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Re: HB 41, An Act Relating to sport fishing services ...

Dear Thor:

As discussed last week and again in teleconference today, HB41 as currently drafted creates some concerns for the Alaska Professional Hunter's Association (APHA). These concerns generally fall under the topics of public participation, applicability to incidental activities of big game guides, and penalties. Each area is addressed below.

First, as currently drafted, the bill grants both the Department of Fish & Game and the Board of Fisheries power to pass regulations to implement the bill. Section 2 grants the Department the authority to adopt regulations related to sport fishing vessel registration. Section 4 grants the Board the authority to create additional licensing requirements by regulation for operators and guides. My understanding is that APHA has no concerns with these sections. Section 4 also grants the Department and the Board the co-authority to require additional information in reports, require certain timing of reports, or adopt additional necessary regulations relating to reports. APHA has expressed concern that department regulations do not allow for full public participation.

In order to maximize the public process I suggest the following changes. In Section 4, the language that will become AS 16.40.281 be amended as follows:

**Sec. 16.40.281. Reports**

...

(4) other information that the [DEPARTMENT OR] board requires by regulation.

(b) A person who holds a license issued under AS 16.40.261 or 16.40.271 shall comply with the reporting requirements in this section and reporting requirements adopted in regulation by the [DEPARTMENT OR] board. The [DEPARTMENT AND THE] board may adopt by regulation requirements for

timely submission of reports required under this section or under regulations adopted by the [DEPARTMENT OR] board.”

...

(f) “The [DEPARTMENT OR] board may adopt regulations under AS 44.62 (Administrative Procedure Act) that it considers necessary to implement this section.”

...

These changes clarify that only the Board may adopt regulations related to the contents of reports or the timing of reports. The Department will retain the ability to submit its own regulatory proposals to the Board, but these proposals will undergo the vetting of the public Board process including full participation by the Advisory Committees located throughout Alaska, written public comment, recommendations from the Department and the Department of Public Safety, public testimony before the Board at meetings, and full deliberation by the seven member Board.

Second, the current version of the bill may be interpreted to require licensing for persons licensed to provide big game hunting services under title 8 if any fishing is done on a hunting trip. The following amendments will clarify that separate licensure is not required under AS 16.40 for persons licensed under AS 08.54 for activities taking place during a hunting trip.

In Section 4, the language that will become AS 16.40.300 be amended as follows:

**Sec. 16.40.300. Definitions.**

...

(2) “sport fishing guide services” means assistance, for compensation or with the intent to receive compensation, to a sport fisherman to take or attempt to take fish by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a sport fishing trip; “sport fishing guide services” does not include

(A) sport fishing services; or

(B) services provided by an assistant, deckhand, or similar person who works directly under the supervision of and on the same vessel as a sport fishing guide; or

**(C) services incidental to big game hunting services (as defined in AS 08.54.790) provided by a person licensed under AS 08.54.610 - .636;**

(3) “sport fishing services” means the indirect provision of assistance for compensation or with the intent to receive compensation, to a person engaged in sport fishing in taking or attempting to take fish or shellfish by a business that employs a sport fishing guide to provide sport fishing guide

services to the person during any portion of a sport fishing trip: “sport fishing services” does not include

...

(B) booking and other ancillary services provided by a tour broker or agent to a sport fishing services operator; or

**(C) services incidental to big game hunting services (as defined in AS 08.54.790) provided by a person licensed under AS 08.54.610 - .636;**

...

These changes make the entirety of the bill inapplicable to big game guides who have clients fishing during a portion of a hunt. These changes would only allow a person on a hunting trip with a licensed big game guide to participate in a sport fishing activity while on a hunt. This exception does not allow a licensed big game guide to provide sport fishing guide services or sport fishing services outside of the hunt context.

Third, the current version of the bill provides for criminal and quasi-criminal penalties for benign record keeping mistakes. The following amendments continue to provide a mechanism to ensure the Department receives the information it needs, without exposing honest business people to criminal punishments.

In Section 4, the language that will become AS 16.40.291 be amended as follows:

**Sec. 16.40.291. Penalty.** (a) Except as provided in (b) [AND (C)] of this section, a person who knowingly violates AS 16.40.261 – 16.40.300 or a regulation adopted under AS 16.40.261 – 16.40.300 is guilty of a class A misdemeanor. However, this subsection does not apply to the failure to hold a current business license under AS 16.40.261(a)(1) as required under AS 43.70.

[(B) A PERSON WHO, WITHOUT ANY CULPABLE MENTAL STATE, VIOLATES AS 16.40.271(E) IS GUILTY OF A VIOLATION.]

**(b) [(C)] A person who [KNOWINGLY] violates AS 16.40.271(e) or who [KNOWINGLY] fails to comply with a requirement for timely submission of reports required by a regulation adopted under AS 16.40.281(b) [IS, FOR A] may be assessed a civil penalty by the department as follows:**

(1) **for a** first offense in a three-year period, **\$100** [GUILTY OF A VIOLATION]; and

(2) **for a** second or subsequent offense in a three-year period **\$200** [GUILTY OF A CLASS B MISDEMEANOR].

**(c)** [(D)] In addition to any other penalty provided by law, a court may revoke the sport fishing guide license of a person who is convicted under (a) [OR (C)(2)] of this section.

**(d)** [(E)] In this section, "knowingly" has the meaning given in AS 11.81.900(a).

These changes remove record keeping and paperwork error from the criminal law. Substantive offenses such as failing to hold a license or aiding in violations remain misdemeanors.

Sincerely,  
DOWNES, TALLERICO, & SCHWALM, LLC



Kirk Schwalm  
Partner