards are not growing. There are something like 5 brokers in Alaska (at least 3-4 of us are one person home office businesses) and 5 or so in Washington, 4 of which are multiple-peopled firms. Probably half of those in this particular type of brokerage are not deriving their full time living from it. At least the two of us in Petersburg also pay the local sales tax out of our own pockets in order to remain competitive with those not required to pay a sales tax on brokerage fees.
4. If individual escrow accounts were required the costs would have to be passed on to the clients in order for us as brokers to survive. An escrow account fee and structure may be acceptable for a large account but how would such be handled for the preponderance of small accounts? Could a client be given a written statement and sign on regarding his choice – to pay for such an additional fee or to trust the broker and sign away his right to legal recourse?
5. Regardless of procedures and regulation there seems to be a practical lack of sufficient federal account insurance or practical availability of sufficient bonding to really, truly solve the basic issue at hand. I really don't think most industries do solve this... only create an illusion or appearance of doing so. Wouldn't you think an Enron employee retirement plan would have been regulated and thus assured of safety? Not.

Thursday, March 27, 2003

House Special Committee on Fisheries
Representative Paul Seaton, Chair
State Capitol
Juneau, AK 99801

RE: HB 22

To Whom It May Concern:

Because of the time restraint I was unable to offer my testimony on HB 22 on March 19, 2003 regarding licensing of brokers of Limited Entry Permits, IFQ's and Fishing vessels so I wanted to go on record with the following.

I am Matthew Schneider, principal of Graves & Schneider, Int'l llc, a business involved in the marketing, transfer and selling of vessels, ifq's and limited entry permits since 1985. Over the last 18 years we have successfully handled the sales and transfer of better than 2000 limited entry permits and vessels.

Currently we are registered as "boat brokers" in Washington state we maintain a \$5000 surety bond. We have had our records audited by the State of Washington for any misuse of trust account funds, and the audit have proven to be errorless.

The reason for my desire to testify during the March 19, 2003 hearing is based on what appears to be a desire to regulate the activity of commercial brokers selling Alaska limited entry permits, IFQ's and commercial fishing vessels, two (2) of which are federally controlled entities; NMFS for IFQ's and USCG for documented fishing vessels.

"My first question is how can the State of Alaska mandate or supercede what transpires with NMFS or the USCG on a federal level?"

I am totally in favor of a \$50,000 bond being mandate by the State for handling limited entry permits. Because a Surety Bond when issued is guaranteed with assets of the insured.

The circumstance surrounding Debbie Moore was sure stupidity. She didn't take the money and run. Once again under your current proposal it would appear to me to be difficult asking NMFS to enforce broker activity.

Once again it is my opinion that instituting a \$50,000 surety bond would be a move in the right direction, by making sure that the broker has assets to pledge.

With respect to Limited Entry Permits, the one item in this House Bill that the State of Alaska can dictate, Elerene McClure has direct access to me. If there is a situation that's

needs scrutinizing, Elerene doesn't hesitate to question me about it. CFEC has the authority to question any transfer and hold up that transfer if questionable. CFEC is in a position to know who in the brokerage business has been Naughty and who's been Nice.

I propose a very simple inexpensive starter program that could start TODAY that would require all Brokers to provide both the Seller & Buyer a questionnaire that needs to be completed and included with the transfer documents. The single question would be:

"It is crucial for the transfer of a limited entry permit that you contact CFEC and obtain an authorization code regarding the status of the broker you are using in this transaction"

If you do not include this form with the authorization number:

1. The permit will not be transferred.
2. The funds you have on deposit may be in jeopardy.
3. The proceeds you expect to get from the sale of your permit may be in jeopardy.

The profit margins in the Permit Brokerage business is tight already, and by imposing special escrow requirements will be an undue burden that will be passed to the fisherman and in my opinion is a false feeling of security.

Respectfully

Matthew E. Schneider
GSI
4027 21st Ave W. #100
Seattle, WA. 98199

Mar 27 03 03:07p

The Permit Master

1-360-293-4180

p.2

The PERMIT MASTER

March 27, 2003

House Special Committee on Fisheries
Representative Paul Seaton, Chair
State Capitol
Juneau, AK 99801

Dear Mr. Chairman,

I would like to take this opportunity to comment on HB 22.

I am a broker and owner of The Permit Master, a commercial fishing brokerage. I am also a commercial fisherman with 30+ years in that business.

I appreciate Mr. Weyhrauch's concern for the commercial fishing industry in trying to make the trading of permits a safe process. I do have some concerns regarding this proposed legislation that I think will have a negative impact on fishers who buy and sell permits.

Our business over the past few years has been directly effected by the down turn in the salmon industry. Our revenues have dropped proportionally with the value of permits and our costs have gone up. Any new costs that we would have to pay would have to be passed on to our customers, the fishermen.

In December we initiated a \$100 processing fee on each transaction that we charge our customers to cover some of the rising costs of our business. Our typical gross commission on Alaska Limited Entry permit is \$1,000.00. Out of that we pay a \$50 transfer fee to the Commercial Fisheries Entry Commission (CFEC) and if there is an emergency transfer required that is an additional \$50. Lien searches generally run \$50 per transaction. Express mail for a typical transaction is \$68.25. As you can see the \$100 processing fee doesn't cover the processing. These costs do not take into account our broker's share of the commission which is \$500 out of the \$1,000.

At this point any new fees associated with the operation of our business would have to be passed on to our customers. Although the values of permits are way down, they still represent a significant amount of the permit holder's investments and any new fees charged to sell the permit would have a negative impact on both the buyer, who's trying to get started and the seller who's already had to endure the devaluation of his asset.

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email: vessels@permitmaster.com

web site: www.permitmaster.com

4302 Whistle Lake Rd.
Anacortes, WA 98221

If the proposed costs of your legislation are not passed on to the fishermen, the existing brokerages would suffer and possibly be forced out of business. Without brokers to handle the more complex trades, conduct the lien searches, make sure the forms are completed correctly and generally oversee the transfer process from beginning to end, several things could happen. The workload on CFEC would increase. Lien searches would not be done and permits would be trading that could have liens that would attach the new owners. Individual buyers and sellers would be doing more of their own transactions, leaving the door open to potential trades without trust accounts and all the associated nightmares that this legislation is attempting to curtail.

This legislation as written does not directly address the main concern of the safety of the buyer's and seller's funds in escrow. As long as the broker is receiving a check payable to the broker and has the responsibility to deposit those funds into the escrow, the funds are still at risk.

One suggestion that I have that would seem to alleviate the biggest concern (safety of funds in escrow) would be to have the buyer submit a cashier's check to the broker for the balance due in the name of the seller. This way the seller's proceeds can be held in escrow at the broker's office. The broker can't cash the check, doesn't need an escrow account and all parties are safe. Upon confirmation of transfer, the broker sends the cashier's check to the seller. This suggestion wouldn't even need to be law. We could educate the parties involved in transactions that if they have any concerns regarding the safety of their funds, that they pay them to the broker in the above manner and they would be totally safe.

As I said in the beginning, as a fisherman and a broker, I really appreciate Mr. Weyhrauch's concern for the well-being of all involved in this process. I think that in this case simple and definitely more affordable is the way to go. We are all paying more and making less and certainly don't need any more costs taking away from the bottom line.

Respectfully,



Mike Painter
The Permit Master

Alaska Department of Community and Economic Development

P.O. Box 110806, Juneau, Alaska 99811-0806

ALASKA BUSINESS LICENSE

The licensee named below holds Alaska Business License Number 284241

covering the period of: January 30, 2003 through December 31, 2004

Line of Business: 54 Professional, Scientific and Technical Services

ALASKA PERMIT SERVICES

PO BOX 29147, BELLINGHAM, WA 98228

Owner:

JOHN F. MITCHELL

This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State of Alaska or of the United States.

*Department of Community and Economic Development
Commissioner: Edgar Blatchford*

This license must be posted in a conspicuous place at the business location. It is not transferable or assignable.

John Mitchell's
ALASKA PERMIT SERVICES

Memo

Date Feb 19, 2003

Attn: Rep. Scaton

Company: _____

Fax: _____ Phone: _____

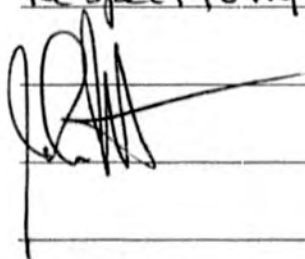
From: John Mitchell Re: HB 22

Number of pages packet (including cover sheet)

REMARKS: ☐ Urgent ☒ For Your Review ☐ Reply ASAP ☐ Please Comment

I offer to share with you some prior events that pertain
to HB 22. I stand committed to offer my time
and effort any way possible to your committee currently
dealing with important issue.

Respectfully yours,



ADD TO HB 22

Bill and legislative legal opinion on HB 652 (1986)

“An act relating to the licensing of limited entry permit brokers”



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

October 1, 1985

MEMORANDUM

TO: Representative Adelheid Herrmann

ATTN: Eric Myers

FROM: Mark Torgerson *MT*
Legislative Analyst

RE: Licensing of Limited Entry Permit Brokers
Research Request 86-022

You asked us to explore the potential benefits of establishing licensing provisions for limited entry permit brokers in Alaska. In addition, you asked whether a licensing requirement could slow down the transfer of permits from resident to nonresident fishermen. Currently, there are no regulations, restrictions or available data on permit brokers or brokering practices in Alaska. Because of this, the information on the pros and cons of the regulation of brokers is based primarily on comments solicited from the Commercial Fisheries Entry Commission (CFEC) and from active brokers of Alaska permits. The data on permit transfers was obtained from the CFEC.

Benefits and Burdens of Regulating Permit Brokers

Permit brokers, like real estate brokers, act as agents in the sale and purchase of property--in this case, fishing permits. The owners of the permits pay the brokers a fee for finding a buyer. The price paid for the transfer of limited entry permits has steadily increased each year since the CFEC began recording the information. The average price paid for permits has increased from \$5,488 in 1976 to \$51,276 in 1984.¹ The total sales price of all limited entry permits during 1984 exceeded \$52,000,000. The percentage of sales participation by permit brokers is unknown. However, the CFEC recently began requesting broker information on transfer forms which must be completed on each permit transfer. A copy of this form is attached.

¹The 1984 Annual Report of the Commercial Fisheries Entry Commission.

Representative Herrmann
October 1, 1985
Page Two

As noted, there is no statutory regulation of brokering practices in Alaska. In order to sell permits in Alaska, a broker is merely required to obtain an Alaska business license (AS 43.70.110). Nonresident brokers need not obtain a license unless they establish business locations in Alaska.

According to most of the individuals contacted, the primary benefit of a licensing requirement would be its policing aspect. Through effective regulations, the State could oversee brokers' activities to protect permit owners when they decide to transfer their rights of ownership. This regulatory oversight could include a licensing provision which--like the real estate regulations--could require that those brokering Alaska permits pass an examination. The examination requirement would theoretically assure permit owners that permit brokers with whom they deal possess a sufficient level of skills and knowledge on limited entry permit transfers and procedures.

According to John Williams, a former commissioner of the CFEC and currently a permit broker, some brokers have done "slipshod" work because they lack a sufficient understanding of CFEC regulations and basic contract and agency principles. Ken Moore, a broker in Homer, stated that some individuals broker one or two permit transfers and then get out of the business because they lack the necessary knowledge of the pertinent regulations and the fishing business to provide adequate service for their clients. A licensing provision could prevent this "fly-by-night" activity.

The CFEC and most of the brokers contacted asserted that effective policing may prevent or curtail "unscrupulous activities" which have allegedly occurred. The unethical activity usually mentioned by the brokers was improper use of client trust fund accounts. Brokers mentioned two kinds of improper use: 1) using client dollars for the broker's cash flow purposes; and 2) failing to keep the client's funds separate from the broker's business funds. (According to John Mitchell, an Anchorage broker, there are a number of pending lawsuits against a permit-brokering firm because of improper use of client funds.) A licensing provision could specifically outline permit brokers' fiduciary duties to their clients.

Another potential benefit of a licensing provision could be the establishment of a surety fund similar to that contained in the real estate regulations (AS 08.88.450 et. seq.). This fund could provide partial or complete reimbursement for losses suffered by permit owners because of fraudulent acts or misuse of trust funds by brokers. The fund could be used in conjunction with other legal remedies available to the permit owner. The fund would be especially beneficial where the permit owner has no other available remedy.

Representative Herrmann
October 1, 1985
Page Three

State regulation of permit brokers could probably be applied to resident and nonresident brokers alike. According to Margo Knuth, Assistant Attorney General for Alaska, nonresident brokers could be required to comply with the licensing provisions because they are dealing with property which technically belongs to the State of Alaska and may be revoked by the State at any time. In addition, the regulatory provisions could require nonresident brokers to submit to the jurisdiction of Alaska State courts as a condition of selling fishing permits. This would assure Alaska residents that they will not be required to fly to Washington, for example, in order to pursue legal remedies against a nonresident broker.

Finally, a licensing provision could also benefit the permit brokers, according to Mae Thiele, a broker for Alaska Permit Sales in Seattle. Ms. Thiele stated that a licensing scheme could give consumers a "better feeling" about brokers, thus enhancing the brokers' image in the public's eye. According to Ms. Thiele, brokers are often viewed negatively by permit owners. She asserted that a licensing provision, which includes a minimum level of competence, may increase the number of people who utilize brokers' services.

Most of the individuals contacted for this request emphasized that the financial costs of the regulations--to the State, the brokers and permit owners--should be weighed against the benefits the parties would get out of them. Some brokers expressed concern that regulatory provisions would become increasingly burdensome. Others questioned the practicality of regulating a business with few operators.

Rate of Permits Transferred to Nonresidents

According to Elaine Dinneford, Research Analyst for the CFEC, the percentage of permanent permits owned by nonresidents increased by 0.5 percent between 1975 and 1983 (from 2,416 to 2,480). The number of nonresidents permits for some fisheries (i.e., set net, drift, seine, etc.) and locations increased while others decreased. Net shifts in permit types are summarized on the attached table (Table 7) copied from a CFEC report entitled "Changes in the Distribution of Permit Ownership in Alaska's Limited Fisheries, 1975-1983" (CFEC Report Number 84-10). An explanation of the column headings (ARL, ARN, etc.) is also enclosed.

As you may be aware, a regulation designed to slow down the rate of permits being transferred to nonresidents could result in a constitutional challenge on grounds that it violates the privileges and immunities clause (Article IV, section two) of the United States Constitution.

Representative Herrmann
October 1, 1985
Page Four

That clause provides that "[t]he citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." According to the Alaska Supreme Court, the purpose of the clause is to "prevent discrimination against nonresidents, to further the concept of federalism, and to create a national economic unit" [See Sheley v. Alaska Bar Association, 620 P. 2d 640, 642 (1980)]. The United States Supreme Court has protected, under the privileges and immunities clause, the right to fish [See Toomer v. Witsell, 334 U.S. 385 (1948)]. A regulation that limits this fundamental right would be required to pass, at a minimum, two tests outlined by the Alaska Supreme Court in Sheley: 1) there must be a "substantial reason" for the discrimination; and 2) there must be a "substantial relationship between the means chosen by the state and the end to be achieved," i.e., there must be a substantial relationship between the discrimination against nonresidents and the "evil" of loss of resident permits (See Sheley at 620 P. 2d 644). Moreover, a regulation of this nature could potentially be constitutionally defective on equal protection grounds as well.

I hope that this information is valuable to you. If you need additional information, please contact our agency.

MT

Attachments

BILL Root: HB0652

Bill Number - HB652

INTRODUCED: 2/17/86

REFERRED: RESOURCES, JUDICIARY AND FINANCE

ORIGINAL SPONSOR: BY HERRMANN

BILL HEADING: IN THE HOUSE

HOUSE BILL NO. 652

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

TITLE: FOR AN ACT ENTITLED:

"AN ACT RELATING TO THE LICENSING OF LIMITED ENTRY PERMIT BROKERS".

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

***SECTION 1. AS 16.43 IS AMENDED BY ADDING NEW SECTIONS TO READ:**

ARTICLE 6A. LIMITED ENTRY PERMIT BROKERS.

SECTION 16.43.500. License required. Except as provided in as 16.43.592 and unless licensed as a Limited Entry Permit Broker, a person may not

- (1) Sell, exchange, auction, or purchase a Limited Entry Permit;
- (2) List a Limited Entry Permit for sale, exchange, auction, or purchase,
- (3) Assist in or direct the procuring of prospective buyers or the negotiation of a transaction that results or is calculated to result in the sale, exchange, auction, or purchase of a Limited Entry Permit;
- (4) Hold out to the public as being engaged in the business of doing any of the things listed in this section; or
- (5) Attempt or offer to do any of the things listed in this section.

SECTION 16.43.505. Entitlement to license.

(A) A person is entitled to a limited entry permit broker license if the person

(1) [by grandfather rights, has been engaged in the business in the capacity of a broker as proven by an Alaska business license and other supportive documents, for a minimum of seven (7) consecutive years proceeding introduction of this bill. The CFEC shall have the authority to make the determination of this qualification. This grandfather clause is limited to brokers who maintained their principal office in the State of Alaska during the seven (7) year term.]

IF NOT QUALIFIED UNDER (1) then;

- (2) Passes the permit broker examination;
- (3) Applies for a license within six months after the person has taken the permit broker examination;
- (4) Is not under indictment for, or seven years have elapsed since the person has completed a sentence imposed upon conviction of, forgery, theft, extortion, conspiracy to defraud creditors, or another felony involving moral turpitude.

(B) Unless the broker fails to pay the biennial renewal fee or unless the broker's license is suspended or revoked under AS 16.43.540, the limited entry permit broker's license continues in effect.

SECTION 16.43.510. Content of Examination.

(A) The permit broker examination may include, but is not necessarily limited to, questions on business ethics; knowledge of state statutes, regulations, and administrative procedures relating to limited entry permits, agency and brokerage; knowledge of fiduciary duties of brokers, and the provisions of this chapter and of the regulations of the commission.

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

[(C) The permit broker examination is limited to those individuals have their principal office located within the State of Alaska.]

APPLICATION.

SECTION 16.43.525. Fees. The commission shall set fees by regulation for a limited entry permit broker licensee or applicant for the following:

- (1) Examination;
- (2) Initial license;
- (3) Renewal of an active license;
- (4) Renewal of an inactive license;
- (5) Amendment of a license.

SECTION 16.43.530. Deposit in General Fund. The commission shall deposit money collected under AS 16.43.500 - 16.43.593 in the General Fund.

SECTION 16.43.535. Reinstatement of lapsed license. A permit broker whose license has lapsed for more than two years shall be reexamined before reinstatement.

SECTION 16.43.540. Duties of the Commission.

(A) The commission shall

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

(A) With respect to a permit transaction

- (I) Made a substantial misrepresentation;
- (II) Made a false promise likely to influence, persuade, or induce;
- (III) Pursued a flagrant course of misrepresentation or made a false promise;
- (IV) Has engaged in conduct that is fraudulent or dishonest;
- (V) Violates AS 16.43.570;

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

(C) Has engaged in conduct demonstrating unfitness to engage in the business of permit brokerage;

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

[(E) Does not maintain their principal office in the State of Alaska.]

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

(3) Publish, on three consecutive weekends in a newspaper of general circulation in the locale of the offending person's principal office, a notice of specifying disciplinary action taken by the commission against a person licensed under AS 16.43.500 - 16.43.593; and

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

~~(B) When an award is made from the limited entry permit surety fund under this chapter in reimbursement of losses suffered by a claimant as a result of fraud, misrepresentation, deceit, or conversion of trust funds on the part of a licensed broker, the commission may consider the hearing on the claim to be a hearing on the suspension of the license of the broker, and may suspend the license of broker. A suspension ordered under this subsection shall be lifted if the broker reaches an agreement with the commission on terms and conditions for the repayment to the surety fund of the money awarded to the claimant and the costs of hearing the claim under AS 16.43.583. The suspension shall be reimposed if the broker violates the terms of a repayment agreement entered into under this subsection.~~

~~SECTION 16.43.545. Compliance with surety fund requirements. Before issuing a permit broker's license to an applicant under AS 16.43.500 - 16.43.593, the commission shall determine that the applicant has complied with the provisions of AS 16.43.581 and is covered by the surety fund established in AS 16.43.580.~~

SECTION 16.43.550. Principle office; service of process.

(A) A licensed permit broker shall inform the commission of the broker's principal office, and of any branch offices the broker has [all of which must be located in the State of Alaska.] ~~[and of the name and address of a registered agent in the state for purposes of service of process if the broker's principal office is not located in the state.]~~ The broker may do business only in or out

of the principal office and the branch offices. Failure of a broker to maintain a place of business, [in the State of Alaska] or inform the commission of its location [and the name and address of a registered agent, if any], are grounds for the suspension or revocation of the broker's license.

~~[(B) — When a permit broker whose principal office is not located in the state fails to appoint or maintain a registered agent in the state, or when a registered agent cannot with reasonable diligence be found, the commission is an agent upon whom process, notice, or demand may be served. Service on the commission shall be made by delivering to and leaving with a commissioner, or with a person designated by the commission in the commission office, duplicate copies of the process, notice, or demand. The commission shall immediately have one copy forwarded by registered or certified mail, addressed to the broker at the broker's principal office. Service on the commission is returnable in not less than 30 days.]~~

SECTION 16.43.555. Listings. Limited entry permit listings must be in writing and must be signed by the seller. Exclusive listings must have a definite expiration date.

SECTION 16.43.560. Record of transaction. A limited entry permit broker shall

- (1) Keep a complete record of limited entry permit transactions made by the broker for at least the preceding three years;
- (2) Make a closing statement showing disbursements and accounting for all money in the transaction;
- (3) Keep a separate trust account in a bank, into which the broker shall deposit all earnest money deposits and purchase money until it is proper for the broker to distribute the money to the proper persons;
- (4) Make available to the commission, on request, records and other documents relating to transactions under (3) of this section that the commission may require in order to conduct a complete audit of trust accounts.

SECTION 16.43.565. Broker's commissions.

(A) A broker's commission is earned when the limited entry permit broker fulfills the terms of a written personal services contract.

~~(B) — The commission shall adopt regulations limiting the percentage rate or amount of a broker's commission that may be charged for a permit broker's services.~~

SECTION 16.43.570. Conflict of interest and fiduciary duties.

(A) A licensed permit broker who has a personal financial interest in a limited entry permit transaction shall disclose that interest to every person involved in the transaction.

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

SECTION 16.43.575. Prohibited conduct.

(A) A person who is not a limited entry permit broker licensed in this state may not accept a fee or a commission for performance of an act for which a license is required.

(B) A person may not knowingly make, authorize, direct, or aid in the publication of a false statement or misrepresentation concerning a limited entry permit offered for sale or exchange or presented at auction.

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

~~[SECTION 16.43.580. Limited entry permit surety fund. The limited entry permit surety fund is established in the general fund to carry out the purposes of AS 16.43.580-16.43.591. The fund is composed of payments made by licensed limited entry permit brokers under AS 16.43.581 and filing fees retained in accordance with AS 16.43.582. The fund may not exceed \$500,000.]~~

SECTION 16.43.581. Payments by permit brokers.

(A) A licensed limited entry permit broker when obtaining or renewing a permit broker license shall pay to the commission, ~~[in addition to] the license fee[.] a surety fund fee not to exceed \$125. After the fund reaches \$250,000 the commission shall by regulation adjust the surety fund fees so that, taking into account anticipated expenditures for claims against the fund, the fund is maintained at a level not less than \$250,000.~~

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

~~**SECTION 16.43.582. Claim for payment.**~~

~~(A) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a limited entry permit broker licensed under AS 16.43.500-16.43.593 shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:~~

~~(1) The name and address of the permit broker;~~

~~(2) The amount of alleged loss;~~

~~(3) The date or period of time during which the alleged loss occurred;~~

~~(4) The date upon which the alleged loss was discovered;~~

~~(5) The name and address of the claimant; or~~

~~(6) The general statement of facts relative to the claimant.~~

~~(B) A copy of a claim filed with the commission under (A) of this section shall be sent to the permit broker alleged to have committed the misconduct resulting in losses, at least 20 days before a hearing held on the claim by the commission.~~

~~(C) Within seven days after receipt of notice of a claim under (B) of this section the permit broker against whom the claim is made may elect to defend the claim as a small claims action in District Court if the claim does not exceed the small claims jurisdictional limit. An election to defend a claim in District Court under the small claims rules may not be revoked by the broker without the consent of the claimant. Upon receipt of a valid written election under this subsection the commission shall dismiss the claim filed with the commission and notify the claimant that the claim must be brought as a small claims action in the appropriate state court.~~

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

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

~~(2) The claim is dismissed under (C) of this section; or~~

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

~~SECTION 16.43.583. Consideration of application:~~

~~(A) Upon receipt of a claim for reimbursement, the commission may, in considering whether a claim should be granted;~~

~~(1) Take and hear evidence pertaining to the claim;~~

~~(2) Administer oaths and affirmations;~~

~~(3) Compel, by subpoena, the attendance of witness and the production of books, papers and documents pertaining to the claim;~~

~~(4) Engage the services of an investigator, accountant, or other expert necessary to process the claim.~~

~~(B) A certified or authenticated copy of a record, including a transcript of testimony, of a hearing held under AS 16.43.540 in which fraud, misrepresentation, deceit, or conversion of funds on the part of a licensed broker is established, may constitute sufficient evidence to support a finding:~~

~~(C) Before the commission finds that payment should be made from the limited entry permit surety fund, the permit broker shall be afforded an opportunity to file with the commission, within 10 days after receipt of notification of the claim under AS 16.43.582(B), either a written statement in opposition to the claim or an application for the presentation of additional evidence.~~

~~(D) The claimant bears the burden of proof of establishing that the claimant suffered losses in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a permit broker and the extent of those losses. Facts shall be established by a preponderance of the evidence.~~

~~(E) The commission may postpone consideration of a claim until after a hearing under AS 16.43.540 or until after a pending or contemplated court proceeding is completed.~~

~~(F) The provisions of this section do not apply to a claim that is dismissed under AS 16.43.582(C).~~

~~SECTION 16.43.584. Findings and payment. At the conclusion of the commission's consideration of a claim made under AS 16.43.582, the commission shall make written findings and conclusions on the evidence. If the commission finds that the claimant has suffered a loss in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a permit broker, the commission may award a claimant reimbursement out of the limited entry permit surety fund for the claimant's loss up to \$10,000. However, not more than \$10,000 may be paid for each transaction regardless of the number of persons injured or the number of permits involved in the transaction.~~

~~SECTION 16.43.585. Hearing costs:~~

~~(A) When an award is made from the limited entry permit surety fund under AS 16.43.584, the commission may charge to the fund the costs of a hearing held under AS 16.43.540 or 16.43.583. Amounts subsequently recovered by the commission for these costs from the licensee under AS 16.43.540(B) or from other parties under AS 16.43.590 shall be deposited to the limited entry permit surety fund.~~

~~(B) An amount charged to the surety fund by the commission for costs under (A) of this section may not be considered in determining the maximum reimbursement to be awarded under AS 16.43.584 or in determining the maximum liability of the surety fund under AS 16.43.587.~~

~~SECTION 16.43.586. Payment of small claims judgment. If a claim originally filed with the commission is dismissed and is heard as a small claims action under AS 16.43.582(C) and the claimant prevails in the small claims action against the permit broker, the commission shall make an award from the surety fund of the outstanding portion of the small claims judgment on receipt of a copy of the final judgment and an affidavit from the claimant stating that more than 30 days have elapsed since the judgment became final and that the permit broker has not satisfied the judgment during that time. After payment of a small claims judgment the commission is subrogated to the claimant's rights in the judgment under AS 16.43.590.~~

~~SECTION 16.43.587. Maximum liability:~~

~~(A) The maximum liability of the limited entry permit surety fund may not exceed \$50,000 for any one broker.~~

~~(B) If the \$50,000 liability of the fund as provided in (A) of this section is insufficient to pay in full the valid claims of the persons who have filed claims against one broker, the \$50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims, or in another manner that the commission considers equitable.~~

~~Distribution shall be among the persons entitled to share in the recovery without regard to the order of priority in which their claims were filed.~~

~~SECTION 16.43.588. Order of claim payment. If the money deposited in the limited entry permit surety fund is insufficient at a given time to satisfy a duly authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year.~~

~~SECTION 16.43.589. False claims or documents. A person who files with the commission a notice, statement or other document required under this chapter that contains an intentional material misstatement of fact, is guilty of a misdemeanor and is punishable by imprisonment for a period of not more than one year, or a fine of not more than \$1,000, or by both.~~

~~SECTION 16.43.590. Right to subrogation. When the commission has paid to a claimant from the limited entry permit surety fund the sum awarded by the commission, the commission shall be subrogated to the rights of the claimant to the amount paid and the claimant shall assign all right, title, and interest in that portion of the claim to the commission. Amounts subsequently realized by the commission on the claim shall be deposited to the limited entry permit surety fund.~~

~~SECTION 16.43.591. Disciplinary action against brokers. Repayment in full of obligations to the limited entry permit surety fund does not nullify or modify the effect of disciplinary proceedings brought under the provisions of AS 16.43.500 - 16.43.593.~~

SECTION 16.43.592. Exceptions. AS 16.43.500 - 16.43.593 do not apply to

- (1) A person who is not a licensed permit broker who makes a transaction with respect to a limited entry permit the person owns or on the person's own behalf;
- (2) An attorney in fact under a power of attorney authorizing the consummation of a specific transaction, an attorney in fact may not act as such for more than two transactions in a calendar year;
- (3) A lawyer performing duties as a lawyer;
- (4) A public official in the conduct of official duties;
- (5) A person acting as receiver, trustee, administrator, executor, or guardian;
- (6) A person acting under court order;
- (7) A person acting under the authority of a will or trust instrument.

SECTION 16.43.593. Regulations. The commission shall adopt regulations reasonably necessary to implement the provision of AS 16.43.500 - 16.43.592.

Supreme Court Decision Regarding Practice of Law by Real Estate Licensees

On January 11, 1985, the Washington State Supreme Court reversed the King County Superior Court ruling in the case of Cultum vs. Heritage House, REALTORS, Inc. with all eight participating Justices concurring in the result. This decision reaffirms the one made by the Supreme Court in Washington State Bar Association v Washington Association of REALTORS, (41 Wn. 2d 697, 251 P.2d 619 1952).

Tom Fishburn, Attorney, Gordon, Thomas and Honeywell, WAR General Counsel, in The Washington REALTOR, February, 1985 wrote, "The principal opinion upholds the practice of completing earnest money agreements by real estate licensees even though (Fishburn's emphasis) such practice does constitute the practice of law. This position concluded that the limited practice is not "unlawful". The concurring opinion appears to go somewhat further by accepting the "current practice as a fact of life in the real world." It does not attempt to create special limitations."

Fishburn further wrote, "The following requirements emerge from the discussion of the Court in the principal opinion and may be viewed as something like a formula to be followed:

1. The practice rights are limited to a real estate broker or salesperson.
2. The rule applies only to agreements, the form of which meet the following requirements:
 - a. They must be simple.
 - b. They must be printed.
 - c. They must be standardized.
 - d. They must have the previous approval of a lawyer.
3. The authority only covers simple real estate transactions which arise in the usual course of brokerage business.

4. The rule applies to forms which are only used in connection with real estate transactions actually handled by such broker or salesperson as a broker and/or salesperson.

"It is important to note," Fishburn continued, "that all Justices agreed that brokers and agents would be subject to a demanding standard of performance. Each must comply with the same standard of care applicable as if he or she were a practicing attorney in the State of Washington." This concurs with the earlier 1952 decision.

From the Court's opinions, Fishburn extracted the following as further guidelines for real estate licensees:

"If a broker or salesperson believes there may be complicated legal issues involved, he or she should persuade the parties to seek legal advice."

"The competent broker/salesperson should recognize when special circumstances require more skill and knowledgeable drafting. If that decision is made at their peril, hopefully it will be made carefully, keeping in mind the fiduciary relationship and the requirements of the licensing statute."

The above is being furnished students of the real estate program at Pierce College for information and guidance.

Alaska Boats & Permits, Inc.
PO Box 505
Homer, Alaska 99603
800-992-4960

May 15, 2003

Representative Paul Seaton, Chair
House Special Committee on Fisheries
Juneau, Alaska

Dear Mr. Chairman,
Thanks for the opportunity to comment on HB 22.

My name is Glenn Caldwell. I'm a broker and part owner of Alaska Boats & Permits in Homer. I appreciate Mr. Weyrauch's, and the legislature's, concern for the commercial fishing industry. I have some concerns that the pending legislation is not the best response to an unfortunate incident in Homer.

Under the proposed legislation, the state could, through checks with CFEC, confirm compliance with licensing and escrow account requirements regarding Limited Entry Permits. However, I don't see an opportunity for confirmation through the U.S. Coast Guard and National Marine Fisheries Service regarding vessels and quota sales. Additionally, how does the state intend to enforce compliance by out-of-state brokers? This lack of enforcement opportunity could give fishers a false sense of protection.

While the latest amendment does allow for brokers to hold certified checks in-house, a fair number of deals would still need to use an escrow account, as buyers' funds are what pays liens, and facilitates the sale. That brings me to the question of the expense of an escrow account and the administration thereof. Most escrow charges are going to be \$175 to \$200, plus approximately \$100 for administration. Approximately \$300, this charge would effectively raise the price to fishers by 30 to 60 percent on medium and small deals. These are hard-working people, in an industry beset by rising costs and falling prices. This legislation would add a burdensome expense to those who need it least.

I think it's also important to look at the broker's role in the commercial fishing industry today. Brokers help with complicated transfers and trades, lien and title searches, correct form completion, and agency interface. Making the utilization of a broker too expensive for fishers could put them in a position of trying to do this work themselves, opening the door for a myriad of possible problems. It's quite possible this legislation could help create exactly the kind of situation is intended to resolve.

Imagine at the dock sits a \$15,000 gillnetter and \$175,000 yacht. It doesn't make sense to me that I'd be required to be licensed, at my expense, and to use expensive escrow accounts to sell the gillnetter, but not the yacht. If you extrapolate the thinking along these lines, shouldn't car sales personnel be licensed? Shouldn't motor home salesmen be licensed and use an escrow accounts? Under this pending legislation, I don't feel equally protected by the law.

Thank you for the chance to add my thoughts and comments. I appreciate Mr. Weyrauch's attempt to help make the transfer process for Limited Entry Permits, vessels and quota shares safer. I think HB 22 is an expensive and cumbersome burden to the parties involved. Let's find an easier, and certainly less expensive solution.

Respectfully,

Glenn Caldwell

FISCAL NOTE

To Kelly 2/18/03

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____

Bill Version: HB 22

() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: DCED

Title An Act relating to commercial fishing
permit brokers; and providing for an effective date.

BRU Occupational Licensing (117)

Component Occupational Licensing

Sponsor Representative Weyhrauch

Requester House FSH Committee

Component No. 2360

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	31.1	31.1	31.1	31.1	31.1	31.1
Travel	1.0	1.0	1.0	1.0	1.0	1.0
Contractual	3.0	3.0	3.0	3.0	3.0	3.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	42.1	36.1	36.1	36.1	36.1	36.1

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	78.2	0.0	72.2	0.0	72.2	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	42.1	36.1	36.1	36.1	36.1	36.1
TOTAL	42.1	36.1	36.1	36.1	36.1	36.1

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal: ☐

POSITIONS

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 22 creates a registration process for Commercial Fishing Permit Brokers. As with other regulatory programs under Centralized Licensing (AS 08.01.010), the Commercial Fishing Permit Brokers will be expected to pay its full regulatory costs through registration fees. If small numbers of registrants are expected, biennial registration fees could be substantial. Attached is an explanation of the costs shown above.

Prepared by: Jennifer Strickler, Administrative Manager

Division: Occupational Licensing

Approved by: Edgar Blatchford, Commissioner

Agency: Department of Community & Economic Development

Phone: (907) 465-2144

Date/Time: 2/18/03 1:58 PM

Date: 2/18/2003

FISCAL NOTE

**STATE OF ALASKA
2003 LEGISLATIVE SESSION**

BILL NO. HB 22

ANALYSIS CONTINUATION

Total PERSONAL SERVICES: \$31.1

- 1/2 Investigator III position, Range 18A, \$31.1

Note: Licensing staff supporting the registration program is anticipated to be provided by current division staff. Time spent on Commercial Fishing Permit Brokers will be tracked and billed to the program accordingly.

Total TRAVEL: \$1.0

- Funding for Investigator to travel.

Total CONTRACTUAL SERVICES: \$3.0

- Printing, postage, communication, and advertising costs, \$3.0

Total SUPPLIES: \$1.0

To fund daily operating supplies of the program.

Total EQUIPMENT (one-time costs): \$6.0

Office equipment and workstation set-up for the support position.

TOTAL FISCAL NOTE: \$42.1

REVENUE & FUND SOURCE: Revenue will be generated by Commercial Fishing Permit Broker registration fees sufficient to cover direct and indirect program costs.

3238.46

1-3 brokers

Alaska State Legislature

Chair
Seaton

Vice Chair
Wilson

Members
Berkowitz
Guttenberg
Heinze
Kott
Samuels



State Capitol
Juneau, AK 99801
(907) 465-3306
(907) 465-3472

House Special Committee on Fisheries

MEMORANDUM

TO: All Fisheries Committee Members

FM: Representative Paul Seaton, Chair
House Fisheries Committee

DATE: March 18th, 2003

RE: Add to HB 22 file

Please add this CSHB 22 to your file.

CSHB 22 is scheduled for hearing on Wednesday, March 19th

Please feel free to contact me with questions anytime x2689, or you can contact my Committee Aide, Cameron Yourkowski, x3306. Thank you.

23-LS0133\Q

Utermohle

3/18/03

CS FOR HOUSE BILL NO. 22(FSH)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-THIRD LEGISLATURE - FIRST SESSION****BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES****Offered:****Referred:****Sponsor(s): REPRESENTATIVE WEYHRAUCH****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to brokers of commercial fishing permits, quota shares, and
2 commercial fishing vessels; to the transfer of commercial fishing permits; amending
3 Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate
4 Procedure; and providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 08.01.010 is amended by adding a new paragraph to read:

7 (38) regulation of brokers of commercial fishing permits, quota shares,
8 and commercial fishing vessels under AS 16.10.570 - 16.10.589.

9 * **Sec. 2.** AS 08.01.050(a) is amended by adding a new paragraph to read:

10 (22) licensing of brokers of commercial fishing permits, quota shares,
11 and commercial fishing vessels under AS 16.10.570 - 16.10.589.

12 * **Sec. 3.** AS 08.01.087(a) is amended to read:

13 (a) The department may, upon its own motion, conduct investigations to
14 (1) determine whether a person has violated a provision of this chapter

1 or a regulation adopted under this chapter [IT], or a provision of AS 16.10.570 -
2 16.10.589 or a regulation adopted under AS 16.10.570 - 16.10.589, or a provision
3 of AS 43.70, or a provision of this title or regulation adopted under this title dealing
4 with an occupation or board listed in AS 08.01.010; or

5 (2) secure information useful in the administration of this chapter.

6 * Sec. 4. AS 08.01.087(b) is amended to read:

7 (b) If it appears to the commissioner that a person has engaged in or is about
8 to engage in an act or practice in violation of a provision of this chapter or a regulation
9 adopted under this chapter [IT], or a provision of AS 16.10.570 - 16.10.589 or a
10 regulation adopted under AS 16.10.570 - 16.10.589, or a provision of AS 43.70, or
11 a provision of this title or regulation adopted under this title dealing with an
12 occupation or board listed in AS 08.01.010, the commissioner may, if the
13 commissioner considers it in the public interest, and after notification of a proposed
14 order or action by telephone, telegraph, or facsimile to all board members, if a board
15 regulates the act or practice involved, unless a majority of the members of the board
16 object within 10 days,

17 (1) issue an order directing the person to stop the act or practice;
18 however, reasonable notice of and an opportunity for a hearing must first be given to
19 the person, except that the commissioner may issue a temporary order before a hearing
20 is held; a temporary order remains in effect until a final order affirming, modifying, or
21 reversing the temporary order is issued or until 15 days after the person receives the
22 notice and has not requested a hearing by that time; a temporary order becomes final if
23 the person to whom the notice is addressed does not request a hearing within 15 days
24 after receiving the notice; the commissioner or the commissioner's designee shall be
25 the hearing officer at the hearing and shall issue a final order within 10 days after the
26 hearing;

27 (2) bring an action in the superior court to enjoin the acts or practices
28 and to enforce compliance with this chapter, a regulation adopted under this chapter
29 [IT], an order issued under this chapter [IT], or with a provision of this title or
30 regulation adopted under this title dealing with business licenses or an occupation or
31 board listed in AS 08.01.010;

(3) examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records, and other documents.

* Sec. 5. AS 08.01.102 is amended to read:

Sec. 08.01.102. Citation for unlicensed practice or activity. The department may issue a citation for a violation of a license requirement under this chapter, AS 16.10.570 - 16.10.589, or AS 43.70 if there is probable cause to believe a person has practiced a profession or engaged in business for which a license is required without holding the license. Each day a violation continues after a citation for the violation has been issued constitutes a separate violation.

* Sec. 6. AS 16.10 is amended by adding new sections to read:

Article 11. Commercial Fishing Permit, Quota Share, and Vessel Brokers.

Sec. 16.10.570. Broker license. (a) A person may not, for compensation, ~~handle or facilitate~~ ^{broker} the transfer of a commercial fishing permit, a quota share, or a commercial fishing vessel on behalf of a buyer, seller, lessor, lessee, transferor, transferee, holder, or owner of the permit, quota share, or vessel unless the person holds a license issued by the Department of Community and Economic Development to act as a broker of commercial fishing permits, quota shares, and commercial fishing vessels.

→ (b) A broker shall use an escrow account for all transactions ^{greater than 5000} for which a broker license is required under this section. ~~and a trust account may be used~~

(c) An applicant for a broker license under (a) of this section shall file an application and an application fee established by the department by regulation with the department.

(d) The department shall prescribe and furnish the form of application for a broker license. The application must contain

(1) the name of the applicant and the name of the business under which the applicant operates;

(2) the address of the main office of the applicant; and

(3) other information the department requires.

(e) The department shall approve an application for a broker license under this section if the applicant satisfies the requirements of (c) and (d) of this section.

(f) A broker shall renew the license required under (a) of this section every two calendar years by filing a request for renewal and a renewal fee with the department.

Sec. 16.10.580. Claims against broker. (a) In an action for damages arising from the performance of the duties of a broker licensed under AS 16.10.570 - 16.10.589, a violation of AS 16.10.570 - 16.10.589, or of regulations adopted under AS 16.10.570 - 16.10.589, is negligence per se if the violation is a proximate cause of the loss to the claimant.

(b) A person aggrieved by the actions of a broker licensed under AS 16.10.570 - 16.10.589 is entitled to full actual attorney fees and costs incurred in bringing an action for damages, if the person is the prevailing party in the action.

Sec. 16.10.585. Penalty. (a) A person who knowingly violates AS 16.10.570 - 16.10.589 is guilty of a class A misdemeanor.

(b) In this section, "knowingly" has the meaning given in AS 11.81.900.

Sec. 16.10.589. Definitions. In AS 16.10.570 - 16.10.589,

(1) "commercial fishing permit" means an entry permit, vessel permit, license, or other authorization issued by the state or federal government that is a legal prerequisite for a person or commercial fishing vessel to engage in commercial fishing or in processing of a commercial fishing resource;

(2) "commercial fishing vessel" means a vessel used or to be used for commercial fishing activities for which a vessel license is required under AS 16.05.490;

(3) "department" means the Department of Community and Economic Development;

(4) "escrow account" means a federally insured account held at a financial institution in the name of the depositor and an escrow agent that is returnable to the depositor or paid to a third person on the fulfillment of escrow conditions;

(5) "quota share" has the meaning given in AS 16.10.360;

(6) "transfer" means purchase, sale, lease, or other transfer.

* Sec. 7. AS 16.43.100 is amended by adding a new subsection to read:

(c) The commission may not transfer an entry permit or vessel permit under this chapter unless

(1) the parties to the transfer disclose to the commission whether the transfer is being ~~handled or facilitated~~ ^{brokered} by a broker and, if so, then provide the name of the broker to the commission; and

(2) if the transfer is being ~~handled or facilitated~~ ^{brokered} by a broker, the broker provides proof of a valid broker license under AS 16.10.570 and provides a sworn statement that funds for the transfer for which application is being made have been deposited into an escrow account.

* Sec. 8. AS 25.27.244(s)(2) is amended to read:

(2) "license"

(A) means, except as provided in (B) of this paragraph, a license, certificate, permit, registration, or other authorization that, at the time of issuance, will be valid for more than 150 days and that may be acquired from a state agency to perform an occupation, including the following:

(i) license relating to boxing or wrestling under AS 05.10;

(ii) authorization to perform an occupation regulated under AS 08 or AS 16.10.570 - 16.10. 589;

(iii) teacher certificate under AS 14.20;

(iv) authorization under AS 18.08 to perform emergency medical services;

(v) asbestos worker certification under AS 18.31;

(vi) boiler operator's license under AS 18.60.395;

(vii) certificate of fitness under AS 18.62;

(viii) hazardous painting certification under AS 18.63;

(ix) security guard license under AS 18.65.400 - 18.65.490;

(x) license relating to insurance under AS 21.27;

(xi) employment agency permit under AS 23.15.330 -
23.15.520;

(xii) registration as a broker-dealer, an agent, a state
investment adviser, or an investment adviser representative under
AS 45.55.030;

(xiii) certification as a pesticide applicator under
AS 46.03.320;

(xiv) certification as a storage tank worker or contractor
under AS 46.03.375;

(xv) certification as a water and wastewater works
operator under AS 46.30; and

(xvi) commercial crewmember fishing license under
AS 16.05.480 other than an entry permit or interim-use permit under
AS 16.43;

(B) does not include

(i) a vessel license issued under AS 16.05.490 or
16.05.530;

(ii) a license issued under AS 14.37 or AS 47.35;

(iii) a business license issued under AS 43.70;

(iv) an entry permit or interim-use permit issued under
AS 16.43; or

(v) a driver's license issued under AS 28.15;

*** Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
read:

INDIRECT COURT RULE CHANGE. (a) The provisions of AS 16.10.580(b),
added by sec. 6 of this Act, have the effect of amending Rule 82, Alaska Rules of Civil
Procedure, and Rule 508, Alaska Rules of Appellate Procedure, by providing for the award of
full actual attorney fees to a person aggrieved by actions of a broker licensed under
AS 16.10.570 - 16.10.589.

(b) AS 16.10.580(b), added by sec. 6 of this Act, takes effect only if (a) of this section

1 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
2 of the State of Alaska.

3 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **IMPLEMENTATION.** The Department of Community and Economic Development
6 shall issue the initial licenses for brokers of commercial fishing permits, quota shares, and
7 commercial fishing vessels for calendar years 2004 and 2005 to qualified applicants before
8 January 1, 2004.

9 * **Sec. 11.** AS 16.10.570(a), added by sec. 6 of this Act, and sec. 7 of this Act take effect
10 January 1, 2004.

11 * **Sec. 12.** Except as provided in sec. 11 of this Act, this Act takes effect immediately under
12 AS 01.10.070(c).

ADD TO HB 22

Bill and legislative legal opinion on HB 652 (1986)

“An act relating to the licensing of limited entry permit brokers”



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

October 1, 1985

MEMORANDUM

TO: Representative Adelheid Herrmann

ATTN: Eric Myers

FROM: Mark Torgerson *MT*
Legislative Analyst

RE: Licensing of Limited Entry Permit Brokers
Research Request 86-022

You asked us to explore the potential benefits of establishing licensing provisions for limited entry permit brokers in Alaska. In addition, you asked whether a licensing requirement could slow down the transfer of permits from resident to nonresident fishermen. Currently, there are no regulations, restrictions or available data on permit brokers or brokering practices in Alaska. Because of this, the information on the pros and cons of the regulation of brokers is based primarily on comments solicited from the Commercial Fisheries Entry Commission (CFEC) and from active brokers of Alaska permits. The data on permit transfers was obtained from the CFEC.

Benefits and Burdens of Regulating Permit Brokers

Permit brokers, like real estate brokers, act as agents in the sale and purchase of property--in this case, fishing permits. The owners of the permits pay the brokers a fee for finding a buyer. The price paid for the transfer of limited entry permits has steadily increased each year since the CFEC began recording the information. The average price paid for permits has increased from \$5,488 in 1976 to \$51,276 in 1984.¹ The total sales price of all limited entry permits during 1984 exceeded \$52,000,000. The percentage of sales participation by permit brokers is unknown. However, the CFEC recently began requesting broker information on transfer forms which must be completed on each permit transfer. A copy of this form is attached.

¹The 1984 Annual Report of the Commercial Fisheries Entry Commission.

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As noted, there is no statutory regulation of brokering practices in Alaska. In order to sell permits in Alaska, a broker is merely required to obtain an Alaska business license (AS 43.70.110). Nonresident brokers need not obtain a license unless they establish business locations in Alaska.

According to most of the individuals contacted, the primary benefit of a licensing requirement would be its policing aspect. Through effective regulations, the State could oversee brokers' activities to protect permit owners when they decide to transfer their rights of ownership. This regulatory oversight could include a licensing provision which--like the real estate regulations--could require that those brokering Alaska permits pass an examination. The examination requirement would theoretically assure permit owners that permit brokers with whom they deal possess a sufficient level of skills and knowledge on limited entry permit transfers and procedures.

According to John Williams, a former commissioner of the CFEC and currently a permit broker, some brokers have done "slipshod" work because they lack a sufficient understanding of CFEC regulations and basic contract and agency principles. Ken Moore, a broker in Homer, stated that some individuals broker one or two permit transfers and then get out of the business because they lack the necessary knowledge of the pertinent regulations and the fishing business to provide adequate service for their clients. A licensing provision could prevent this "fly-by-night" activity.

The CFEC and most of the brokers contacted asserted that effective policing may prevent or curtail "unscrupulous activities" which have allegedly occurred. The unethical activity usually mentioned by the brokers was improper use of client trust fund accounts. Brokers mentioned two kinds of improper use: 1) using client dollars for the broker's cash flow purposes; and 2) failing to keep the client's funds separate from the broker's business funds. (According to John Mitchell, an Anchorage broker, there are a number of pending lawsuits against a permit-brokering firm because of improper use of client funds.) A licensing provision could specifically outline permit brokers' fiduciary duties to their clients.

Another potential benefit of a licensing provision could be the establishment of a surety fund similar to that contained in the real estate regulations (AS 08.88.450 et. seq.). This fund could provide partial or complete reimbursement for losses suffered by permit owners because of fraudulent acts or misuse of trust funds by brokers. The fund could be used in conjunction with other legal remedies available to the permit owner. The fund would be especially beneficial where the permit owner has no other available remedy.

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State regulation of permit brokers could probably be applied to resident and nonresident brokers alike. According to Margo Knuth, Assistant Attorney General for Alaska, nonresident brokers could be required to comply with the licensing provisions because they are dealing with property which technically belongs to the State of Alaska and may be revoked by the State at any time. In addition, the regulatory provisions could require nonresident brokers to submit to the jurisdiction of Alaska State courts as a condition of selling fishing permits. This would assure Alaska residents that they will not be required to fly to Washington, for example, in order to pursue legal remedies against a nonresident broker.

Finally, a licensing provision could also benefit the permit brokers, according to Mae Thiele, a broker for Alaska Permit Sales in Seattle. Ms. Thiele stated that a licensing scheme could give consumers a "better feeling" about brokers, thus enhancing the brokers' image in the public's eye. According to Ms. Thiele, brokers are often viewed negatively by permit owners. She asserted that a licensing provision, which includes a minimum level of competence, may increase the number of people who utilize brokers' services.

Most of the individuals contacted for this request emphasized that the financial costs of the regulations--to the State, the brokers and permit owners--should be weighed against the benefits the parties would get out of them. Some brokers expressed concern that regulatory provisions would become increasingly burdensome. Others questioned the practicality of regulating a business with few operators.

Rate of Permits Transferred to Nonresidents

According to Elaine Dinneford, Research Analyst for the CFEC, the percentage of permanent permits owned by nonresidents increased by 0.5 percent between 1975 and 1983 (from 2,416 to 2,480). The number of nonresidents permits for some fisheries (i.e., set net, drift, seine, etc.) and locations increased while others decreased. Net shifts in permit types are summarized on the attached table (Table 7) copied from a CFEC report entitled "Changes in the Distribution of Permit Ownership in Alaska's Limited Fisheries, 1975-1983" (CFEC Report Number 84-10). An explanation of the column headings (ARL, ARN, etc.) is also enclosed.

As you may be aware, a regulation designed to slow down the rate of permits being transferred to nonresidents could result in a constitutional challenge on grounds that it violates the privileges and immunities clause (Article IV, section two) of the United States Constitution.

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That clause provides that "[t]he citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." According to the Alaska Supreme Court, the purpose of the clause is to "prevent discrimination against nonresidents, to further the concept of federalism, and to create a national economic unit" [See Sheley v. Alaska Bar Association, 620 P. 2d 640, 642 (1980)]. The United States Supreme Court has protected, under the privileges and immunities clause, the right to fish [See Toomer v. Witsell, 334 U.S. 385 (1948)]. A regulation that limits this fundamental right would be required to pass, at a minimum, two tests outlined by the Alaska Supreme Court in Sheley: 1) there must be a "substantial reason" for the discrimination; and 2) there must be a "substantial relationship between the means chosen by the state and the end to be achieved," i.e., there must be a substantial relationship between the discrimination against nonresidents and the "evil" of loss of resident permits (See Sheley at 620 P. 2d 644). Moreover, a regulation of this nature could potentially be constitutionally defective on equal protection grounds as well.

I hope that this information is valuable to you. If you need additional information, please contact our agency.

MT

Attachments

BILL Root: HB0652

Bill Number - HB652

INTRODUCED: 2/17/86

REFERRED: RESOURCES, JUDICIARY AND FINANCE

ORIGINAL SPONSOR: BY HERRMANN

BILL HEADING: IN THE HOUSE

HOUSE BILL NO. 652

IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

TITLE: FOR AN ACT ENTITLED:

"AN ACT RELATING TO THE LICENSING OF LIMITED ENTRY PERMIT BROKERS".

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

***SECTION 1. AS 16.43 IS AMENDED BY ADDING NEW SECTIONS TO READ:**

ARTICLE 6A. LIMITED ENTRY PERMIT BROKERS.

SECTION 16.43.500. License required. Except as provided in as 16.43.592 and unless licensed as a Limited Entry Permit Broker, a person may not

- (1) Sell, exchange, auction, or purchase a Limited Entry Permit;
- (2) List a Limited Entry Permit for sale, exchange, auction, or purchase,
- (3) Assist in or direct the procuring of prospective buyers or the negotiation of a transaction that results or is calculated to result in the sale, exchange, auction, or purchase of a Limited Entry Permit;
- (4) Hold out to the public as being engaged in the business of doing any of the things listed in this section; or
- (5) Attempt or offer to do any of the things listed in this section.

SECTION 16.43.505. Entitlement to license.

(A) A person is entitled to a limited entry permit broker license if the person

(1) [by grandfather rights, has been engaged in the business in the capacity of a broker as proven by an Alaska business license and other supportive documents, for a minimum of seven (7) consecutive years proceeding introduction of this bill. The CFEC shall have the authority to make the determination of this qualification. This grandfather clause is limited to brokers who maintained their principal office in the State of Alaska during the seven (7) year term.]

IF NOT QUALIFIED UNDER (1) then;

- (2) Passes the permit broker examination;
- (3) Applies for a license within six months after the person has taken the permit broker examination;
- (4) Is not under indictment for, or seven years have elapsed since the person has completed a sentence imposed upon conviction of, forgery, theft, extortion, conspiracy to defraud creditors, or another felony involving moral turpitude.

(B) Unless the broker fails to pay the biennial renewal fee or unless the broker's license is suspended or revoked under AS 16.43.540, the limited entry permit broker's license continues in effect.

SECTION 16.43.510. Content of Examination.

(A) The permit broker examination may include, but is not necessarily limited to, questions on business ethics; knowledge of state statutes, regulations, and administrative procedures relating to limited entry permits, agency and brokerage; knowledge of fiduciary duties of brokers, and the provisions of this chapter and of the regulations of the commission.

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

No * [(C) The permit broker examination is limited to those individuals have their principal office located within the State of Alaska.]

APPLICATION.

SECTION 16.43.525. Fees. The commission shall set fees by regulation for a limited entry permit broker licensee or applicant for the following:

- (1) Examination;
- (2) Initial license;
- (3) Renewal of an active license;
- (4) Renewal of an inactive license;
- (5) Amendment of a license.

SECTION 16.43.530. Deposit in General Fund. The commission shall deposit money collected under AS 16.43.500 - 16.43.593 in the General Fund.

SECTION 16.43.535. Reinstatement of lapsed license. A permit broker whose license has lapsed for more than two years shall be reexamined before reinstatement.

SECTION 16.43.540. Duties of the Commission.

(A) The commission shall

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

(A) With respect to a permit transaction

- (I) Made a substantial misrepresentation;
- (II) Made a false promise likely to influence, persuade, or induce;
- (III) Engaged in a flagrant course of misrepresentation or made a false promise;
- (IV) Has engaged in conduct that is fraudulent or dishonest;
- (V) Violates AS 16.43.570;

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

(C) Has engaged in conduct demonstrating unfitness to engage in the business of permit brokerage;

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

[(E) Does not maintain their principal office in the State of Alaska.]

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

(3) Publish, on three consecutive weekends in a newspaper of general circulation in the locale of the offending person's principal office, a notice of specifying disciplinary action taken by the commission against a person licensed under AS 16.43.500 - 16.43.593; and

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

~~—————(B) When an award is made from the limited entry permit surety fund under this chapter in reimbursement of losses suffered by a claimant as a result of fraud, misrepresentation, deceit, or conversion of trust funds on the part of a licensed broker, the commission may consider the hearing on the claim to be a hearing on the suspension of the license of the broker, and may suspend the license of broker. A suspension ordered under this subsection shall be lifted if the broker reaches an agreement with the commission on terms and conditions for the repayment to the surety fund of the money awarded to the claimant and the costs of hearing the claim under AS 16.43.583. The suspension shall be reimposed if the broker violates the terms of a repayment agreement entered into under this subsection.~~

~~—————SECTION 16.43.545. Compliance with surety fund requirements. Before issuing a permit broker's license to an applicant under AS 16.43.500 - 16.43.593, the commission shall determine that the applicant has complied with the provisions of AS 16.43.581 and is covered by the surety fund established in AS 16.43.580.~~

SECTION 16.43.550. Principle office; service of process.

(A) A licensed permit broker shall inform the commission of the broker's principal office, and of any branch offices the broker has [all of which must be located in the State of Alaska.] ~~[and of the name and address of a registered agent in the state for purposes of service of process if the broker's principal office is not located in the state.]~~ The broker may do business only in or out

of the principal office and the branch offices. Failure of a broker to maintain a place of business, [in the State of Alaska] or inform the commission of its location [~~and the name and address of a registered agent, if any~~], are grounds for the suspension or revocation of the broker's license.

~~[(B) When a permit broker whose principal office is not located in the state fails to appoint or maintain a registered agent in the state, or when a registered agent cannot with reasonable diligence be found, the commission is an agent upon whom process, notice, or demand may be served. Service on the commission shall be made by delivering to and leaving with a commissioner, or with a person designated by the commission in the commission office, duplicate copies of the process, notice, or demand. The commission shall immediately have one copy forwarded by registered or certified mail, addressed to the broker at the broker's principal office. Service on the commission is returnable in not less than 30 days.]~~

SECTION 16.43.555. Listings. Limited entry permit listings must be in writing and must be signed by the seller. Exclusive listings must have a definite expiration date.

SECTION 16.43.560. Record of transaction. A limited entry permit broker shall

- (1) Keep a complete record of limited entry permit transactions made by the broker for at least the preceding three years;
- (2) Make a closing statement showing disbursements and accounting for all money in the transaction;
- (3) Keep a separate trust account in a bank, into which the broker shall deposit all earnest money deposits and purchase money until it is proper for the broker to distribute the money to the proper persons;
- (4) Make available to the commission, on request, records and other documents relating to transactions under (3) of this section that the commission may require in order to conduct a complete audit of trust accounts.

SECTION 16.43.565. Broker's commissions.

(A) A broker's commission is earned when the limited entry permit broker fulfills the terms of a written personal services contract.

~~(B) The commission shall adopt regulations limiting the percentage rate or amount of a broker's commission that may be charged for a permit broker's services.~~

SECTION 16.43.570. Conflict of interest and fiduciary duties.

(A) A licensed permit broker who has a personal financial interest in a limited entry permit transaction shall disclose that interest to every person involved in the transaction.

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

SECTION 16.43.575. Prohibited conduct.

(A) A person who is not a limited entry permit broker licensed in this state may not accept a fee or a commission for performance of an act for which a license is required.

(B) A person may not knowingly make, authorize, direct, or aid in the publication of a false statement or misrepresentation concerning a limited entry permit offered for sale or exchange or presented at auction.

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

~~[SECTION 16.43.580. Limited entry permit surety fund. The limited entry permit surety fund is established in the general fund to carry out the purposes of AS 16.43.580-16.43.591. The fund is composed of payments made by licensed limited entry permit brokers under AS 16.43.581 and filing fees retained in accordance with AS 16.43.582. The fund may not exceed \$500,000.]~~

SECTION 16.43.581. Payments by permit brokers.

(A) A licensed limited entry permit broker when obtaining or renewing a permit broker license shall pay to the commission, ~~[in addition to] the license fee[.] a surety fund fee not to exceed \$125. After the fund reaches \$250,000 the commission shall by regulation adjust the surety fund fees so that, taking into account anticipated expenditures for claims against the fund, the fund is maintained at a level not less than \$250,000.~~

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

~~**SECTION 16.43.582. Claim for payment.**~~

~~(A) A person seeking reimbursement for a loss suffered in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a limited entry permit broker licensed under AS 16.43.500-16.43.593 shall make a claim to the commission for reimbursement on a form furnished by the commission. The form shall be executed under penalty of perjury, and information required to be supplied shall include the following:~~

~~(1) The name and address of the permit broker;~~

~~(2) The amount of alleged loss;~~

~~(3) The date or period of time during which the alleged loss occurred;~~

~~(4) The date upon which the alleged loss was discovered;~~

~~(5) The name and address of the claimant; or~~

~~(6) The general statement of facts relative to the claimant.~~

~~(B) A copy of a claim filed with the commission under (A) of this section shall be sent to the permit broker alleged to have committed the misconduct resulting in losses, at least 20 days before a hearing held on the claim by the commission.~~

~~(C) Within seven days after receipt of notice of a claim under (B) of this section the permit broker against whom the claim is made may elect to defend the claim as a small claims action in District Court if the claim does not exceed the small claims jurisdictional limit. An election to defend a claim in District Court under the small claims rules may not be revoked by the broker without the consent of the claimant. Upon receipt of a valid written election under this subsection the commission shall dismiss the claim filed with the commission and notify the claimant that the claim must be brought as a small claims action in the appropriate state court.~~

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

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

~~(2) The claim is dismissed under (C) of this section; or~~

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

~~SECTION 16.43.583. Consideration of application:~~

~~(A) Upon receipt of a claim for reimbursement, the commission may, in considering whether a claim should be granted;~~

~~(1) Take and hear evidence pertaining to the claim;~~

~~(2) Administer oaths and affirmations;~~

~~(3) Compel, by subpoena, the attendance of witness and the production of books, papers and documents pertaining to the claim;~~

~~(4) Engage the services of an investigator, accountant, or other expert necessary to process the claim.~~

~~(B) A certified or authenticated copy of a record, including a transcript of testimony, of a hearing held under AS 16.43.540 in which fraud, misrepresentation, deceit, or conversion of funds on the part of a licensed broker is established, may constitute sufficient evidence to support a finding:~~

~~(C) Before the commission finds that payment should be made from the limited entry permit surety fund, the permit broker shall be afforded an opportunity to file with the commission, within 10 days after receipt of notification of the claim under AS 16.43.582(B), either a written statement in opposition to the claim or an application for the presentation of additional evidence.~~

~~(D) The claimant bears the burden of proof of establishing that the claimant suffered losses in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a permit broker and the extent of those losses. Facts shall be established by a preponderance of the evidence.~~

~~(E) The commission may postpone consideration of a claim until after a hearing under AS 16.43.540 or until after a pending or contemplated court proceeding is completed.~~

~~(F) The provisions of this section do not apply to a claim that is dismissed under AS 16.43.582(C).~~

~~SECTION 16.43.584. Findings and payment. At the conclusion of the commission's consideration of a claim made under AS 16.43.582, the commission shall make written findings and conclusions on the evidence. If the commission finds that the claimant has suffered a loss in a transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a permit broker, the commission may award a claimant reimbursement out of the limited entry permit surety fund for the claimant's loss up to \$10,000. However, not more than \$10,000 may be paid for each transaction regardless of the number of persons injured or the number of permits involved in the transaction.~~

~~SECTION 16.43.585. Hearing costs:~~

~~(A) When an award is made from the limited entry permit surety fund under AS 16.43.584, the commission may charge to the fund the costs of a hearing held under AS 16.43.540 or 16.43.583. Amounts subsequently recovered by the commission for these costs from the licensee under AS 16.43.540(B) or from other parties under AS 16.43.590 shall be deposited to the limited entry permit surety fund.~~

~~(B) An amount charged to the surety fund by the commission for costs under (A) of this section may not be considered in determining the maximum reimbursement to be awarded under AS 16.43.584 or in determining the maximum liability of the surety fund under AS 16.43.587.~~

~~SECTION 16.43.586. Payment of small claims judgment. If a claim originally filed with the commission is dismissed and is heard as a small claims action under AS 16.43.582(C) and the claimant prevails in the small claims action against the permit broker, the commission shall make an award from the surety fund of the outstanding portion of the small claims judgment on receipt of a copy of the final judgment and an affidavit from the claimant stating that more than 30 days have elapsed since the judgment became final and that the permit broker has not satisfied the judgment during that time. After payment of a small claims judgment the commission is subrogated to the claimant's rights in the judgment under AS 16.43.590.~~

~~SECTION 16.43.587. Maximum liability:~~

~~(A) The maximum liability of the limited entry permit surety fund may not exceed \$50,000 for any one broker.~~

~~(B) If the \$50,000 liability of the fund as provided in (A) of this section is insufficient to pay in full the valid claims of the persons who have filed claims against one broker, the \$50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims, or in another manner that the commission considers equitable.~~

~~Distribution shall be among the persons entitled to share in the recovery without regard to the order of priority in which their claims were filed.~~

~~SECTION 16.43.588. Order of claim payment. If the money deposited in the limited entry permit surety fund is insufficient at a given time to satisfy a duly authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year.~~

~~SECTION 16.43.589. False claims or documents. A person who files with the commission a notice, statement or other document required under this chapter that contains an intentional material misstatement of fact, is guilty of a misdemeanor and is punishable by imprisonment for a period of not more than one year, or a fine of not more than \$1,000, or by both.~~

~~SECTION 16.43.590. Right to subrogation. When the commission has paid to a claimant from the limited entry permit surety fund the sum awarded by the commission, the commission shall be subrogated to the rights of the claimant to the amount paid and the claimant shall assign all right, title, and interest in that portion of the claim to the commission. Amounts subsequently realized by the commission on the claim shall be deposited to the limited entry permit surety fund.~~

~~SECTION 16.43.591. Disciplinary action against brokers. Repayment in full of obligations to the limited entry permit surety fund does not nullify or modify the effect of disciplinary proceedings brought under the provisions of AS 16.43.500 - 16.43.593.~~

SECTION 16.43.592. Exceptions. AS 16.43.500 - 16.43.593 do not apply to

- (1) A person who is not a licensed permit broker who makes a transaction with respect to a limited entry permit the person owns or on the person's own behalf;
- (2) An attorney in fact under a power of attorney authorizing the consummation of a specific transaction, an attorney in fact may not act as such for more than two transactions in a calendar year;
- (3) A lawyer performing duties as a lawyer;
- (4) A public official in the conduct of official duties;
- (5) A person acting as receiver, trustee, administrator, executor, or guardian;
- (6) A person acting under court order;
- (7) A person acting under the authority of a will or trust instrument.

SECTION 16.43.593. Regulations. The commission shall adopt regulations reasonably necessary to implement the provision of AS 16.43.500 - 16.43.592.

** Define Broker for fee*

Alaska Boats & Permits, Inc.

P.O. Box 505, Homer, Alaska 99603

907-235-4966 1-800-992-4960 Fax 907-235-4965



February 18, 2003

Representative Bruce Weyhrauch
Alaska State Legislature

Re: House Bill No. 22

Dear Mr. Weyhrauch,

*Bond
real estate 10,000
? apply to
and vessels*

This letter is in response to a request from your office for comments on HB 22 which is your proposed legislation to regulate commercial fishing permit brokers. We, at Alaska Boats & Permits, very much appreciate this opportunity.

Alaska Boats & Permits has been doing business as a boat and permit broker in Homer for more than six years. The business is owned by four Homer residents. Besides myself, the other owners are Doug Bowen, Glenn Caldwell, and Dave Swarthout. We are unaware of any complaints against us. The commercial fishing industry is a relatively small community. Most of our clients are repeat clients.

We have two major concerns about the proposed legislation. First, the bond amount is excessive and may be prohibitive. We presently have a bond. However, the bond we have will only cover criminal actions. The bond requirements in the proposed legislation are much broader and we do not know whether such a bond is available or affordable. The broker business is very competitive and we may not be able to pass on such costs to our clients. Under the proposed legislation, the alternative of putting up at least two individual securities with real estate having a fair market value of at least \$100,000.00 is even more oppressive. No other industry in this state is under such a requirement.

ON THE INTERNET: www.ifgalaska.com

E-MAIL: abp@acsalaska.net

To be licensed as a general contractor, the bond requirement is \$10,000.00. To be licensed as a specialty contractor, the bond is \$5,000.00 (see Alaska Statutes 8.18.071). To be licensed as a real estate broker, the licensee has to contribute to a surety fund that pays a maximum of \$10,000.00 per claim. (see Alaska Statutes 8.88.470). It should be noted that the real estate surety fund covers claims involving trust account funds. I am sure that real estate brokers, on average, deal with significantly more trust fund deposits than fishing permit brokers.

Our second concern with the proposed legislation is that it would regulate Alaska brokers but not our competitors in Seattle. We understand that there are approximately thirteen fishing permit brokers that deal with Alaska fishing permits and IFQs. Of those, only four are Alaska businesses. The bulk of the permit transfers in terms of dollars and number of transfers is in IFQs. Limited entry permits are an ever-decreasing commodity in terms of dollars and number of transfers due to the decline in the salmon fishing industry. It is apparent to us that the proposed legislation will have no affect on the non-Alaska brokers who deal in IFQs which are federal permits. In such case, the proposed legislation will be unfair to Alaska brokers and do little or nothing in regulating the bulk of the industry.

We will be happy to answer any questions you may have. If it is possible, we would like this letter to be made part of the record at any hearings on this bill.

Sincerely,

Bill De Vries