

ALASKA LEGISLATURE COMMITTEE FILES

1997-1998

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HOUSE JUDICIARY

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Sectional Analysis  
CSHB 285 (RES)

**Sec. 16.43.895. Definitions for AS 16.43.850-16.43.895.** Provides definitions for "commercial fishing law," "commercial fishing permit," "commercial fishing privileges" and "permit holder."

**Section 2:** Amends AS 16.05.723(a), Misdemeanor commercial fishing penalties. Deletes AS 16.05.710 which gave the court the authority to suspend or revoke a permit. This authority now rests with the Commission after a certain number of points have been accumulated.

**Section 3:** Adds a new subsection to AS 16.10.335, Loans for purchase of Alaska limited entry permits. This subsection terminates a debtor's interest in a limited entry permit as of the date the Commission revokes the permit. This is to ensure the lending institution (the Division of Investments) is protected and can recoup its loan.

**Section 4:** Amends AS 16.10.337(a), Deficiencies and transfer of entry permits after foreclosure. This amendment refers to the new subsection found in section 3 of this bill.

**Sections 5, 6, 7, 8, 9:** AS 16.43.970(a), Penalties. The changes in these five sections do not change the effects of the current statute addressing violations of the Limited Entry Act. Violations in the law may still result in suspension and revocation under this act. However, references to forfeiture of fishing privileges by the court are eliminated in favor of referrals by the court to the Commission for suspension or revocation of fishing privileges as directed. Suspension and revocation of fishing privileges by the Commission is more consistent with the Legislature's determination that fishing privileges administered by the Commission are use privileges and not property under AS 16.43.150(e).

**Section 10:** Adds a new subsection to AS 44.81.247, Termination of permit interest. This subsection terminates a debtor's interest in a limited entry permit as of the date the Commission revokes the permit. This is to ensure the lending institution (CFAB) is protected and can recoup its loan.

**Section 11:** Amends AS 44.81.250(a), Transfer of entry permits after foreclosure. This amendment references the new subsection found in Section 10 of this bill.

**Section 12:** Repeals AS 16.05.710(a) and 16.05.710 (d)(1), Suspension of commercial license and entry permit. Subsection (a) allowed the courts to revoke or suspend a limited entry permit due to Title 16 violations. This authority now rests with the Commission due to points accumulations or violations of the Limited Entry Act.

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Subsection (d)(1) is the definition of "commercial fishing law." The definition of "commercial fishing law" is now found in Section 1 of this bill.

**Section 13:** Applicability. This act applies to violations of commercial fishing laws that occur on or after the effective date of this bill.

**Section 14:** Immediate effective date.

Sec. 11.56.210. Unsworn falsification.

(a) A person commits the crime of unsworn falsification if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement which the person does not believe to be true

(1) in an application for a benefit; or

(2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

(b) Unsworn falsification is a class A misdemeanor.

History -

(Sec. 6 ch 166 SLA 1978)

Decisions -

Double jeopardy. - Criminal prosecution for unsworn falsification was not barred on double jeopardy grounds in the case of a person who had lied in her unemployment insurance benefits application and subsequently agreed to repay the unlawfully obtained benefits plus the fifty-percent penalty specified in AS 23.20.390(f). *Mitchell v. State*, 818 P.2d 1163 (Alaska Ct. App. 1991).

Sec. 16.05.195. Forfeiture of equipment.

(a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title or AS 08.54, or regulation adopted under this title or AS 08.54, and all fish and game or parts of fish and game or nests or eggs of birds taken, transported, or possessed contrary to the provisions of this title or AS 08.54, or regulation adopted under this title or AS 08.54, may be forfeited to the state

(1) upon conviction of the offender in a criminal proceeding of a violation of this title or AS 08.54 in a court of competent jurisdiction; or

(2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or AS 08.54 or a regulation adopted under this title or AS 08.54.

(b) Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action.

(c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them or nests or eggs of birds taken, transported or possessed contrary to the provisions of this title or a regulation adopted under it.

(d) It is no defense that the person who had the item specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use.

(e) Forfeiture may not be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser.

(f) An item forfeited under this section shall be disposed of at the discretion of the department. Before the department disposes of an aircraft it shall consider transfer of ownership of the aircraft to the Alaska Wing, Civil Air Patrol.

History -

(Sec. 3 ch 124 SLA 1974; am Sec. 1 ch 18 SLA 1983; am Sec. 5 ch 33 SLA 1996)

Amendment Notes -

The 1996 amendment, effective May 23, 1996, inserted section references and made minor stylistic changes.

Decisions -

Purposes for forfeiture. - See *State v. Rice*, 626 P.2d 104 (Alaska 1981).

Strict construction against government. - As a general rule, forfeitures are disfavored by the law, and thus forfeiture statutes should be strictly construed against the government. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Due process requirements. - The standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

When the seized property is used by its owner in earning a livelihood, notice and an unconditional opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Due process does not require that any owner of a vessel seized by the state for suspected use in illegal activity has an absolute right to obtain release of the property upon the posting of an adequate bond. To permit this would frustrate one purpose of forfeitures, which is to prevent possible use of the property in further illicit acts. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Where the seizure of a fishing vessel is authorized by a judicially approved warrant issued upon probable cause and the state files a civil complaint on the next working day following the seizure, and the owners are promptly notified, the owners are afforded procedural due process. *State v. Baranof*, 677 P.2d 1245 (Alaska 1984), cert. denied, 496 U.S. 823, 105 S. Ct. 98, 83 L. Ed. 2d 43 (1984).

Section not preempted by federal law. - The Fishery Conservation and Management Act, 16 U.S.C. Sec. 1801 et seq., does not preempt state regulation of king crab harvesting in the extraterritorial fishery conservation zone by vessels registered in Alaska. *State v. F/V Baranof*, 677 P.2d 1256 (Alaska 1984).

The federal Fishery Management and Conservation Act does not preempt Alaskan king crab regulation of vessels registered in Alaska. *State v. Baranof*, 677 P.2d 1245 (Alaska 1984), cert. denied, 496 U.S. 823, 105 S. Ct. 98, 83 L. Ed. 2d 43 (1984).

Concurrent state jurisdiction of in rem admiralty forfeiture actions. - In rem admiralty forfeiture actions brought by the state to enforce violations of law may be brought in state courts under concurrent state jurisdiction. *State v. Baranof*, 677 P.2d 1245 (Alaska 1984), cert. denied, 496 U.S. 823, 105 S. Ct. 98, 83 L. Ed. 2d 43 (1984).

The quasi-criminal nature of forfeiture proceedings - under AS 16.05.190 and this section has been recognized by the state supreme court in *Graybill v. State*, 545 P.2d 629 (Alaska 1976); *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Strict liability penalties. - With regard to the penalties the legislature intended to be available to sanction those found in violation of fish and game regulations where the state elects to proceed on a theory of strict liability, the legislature has approved at least the imposition of a maximum fine of \$300 for a noncriminal violation under AS 12.55.035(b)(5), and the legislature intended to authorize the court to order the forfeiture of any fish or game obtained in violation of a regulation. There is no reason to allow a defendant, even if he or she acted without fault, to have a valid claim to fish or game obtained in violation of a regulation, and AS 16.05.190 and this section provide sufficient legislative authorization for this action. *Constantine v. State*, 739 P.2d 188 (Alaska Ct. App. 1987).

This section and former narcotics and gambling forfeiture statutes distinguished. - See *One Cocktail Glass v. State*, 565 P.2d 1265 (Alaska 1977).

Effect of stipulation agreement. - Under the rules of admiralty, once a stipulation for value is posted with the court, the once-seized vessel is free from re-arrest in the same action. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Stipulation agreements for the value of a vessel constitute an agreement with the court, involving substitution of a chose in action against the owner in place of the vessel sued in rem. The bond filed becomes the res which alone is sufficient to give the court in rem jurisdiction. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

The superior court did not err in relying on the general rules of admiralty law in holding

that the stipulated bond served as a complete substitute for the res, thereby limiting the state's recovery to that bond, rather than a form of bail in order to allow for the temporary release of the vessel only. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Amount of stipulation bond. - Absent fraud, mistake, or duress, the amount of the stipulation bond will not be raised even though the value of the vessel increases. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Forfeiture of bond. - The superior court did not err in allowing the owners of a vessel to forfeit the \$350,000 bond they posted, rather than requiring the forfeiture of the vessel itself, or ordering an increase in the value of the bond to reflect a rise in the vessel's appraised value subsequent to the stipulation whereby the vessel was released. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

When the violations alleged involved taking for commercial profit a crucial biological resource of the state, the existence of which depends on careful regulation of harvest, forfeiture of the bond and sale proceeds of the illegal taking was not an abuse of the superior court's discretion. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Statutory provisions for remission. - Alaska's forfeiture statute only allows for remission when an innocent buyer subsequently purchases, in good faith, property subject to forfeiture. It makes no provision for remission to an innocent owner or security holder. *State v. Rice*, 626 P.2d 104 (Alaska 1981).

Remission to innocent nonnegligent third parties. - Where property is forfeited under this section, if an innocent nonnegligent third party can show the manner in which the property came into possession of the violator and that prior to parting with the property he did not know, nor have reasonable cause to believe, either that the property would be used to violate the law, or that the violator had a criminal record or a reputation for commercial crime, substantive due process under the Alaska Constitution requires that a procedure be available for remission of the forfeited item. *State v. Rice*, 626 P.2d 104 (Alaska 1981).

Where the state files an action pursuant to this section for forfeiture of property, a remission procedure is mandated under the Alaska Constitution, since not to allow innocent owners and security holders to show that they have not been involved in the criminal activity that triggered the forfeiture proceeding violates Alaska's constitutional due process provision. *State v. Rice*, 626 P.2d 104 (Alaska 1981).

An innocent holder of an interest in the seized airplane which did all it could reasonably be expected to do was deprived of its constitutional rights to substantive due process through the failure of the statutory scheme relating to forfeitures to provide for remission of the interests of innocent nonnegligent third parties in the forfeited item. *State v. Rice*, 626 P.2d 104 (Alaska 1981).

Stated in *Graybill v. State*, 545 P.2d 629 (Alaska 1976).

Cited in *Reynolds v. State*, 655 P.2d 1313 (Alaska Ct. App. 1982); *Ostrosky v. State*, 725 P.2d 1087 (Alaska Ct. App. 1986).

Sec. 16.05.440. Expiration date for licenses.

Licenses issued under AS 16.05.440 - 16.05.723 expire at the close of December 31 following their issuance or, for licenses that are valid for two years, after December 31 of the year after the year of issuance, and shall be renewed upon application and payment of the license fees required by AS 16.05.440 - 16.05.723.

History -

(Sec. 2 art III ch 94 SLA 1959; am Sec. 19 ch 81 SLA 1984; am Sec. 3 ch 6 SLA 1993)

Amendment Notes -

The 1993 amendment, effective April 13, 1993, made a section reference substitution in two places.

Collateral Refs -

35 Am. Jur. 2d, Fish & Game, Sec. 29 et seq.

36A C.J.S., Fish, Sec. 26 et seq.

Sec. 16.05.450. Issuance of licenses; disclosure for child support purposes.

(a) The commissioner or an authorized agent shall issue a crewmember fishing license under AS 16.05.480 to each qualified person who files a written application at a place in the state designated by the commissioner, containing the reasonable information required by the commissioner together with the required fee. The commissioner shall require the reporting of the applicant's social security number on the application. The application shall be simple in form and shall be executed by the applicant under the penalty of unsworn falsification.

(b) The Commercial Fisheries Entry Commission shall issue a vessel license under AS 16.05.490 to each qualified vessel for which a written application has been filed, at a place in the state designated by the commission, containing the reasonable information required by the commission together with the required fee. The application shall be simple in form and shall be executed by the applicant under the penalty of unsworn falsification.

(c) [Repealed, Sec. 19 ch 105 SLA 1977].

(d) Upon request, the commissioner shall provide a social security number provided under (a) of this section to the child support enforcement agency created in AS 25.27.010, or the child support enforcement agency of another state, for child support purposes authorized under law.

History -

(Sec. 3 art III ch 94 SLA 1959; am Sec. 1 ch 163 SLA 1962; am Sec. 7 ch 31 SLA 1963; am Sec. 1, 2 ch 92 SLA 1971; am Sec. 1 ch 145 SLA 1972; am Sec. 2, 3, 19 ch 105 SLA 1977; am E.O. No. 73 Sec. 9 (1989); am Sec. 15 ch 21 SLA 1991; am Sec. 15, 16 ch 87 SLA 1997)

Delayed Action -

Under Sec. 148(c), ch. 87, SLA 1997, effective July 1, 1999, subsection (d) is repealed and subsection (a) is amended to read: "The commissioner or an authorized agent shall issue a crewmember fishing license under AS 16.05.480 to each qualified person who files a written application at a place in the state designated by the commissioner, containing the reasonable information required by the commissioner together with the required fee. The application shall be simple in form and shall be executed by the applicant under the penalty of unsworn falsification."

Amendment Notes -

The 1989 amendment, effective March 11, 1989, deleted "of revenue" following "commissioner" in the first sentence in subsection (a).

The 1991 amendment, effective June 11, 1991, substituted "unsworn falsification" for

"perjury" at the end of subsections (a) and (b).

The 1997 amendment, effective July 1, 1997, added the next-to-last sentence in subsection (a) and added subsection (d).

History Reports -

For House Resources Committee report on ch. 92, SLA 1971 (CSHB 191), see 1971 House Journal, p. 719.

Sec. 16.05.460. Commissioner may appoint agents.

The commissioner may appoint qualified persons as agents to receive applications, issue licenses, and collect license fees under AS 16.05.440 - 16.05.480.

History -

(Sec. 4 art III ch 94 SLA 1959; am Sec. 8 ch 31 SLA 1963; am Sec. 4 ch 105 SLA 1977; am E.O. No. 73 Sec. 10 (1989); am Sec. 3 ch 21 SLA 1990)

Amendment Notes -

The 1989 amendment, effective March 11, 1989, deleted "of revenue" following "commissioner."

The 1990 amendment, effective April 21, 1990, deleted "and to assist in the completion of annual application or renewal forms for interim-use permits and entry permits issued under AS 16.43" from the end of the section.

Sec. 16.05.470. Fee for issuance of licenses and interim-use or entry permits.

(a) A person appointed by the commissioner to sell licenses under AS 16.05.440 - 16.05.480, except salaried employees of the state, shall retain the sum of 15 percent of the fee for the issuance of a license. An agent shall transmit monthly to the commissioner all license fees collected by the agent, less the authorized commission, together with a full accounting of the fees. The commissioner shall make monthly remittances of the fees collected to the proper state official. The commissioner is not liable for defalcation or failure to account for the fees collected by an agent, but the commissioner shall require a bond in the sum the commissioner considers adequate, conditioned upon the faithful accounting of money collected.

(b) [Repealed, Sec. 5 ch 21 SLA 1990].

(c) Forms and fees under (a) of this section shall be transmitted to the commissioner by the last day of the month following the month in which the fees are collected. The commissioner may grant an extension of not more than 30 days if the agent establishes that

(1) failure to grant an extension would impose an excessive financial hardship on the agent;

(2) the fees collected by the agent for the period, including the amount that the agent is authorized to retain, totals less than \$1,000; and

(3) the cumulative amount of fees due from the agent, including the fees due for the current period, does not exceed \$1,000.

(d) The commissioner may assess a penalty against an agent who does not transmit fees within the time allowed under (c) of this section. The penalty is equal to one and one-half percent of the amount of fees due. The penalty may be assessed for each month or portion of a month that the fees are delinquent.

History -

(Sec. 5 art III ch 94 SLA 1959; am Sec. 9 ch 31 SLA 1963; am Sec. 1 ch 8 SLA 1977; am Sec. 5, 6 ch 105 SLA 1977; am E.O. No. 73 Sec. 11 (1989); am Sec. 4, 5 ch 21 SLA 1990)

Amendment Notes -

The 1989 amendment, effective March 11, 1989, deleted "of revenue" following "commissioner" in the first sentences in subsections (a) and (b) and deleted "and authorized" following "appointed" in the first sentence in subsection (a).

The 1990 amendment, effective April 21, 1990, added subsections (c) and (d) and repealed former subsection (b) concerning collection and transmittal of fees to the Commercial Fisheries Entry Commission.

Sec. 16.05.475. Registration of fishing vessels.

(a) A person may not employ a fishing vessel in the water of this state unless it is registered under the laws of the state. Vessels registered under the laws of another state, and persons residing in another state, are not excused from this provision.

(b) The term "employ", as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under AS 44.62 (Administrative Procedure Act). The definition may include any activities involving the use or navigation of fishing vessels.

(c) The term "registered under the laws of the state", as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under AS 44.62 (Administrative Procedure Act). The definition may include any existing requirements regarding registration, licenses, permits, and similar matters imposed by law or regulation together with modifications of them and with any additional requirements the board finds necessary to maximize the authority of the state to apply and enforce fisheries regulations under 16 U.S.C. 1801-1882 (Fishery Conservation and Management Act of 1976 (P.L. 94-265, 90 Stat. 331)).

(d) In this section "fishing vessel" means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type which is normally used for

(1) fishing, or

(2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

History -

(Sec. 7 ch 105 SLA 1977)

Decisions -

Cited in *State v. Baranof*, 677 P.2d 1245 (Alaska 1984); *State v. F/V Baranof*, 677 P.2d 1256 (Alaska 1984).

Sec. 16.05.480. Commercial fishing license: disclosure for child support purposes.

(a) A person engaged in commercial fishing shall obtain a commercial fishing license. The fee for the license is \$30 for residents, and \$90 for nonresidents. Except for those which are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses.

(b) A person applying for a resident commercial license under this section shall provide the person's social security number and the proof of residence that the department requires by regulation.

(c) [Repealed, Sec. 12 ch 123 SLA 1978].

(d) Upon request, the department shall provide a social security number provided under (a) of this section to the child support enforcement agency created in AS 25.27.010, or the child support agency of another state, for child support purposes authorized under law.

History -

(Sec. 6 art III ch 94 SLA 1959; am Sec. 19 ch 131 SLA 1960; am Sec. 1 ch 93 SLA 1966; am Sec. 2 ch 42 SLA 1968; am Sec. 8 ch 105 SLA 1977; am Sec. 1, 2, 12 ch 123 SLA 1978; am Sec. 1 ch 79 SLA 1982; am Sec. 17, 18 ch 87 SLA 1997)

Delayed Action -

Under Sec. 148(c), ch. 87, SLA 1997, effective July 1, 1999, subsection (d) is repealed and subsection (b) is amended to read: "A person applying for a resident commercial license under this section shall provide the proof of residence that the department requires by regulation."

Amendment Notes -

The 1997 amendment, effective July 1, 1997, inserted "the person's social security number and" near the middle of subsection (b) and added subsection (d).

Editors Notes -

Sixty percent of the fees collected under this section is deposited in the fishermen's fund, AS 23.35.060. For opinions of the Attorney General regarding constitutional limits on altering the amount of a license fee upon which a dedicated fund is based, see annotations following art. IX, Sec. 7 in the Alaska Constitution pamphlet.

AG Opinions -

Discrimination against aliens and nonresidents in issuance of fishing licenses. See 1959 Op. Att'y Gen. No. 15.

Employees of shore-based floating canneries are not required to have a commercial fishing license, but employees of floating canneries are required to have a commercial fishing license. February 22, 1984 Op. Att'y Gen.

Decisions -

Constitutionality of fee differential. - The issue of the constitutionality of the fee differential for resident and nonresident licenses does not implicate the Commerce Clause of the United States Constitution. cert. denied. - U.S. -, 117 S. Ct. 789, 136 L. Ed. 2d 730 (1996) *Carlson v. State*, 919 P.2d 1337 (Alaska 1996).

The constitutionality of the fee differential for resident and nonresident licenses under the Privileges and Immunities Clause of the United States Constitution turns on whether there is a sufficient relationship between the higher fees charged nonresidents and the state's interest in imposing on nonresidents their share of the costs for managing the state's commercial fisheries; the disparate fees charged to nonresidents are not unconstitutional if the differential does not exceed the contribution made by residents, because the differential will be justified as imposing on nonresidents their share of the costs of commercial fisheries. cert. denied. - U.S. -, 117 S. Ct. 789, 136 L. Ed. 2d 730 (1996) *Carlson v. State*, 919 P.2d 1337 (Alaska 1996).

Constitutionality of former provisions. - See *Anderson v. Mullaney*, 13 Alaska 332, 191 F.2d 123 (9th Cir. 1951), aff'd, 342 U.S. 415, 72 S. Ct. 428, 96 L. Ed. 458 (1952).

Failure to consider native's inability to speak English. - Where the failure of the Commercial Fisheries Entry Commission to consider a non-English speaking Alaska native's dependence on others had the potential to result in unjust discrimination, the case was remanded to the commission for explicit determination as to whether the factual circumstances relating to the native's application for crewing points warranted granting an exception in her case to the

commission's licensure requirement. *Arkanakyak v. State, Com. Fisheries Entry Comm'n.* 759 P.2d 513 (Alaska 1988).

States have a right to exact a higher license fee from nonresidents than from residents - for the privilege of hunting game within its borders. *Anderson v. Smith.* 71 F.2d 493 (9th Cir. 1934).

Principle upon which such right is based. - This right to discriminate is based upon the principle that the state owns the wild fish and game within its borders and therefore has a right to determine the conditions upon which persons may reduce the same to possession and ownership. *Anderson v. Smith.* 71 F.2d 493 (9th Cir. 1934).

Discrimination between resident and nonresident fishermen in prescribing license fees. - See *Anderson v. Smith,* 8 Alaska 470 (9th Cir. 1934), *aff'd,* 71 F.2d 493 (9th Cir. 1934).

Applied in *Commercial Fisheries Entry Comm'n v. Apokedak.* 606 P.2d 1255 (Alaska 1980).

#### Sec. 16.05.490. Vessel license.

(a) As a condition to delivery or landing of fish or engaging in commercial fishing in the state, a license is required for a commercial vessel, including a vessel used in charter service for the recreational taking of fish and shellfish.

(b) [Repealed, Sec. 19 ch 105 SLA 1977].

(c) [Repealed, Sec. 19 ch 105 SLA 1977].

(d) [Repealed, Sec. 19 ch 105 SLA 1977].

(e) [Repealed, Sec. 19 ch 105 SLA 1977].

#### History -

(Sec. 7 art III ch 94 SLA 1959; am Sec. 20 ch 131 SLA 1960; am Sec. 1 ch 48 SLA 1963; am Sec. 19 ch 105 SLA 1977)

#### AG Opinions -

The residency of the vessel follows that of the operator. 1959 Op. Att'y Gen. No. 38.

#### Decisions -

Cited in *Commercial Fisheries Entry Comm'n v. Baxter.* 806 P.2d 1373 (Alaska 1991).

#### Sec. 16.05.495. Vessel license exemption.

A vessel used exclusively for the commercial capture of salmon in commercial salmon administrative management areas that include state water between the latitude of Point Romanof and the latitude of Cape Newenham, and state water surrounding Nunivak Island, or at a set net site, is exempt from the licensing requirements of AS 16.05.490.

#### History -

(Sec. 1 ch 73 SLA 1983; am Sec. 16 ch 132 SLA 1984)

#### Sec. 16.05.500. Revocation of vessel license. [Repealed, Sec. 19 ch 105 SLA 1977].

Repealed or Renumbered

#### Sec. 16.05.510. Unlicensed vessel unlawful.

A person may not operate a vessel to which AS 16.05.490 - 16.05.530 apply without a vessel license, whether the absence of a vessel license results from initial failure to purchase or from another reason.

#### History -

(Sec. 7 art III ch 94 SLA 1959; am Sec. 20 ch 131 SLA 1960; am Sec. 11 ch 31 SLA 1963; am

Sec. 4 ch 6 SLA 1993)

Amendment Notes -

The 1993 amendment, effective April 14, 1993, made a stylistic change and substituted "from another reason" for "revocation by the commissioner."

Sec. 16.05.520. Number plate.

(a) The vessel license includes a permanent number plate. The number plate shall be accompanied by a tab affixed to it designating the year to be fished. A number plate is not transferable, and it shall be considered a permanent fixture upon the vessel upon which it is originally placed. It shall be securely fastened well forward on the port side in plain sight. On a vessel with a superstructure the plate shall be fastened on the port side of the superstructure. A number plate remains the property of the state. If a permanent number plate is accidentally defaced, mutilated, destroyed, or lost, the person owning or operating the vessel shall immediately apply for and may obtain a duplicate upon furnishing the Commercial Fisheries Entry Commission with the pertinent facts and a payment of \$2.

(b) If a vessel carrying a number plate is lost, destroyed, or sold, the owner shall immediately report the loss, destruction, or sale to the Commercial Fisheries Entry Commission.

History -

(Sec. 7 art III ch 94 SLA 1959; am Sec. 20 ch 131 SLA 1960; am Sec. 16 ch 31 SLA 1963; am Sec. 9 ch 105 SLA 1977)

Decisions -

Cited in *State v. Baranof*, 677 P.2d 1245 (Alaska 1984); *State v. F/V Baranof*, 677 P.2d 1256 (Alaska 1984).

Sec. 16.05.530. Renewal of vessel license.

(a) Upon payment of a license fee and filing of the name and address of the owner of the vessel or the owner's authorized agent, the name and number of the vessel, a description of the vessel, vessel license number, if any, the area to be fished, and other reasonable information required by the Commercial Fisheries Entry Commission, the commission shall issue a number plate and a vessel license. If the vessel has a number plate, the commission shall issue a vessel license and tab designating the year the license is valid. The tab shall be placed in the space provided on the permanent number plate. The annual license fee is set according to the overall length, as defined by the United States Coast Guard, of the vessel under the following schedule:

(1) 0 - 25 feet .....	\$20
(2) over 25 feet - 50 feet .....	50
(3) over 50 feet - 75 feet .....	100
(4) over 75 feet - 150 feet .....	250
(5) over 150 feet - 250 feet .....	500
(6) over 250 feet .....	750

(b) [Repealed, Sec. 3 ch 71 SLA 1995].

History -

(Sec. 7 art III ch 94 SLA 1959; am Sec. 20 ch 131 SLA 1960; am Sec. 12 ch 31 SLA 1963; am Sec. 10 ch 105 SLA 1977; am Sec. 29, 21 ch 81 SLA 1984; am Sec. 2, 3 ch 71 SLA 1995)

Cross References -

For applicability of vessel license fees established by ch. 71, SLA 1995, see Sec. 4, ch. 71.

SLA 1995 in the Temporary and Special Acts.

Amendment Notes -

The 1995 amendment, effective September 3, 1995, in subsection (a), deleted "of \$20 for one year or \$40 for two years at the option of the owner." following "license fee" near the beginning of the first sentence, deleted "or years" following "year" in the second sentence, and added the last sentence and schedule; and repealed subsection (b), relating to validity of vessel licenses for one or two years.

Editors Notes -

Section 1, ch. 71, SLA 1995 states that it is the intent of the legislature that the revenue generated by the amendments made by ch. 71, SLA 1995 "be appropriated to the Department of Fish and Game for the management, rehabilitation, enhancement, development, and scientific study of the commercial fishery resources of the state."

Decisions -

Cited in *State v. Baranof*, 677 P.2d 1245 (Alaska 1984); *State v. F/V Baranof*, 677 P.2d 1256 (Alaska 1984).

Sec. 16.05.536. Persons eligible for gear licenses. [Repealed, Sec. 12 ch 71 SLA 1972].

Repealed or Renumbered

Sec. 16.05.540. - 16.05.610. Limitation on issuance of fishing gear licenses; issuance of licenses for various types of fishing gear. [Repealed, Sec. 19 ch 105 SLA 1977]. :ao:16.05.610

Repealed or Renumbered

Sec. 16.05.620. Otter trawl license. [Repealed, Sec. 2 ch 159 SLA 1968].

Repealed or Renumbered

Sec. 16.05.630. Shellfish pot license. [Repealed, Sec. 19 ch 105 SLA 1977].

Repealed or Renumbered

Sec. 16.05.632. Identification of shellfish pots or buoys, or both, used in the taking of king crab and requirements for buoys.

(a) Registration tags for the identification of shellfish pots or buoys, or both, used in the taking of king crab are required in areas in which the board has regulations limiting the total amount of shellfish pots allowed per vessel. Registration tags shall

(1) be issued by the department under regulations adopted by the board;

(2) be nontransferable;

(3) be individually numbered, designating the year of issuance;

(4) be permanently affixed to each shellfish pot or buoy, or both, used in the taking of king crab, whichever in the determination of the board is appropriate for identification, and in a manner determined to be appropriate by the board;

(5) conform to other requirements determined to be appropriate by the board; and

(6) be issued and renewed for a fee equal to the cost of obtaining the registration tags plus reasonable administrative costs, under procedures determined to be appropriate by the department.

(b) The unauthorized production, reproduction, sale, exchange, distribution, or use of registration tags required in (a) of this section is prohibited.

(c) In addition to meeting other requirements imposed by law, each shellfish pot used in the taking of king crab shall be connected to one durable "sea lion" buoy of an appropriate type and diameter as specified by the board. The buoy shall conform to other specifications determined to be appropriate by the board.

(d) [Repealed. Sec. 61 ch 50 SLA 1989].

(e) In this section

(1) "board" means the Board of Fisheries;

(2) "registration tags" means any tag, tape, or other identification device or method determined to be appropriate by the board.

History -

(Sec. 2 ch 103 SLA 1977; Sec. 65 ch 6 SLA 1984; am Sec. 61 ch 50 SLA 1989)

Revisors Notes -

Subsection (e) was enacted as (d). Relettered in 1987.

Cross References -

For legislative intent in connection with the enactment of this section, see Sec. 1, ch. 103, SLA 1977 in the Temporary and Special Acts.

Amendment Notes -

The 1989 amendment, effective May 27, 1989, repealed subsection (d).

Sec. 16.05.640. - 16.05.650. Clam digger's license: licensing of small commercial operations. [Repealed, Sec. 19 ch 105 SLA 1977];:ao:16.05.650

Repealed or Renumbered

Sec. 16.05.660. License exemption.

A person may, by complying with the \$5 license requirement of AS 16.05.340(a)(6), take not more than 2,000 pounds each of tom cod, blue cod, smelt, pickerel, white fish, and spider crab a year from waters of the state.

History -

(Sec. 1 ch 96 SLA 1963; am Sec. 66 ch 6 SLA 1984; am Sec. 6 ch 28 SLA 1990)

Amendment Notes -

The 1990 amendment, effective January 1, 1991 substituted "\$5 license requirement" for "25-cent license requirement."

Sec. 16.05.662. Fishing derbies.

(a) The commissioner may issue without cost a permit to a fishing derby association that has complied with the provisions of AS 05.15.100 - 05.15.180 to sell or offer for sale sport caught fish obtained as a direct result of a fishing derby.

(b) In this section "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under (a) of this section, but does not include an organization formed or operated for gaming or gambling purposes.

History -

(Sec. 1 ch 73 SLA 1970)

Revisors Notes -

Subsection (b) was formerly AS 16.05.940(13). Renumbered in 1992, at which time minor

word changes were made to reflect the reorganization.

Sec. 16.05.665. Falsification of application for license.

(a) A person who knowingly makes a false statement as to a material fact on an application for a license under AS 16.05.440 - 16.05.660 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both.

(b) A license issued under AS 16.05.440 - 16.05.660 to a person convicted under (a) of this section is void.

(c) A person whose license is void under (a) and (b) of this section may not obtain another license of the same type for a period of not less than two nor more than three years from the date of conviction by the court.

History -

(Sec. 1 ch 23 SLA 1965)

Sec. 16.05.670. Fishing gear license in general. [Repealed. Sec. 19 ch 105 SLA 1977].

Repealed or Renumbered

Sec. 16.05.675. Landing permits.

(a) A person who does not hold a limited entry permit or interim-use permit issued under AS 16.43 may not deliver or land fish in the state unless the person

(1) holds a valid federal permit to operate commercial fishing gear in the fishery conservation zone; and

(2) has been issued a landing permit by the Commercial Fisheries Entry Commission.

(b) The commissioner may by regulation establish eligibility requirements for the issuance of a landing permit.

(c) The commissioner may authorize the Commercial Fisheries Entry Commission to issue landing permits for a fishery if the commissioner has made a written finding that the issuance of landing permits for that fishery is consistent with state resource conservation and management goals.

History -

(Sec. 1 ch 145 SLA 1984)

Sec. 16.05.680. Unlawful purchases.

It is unlawful for a person, or an agent or representative of the person,

(1) to employ, in the harvesting, transporting or purchasing of fish, a fisherman who neither is licensed under AS 16.05.48 nor is the holder of a permit issued under AS 16.43,

(2) to purchase fish from a fisherman who neither is the holder of a limited entry, interim-use, or landing permit issued under AS 16.43, nor is exempt under AS 16.05.660, or

(3) to purchase fish from an association other than one to which a permit has been issued under AS 16.05.662.

History -

(Sec. 10 art III ch 94 SLA 1959; am Sec. 2 ch 96 SLA 1963; am Sec. 2 ch 73 SLA 1970; am Sec. 11 ch 105 SLA 1977; am Sec. 2 ch 145 SLA 1984)

Cross References -

For additional penalty provisions related to unlawful purchase of fish, see AS 16.10.265.

Sec. 16.05.685. Processing on commercial king crab fishing vessels.

(a) Crab of any species may not be processed on a commercial crab fishing vessel unless

(1) the vessel remains within one registration area from the time the crab is caught to the time of dock delivery;

(2) the operator of the vessel notifies the department of proposed changes in location before moving to another registration area; and

(3) the operator of the vessel provides quarters for inspectors of the department who may inspect the crab catch on the vessel at any time.

(b) The restrictions set out in (a) of this section do not apply to processing aboard the fishing vessel for and as donations to charity, for consumption aboard the vessel, or for dockside retail sales from the vessel.

(c) In this section,

(1) "process" means to butcher, cook, chill, or freeze crab for commercial use;

(2) "registration area" means a specific king crab registration area as designated by regulation of the Board of Fisheries.

History -

(Sec. 2 ch 70 SLA 1974; am Sec. 12 ch 206 SLA 1975; am Sec. 17 ch 132 SLA 1984)

Sec. 16.05.690. Record of purchases.

(a) Each buyer of fish shall keep a record of each purchase showing the name or number of the vessel from which the catch involved is taken, the date of landing, vessel license number, pounds purchased of each species, number of each species, and where possible, statistical area in which the fish were taken, and other information the department requires. Records may be kept on forms provided by the department. Each person charged with keeping the records shall report them to the department in accordance with regulations adopted by it.

(b) A person may not knowingly enter false information on a fish ticket or supply false information to a person who is recording information on a fish ticket.

(c) [Repealed. Sec. 1 ch 13 SLA 1997].

History -

(Sec. 10 art III ch 94 SLA 1959; am Sec. 1 ch 84 SLA 1987; am Sec. 1 ch 78 SLA 1992; am Sec. 1 ch 13 SLA 1997)

Amendment Notes -

The 1992 amendment, effective September 14, 1992, added subsection (c).

The 1997 amendment, effective July 23, 1997, repealed subsection (c).

Sec. 16.05.710. Suspension of commercial license and entry permit.

(a) Upon the conviction of a person for a misdemeanor or felony violation of a commercial fishing law of this state, the court, in addition to other penalties imposed by law

(1) may suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than one year, if the conviction is the person's first or second misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction; or

(2) shall suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than three years, if the conviction is the person's third or subsequent misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction.

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

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

(d) In this section

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

(2) "commercial fishing license" means a limited entry permit or a crew member license;

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

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

History -

(Sec. 11 art III ch 94 SLA 1959; am Sec. 1 ch 112 SLA 1961; am Sec. 1 ch 75 SLA 1966; am Sec. 3 ch 73 SLA 1986; am Sec. 1, 2 ch 46 SLA 1988; am Sec. 1 - 4 ch 63 SLA 1989)

Amendment Notes -

The 1988 amendment, effective May 25, 1988, repealed and reenacted subsection (a).

which formerly related to the same subject matter, and added subsections (c) and (d).

The 1989 amendment, effective May 31, 1989, rewrote subsections (a) and (d); in subsection (b), substituted "suspend one or more" for "order a suspension" in the first and second sentences, inserted "and licenses" following "privileges" in the first and second sentences, and inserted "for a violation of AS 11.46.120 - 11.46.130 or a similar law of another jurisdiction in which the property is commercial fishing gear as defined in AS 16.43.990" in the second sentence; and in subsection (c), added the present first sentence and rewrote the present second sentence.

Editors Notes -

Section 6 of ch. 46, SLA 1988, which amended this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Section 6, ch. 63, SLA 1989 provides that the 1989 amendments to this section by Sec. 1 - 4, ch. 63, SLA 1989 "are applicable to cases involving a commercial fishing violation or theft of commercial fishing gear that occurs on or after May 31, 1989."

Decisions -

Former provision held unconstitutional. - A former provision of this section requiring a forfeiture immediately upon conviction and no stay pending appeal was declared unconstitutional in *Leege v. Martin*, 379 P.2d 447 (Alaska 1963).

Quoted in *Beran v. State*, 705 P.2d 1280 (Alaska Ct. App. 1985).

Stated in *Rubino v. State*, 391 P.2d 946 (Alaska 1964).

Cited in *Love v. State*, 457 P.2d 622 (Alaska 1969).

Sec. 16.05.722. Strict liability commercial fishing penalties.

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

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

(2) \$6,000 for a second conviction or for a subsequent conviction not described in

(3) of this subsection; and

(3) \$9,000 for a third or subsequent conviction within a 10-year period.

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

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

History -

(sec. 3 ch. 46 SLA 1988; am. sec. 1 ch. 47 SLA 1995)

Amendment Notes -

The 1995 amendment, effective August 24, 1995, in subsection (a), added "conviction or for a subsequent conviction not described in (3) of this subsection; and" at the end of paragraph (2), added the paragraph (3) designation, in paragraph (3), added "\$9,000 for a third" at the beginning and "within a 10-year period" at the end, and made a minor stylistic change.

Editors Notes -

Section 6 of ch. 46, SLA 1988, which enacted this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Decisions -

No absolute liability - This section does not establish absolute liability; the statute simply eliminates culpable mental state as an element of specified fish and game violations. *Clucas v. State*, 815 P.2d 384 (Alaska Ct. App. 1991).

"First in time, first in right" defense. - Because the "first in time, first in right" defense does not implicate the culpable mental state involved in a case, prosecution of a fish and game case under this section does not preclude the defense from being raised. *Clucas v. State*, 815 P.2d 384 (Alaska Ct. App. 1991).

Sanction of fine and forfeiture. - This section states that fishermen may be sanctioned in two ways for their conduct - fine and forfeiture. The statute allows the state to seize the illegal catch itself, or, if it has already been sold, the statute allows the state to seize the proceeds or fair market value of the sale. *McCann v. State*, 817 P.2d 484 (Alaska Ct. App. 1991).

Intent of forfeiture language. - The clear intent of the forfeiture language in this section is to prevent the violator from profiting in any way from the illegal catch. Nothing in the statute allows for a forfeiture in order to "make the state whole". *McCann v. State*, 817 P.2d 484 (Alaska Ct. App. 1991).

No offset of violator's operating costs. - This section makes no provision, in a forfeiture

order. for offsetting the fair market value of the illegal catch with the violator's operating costs. Millman v. State, 841 P.2d 190 (Alaska Ct. App. 1992).

Forfeiture order was improper, - where the state fined defendant the maximum amount, seized undersized crabs, and ordered him to pay a percentage of the fair market value of the seized crabs. McCann v. State, 817 P.2d 484 (Alaska Ct. App. 1991).

Maximum fine upheld. - Findings that defendant caught a "high percentage" of undersized crabs and that he exhibited "extreme carelessness" in using a bent measuring stick to measure the crabs constituted sufficient justification for the imposition of the maximum fine. McCann v. State, 817 P.2d 484 (Alaska Ct. App. 1991).

Quoted in Waiste v. State, 808 P.2d 286 (Alaska Ct. App. 1991).

Cited in State v. Lawler, Ct. App. Op. No. 1473 (File No. A-5728), P.2d (1996).

Sec. 16.05.723. Misdemeanor commercial fishing penalties.

(a) A person who negligently violates AS 16.05.440 - 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a misdemeanor and in addition to punishment under other provisions in this title, including AS 16.05.195 and 16.05.710, is punishable upon conviction by a fine of not more than \$15,000 or by imprisonment for not more than one year, or by both. In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation, and the court may forfeit any vessel and any fishing gear, including any net, pot, tackle, or other device designed or employed to take fish commercially, that was used in or in aid of the violation. Any fish, or its fair market value, forfeited under this subsection may not also be forfeited under AS 16.05.195. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of Fisheries or the department, and it is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

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

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

(c) Upon a third misdemeanor conviction within a period of 10 years for an offense listed in (b) of this section or any combination of offenses listed in (b) of this section, the court shall impose, in addition to any penalties imposed under (a) of this section, a fine equal to three times the gross value of the fish found on board or at the fishing site at the time of the offense, or a fine equal to \$10,000, whichever is greater.

History -

(sec. 3 ch. 46 SLA 1988)

Editors Notes -

Section 6 of ch. 46, SLA 1988, which enacted this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Decisions -

Legislative intent - Although this section is broadly worded, it does not supersede all Board of Fisheries regulations that specify a mens rea other than negligence. Given the lack of any clear expression of legislative intent, such an interpretation would be unwarranted. *Waiste v. State*, 808 P.2d 286 (Alaska Ct. App. 1991).

Forfeiture only of fish for which convicted - Subsection (a) of this section provides for the mandatory forfeiture only of fish taken or retained as a result of the violation for which the defendant has been convicted. When the statute is so construed, the defendant must still overcome the presumption that all fish on board his vessel were taken as the result of the violation for which he was convicted. *McNabb v. State*, 860 P.2d 1294 (Alaska Ct. App. 1993).

Amount of fine not dependent on violation. - Unlike the forfeiture authorized by subsection (a) of this section, the fine provided for in subsection (b) of the statute does not depend on the amount of fish taken as a result of the violation. The statute contemplates a fine which is based on the value of the fish on board a vessel, whether they were taken illegally or not. McNabb v. State, 860 P.2d 1294 (Alaska Ct. App. 1993)

Cited in McCann v. State, 817 P.2d 484 (Alaska Ct. App. 1991); Scudero v. State, Ct. App. Op. No. 1469 (File No. A-5954), P 2d (1996).

Sec. 16.05.831. Waste of salmon.

(a) A person may not waste salmon intentionally, knowingly, or with reckless disregard for the consequences. In this section, "waste" means the failure to utilize the majority of the carcass, excluding viscera and sex parts, of a salmon intended for

- (1) sale to a commercial buyer or processor;
- (2) consumption by humans or domesticated animals; or
- (3) scientific, educational, or display purposes.

(b) The commissioner, upon request, may authorize other uses of salmon that would be consistent with maximum and wise use of the resource.

(c) A person who violates this section or a regulation adopted under it is punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both. In addition, a person who violates this section is subject to a civil action by the state for the cost of replacing the salmon wasted.

History -

(Sec. 3 ch 79 SLA 1975; am Sec. 18 ch 132 SLA 1984)

Revisors Notes -

This section was enacted in section 3 of both ch. 89 and ch. 99, SLA 1975. Chapter 99 had an immediate effective date (May 30, 1975), so the section was already in effect when ch. 89, enacting identical language, took effect on August 20, 1975.

Collateral Refs -

35 Am. Jur. 2d, Fish and Game, Sec. 51.

Sec. 16.10.055. Interference with commercial fishing gear.

A person who wilfully or with reckless disregard of the consequences, interferes with or damages the commercial fishing gear of another person is guilty of a misdemeanor. For the purposes of this section "interference" means the physical disturbance of gear which results in economic loss or loss of fishing time, and "reckless disregard of the consequences" means a lack of consideration for the consequences of one's acts in a manner that is reasonably likely to damage the property of another.

History -

(Sec. 1 ch 55 SLA 1974)

Sec. 16.10.070. Operation of fish traps.

Fish traps, including but not limited to floating, pile-driven, or hand-driven fish traps, may not be operated in the state on or over state land, tideland, submerged land, or water. This section does not prevent the operation of small hand-driven fish traps of the type ordinarily used on rivers of the state that are otherwise legally operated in or above the mouth of a stream or river.

History -

(Sec. 1 ch 95 SLA 1959)

Decisions -

Purpose. - SLA 1959, ch. 95 (AS 16.10.070 - 16.10.110) is a welfare measure. Its objects are stated to be the relief of economic distress among fishermen, to conserve the dwindling supply of salmon and insure fair competition in commercial fishing. Alaska had every right to adopt such a policy, applicable to natives and whites alike, unless its police power with respect to natives while fishing had been rightfully curtailed. *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 362 P.2d 901 (Alaska 1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Fish trap. - The fish trap consists principally of a fence or netting stretched across or partly across a stream to obstruct the upstream progress of the salmon and turn the fish into the "heart" or "pot" of the trap, where they are imprisoned until removed. *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Cited in *Organized Village of Kake v. Egan*, 354 P.2d 1108 (Alaska 1960); *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 363 U.S. 555, 80 S. Ct. 1321, 4 L. Ed. 2d 1397 (1960).

Sec. 16.10.080. Federal compact exempted.

AS 16.10.070 may not be construed to violate sec. 4, P.L. 85-508 (72 Stat. 339) (Alaska Statehood Act), which constitutes a compact between the United States and Alaska, under which the state disclaims all right and title to land or other property (including fishing rights), the right or title to which may be held by Indians, Eskimos, or Aleuts, hereafter referred to as Natives, or which is held by the United States in trust for these Natives.

History -

(Sec. 1 ch 95 SLA 1959)

Decisions -

Transfer of jurisdiction over fishing. - Legislative history makes clear that the transfer of jurisdiction, from the United States to the State of Alaska, over fishing was subject to rights reserved in Sec. 4 of the Alaska Statehood Act. *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Allowance of fish traps under reservation statute. - The exercise of any authority that the Secretary of the Interior has under the Annette Islands reservation statute (48 U.S.C. 358) to allow fish traps necessarily involves his judgment on a complex of facts, his evaluation of the relative weights of the Metlakatla Indians' need for traps, and of the impact of traps at Metlakatla on the state's interest in conservation. *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Effect of permit on state regulation. - Permits to operate fish traps granted by the Army Corps of Engineers and by the United States Forest Service to the Organized Village of Kake and the Angoon Community Association do not grant a right to be free of state regulation or prohibition. *Organized Village of Kake v. Egan*, 369 U.S. 60, 82 S. Ct. 562, 680, 7 L. Ed. 2d 573,

636 (1962).

There is nothing in the legislative history of AS 16.10.070 - 16.10.110 to substantiate a conclusion that the state intended to recognize a claimed right of the Metlakatians, the Organized Village of Kake, and the Angoon Community Association to operate fish traps. Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901 (Alaska 1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

No federal authority for use of fish traps at Kake and Angoon. - Congress has neither authorized the use of fish traps at Kake and Angoon nor empowered the Secretary of the Interior to do so. Organized Village of Kake v. Egan, 369 U.S. 60, 82 S. Ct. 562, 680, 7 L. Ed. 2d 573, 636 (1962).

Sec. 16.10.090. Penalty for violation of AS 16.10.070.

A person who violates AS 16.10.070 is guilty of a misdemeanor and is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000 or by both.

History -

(Sec. 5 ch 95 SLA 1959)

Sec. 16.10.100. Erection of fish traps prohibited on land or water owned by state. Fish traps, including but not limited to floating, pile-driven, or hand-driven fish traps, may not be erected, moored, or maintained on or over land, tideland, submerged land, or water owned or otherwise acquired by the state. This section does not prevent the maintenance, use, or operation of small, hand-driven fish traps of the type ordinarily used on rivers of the state which are otherwise legally maintained and operated in or above the mouth of a stream or river.

History -

(Sec. 1 ch 17 SLA 1959; am Sec. 2 ch 95 SLA 1959)

Decisions -

No property right exists in fish traps. - *Organized Village of Kake v. Egan*, 174 F. Supp. 500 (D. Alaska 1959), *aff'd*, *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 362 P.2d 901 (1961), *aff'd in part*, 369 U.S. 60, 82 S. Ct. 562, 680, 7 L. Ed. 2d 573, 636 (1962).

And their use has been legally prohibited in Alaska. - *Organized Village of Kake v. Egan*, 174 F. Supp. 500 (D. Alaska 1959), *aff'd*, *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 362 P.2d 901 (1961), *aff'd in part*, 369 U.S. 60, 82 S. Ct. 562, 680, 7 L. Ed. 2d 573, 636 (1962).

In the exercise of its police power. - The abolition of fish traps by a state in the exercise of its police power is not new to the law. *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 362 P.2d 901 (Alaska 1961), *vacated and remanded on other grounds*, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

As a general welfare measure. - As a general welfare measure a state can prohibit the use of traps for the taking of fish. *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 362 P.2d 901 (Alaska 1961), *vacated and remanded on other grounds*, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Sec. 16.10.110. Penalty for violation of AS 16.10.100.

A person who violates AS 16.10.100 is guilty of a misdemeanor and is punishable by imprisonment for not more than one year or by a fine of not more than \$5,000, or by both.

History -

(Sec. 3 ch 17 SLA 1959; am Sec. 4 ch 95 SLA 1959)

Sec. 16.10.120. Use of drum or reel in operation of purse seine.

A person may not use, employ, or operate a drum or reel around which a purse seine is coiled, rolled, or looped for purposes of taking or removing fish from a body of water located on or over land or tideland owned by the state or over which the state has jurisdiction. This section does not prevent the use of power blocks or the use of a reel mounted on a seine skiff to haul in or let out the separate purse seine lead which is temporarily connected to the purse seine proper, as these terms are generally employed or used in the fishing industry.

History -

(Sec. 1 ch 26 SLA 1959; am Sec. 1 ch 107 SLA 1962)

Decisions -

This section and supplementary regulations are lawful exercise of police power. - This section and supplementary state fish and game department regulations are based upon legislative policy and are a lawful and constitutional exercise of Alaska's police power in conservation and management of its fisheries. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

It is well established by the authorities that by virtue of residual sovereignty, a state, as the representative of its people and for the common benefit of all its citizens, may control the fish and game within its borders and may regulate or prohibit such fishing and hunting, subject to the absence of conflicting federal legislation. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

And are not violative of any United States constitutional rights, privileges and immunities under the commerce clause. - *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

This section and the regulations supplementing it do not establish an unreasonable burden on interstate commerce and thereby are not forbidden by art. I, Sec. 8 of the United States Constitution. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

Nor art. IV, Sec. 2 thereof. - *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

This section and the regulations supplementing it are not a form of discrimination against Washington State commercial salmon fishermen as nonresidents by the State of Alaska which violates the privileges and immunities clause of art. IV, Sec. 2 of the United States Constitution. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

Nothing in the principle of freedom of movement among the states permits property, legal to possess in one state, to be carried to and possessed in another state which outlaws the property in furtherance of its policy of police protection. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

Equal protection. - This section and the regulations supplementing it do not deny equal protection of the laws as guaranteed by the 14th amendment of the United States Constitution. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

Conservation is not only right, but duty, of state. - It is not only the right, but the duty, of the state to preserve for the benefit of the general public, the fish in its waters from destruction or undue reduction, in numbers, whether caused by improvidence or greed of any interests. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S.

Ct. 687, 34 L. Ed. 2d 660 (1972).

All purse-seining vessels with drum retrieval systems outlawed. - This section and department regulations supplementing it on their face and in operative effect outlaw all purse-seining vessels equipped with power drum retrieval systems whether the owners are nonresidents or residents of the State of Alaska and without regard to citizenship, race, color or creed, or poor or rich. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

The power drum is illegal in Alaska. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

This section and regulations further state fishery management program. - It is manifest that this section and aiding regulations are in furtherance of Alaska's fishery management program. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

And the power drum prohibition has a rational relationship to that program. - *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

Conformance with section and regulations is not unduly oppressive. - While power drum equipped purse-seiners have to do some gear refitting of their vessels at some expense and utilize a larger crew under the power block operation in order to fish lawfully in Alaska's waters, their vessels are not outlawed, and it cannot be said that conformance with this section and regulations supplementing it is unduly oppressive upon them under either due process or equal protection and treatment federal standards. Their difficulty arises from their wish to fish with the power drum in waters under different governmental policy and gear use requirements. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

Their need or effectiveness is of legislative, not judicial, concern. - Difference of opinion as to the need or of the effectiveness of this section and regulations in producing the desired effect upon salmon population and fishery management, and the economic controversy of a more safe and profitable per man drum operation versus less safe and profitable per man power block operation are of legislative concern and policy and not judicial. *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

For discussion of the importance of Alaska salmon resource, the area of purse-seiner operation, and the development of the power drum, - see *Glenovich v. Noerenberg*, 346 F. Supp. 1286 (D. Alaska), aff'd, 409 U.S. 1070, 93 S. Ct. 687, 34 L. Ed. 2d 660 (1972).

Sec. 16.10.125. Use of termination device on shellfish and bottom fish pot required.

The Board of Fisheries shall, by regulation, prescribe a termination device or devices for all shellfish and bottom fish pots. In this section "termination device" means a biodegradable seam or panel or other device that renders the pot incapable of holding shellfish or bottom fish for more than six months when it is continuously immersed in sea water.

History -

(Sec. 3 ch 103 SLA 1977)

Sec. 16.10.130. Penalty for violation of AS 16.10.120 or 16.10.125.

A person who violates AS 16.10.120 or 16.10.125 is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than six months, or by a fine of not more

than \$1.000. or by both.

History -

(Sec. 2 ch 26 SLA 1959: am Sec. 4 ch 103 SLA 1977)

Sec. 16.10.165. Utilization of pollock taken in a commercial fishery.

(a) Unless otherwise provided by law, a person may not recklessly waste or cause to be wasted pollock taken in a commercial fishery.

(b) The Board of Fisheries may adopt regulations under AS 44.62 (Administrative Procedure Act) it considers necessary for implementation of this section. The board may delegate its authority under this section to the commissioner.

(c) A person who violates this section is guilty of a class A misdemeanor.

(d) Each day on which a violation of this section occurs is a separate violation.

(e) In this section

(1) "flesh" means all muscular body tissue surrounding the skeleton;

(2) "person" includes a joint venture;

(3) "waste" means the failure to use the flesh of pollock for human consumption, reduction to meal, production of food for domestic animals or fish, or scientific, display, or educational purposes; "waste" does not include normal, inadvertent loss of flesh associated with processing that cannot be prevented by practical means.

History -

(Sec. 2 ch 116 SLA 1990)

Cross References -

For penalties for class A misdemeanors, see AS 12.55.035(b)(3) and 12.55.135(a).

Sec. 16.10.173. Utilization of commercially taken herring.

(a) A person may not waste or cause to be wasted any commercially taken herring.

(b) The Board of Fisheries may adopt regulations under AS 44.62 (Administrative Procedure Act) it considers necessary for implementation of this section. The board may delegate its authority under this section to the commissioner.

(c) The provisions of this section do not apply to herring taken commercially in the Bering Sea (including appurtenant bays, sounds, estuaries, and water of the state) north of 56 North Latitude, until January 1, 1979.

(d) In this section,

(1) "flesh" means all muscular body tissue surrounding the bony skeleton of the herring;

(2) "person" has the meaning given in AS 01.10.060 and also includes a joint venture;

(3) "waste" means the failure to use the flesh of commercially taken herring for reduction to meal, production of fish food, human consumption, food for domestic animals, scientific or educational purposes, or round herring bait. Normal, inadvertent loss of flesh associated with the uses described in this subsection that cannot be prevented by practical means does not constitute waste. The commissioner may authorize other uses of commercially taken herring consistent with the intent of this section and AS 16.10.172 upon receipt of a request accompanied by a detailed justification.

(e) A person who violates this section is guilty of a class A misdemeanor.

History -

(Sec. 1 ch 9 SLA 1977; am Sec. 26 ch 132 SLA 1984)

Revisors Notes -

In 1992, this section was reorganized as follows: former subsections (d) and (e) were relettered as (b) and (c), respectively; the former last sentence of (a) and the provisions of former (b) and (c) were relocated to (d)(1)-(3), at which time related minor word and punctuation changes were made; and former (f) was relettered as (e).

Cross References -

For penalties for class A misdemeanors, see AS 12.55.035(b)(3) and 12.55.135(a).

Editors Notes -

Section 1, ch. 23, SLA 1985 provides: "HERRING STRIPPING. (a) Notwithstanding AS 16.10.173, a person may strip commercially taken herring for the purpose of removing and selling the roe product if prior authorization is obtained from the commissioner of fish and game and the herring is taken from and the carcass disposal process occurs in the following fisheries of the Bering Sea during the following periods:

"(1) the Togiak fishery - south of the latitude of Cape Newenham and north of the latitude of Cape Menshikoff, until July 1, 1986;

"(2) the Security Cove/Goodnews Bay fishery - north of the latitude of Cape Newenham and south of the latitude of Dall Point, until July 1, 1987;

"(3) the Cape Romanzoff fishery - north of the latitude of Dall Point and south of the latitude of Black River, until July 1, 1987;

"(4) the Norton Sound fishery - north of the latitude of Black River and south of the latitude of Cape Prince of Wales, until July 1, 1988;

"(5) the Kotzebue fishery - north of the latitude of Cape Prince of Wales and south of the latitude of Cape Krusenstern, until July 1, 1988.

"(b) The commissioner may authorize a person to dispose of herring carcasses under (a) of this section only if the person submits to the commissioner an operational plan demonstrating the intent to comply with the provisions of AS 16.10.172 and AS 16.10.173 by the dates specified under (a) of this section for the fishery in which the herring carcasses are to be disposed.

"(c) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) regarding disposal of herring carcasses for each administrative area where disposal occurs.

"(d) The provisions of AS 46.03.100 apply to the disposal of herring carcasses under this section."

Sec. 16.10.200. Unlawful taking prohibited.

A person taking migratory fish and migratory shellfish in high sea areas designated by the Board of Fisheries or in violation of the regulations adopted by the Board of Fisheries governing the taking of migratory fish and migratory shellfish in the designated areas may not possess, sell, offer to sell, barter, offer to barter, give, or transport in the state, including the waters of the state, migratory fish or migratory shellfish.

History -

(Sec. 3 ch 121 SLA 1960; am Sec. 22 ch 206 SLA 1975)

Decisions -

This section is a typical "landing law." - *State v. Sieminski*, 556 P.2d 929 (Alaska 1976).

Charging owners with knowledge and control of fishing vessel's illegal activity. - When three owners of a fishing vessel were active partners in the enterprise of operating the vessel, it was not unduly oppressive to charge two of the owners with knowledge and control of that vessel's illegal activity even though they were not on board with the third owner at the time of the alleged infractions. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Applied in *State v. Bundrant*, 546 P.2d 530 (Alaska 1976), rehearing denied, 547 P.2d 838 (1976).

Cited in *Hjelle v. Brooks*, 424 F. Supp. 595 (D. Alaska 1976).

Sec. 16.10.210. Unlawful sale or offer prohibited.

A person may not possess, purchase, offer to purchase, sell, or offer to sell in the state migratory fish or migratory shellfish taken on the high seas knowing that they were taken in violation of a regulation adopted by the Board of Fisheries governing the taking of migratory fish or migratory shellfish in certain areas designated by the Board of Fisheries or the commissioner.

History -

(Sec. 4 ch 121 SLA 1960; am Sec. 23 ch 206 SLA 1975)

Decisions -

Charging owners with knowledge and control of fishing vessel's illegal activity. - When three owners of a fishing vessel were active partners in the enterprise of operating the vessel, it was not unduly oppressive to charge two of the owners with knowledge and control of that vessel's illegal activity even though they were not on board with the third owner at the time of the alleged infractions. *F/V Am. Eagle v. State*, 620 P.2d 657 (Alaska 1980), appeal dismissed, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Cited in *Hjelle v. Brooks*, 424 F. Supp. 595 (D. Alaska 1976).

Sec. 16.10.220. Penalty for violation of AS 16.10.200 and 16.10.210.

A person who violates AS 16.10.200 and 16.10.210 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000 or by imprisonment for not more than one year, or by both.

History -

(Sec. 5 ch 121 SLA 1960)

Collateral Refs -

Entrapment with respect to violation of fishing laws. 75 ALR2d 709.

Sec. 16.10.240. Transportation of King, Dungeness, or Tanner crab.

(a) A person may not take out of, ship, transport, or send from this state any live King crab, species *Paralithodes camtschatica*, live Dungeness crab, species *Cancer magister*, or live Tanner crab, species *Chionoecetes bairdi*, except that all of these species may be shipped live via air freight after pre-packaging.

(b) Notwithstanding (a) of this section, live dungeness crab, species *Cancer magister*, may be taken, shipped, transported, or sent from the state by means of surface transportation if the crab are taken at a time and location in the state for which the Department of Environmental Conservation does not require seafood processors to test dungeness crab for the presence of marine toxins.

History -

(Sec. 1 ch 33 SLA 1962; am Sec. 2 ch 5 SLA 1966; am Sec. 1 ch 14 SLA 1969; am Sec. 1 ch 78 SLA 1996)

Amendment Notes -

The 1996 amendment, effective September 18, 1996, added subsection (b).

Collateral Refs -

35 Am. Jur. 2d, Fish & Game, Sec. 49.

Sec. 16.10.250. Penalty.

A person, association, or corporation violating AS 16.10.240 or contributing to or cooperating in the violation of AS 16.10.240 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. Each unlawful removal of live crab is a separate offense. Vessels and equipment used in or in aid of a violation of AS 16.10.240 may be seized and disposed of as provided in AS 16.05.190.

Conviction under AS 16.10.240 is grounds for suspension of a fishing license or permit by the department.

History -

(Sec. 2 ch 33 SLA 1962)

Sec. 16.10.333. Loans for purchase of Alaska limited entry permits.

(a) Loans under AS 16.10.310(a) may be made to an individual commercial fisherman for the purchase of a limited entry permit upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the commissioner, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the commissioner as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the department in administering the loan.

(c) The commissioner is not liable for any act or omission resulting from permit ownership nor will that act or omission affect the commissioner's title to the permit or the commissioner's rights under it.

(d) Upon satisfaction of the note by the debtor, the commissioner shall certify to the commission that the note has been satisfied.

(e) Upon certification as provided in (d) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner.

(f) [Repealed, Sec. 34 ch 79 SLA 1985].

History -

(Sec. 4 ch 83 SLA 1978; am Sec. 1 ch 106 SLA 1980; am Sec. 8, 34 ch 79 SLA 1985)

Cross References -

For the reassignment of entry permits taken as security for loans after such permits are revoked, see AS 16.43.960(i).

Decisions -

Cited in *Anderson v. Anderson*, 736 P.2d 320 (Alaska 1987).

Sec. 16.10.335. Default and foreclosure.

(a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 16.10.333 or 16.10.338, the commissioner shall provide the debtor, by both certified and first class mail sent to the debtor's last known address on file with the commissioner, with a notice of default that includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

(2) the date upon which the default occurred;

(3) the amount of the debtor's outstanding principal and interest as of the date of the default notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days after the postmark date of the notice, request a hearing to submit evidence showing the debtor has not defaulted;

(5) a statement that the note may be reinstated if it is brought current within 120 days after the postmark date of the notice;

(6) a statement that, under AS 16.10.310(a)(4), the debtor may reinstate the note by submitting to the commissioner a plan of repayment if the commissioner accepts the debtor's plan of repayment;

(7) the place where reinstatement of the note or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: **IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU.**

(b) In each case of a limited entry permit being pledged as security under AS 16.10.333 or 16.10.338, the debtor shall maintain on file with the department an address where notice of default is to be sent, if necessary, and where that notice will be timely received by the debtor.

(c) Upon presentation of evidence of mailing in accordance with (a) of this section, the receipt of the notice of default by the debtor will be presumed for all purposes. This presumption is rebuttable by presentation of evidence sufficient to demonstrate lack of receipt of notice through no fault of the debtor. Upon presentation of evidence sufficient to prove lack of receipt of notice through no fault of the debtor, the notice is a nullity.

(d) If requested by the debtor, the commissioner may waive any of the time limits in (a) of this section for a period not to exceed 60 days if

(1) the debtor demonstrates good cause for the waiver; and

(2) the commissioner sets out in writing the reasons for approving the waiver.

(e) Except as otherwise provided in (c) and (d) of this section, if the debtor fails to reinstate or satisfy the note within the time specified in (a)(5) of this section, the debtor's interest in the permit is terminated by operation of law without further notice.

(f) Notwithstanding (a) of this section, when a debtor files bankruptcy, the debtor's interest in the limited entry permit is terminated by operation of law without further notice as of the date that the automatic stay issued in the bankruptcy is no longer in effect, unless the debtor has reaffirmed the debt.

History -

(Sec. 4 ch 83 SLA 1978; am Sec. 9 ch 72 SLA 1979; am Sec. 3, 4 ch 7 SLA 1983; am Sec. 9 ch 79 SLA 1985; am Sec. 1 - 4 ch 84 SLA 1991)

Amendment Notes -

The 1991 amendment, effective June 28, 1991, in subsection (a), rewrote paragraphs (3) and (6), in paragraph (5), substituted "120 days" for "60 days" and made a stylistic change, and inserted "of the note" in paragraph (7); rewrote subsections (d) and (e); and added subsection (f).

Sec. 16.10.337. Deficiencies and transfer of entry permits after foreclosure.

(a) Upon a foreclosure on an entry permit as provided in AS 16.10.335, the commissioner shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 - 16.43.330 at a price equal to the amount outstanding on the note plus any costs the department directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 - 16.43.330, the department shall promptly advertise and sell the permit. If the proceeds of the sale of a permit exceed the amount necessary to pay the note in full, plus penalties, costs of administration of the note, and attorney fees, the excess shall be transferred by the commissioner to the debtor. At any time until the permit has been sold under this subsection the debtor may repurchase the permit by paying the department the amount necessary to pay the note in full, plus penalties, costs of administration of the note, and attorney fees, as determined by the commissioner.

(c) [Repealed, Sec. 72 ch 113 SLA 1982].

(d) Nothing in this section affects the right of the commissioner to institute legal action for a deficiency resulting from a default on a note given under AS 16.10.333. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees.

History -

(Sec. 4 ch 83 SLA 1978; am Sec. 72 ch 113 SLA 1982; am Sec. 5 ch 7 SLA 1983)

Cross References -

For the reassignment of entry permits taken as security for loans after such permits are revoked, see AS 16.43.960(i).

Sec. 16.10.338. Entry permits as collateral.

(a) Alaska limited entry permits may be used as security for loans under AS 16.10.310(a). The provisions of AS 16.10.335 and 16.10.337 apply to Alaska limited entry permits pledged as security for loans in accordance with this section.

(b) If a limited entry permit is pledged for security for a loan made under AS 16.10.310(a)(1)(B) for the repair, restoration, upgrading, construction, or purchase of a vessel and the borrower thereafter fails to make a payment or defaults, the commissioner shall, in addition to the notice provided under AS 16.10.335(a), notify the borrower that subject to the commissioner's acceptance the borrower may sell the vessel, apply the sales proceeds to the debt, and renegotiate payment of the balance due on the loan to avoid the immediate loss of the limited entry permit that has been pledged for security for the loan.

(c) If a limited entry permit is pledged for security for a loan made under AS 16.10.310(a)(1)(C) for the purchase of quota shares and the borrower thereafter fails to make a payment or defaults, the commissioner shall, in addition to the notice provided under AS 16.10.335(a), notify the borrower that subject to the commissioner's acceptance the borrower may sell the quota shares, apply the sales proceeds to the debt, and renegotiate payment of the balance due on the loan to avoid the immediate loss of the limited entry permit that has been pledged for security for the loan.

History -

(Sec. 10 ch 72 SLA 1979; am Sec. 5 ch 84 SLA 1991; am Sec. 6 ch 73 SLA 1994)

Amendment Notes -

The 1991 amendment, effective June 28, 1991, added subsection (b).

The 1994 amendment, effective June 7, 1994, added subsection (c).

Sec. 16.10.760. Trafficking in intercepted salmon.

(a) A person commits the offense of trafficking in intercepted salmon if the person

(1) buys, sells, trades, processes, or possesses salmon, or attempts to buy, sell, trade, process, or possess salmon, with reckless disregard that the salmon has been, or will be, obtained by high seas interception;

(2) knowingly provides financing, premises, equipment, supplies, services, power, or fuel used to buy, sell, trade, process, or possess salmon that has been, or will be, obtained by high seas interception; or

(3) acts as a broker or middleman, or otherwise acts on behalf of another party, to arrange for or negotiate, or attempts to arrange for or negotiate, the purchase, sale, trade, processing, or possession of salmon, with reckless disregard that the salmon has been, or will be, obtained by high seas interception.

(b) Trafficking in intercepted salmon is a class C felony.

History -

(Sec. 1 ch 94 SLA 1989)

Sec. 16.10.770. Falsification related to high seas interception of salmon.

(a) A person commits the offense of falsification related to high seas interception of salmon if the person creates, utters, or possesses a written instrument related to salmon, or makes an assertion for the purpose of having a written instrument related to salmon created, uttered, or accepted, with reckless disregard that the salmon was obtained by high seas interception and that the written instrument or assertion conveys misleading or untrue information about the ownership, possession, processing, origin, destination, route of shipping, type, condition, or time, place, and manner of the taking of the salmon.

(b) In this section

(1) "utter" has the meaning given in AS 11.46.580(b);

(2) "written instrument" has the meaning given in AS 11.46.580(b) and includes ships' logs and papers, bills of lading and sale, documents relating to processing, shipping, and customs, and information stamped on or affixed to cans, crates, containers, freight, or a means of storage or packaging.

(c) Falsification related to high seas interception of salmon is a class C felony.

History -

(Sec. 1 ch 94 SLA 1989)

Sec. 16.10.780. Assisting a vessel in high seas interception of salmon.

(a) A person commits the offense of assisting a vessel in high seas interception of salmon if, knowing that a vessel is in possession of salmon obtained by high seas interception or that the owner or operator of the vessel intends to engage in the imminent interception of salmon, the person

(1) moves persons, cargo, or other property to or from the vessel;

(2) services or repairs the vessel or its equipment;

(3) provides the vessel with power, supplies, equipment, or fuel;

(4) provides the vessel with information, other than weather reports, capable of aiding the high seas interception of salmon or frustrating or avoiding detection, including communicating the movements, intentions, or activities of state or federal law enforcement officials or other fishing vessels; or

(5) is in charge of a docking facility, harbor, or anchorage, and permits the vessel to dock or anchor, or to remain docked or anchored.

(b) It is an affirmative defense, as defined in AS 11.81.900(b), to a violation of this section, if the person honestly and reasonably believed that the assistance provided to the vessel was necessary for humanitarian or environmental purposes or to prevent a significant loss of property. An affirmative defense under this section may not be raised, unless the person provided immediate notice, by the quickest available means, to the United States Coast Guard or the Department of Public Safety indicating the type of assistance being provided and the circumstances requiring the assistance.

(c) In this section

(1) "environmental purpose" means the intent to prevent or minimize adverse ecological effects to water quality;

(2) "humanitarian purpose" means the intent to provide medical services for a sick or injured person, or to prevent the loss of human life;

(3) "owner or operator of the vessel" means a person who

(A) has an ownership interest in the vessel;

(B) has authority to control or direct the vessel's activities; or

(C) physically operates a vessel or its equipment.

(d) Assisting a vessel in high seas interception of salmon is a class A misdemeanor.

History -

(Sec. 1 ch 94 SLA 1989)

Sec. 16.10.790. Fines.

Notwithstanding the provisions of AS 12.55.035(b) and (c), a person convicted of an offense under AS 16.10.760 - 16.10.780 may be sentenced to pay a fine not exceeding the greater of

(1) \$100,000;

(2) three times the pecuniary gain realized by the person as a result of the offense;

or

(3) if the person is convicted under AS 16.10.760, two times the fair market value of the salmon involved or contemplated in the commission of the offense.

History -

(Sec. 1 ch 94 SLA 1989)

Sec. 16.43.140. Permit required.

(a) After January 1, 1974, a person may not operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit issued by the commission.

(b) A permit is not required of a crewmember or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim-use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear.

(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) harvesting particular species for which separate interim-use or entry permits are issued;

(4) if authorized by regulations of the commission, fishing an entire unit of gear in a fishery in which the commission has issued entry permits for less than a unit of gear under AS 16.43.270(d); under this paragraph, a person may not hold more than two entry permits for a fishery; however, the person may not

(A) fish more than one unit of gear in the fishery; or

(B) acquire a second entry permit for the fishery after the person has acquired an entry permit that authorizes the use of an entire unit of gear in the fishery.

History -

(Sec. 1 ch 79 SLA 1973; am Sec. 1 ch 57 SLA 1996)

Cross References -

For penalties for violation of subsection (a) of this section, see AS 16.43.970(g) and (h).

Amendment Notes -

The 1996 amendment, effective June 12, 1996, in subsection (c), added paragraph (4) and made a related stylistic change.

Decisions -

Constitutionality. - The entry restrictions of the Limited Entry Act violate neither Sec. 3, art. VIII, nor Sec. 1, art. I, of the state constitution. *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983), appeal dismissed, 467 U.S. 1201, 104 S. Ct. 2379, 81 L. Ed. 2d 339 (1984).

Inheritability of permits. - Except in the limited circumstance of AS 16.43.150(h), limited entry permits are to be treated as ordinary personal property for inheritance purposes. *Wik v. Wik*, 681 P.2d 336 (Alaska 1984).

Applied in *Isakson v. Rickey*, 550 P.2d 359 (Alaska 1976).

Quoted in *Commercial Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1255 (Alaska 1980); *Simpler v. State*, 728 P.2d 227 (Alaska 1986).

Stated in *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154 (Alaska 1982); *Noden v. Commercial Fisheries Entry Comm'n*, 680 P.2d 493 (Alaska 1984).

Cited in *Estate of Smith v. State*, 635 P.2d 465 (Alaska 1981); *Baker v. State*, 878 P.2d 642 (Alaska Ct. App. 1994); *Scudero v. State*, 917 P.2d 683 (Alaska Ct. App. 1996).

Sec. 16.43.180. Emergency transfers.

(a) The commission shall adopt regulations providing for the temporary emergency transfer of entry permits and interim-use permits when illness, disability, death, required military or government service, or other unavoidable hardship prevents the permit holder from participating in the fishery. To alleviate hardship pending a final determination of the permit holder's eligibility for an entry permit, the commission shall adopt regulations providing for the temporary emergency transfer of an interim-use permit issued under AS 16.43.210(b) or 16.43.225.

(b) The commission shall adopt regulations providing for the temporary transfer of an entry permit upon the death of the permittee pending final disposition of the permit as a part of the permittee's estate.

History -

(Sec. 1 ch 79 SLA 1973; am Sec. 5 ch 73 SLA 1977; am Sec. 5 ch 123 SLA 1978; am Sec. 5 ch 34 SLA 1991)

Amendment Notes -

The 1991 amendment, effective June 13, 1991, added "or 16.43.225" to the end of subsection (a).

Decisions -

Quoted in *Wik v. Wik*, 681 P.2d 336 (Alaska 1984).

Sec. 16.43.300. Revisions of optimum number of entry permits.

(a) The commission may increase or decrease the optimum number of entry permits for a fishery when one or more of the following conditions makes a change desirable considering the purposes of this chapter:

(1) an established long-term change in the biological condition of the fishery has occurred that substantially alters the optimum number of entry permits permissible applying the standards set out in AS 16.43.290;

(2) an established long-term change in market conditions has occurred, directly affecting the fishery, that substantially alters the optimum number of entry permits permissible under the standards set out in AS 16.43.290.

(b) If the commission decreases the optimum number of entry permits for a fishery, the number of entry permits may be reduced only under the voluntary buy-back provisions set out in AS 16.43.310 and 16.43.320.

History -

(Sec. 1 ch 79 SLA 1973)

Decisions -

Cited in *Rose v. Commercial Fisheries Entry Comm'n.* 647 P.2d 154 (Alaska 1982).

Sec. 16.43.320. Administration of the buy-back program.

(a) The commission shall adopt regulations providing for the purchase of entry permits, vessels, and gear at fair market value with money accumulated in the buy-back fund for each fishery. The buy-back program for a fishery shall terminate when the number of entry permits is reduced to the optimum and the buy-back fund has been reimbursed.

(b) When entry permits subject to the restrictions in AS 16.43.250(c) and the vessels and gear related to those permits are offered for sale to the commission, the commission shall purchase the permits and related vessels and gear at fair market value, if sufficient funds are available in the appropriate buy-back fund.

History -

(Sec. 1 ch 79 SLA 1973)

AG Opinions -

The provisions of AS 16.43.310 and this section, which authorize the Commercial Fisheries Entry Commission to establish and administer a buy-back program, offend the state constitutional prohibition against dedicated funds. May 23, 1985 Op. Att'y Gen.

Decisions -

Cited in *Rose v. Commercial Fisheries Entry Comm'n.* 647 P.2d 154 (Alaska 1982);  
*Johns v. Commercial Fisheries Entry Comm'n.* 758 P.2d 1256 (Alaska 1988).

Sec. 16.43.330. Issuance of new entry permits.

(a) When the number of outstanding entry permits for a fishery is less than the optimum number established under AS 16.43.290, the commission shall issue new entry permits to applicants who are presently able to engage actively in the fishery until the optimum number is reached.

(b) The commission shall determine equitable methods of issuance, as appropriate, under (a) of this section that assure the receipt of fair market value for the permits issued.

History -

(Sec. 1 ch 79 SLA 1973)

Decisions -

Stated in *Vik v. Commercial Fisheries Entry Comm'n*, 636 P.2d 597 (Alaska 1981).

Cited in *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154 (Alaska 1982);

*Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256 (Alaska 1988).

Sec. 16.43.970. Penalties.

(a) A person who violates a provision of this chapter or a regulation adopted under this chapter is, upon conviction, guilty of a class B misdemeanor and is punishable by a fine of not more than \$5,000 for a first conviction, and a fine of not more than \$10,000 for a second or third conviction. Upon a third conviction, the person forfeits all interim-use and entry permits held by the person and loses eligibility for future issuance or transfer of interim-use or entry permits for a period of three years. Upon a first or second conviction under this section, the court may in its discretion order a forfeiture of interim-use or entry permits held by the person, as well as a loss of eligibility for future issuance or transfer of interim-use or entry permits, or order a suspension of fishing rights under interim-use or entry permits held or to be held by the person for a period of not more than three years. This subsection does not apply to violations of AS 16.43.140(a).

(b) A person who knowingly makes a false statement to the commission for the purpose of obtaining a benefit, including the issuance, renewal, duplication, or transfer of an entry or interim-use permit or vessel license or a person who assists another by knowingly making a false statement to the commission for the purpose of obtaining a benefit for another, is guilty of the crime of unsworn falsification as set out in AS 11.56.210. Upon conviction, the person (1) shall forfeit to the commission all interim-use permits and entry permits and (2) loses eligibility for interim-use permits and for entry permits for a period of three years.

(c) [Repealed, Sec. 12 ch 47 SLA 1981].

(d) If a permit holder is charged by the state with violating a provision of this chapter or a regulation adopted under this chapter, the holder may not transfer, under AS 16.43.170, any interim-use or entry permit, until after the final adjudication or dismissal of the charges.

(e) Notwithstanding any other provision of this section, an interim-use or entry permit may not be transferred while under suspension, without the consent of the commission.

(f) An entry permit forfeited under this section that is taken as security for a loan under AS 16.10.333 or AS 44.81.231 shall be reassigned as provided in AS 16.10.337 or AS 44.81.250.

(g) A person who violates the provisions of AS 16.43.140(a) is

(1) upon a first conviction, guilty of a class B misdemeanor and may be sentenced to a definite term of imprisonment of not more than 90 days, or forfeiture of the person's fishing vessel, or both, and shall be sentenced to a fine of not less than \$5,000 nor more than \$10,000 and loss of commercial fishing privileges for a period of one year after the date of conviction;

(2) upon a second conviction, guilty of a class A misdemeanor and may be sentenced to a definite term of imprisonment of not more than one year, and shall be sentenced to a fine of not less than \$10,000 nor more than \$20,000, forfeiture of the person's fishing vessel, and loss of commercial fishing privileges for a period of two years after the date of conviction;

(3) upon a third or subsequent conviction, guilty of a class A misdemeanor and may be sentenced to a definite term of imprisonment of not more than one year, and shall be sentenced to a fine of not less than \$20,000 nor more than \$50,000, forfeiture of the person's fishing vessel, and loss of commercial fishing privileges for a period of five years after the date of conviction.

(h) A person convicted of violating the provisions of AS 16.43.140(a) forfeits the value of the fishery resources found on board the person's vessel at the time of the violation.

History -

(Sec. 1 ch 79 SLA 1973; am Sec. 7 ch 73 SLA 1977; am Sec. 7 - 9 ch 123 SLA 1978; am Sec. 10,

12 ch 47 SLA 1981; am Sec. 4, 5 ch 94 SLA 1982; am Sec. 9 ch 22 SLA 1985; am Sec. 7 ch 34 SLA 1996)

Revisors Notes -

Formerly AS 16.43.360. Renumbered in 1983.

Cross References -

For sentences for misdemeanors generally, see AS 12.55.035 and 12.55.135.

For provisions relating to the additional penalties that may be imposed upon a first or second conviction under this section and that are imposed upon a third conviction, see AS 16.43.911.

Amendment Notes -

The 1996 amendment, effective August 20, 1996, made a section reference substitution in subsection (f).

Decisions -

Applied in *Ostrosky v. State*, 725 P.2d 1087 (Alaska Ct. App. 1986); *Scudero v. State*, 917 P.2d 683 (Alaska Ct. App. 1996).

Cited in *Ostrosky v. State*, 913 F.2d 590 (9th Cir. 1990).

Sec. 44.81.231. Pledge of permits.

(a) A limited entry permit issued under AS 16.43 may be pledged by the holder as security for a loan authorized under AS 44.81.236 if the certificate for the pledged permit lists the bank as the legal owner of the permit and the pledger as the equitable owner of the permit.

(b) Annual permit cards issued under the pledged permit must be in the name of the equitable owner who shall be responsible for compliance with the laws that govern the permit as if the equitable owner were the holder of the permit.

(c) Co-borrowers or guarantors on a loan secured by one or more pledged permits do not have a right in the pledged permit of the equitable owner, whether by subrogation or other manner.

(d) Upon payment of the loan, the bank shall certify to the Commercial Fisheries Entry Commission that the loan has been repaid, and the commission shall amend the permit certificate to list the equitable owner as the holder, and the legal interest of the bank shall terminate.

(e) In anticipation of a possible foreclosure under AS 44.81.241 - 44.81.250, the equitable owner of a permit that is pledged as security for the loan may nominate a person to whom the permit may be transferred if the pledge is foreclosed under AS 44.81.245.

History -

(Sec. 19 ch 34 SLA 1996)

Effective Date Notes -

Section 19, ch. 34, SLA 1996, which enacted this section, took effect on August 20, 1996.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Decisions -

Cited in *Anderson v. Anderson*, 736 P.2d 320 (Alaska 1987) (decided under former AS 44.81.230).

Sec. 44.81.241. Initial notice of default.

If there is a default on a loan secured by a permit pledged under AS 44.81.231, the bank shall notify the borrowers and guarantors on the loan of the default and of the right to cure the default by sending a notice by certified mail to their last known address or addresses on file with the bank. The notice must include

- (1) the date of the notice;
- (2) a description of the security given for the loan, including the number assigned by the commission and the name of the equitable owner of each permit pledged to secure the loan;
- (3) the date and nature of the default;
- (4) the amount of arrearages as of the date of the notice;
- (5) the total indebtedness, including interest, penalties, and costs of collection, remaining owing on the loan as of the date of the notice;
- (6) the amount of daily interest to accrue from the date of the notice;
- (7) a statement that the costs of collection of the loan incurred by the bank after the date of the notice will be added to the total amount of the indebtedness owing on the loan;
- (8) a statement that the default may be cured within 60 days from the date of the notice or within an extended time period that is specified in an extension notice provided by the bank within the 60-day period under AS 44.81.249;
- (9) the place where payment of arrearages or other cure may be made; and
- (10) a statement in at least 10 point bold type stating:

"IMPORTANT: UNLESS YOU CURE THE LOAN DEFAULT WITHIN THE TIME SPECIFIED BY THIS NOTICE, THE TOTAL INDEBTEDNESS OWING ON THE LOAN SHALL BE IMMEDIATELY DUE AND PAYABLE TO THE BANK WITHOUT FURTHER NOTICE TO YOU. ALSO, THE BANK SHALL THEN BE ENTITLED TO TAKE ANY LEGAL ACTION AGAINST YOU TO COLLECT THE LOAN, INCLUDING THE INSTITUTION OF LAWSUITS AND THE FORECLOSURE OF THE PLEDGE OF ANY PERMIT PLEDGED TO SECURE THIS LOAN."

History -

(Sec. 21 ch 34 SLA 1996)

Effective Date Notes -

Section 21, ch. 34, SLA 1996, which enacted this section, took effect on August 20, 1996.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.243. Bank remedies after failure to cure.

If the borrowers and guarantors on a loan secured by a permit pledged under AS 44.81.231 fail to cure a default within the time stated in the notice given under AS 44.81.241, the total indebtedness owing on the loan immediately becomes due and payable to the bank, and the bank shall be entitled to take any legal action to collect the loan, including the foreclosure under AS 44.81.245 of the permit pledge that secures the loan and the institution of legal action. If the bank forecloses the permit pledge, the bank may proceed in the order the bank selects, whether before,

after, or concurrent with other action taken to collect the loan.

History -

(Sec. 21 ch 34 SLA 1996)

Effective Date Notes -

Section 21, ch. 34, SLA 1996, which enacted this section, took effect on August 20, 1996.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.245. Foreclosure notice.

The bank may foreclose on a permit pledge that secures a loan by sending to the equitable owner of the permit pledged and any other borrowers and guarantors on the loan a notice of foreclosure. The notice shall be sent by certified mail to their last known address or addresses on file with the bank and must include

(1) the date of the notice;

(2) a statement that the total indebtedness owing on the loan became due and payable to the bank because the loan default was not cured within the time specified in the notice of default and right to cure provided under AS 44.81.241, and that as a result the bank is entitled to take legal action to collect the loan, including the forfeiture of a permit pledge that secures the loan and the institution of legal action;

(3) a description of the permit pledge that is being foreclosed by the notice, including an identification of the permit by the number assigned by the commission and the name of the equitable owner;

(4) the amount of the total indebtedness owing as of the date of the notice;

(5) the amount of daily interest that accrues from the date of the notice;

(6) a statement that the costs of collection of the loan incurred by the bank after the date of the notice will be added to the total amount of the indebtedness due on the loan;

(7) a statement that to avoid forfeiture of all rights of the equitable owner of the permit identified in the notice, the loan must be paid in full within 60 days from the date of the notice or within an extended time period that is specified in an extension notice provided by the bank within the 60-day period under AS 44.81.249;

(8) a statement that once a forfeiture of all rights of the equitable owner of a permit described in the notice occurs, the permit may not be redeemed;

(9) a statement of the right of the equitable owner to nominate a person to assume the loan under AS 44.81.245;

(10) the place where payment in full may be made; and

(11) a notice in at least 10 point bold type stating:

**"IMPORTANT: IF THE LOAN IS NOT PAID IN FULL BY THE DATE SPECIFIED, ALL RIGHTS OF THE EQUITABLE OWNER TO THE PERMIT IDENTIFIED IN THIS NOTICE WILL BE FORFEITED WITHOUT FURTHER NOTICE TO YOU. IN THAT EVENT, THERE WILL NOT BE A RIGHT OF REDEMPTION OF THE PERMIT. IN ADDITION, THE BANK MAY NOW TAKE OTHER ACTION TO COLLECT THE LOAN, INCLUDING THE INSTITUTION OF LEGAL ACTION AGAINST YOU AND THE FORECLOSURE OF OTHER**

## PERMIT PLEDGES THAT SECURE THE LOAN."

### History -

(Sec. 21 ch 34 SLA 1996)

### Effective Date Notes -

Section 21, ch. 34, SLA 1996, which enacted this section, took effect on August 20, 1996.

### Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996." and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

### Sec. 44.81.247. Termination of permit interest.

If a loan is not paid in full within the time specified by the notice provided for the loan under AS 44.81.245, the equitable interest in the permit identified in the notice terminates by operation of law without further notice. The commission shall cancel an entry permit card issued to the equitable owner of the permit immediately upon receipt by the commission of a certificate of termination containing a copy of the notices required by AS 44.81.241 and 44.81.245.

### History -

(Sec. 21 ch 34 SLA 1996)

### Effective Date Notes -

Section 21, ch. 34, SLA 1996, which enacted this section, took effect on August 20, 1996.

### Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996." and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

### Sec. 44.81.249. Cancellation, extension, and delivery of notices.

(a) The bank may cancel a notice provided under AS 44.81.241 or 44.81.245 by delivering a written notice of cancellation to the persons who were given the cancelled notice. The notice shall be given in the same manner as is required for the cancelled notice.

(b) The bank may extend the 60-day period for curing a default under AS 44.81.243 and the period before a forfeiture occurs under AS 44.81.247 by giving a written notice of extension to the persons who were given the notice. The notice shall be given in the same manner as is required for the giving of the notice being extended.

(c) The bank may give a notice required to be provided in AS 44.81.241, 44.81.245, or 44.81.247 by personal delivery instead of by certified mail.

### History -

(Sec. 21 ch 34 SLA 1996)

### Effective Date Notes -

Section 21, ch. 34, SLA 1996, which enacted this section, took effect on August 20, 1996.

### Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996." and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Sec. 44.81.250. Transfer of entry permits after foreclosure.

(a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 - 44.81.249, the bank shall determine if the permit is subject to a buy-back program under AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program, shall offer the permit to the commission at a price equal to the outstanding indebtedness on the loan.

(b) If the permit is not subject to a buy-back program, or if the commission fails to buy back the permit within 30 days after the commission receives the offer, the bank shall sell the permit to a person who qualifies as a transferee of an entry permit under AS 16.43 and the regulations adopted by the commission. The bank shall give preference to an offer to purchase a permit made by a state resident if the price offered is equal to or greater than the price offered by a nonresident. If the proceeds of the sale of a permit exceed the amount necessary to pay the indebtedness in full, the bank shall remit the excess to the borrower.

(c) At any time before foreclosure of a pledge of a permit, or within 30 days following foreclosure of a pledge of a permit, the equitable owner or former equitable owner may nominate a person to assume the loan. A person nominated must qualify as a transferee of the permit under AS 16.43 and must qualify to assume the loan under the requirements of the bank. If the person qualifies, the permit shall be transferred to the nominee upon the nominee's assumption of the loan.

(d) This section does not affect the right of the bank to institute legal actions against the borrowers, guarantors, or other sureties for performance to collect the indebtedness owing on the loan and to take other legal action on the collateral securing the loan.

History -

(Sec. 5 ch 53 SLA 1979; am Sec. 15 - 17 ch 51 SLA 1980; am Sec. 6 - 8 ch 70 SLA 1989; am Sec. 6 ch 39 SLA 1991; am Sec. 37 ch 30 SLA 1992; am Sec. 22 ch 34 SLA 1996)

Revisors Notes -

Formerly AS 44.54.250. Renumbered in 1980.

Amendment Notes -

The 1989 amendment, effective May 31, 1989, added "If the debtor has not previously nominated a qualified person to assume the note under AS 44.81.230(f)" at the beginning of the second sentence in subsection (b); inserted the reference to "44.81.210(a)(20)" in the first sentence in subsection (d); and added subsection (c).

The 1991 amendment, effective June 13, 1991, in subsection (d), substituted "note for a loan made under" for "note given under" and inserted "44.81.225." and "or 44.81.235." and made a stylistic change.

The 1992 amendment, effective May 16, 1992, deleted "and commercial fishing participation" following "met the residency" in the second sentence of subsection (c).

The 1996 amendment, effective August 20, 1996, rewrote this section.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter to this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

PO Box 532  
King Salmon, AK 99613  
TEL 907-246-7487  
FAX 907-246-8376

January 26, 1997

Honorable Senator Rick Halford  
Juneau, AK

Dear Senator Halford:

Illegal fishing in Bristol Bay is increasing annually. We all hear of commercial fishers fishing over the line, in closed waters during the cover of darkness or fog, before their 48 hour transfer time is up, with extra gear, and before the fishing period is open. These are some examples of what is happening. We need legislation to deter illegal fishing.

With today's illegal fishers it is like the modern day gold rush with no marshal in town. A 12 point system on the permits and boat, plus a monetary fine just like an Alaska drivers' license is recommended. Some fishers feel they do not have to adhere to the rules and regulations and make the statement, "If I get caught fishing over the line it's a \$2500 fine. The cost of doing business. No big thing. I cleared \$7000 before I was caught. I still made money with the fine." The person who fished legally becomes frustrated.

With the point system an illegal fisher would receive 6 points against the permit and 6 points against the boat, plus a monetary fine. Illegal fishers would no longer be saying, "That its the cost of doing business." With this system both the permit and boat are at stake with only 6 more points left on each before being removed from the fishery. Then most cases of illegal fishing would cease because the penalties are too high.

If that permit and boat was put on the market to be sold, points against the permit and boat would be attached. It would drive down the value of the permit and boat giving a person without a permit and boat a chance to buy into a fishery at a lower cost. Also, if there was a permit and boat on the market that had no points attached the value would go up.

A person who had acquired 12 points on the permit and boat within five years the permit and boat would be removed from the fishery forever. The person whose name was on the permit would not be able to fish in the fishery again either as a permit holder or crew person.

A person who had points deducted from the permit and boat and had no more point deductions within five years the permit and boat would resort back to zero points.

The legislation must include the same penalties for fisheries that aren't included under the limited entry program, such as, the herring fishery. The penalties received would be administered under the Limited Entry system.

The points attached to each violation has to be severe enough to deter the person from doing any illegal fishing.

The following are suggested penalties that should be against the boat and permit:

Fishing in Closed Waters-----6 points

Fishing with Extra Gear-----6 points

Selling Subsistence Fish-----6 points

-(with subsistence permit revoked for 5 years)

Fishing Before 48 Hour Transfer Period-----5 points

Boats Fishing with Extra Gear Onboard-----4 points

Fishing Between Set-Net Sites-----4 points

Crew Fishing Without License-----1 point

Boat Fishing Without Necessary Paperwork

-Blue Card Registration-----1 point

Numbers Covered on Boat-----Warning

-next offense-----1 point

Buoy Not Marked-----Warning

-next offense-----1 point

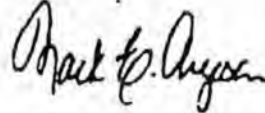
Sites

Fishing more than two 25 Fathom Sites with 1 permit---6 points

Drifting-----6 points

If you agree with this concept, legislation is needed. If you have any questions or need further clarification please call me at 246-7483. Any legal fisher shouldn't disagree with this approach.

Sincerely,



Mark E. Angasan

**HB**

**293**

0-LS1144H  
Ford  
2/3/98

**CS FOR SPONSOR SUBSTITUTE FOR HGOUSE BILL NO. 293( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE PORTER**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to collection of settlement information in civil litigation; and  
2 providing for an effective date."

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

4 \* Section 1. AS 09.68.130(c) is amended to read:

5 (c) The requirements of (a) of this section do not apply to the following types  
6 of cases:

7 (1) divorce and dissolution;

8 (2) adoption, custody, support, visitation, and emancipation of children;

9 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors  
10 cases under 47.12;

11 (4) domestic violence protective orders under AS 18.66.100 -  
12 18.66.180;

13 (5) estate, guardianship, and trust cases filed under AS 13;

14 (6) small claims under AS 22.15.040;

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(7) forcible entry and detainer cases;

(8) administrative appeals;

(9) motor vehicle impound or forfeiture actions under municipal ordinance.

\* Sec. 2. AS 09.68.130 is amended by adding a new subsection to read:

(d) A party to a civil case, except a civil case described in (c) of this section, or, if the party is represented by an attorney, the party's attorney shall submit the information described in (a) of this section to the Alaska Judicial Council. The information must be submitted within 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council.

\* Sec. 3. APPLICABILITY. This Act applies to a compromise or settlement of civil litigation that occurs on or after the effective date of this Act.

\* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).



COPY

# alaska judicial council

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EXECUTIVE DIRECTOR  
William T. Cotton

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CHAIRMAN, EX OFFICIO  
Warren W. Matthews  
Chief Justice  
Supreme Court

February 2, 1998

BY FAX: 465-3834

Representative Brian Porter  
Capital Building, Room 216  
Juneau, AK 99801

Dear Representative Porter:

Jim Sourant asked me for my opinion on whether Workers Compensation administrative appeals should be excluded from the civil case data reporting requirement. My inclination would be to exclude these administrative appeals along with other administrative appeals.

To the extent you are interested in Workers Comp cases generally, there are already reporting requirements which provide substantial data, including data on attorneys' fees. Any information we could collect would be limited to part (the administrative appeal part) of some Workers Comp cases (the ones which are appealed.) The extra information would probably not be particularly helpful in understanding the Workers Comp system as a whole.

On the other hand, if your (or the legislature's) interest is specifically on Workers Comp appeals, it probably makes sense to have us collect the data.

Please feel free to give me a call if you have any questions.

Very truly yours,

William T. Cotton  
Executive Director



**FACSIMILE TRANSMISSION COVER SHEET**

**TORT Section**  
**1031 W. 4TH AVE.**  
**SUITE 200**

**ANCHORAGE, AK 99501**

**PHONE: (907) 269-5190**

**FAX: (907) 258-0760**

**DATE: 1/29/98**

**TO: THE HONORABLE JOE GREEN**

**FAX: (907) 465-4316**

**FROM: GAIL VOIGTLANDER**

*Kevin -  
Hearing (JMD)  
Jan. 30*

**NUMBER OF PAGES INCLUDING THIS SHEET: 3**

**MESSAGE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The information contained in this FAX is confidential and/or privileged. This FAX is intended to be reviewed initially by only the individual named above. If the reader of this TRANSMITTAL PAGE is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this FAX or the information contained herein is prohibited. If you have received this FAX in error, please immediately notify the sender by telephone and return this FAX to the sender at the above address. Thank you.

**PLEASE INFORM US IMMEDIATELY  
IF YOU DO NOT RECEIVE THIS TRANSMISSION IN FULL  
(907) 269-5190 ASK FOR: SANDY**

PLEASE REPLY TO:

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ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 29, 1998

The Honorable Brian Porter  
Alaska House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

Re: SSHB 293: Collection of settlement  
information in civil litigation

Dear Representative Porter:

On behalf of the Department of Law, I have been asked to provide comments to you on SSHB 293 concerning the reporting of certain information to the Alaska Judicial Council regarding certain civil actions. I understand that the purpose of the bill is to fine-tune the reporting requirements of HB 58.

While the bill presents no legal issues, there are some practical problems that may affect the implementation of it that you may wish to address. Those problems are:

1. **Retroactivity provision** - If enacted into law, the bill would require reporting of settlement information retroactive to August 7, 1997. It may be difficult to ensure full compliance with this provision, because the court likely has already acted on the dismissal of the case and the attorney has likely closed the file and turned attention to other matters. Since the attorney was not required to file the settlement information at time of dismissal for these cases, it may be difficult to retroactively obtain a complete reporting to make any meaningful conclusions on settlement activity for these cases from August 4, 1997 to the date of enactment of the bill. You may wish to consider removing the retroactive provision and making the provision effective immediately.

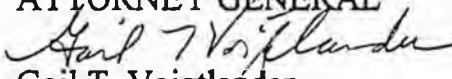
I have discussed this matter with Mr. Cotton, the executive director of the Alaska Judicial Council. Mr. Cotton has indicated that making this reporting provision effective immediately, rather than retroactive, should not significantly impact the integrity of the data being reported.

**(2) Reporting of appeals from decisions of the Alaska Worker's Compensation Board** - Reports of appeal information, as well as payments and attorneys fees, on workers's compensation cases are generally supplied to the Alaska Worker's Compensation Board under AS 23.30.155. The board provides an annual report aggregating the information, which is available to the public. There is a cost to the public to submit the information again to the Alaska Judicial Council. Could the Alaska Judicial Council just use this aggregate report to obtain the needed information for worker's compensation cases? If so, the additional reporting requirements could be deleted. A statutory change would not be required for the Alaska Judicial Council to have access and be able to use this publicly available document.

If you have questions or need further information, please let me know.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

  
By: Gail T. Voigtlander  
Assistant Attorney General

BMB:GTV:jn

cc: Pat Pourchot, Legislative Director  
Office of the Governor

William T. Cotton  
Executive Director  
Alaska Judicial Council

HOUSE COMMITTEE REPORT

(7)  
Date Referred to Committee: January 20, 1998

FURTHER REFERRALS:

Date of Committee Action: 2/16/98

The JUDICIARY Committee considered:

SSHB 293

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 293 PERSONS REQUIRED TO FILE SETTLEMENT INFO

"An Act relating to collection of settlement information in civil litigation; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 293 (Jud)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_  
 zero fiscal note(s) Adms  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *[Signature]*

**FISCAL NOTE**

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. SSB 293**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to collection of settlement information in civil litigation; and providing for an effective date."  
 Sponsor: Rep. Porter  
 Requestor: (H) JUD

Department Affected: Administration  
 BRU: Risk Management  
 Component: Risk Management  
 COMPONENT SERIAL NO. 0071

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ none

**POSITIONS:**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

**ANALYSIS:** (Attach a separate page if necessary.)

There is no fiscal impact on the Division of Risk Management.

Bill adds reporting requirement to the Alaska Judicial Council upon the settlement of any civil case (excluding those explicitly exempt), retroactive to August 7, 1997.

Required information is retrievable from existing records.

Prepared by: J. Brad Thompson, Director  
 Division: Risk Management

Phone: 465-5723  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 1/28/98

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# Alaska State Legislature



Official Business

House Majority Leader

State Capitol  
Juneau, AK 99801-1182  
(907) 465-3718

JANUARY 15, 1998

SPONSOR STATEMENT

FOR

HB 293 COLLECTION OF SETTLEMENT AND OTHER DATA IN  
CIVIL CASES AND PROVIDING FOR AN EFFECTIVE DATE

Last session the Tort Reform bill was enacted into law. One section of the Tort Reform law requires the collection of settlement and other data in certain civil litigation cases.

The necessity of four minor "housekeeping" amendments has now become apparent. The first makes mandatory the reporting of such data by attorneys and persons representing themselves. Apparently some individuals have interpreted the data collection provisions of the Tort Reform law to be optional, and not mandatory. This amendment will make clear the mandatory nature of those reporting requirements, in order to ensure that accurate statistics will be compiled. Information must be submitted within 30 days after the final appeal of all covered cases.

Second, the effective date as to the collection of settlement and other data needs to be changed to make clear the reporting requirements apply to all applicable civil litigation cases which are closed after the effective date of the Tort Reform law. Although the substantive tort reforms only apply to causes of action which occur on or after the effective date of the Tort Reform law, HB 293 will made it clear that the reporting requirements apply to the appropriate civil cases which close after the effective date of the Tort Reform law. Late filed information because of this change shall be filed within 30 days of the effective date of HB 293.

Third, the Alaska Judicial Council has recommended that certain non-tort cases be added to the types of cases already excluded from the reporting requirements. The Tort Reform Act excluded Divorce and other cases from the reporting requirements. This amendment adds several other types of cases which should be excluded.

# Alaska State Legislature



Official Business

House Majority Leader

State Capitol  
Juneau, AK 99801-1182  
(907) 465-3718

JANUARY 15, 1998

SECTIONAL ANALYSIS

OF

HB 293

## COLLECTION OF SETTLEMENT AND OTHER DATA IN CERTAIN CIVIL CASES AND PROVIDING FOR AN EFFECTIVE DATE.

Section 1 of this bill adds to the list of cases which are excluded from the reporting requirements of AS 09.68.130(c) the following cases: forcible entry and detainer actions, administrative appeals other than those from the Alaska Workers' Compensation Board, and municipal code motor vehicle impound and forfeiture actions.

Section 2 of this bill makes clear that attorneys and persons representing themselves in certain civil litigation cases are under a mandatory duty to furnish settlement and other data to the Alaska Judicial Council within 30 days after the case is finally resolved as to that party on a form specified by the Alaska Judicial Council.

Section 3 is a grace period provision which allows delinquent reports to be filed within 30 days of the effective date of HB 293.

Section 4 of this bill retroactively establishes an effective date as to the reporting requirements for all covered cases which close after August 7, 1998, the effective date of the Tort Reform law, irrespective of the fact that the cause of action upon which the report is based arose prior to August 7, 1998.

Section 5 makes HB 293 effective immediately upon enactment into law under AS 01.10.070(c).



# alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1969 (907) 279-2526 FAX (907) 276-5046  
http://www.ajc.state.ak.us E-Mail: porter@ajc.state.ak.us

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Robert H. Wagstaff

September 26, 1997

CHAIRMAN, EX OFFICIO  
Warren W. Matthews  
Chief Justice  
Supreme Court

Representative Brian Porter  
716 W. 4<sup>th</sup> Ave.  
Anchorage, AK 99501-2133

RE: Collection of Civil Case Data Effective Date

Dear Brian:

I am writing to keep you informed about the Council's collection of civil case data under the tort reform legislation. (The letter to attorneys and the form are attached.) I would recommend a legislative change which would exclude administrative appeals to superior court and forcible entry and detainer cases (FED). More importantly, I believe the Act's effective date may cause some problems.

The act's effective date is August 7, 1997. However section 55 of the act indicates that the changes only apply to causes of action that accrue on or after that date:

**Sec. 55. APPLICABILITY.** This Act applies to causes of action accruing on or after the effective date of this Act.

Section 1, which describes the legislative intent of the act, also states that the act only applies to causes of action that accrue on or after the effective date:

**Sec. 1. LEGISLATIVE INTENT.** In enacting this bill, it is the intent of this legislature as a matter of public policy to

\* \* \* \*

Brian Porter  
Page 2  
September 12, 1997

(11) ensure that this Act does not apply to or in any way have an effect on existing litigation or a civil cause of action that accrues before the effective date of this Act; it is the specific intent of the legislature that this Act not apply to or in any way have an effect on *In Re Exxon Valdez*, A89-0095 Civ. (D. Alaska) or any other federal admiralty action now or in the future.

These provisions do not distinguish between rule changes made by the act and changes to substantive law. Given this legislative language, the Supreme Court added the language referring to causes of actions accruing after the effective date to the court rules changes made in the legislation.

Unfortunately, from a data gathering perspective we would like attorneys to begin sending us the civil case data for all cases that close after the effective date of the act. Otherwise, it will be years before we get useful data. For this reason, we loosely interpreted the reporting requirement in our letter to attorneys (and implicitly in the form itself) to apply to all cases closed August 8, 1997 or later. I believe the legislature wished us to gather data immediately even if the exact legislative language seems to lead to a different conclusion.

We hope to get a significant number of forms immediately (some have already come in), but I anticipate non-compliance with the reporting requirement will be higher because of the effective date problem. We have had quite a few inquiries on this point, including complaints about our interpretation. I would like to ask you to consider adding a specific effective date for the reporting requirement to the added language I previously suggested. The effective date for the reporting requirement could be set retroactively to August 7, 1997 (or perhaps better to whenever the amendment goes into effect).

Thank you for your assistance.

Very truly yours,



William T. Cotton  
Executive Director

WTC:sl

Attachment



# alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046  
http://www.ajc.state.ak.us E-Mail: 72302.1261@compuserve.com

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Robert H. Wagstaff  
Christopher E. Zimmerman

CHAIRMAN, EX OFFICIO  
Allen T. Compton  
Chief Justice  
Supreme Court

Representative Brian Porter  
State Capitol  
Room 216  
Juneau, AK 99801-1182

RE: Collecting Civil Case Data

Dear Representative Porter:

Thank you for your time and suggestions at our recent meeting. You recommended that I suggest a statutory change which would impose a general requirement on attorneys (and pro se parties) to send to the Council the civil case data we are required to collect under the tort reform legislation. I suggest adding a new paragraph (d) to A.S. 09.68.130:

(d) An attorney representing a party in a civil case not excluded under paragraph (c), and any pro se party to such a civil case, shall submit to the Alaska Judicial Council the information required under paragraph (b). The information must be submitted on a form specified by the Judicial Council within 30 days of the resolution of the civil case as to that party.

I have attached the full version of the statute. Thanks for your help.

Very truly yours,

William T. Cotton  
Executive Director

WTC:sl

Attachment

*P.S. I was able to make room on the case data form to add the items you suggested (non-economic + % judgm. covered by liability ins) Will*

Amend AS 09.68.130 to add a new paragraph (d) [(a)-(c)] included without change.

**Sec. 09.68.130. Collection of settlement information.** (a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other resolution of all civil litigation. The information shall be collected on a form developed by the council for that purpose and must include

- (1) the case name and file number;
- (2) a general description of the claims being settled;
- (3) if the case is resolved by way of settlement,
  - (A) the gross dollar amount of the settlement;
  - (B) to whom the settlement was paid;
  - (C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the settlement before disbursement to the claimant;
  - (D) the net amount actually disbursed to the claimant;
  - (E) the total costs and attorney fees paid by or owed by all parties; and
  - (F) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid;
- (4) if the case is resolved by dismissal, summary judgment, trial, or otherwise,
  - (A) the gross dollar amount of the judgment;
  - (B) the amount of attorney fees awarded and to which party;
  - (C) the amount of costs awarded and to which party;
  - (D) the net amount, after deduction of (B) and (C) of this paragraph, for which the prevailing party has judgment;
  - (E) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the judgment before distribution to the claimant;
  - (F) the total costs and attorney fees paid by defending parties; and
  - (G) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a

contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid.

(b) The information received by the council under (a) of this section is confidential. This restriction does not prevent the disclosure of summaries and statistics in a manner that does not allow the identification of particular cases or parties.

(c) The requirements of (a) of this section do not apply to the following types of cases:

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (4) domestic violence protective orders under AS 18.66.100 - 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

(d) An attorney representing a party in a civil case, not excluded under paragraph (c) and any pro se party to such a civil case, shall submit to the Alaska Judicial Council the information required under paragraph (b). The information must be submitted on a form specified by the Judicial Council within 30 days of the resolution of the civil case as to that party.

# Information About the Resolution of Civil Cases

Send to Judicial Council:  
Not Court

Complete Both Sides  
Confidential

Attorneys/parties must submit the information contained in this form upon the resolution (whether by dismissal, settlement, final judgment, etc.) of most civil cases in Alaska state courts. See AS 09.68.138; Civil Rule 41(a)(3); Appellate Rule 511(e). Complete all the information on both sides of this page. The only excluded

civil case types are: divorce and dissolution; adoption, custody, support, visitation, and emancipation of children; children-in-need-of-aid cases under 47.10 or delinquent minors cases under 47.12; domestic violence protective orders under AS 18.66.100-18.66.180; estate, guardianship, and trust cases filed under AS 13; and small claims under AS 22.15.040

The information collected in this form is confidential and will be used for the sole purpose of compiling statistics and summaries in a manner that does not allow the identification of particular cases or parties. AS 09.68.130(b).

Trial Court Case Number (use all caps)

Case Name (use all caps)

\_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ C I \_\_\_\_\_  
v. \_\_\_\_\_

**Case Type (check all applicable)**

Medical Malpractice       Property Damage - Other  
 Legal Malpractice       Employment  
 Other Malpractice       FED  
 Personal Injury - Auto     Debt  
 Personal Injury - Premises  Administrative Review  
 Personal Injury - Product  Other Business Dispute  
 Personal Injury - Other     Other Civil  
 Property Damage - Auto

**Date Filed:**  
\_\_\_\_/\_\_\_\_/\_\_\_\_

**Date Disposed:**  
\_\_\_\_/\_\_\_\_/\_\_\_\_

**Relief Sought (check all applicable)**

Compensatory: Actual  
 Compensatory: Non-Economic  
 Punitive  
 Costs/Attorney Fees  
 Injunctive Relief

**Total Judgment/Settlement**      **% of Judgment Covered by Liability Insurance**

\$ \_\_\_\_\_<sup>00</sup>      \_\_\_\_\_%

**Disposition: (pick one)**

Dismissed  
 Settlement  
 Final Judgment

**Disposition After? (check all applicable)**

Bench Trial  
 Jury Trial  
 Appeal Filed    Appeal # \_\_\_\_\_

**Non-Economic Award** \_\_\_\_\_<sup>00</sup>

**Punitive Award** \$ \_\_\_\_\_<sup>00</sup>

**Declaratory Relief Award?**     Yes     No

### Notes

\_\_\_\_\_

**Did you use Alternative Dispute Resolution?**

Mediation  
 Arbitration  
 Early Neutral Evaluation

**Did your case settle as a result of ADR?**

Yes     No

Send the completed form to:  
Alaska Judicial Council  
1029 West Third Avenue  
Suite 201  
Anchorage, AK 99501

See the Council's home page at <http://www.ajc.state.ak.us> or call the Council at (907) 279-2526 for copies of the form. You can also pick up copies of the form at any court clerk's office. E-mail [bill@ajc.state.ak.us](mailto:bill@ajc.state.ak.us) with questions.

Do not fill in: for AJC use only.

\_\_\_\_\_ - 9 \_\_\_\_\_

Each party, including pro se parties, must complete the information requested below. Use a second form for more than three parties.

60442

Do not fill in: for AJC use only.

					-	9	
--	--	--	--	--	---	---	--

**The Party's Own Fees and Costs**

**Attorney Fees/Costs for - payable to this Party by Another Party; or Against this Party to Another Party**

Party Name/Type (fill in line for each party filing this form)	Fee Type	Percent of Judgment if contingent; hourly rate if hourly <sup>3</sup>	Total (of the party's own) Attorney Fees	Total (of the party's own) Costs	Gross Judgment/Settlement (for or against this party) including Attorney Fees and Costs	Attorney Fees Awards <sup>5</sup>	Costs Awards <sup>5</sup>	Total money to Client after all Fees/Costs <sup>4</sup> Deducted (if any)
First Name (all caps) _____ Last _____ <input type="radio"/> Plaintiff/Petitioner <input type="radio"/> Defendant/Respondent <input type="radio"/> Other (specify below) _____	<input type="radio"/> Contingent <input type="radio"/> Hourly <input type="radio"/> Flat Fee <input type="radio"/> In-house <input type="radio"/> Legal Svcs. <input type="radio"/> Pro Se <input type="radio"/> Other	_____ % of Judgment Or \$ _____ /hr. if hourly	\$ _____ <sup>00</sup>	\$ _____ <sup>00</sup>	\$ _____ <sup>00</sup>	Not Separable? <input type="radio"/> For \$ _____ <sup>00</sup> Against \$ _____ <sup>00</sup>	Not Separable? <input type="radio"/> For \$ _____ <sup>00</sup> Against \$ _____ <sup>00</sup>	\$ _____
First Name (all caps) _____ Last _____ <input type="radio"/> Plaintiff/Petitioner <input type="radio"/> Defendant/Respondent <input type="radio"/> Other (specify below) _____	<input type="radio"/> Contingent <input type="radio"/> Hourly <input type="radio"/> Flat Fee <input type="radio"/> In-house <input type="radio"/> Legal Svcs. <input type="radio"/> Pro Se <input type="radio"/> Other	_____ % of Judgment Or \$ _____ /hr. if hourly	\$ _____ <sup>00</sup>	\$ _____ <sup>00</sup>	\$ _____ <sup>00</sup>	Not Separable? <input type="radio"/> For \$ _____ <sup>00</sup> Against \$ _____ <sup>00</sup>	Not Separable? <input type="radio"/> For \$ _____ <sup>00</sup> Against \$ _____ <sup>00</sup>	\$ _____
First Name (all caps) _____ Last _____ <input type="radio"/> Plaintiff/Petitioner <input type="radio"/> Defendant/Respondent <input type="radio"/> Other (specify below) _____	<input type="radio"/> Contingent <input type="radio"/> Hourly <input type="radio"/> Flat Fee <input type="radio"/> In-house <input type="radio"/> Legal Svcs. <input type="radio"/> Pro Se <input type="radio"/> Other	_____ % of Judgment Or \$ _____ /hr. if hourly	\$ _____ <sup>00</sup>	\$ _____ <sup>00</sup>	\$ _____ <sup>00</sup>	Not Separable? <input type="radio"/> For \$ _____ <sup>00</sup> Against \$ _____ <sup>00</sup>	Not Separable? <input type="radio"/> For \$ _____ <sup>00</sup> Against \$ _____ <sup>00</sup>	\$ _____

<sup>3</sup> Round all money amounts to the nearest dollar.  
<sup>4</sup> "Costs" as used on this form is limited to litigation costs (excluding attorney fees) and does not include such things as medical expenses.  
<sup>5</sup> If attorney fees/costs are not separable from the gross judgment (usually the case in settlements), check this box and go to the next item.

Signature (of attorney, or party if no attorney) \_\_\_\_\_

Printed Name (of attorney, or party if no attorney)(all caps) \_\_\_\_\_

Date / / \_\_\_\_\_

Telephone Number \_\_\_\_\_

KEVIN

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 293  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE PORTER

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to collection of settlement information in civil litigation; and  
2 providing for an effective date."

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

4 \* Section 1. AS 09.68.130(c) is amended to read:

5 (c) The requirements of (a) of this section do not apply to the following types  
6 of cases:

- 7 (1) divorce and dissolution;
- 8 (2) adoption, custody, support, visitation, and emancipation of children;
- 9 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors  
10 cases under 47.12;
- 11 (4) domestic violence protective orders under AS 18.66.100 -  
12 18.66.180;
- 13 (5) estate, guardianship, and trust cases filed under AS 13;
- 14 (6) small claims under AS 22.15.040;

L

1                    (7) forcible entry and detainer cases;

2                    (8) administrative appeals, excluding appeals from a decision of the  
3                    Alaska Workers' Compensation Board;

4                    (9) motor vehicle impound or forfeiture actions under municipal  
5                    ordinance.

6                    \* Sec. 2. AS 09.68.130 is amended by adding a new subsection to read:

7                    (d) A party to a civil case, except a civil case described in (c) of this section,  
8                    or, if the party is represented by an attorney, the party's attorney shall submit the  
9                    information described in (a) of this section to the Alaska Judicial Council. The  
10                    information must be submitted within 30 days after the case is finally resolved as to  
11                    that party and on a form specified by the Alaska Judicial Council.

12                    \* Sec. 3. TRANSITION. Notwithstanding sec. 2 of this Act, a party or, if a party is  
13                    represented by an attorney, a party's attorney who is required to provide information relating  
14                    to a compromise or settlement of civil litigation that occurred before the effective date of this  
15                    Act has 30 days from the effective date of this Act to submit the information required under  
16                    sec. 2 of this Act.

17                    \* Sec. 4. Sections 1 and 2 of this Act are retroactive to August 7, 1997.

18                    \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 293(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE PORTER**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to collection of settlement information in civil litigation; and**  
2 **providing for an effective date."**

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

4 **\* Section 1. AS 09.68.130(c) is amended to read:**

5 (c) The requirements of (a) of this section do not apply to the following types  
6 of cases:

7 (1) divorce and dissolution;

8 (2) adoption, custody, support, visitation, and emancipation of children;

9 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors  
10 cases under 47.12;

11 (4) domestic violence protective orders under AS 18.66.100 -  
12 18.66.180;

13 (5) estate, guardianship, and trust cases filed under AS 13;

14 (6) small claims under AS 22.15.040;

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(7) forcible entry and detainer cases:

(8) administrative appeals:

(9) motor vehicle impound or forfeiture actions under municipal ordinance.

\* Sec. 2. AS 09.68.130 is amended by adding a new subsection to read:

(d) A party to a civil case, except a civil case described in (c) of this section, or, if the party is represented by an attorney, the party's attorney shall submit the information described in (a) of this section to the Alaska Judicial Council. The information must be submitted within 30 days after the case is finally resolved as to that party and on a form specified by the Alaska Judicial Council.

\* Sec. 3. APPLICABILITY. This Act applies to a compromise or settlement of civil litigation that occurs on or after the effective date of this Act.

\* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).