

HOUSE BILL NO. 452

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE HEINZE

Introduced: 2/16/04

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to licensing and regulation of sport fishing services operators and**
2 **fishing guides; and providing for an effective date."**

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

4 *** Section 1.** AS 16.05.251(a) is amended to read:

5 (a) The Board of Fisheries may adopt regulations it considers advisable in
6 accordance with AS 44.62 (Administrative Procedure Act) for

7 (1) setting apart fish reserve areas, refuges, and sanctuaries in the
8 waters of the state over which it has jurisdiction, subject to the approval of the
9 legislature;

10 (2) establishing open and closed seasons and areas for the taking of
11 fish; if consistent with resource conservation and development goals, the board may
12 adopt regulations establishing restricted seasons and areas necessary for persons 60
13 years of age and older to participate in sport, personal use, or subsistence fishing;

14 (3) setting quotas, bag limits, harvest levels, and sex and size

1 limitations on the taking of fish;

2 (4) establishing the means and methods employed in the pursuit,
3 capture, and transport of fish;

4 (5) establishing marking and identification requirements for means
5 used in pursuit, capture, and transport of fish;

6 (6) classifying as commercial fish, sport fish, guided sport fish,
7 personal use fish, subsistence fish, or predators or other categories essential for
8 regulatory purposes;

9 (7) watershed and habitat improvement, and management,
10 conservation, protection, use, disposal, propagation, and stocking of fish;

11 (8) investigating and determining the extent and effect of disease,
12 predation, and competition among fish in the state, exercising control measures
13 considered necessary to the resources of the state;

14 (9) prohibiting and regulating the live capture, possession, transport, or
15 release of native or exotic fish or their eggs;

16 (10) establishing seasons, areas, quotas, and methods of harvest for
17 aquatic plants;

18 (11) establishing the times and dates during which the issuance of
19 fishing licenses, permits, and registrations and the transfer of permits and registrations
20 between registration areas is allowed; however, this paragraph does not apply to
21 permits issued or transferred under AS 16.43;

22 (12) regulating commercial, sport, guided sport, subsistence, and
23 personal use fishing as needed for the conservation, development, and utilization of
24 fisheries;

25 (13) requiring, in a fishery, observers on board fishing vessels, as
26 defined in AS 16.05.475(d), that are registered under the laws of the state, as defined
27 in AS 16.05.475(c), after making a written determination that an on-board observer
28 program

29 (A) is the only practical data-gathering or enforcement
30 mechanism for that fishery;

31 (B) will not unduly disrupt the fishery;

1 (C) can be conducted at a reasonable cost; and
2 (D) can be coordinated with observer programs of other
3 agencies, including the National Marine Fisheries Service, North Pacific
4 Fishery Management Council, and the International Pacific Halibut
5 Commission;

6 (14) establishing nonexclusive, exclusive, and superexclusive
7 registration and use areas for regulating commercial fishing;

8 (15) regulating resident or nonresident sport fishermen as needed for
9 the conservation, development, and utilization of fishery resources;

10 (16) requiring unlicensed fishing vessels present in or transiting the
11 waters of the state to report to the department the quantity, species, and origin of fish
12 on board; in this paragraph, "unlicensed fishing vessel" means a fishing vessel that is
13 not licensed under AS 16.05.490 - 16.05.530;

14 **(17) regulating the sport fishing services industry as needed for the**
15 **conservation, development, and utilization of fisheries, the safety of clients of the**
16 **sport fishing services industry, and the integrity of the sport fishing services**
17 **industry.**

18 * **Sec. 2.** AS 16.05.340(a) is amended by adding a new paragraph to read:

- 19 (26) Fishing services licenses
- 20 (A) Sport fishing services operator license\$100
- 21 (B) Fishing guide license.....50
- 22 (C) Sport fishing services operator and fishing
- 23 guide combined license 100

24 * **Sec. 3.** AS 16.05.815(a) is amended to read:

25 (a) Except as provided in (b) and (c) of this section, records required by
26 regulations of the department concerning the landings of fish, shellfish, or fishery
27 products, [AND] annual statistical reports of fishermen, buyers, and processors
28 required by regulation of the department, **and the names and license numbers of**
29 **fishermen collected under AS 16.40.280** are confidential and may not be released by
30 the department or by the Alaska Commercial Fisheries Entry Commission except as
31 set out in this subsection. The department may release the records and reports set out

1 in this subsection to the Alaska Commercial Fisheries Entry Commission. The
2 department and the Alaska Commercial Fisheries Entry Commission may release the
3 records and reports set out in this subsection to the recipients identified in this
4 subsection if the recipient, other than a recipient under (5) - (9) of this subsection,
5 agrees to maintain the confidentiality of the records and reports. The department and
6 the Alaska Commercial Fisheries Entry Commission may release

7 (1) any of the records and reports to the National Marine Fisheries
8 Service and the professional staff of the North Pacific Fishery Management Council as
9 required for preparation and implementation of the fishery management plans of the
10 North Pacific Fishery Management Council within the exclusive economic zone;

11 (2) any of the records and reports to the professional staff of the
12 Pacific States Marine Fisheries Commission who are employed in the Alaska Fisheries
13 Information Network project for the purpose of exchanging information with users
14 authorized by the department;

15 (3) any of the records and reports to the Department of Revenue to
16 assist the Department of Revenue in carrying out its statutory responsibilities;

17 (4) records or reports of the total value purchased by each buyer to a
18 municipality that levies and collects a tax on fish, shellfish, or fishery products if the
19 municipality requires records of the landings of fish, shellfish, or fishery products to
20 be submitted to it for purposes of verification of taxes payable;

21 (5) such records and reports as necessary to be in conformity with a
22 court order;

23 (6) on request, the report of a person to the person whose fishing
24 activity is the subject of the report, or to a designee of the person whose fishing
25 activity is the subject of the report;

26 (7) on request, annual statistical reports of a fisherman, buyer, or
27 processor to the fisherman, buyer, or processor whose activity is the subject of the
28 report, or to a designee of the fisherman, buyer, or processor whose activity is the
29 subject of the report;

30 (8) fish tickets, fish ticket information, saltwater charter logbooks,
31 saltwater charter logbook information, and annual statistical reports of fishermen,

1 buyers, and processors and information in those reports to the Department of Public
2 Safety;

3 (9) fish tickets, fish ticket information, and annual statistical reports of
4 fishermen, buyers, and processors and information in those reports to the law
5 enforcement personnel of the National Marine Fisheries Service and the National
6 Oceanic and Atmospheric Administration for the purpose of enforcing fishery laws in
7 waters of this state and in waters of the exclusive economic zone adjacent to this state;

8 (10) fish tickets and fish ticket information regarding halibut to the
9 International Pacific Halibut Commission; and

10 (11) any of the records and reports to the child support enforcement
11 agency created in AS 25.27.010, or the child support enforcement agency of another
12 state, for child support purposes authorized under law.

13 * **Sec. 4.** AS 16.40 is amended by adding new sections to read:

14 **Article 6. Fishing Services.**

15 **Sec. 16.40.260. Sport fishing services operator license.** (a) The department
16 shall issue an annual sport fishing services operator license to a person who

17 (1) holds a current business license under AS 43.70 to provide services
18 to sport, personal use, and subsistence fishermen;

19 (2) presents proof satisfactory to the department of a general liability
20 insurance policy or marine protection and indemnity insurance policy, covering the
21 services provided by the person and person's employees to sport, personal use, and
22 subsistence fishermen, that provides coverage of at least \$100,000 for each incident,
23 and \$300,000 for all incidents in a year;

24 (3) pays the license fee prescribed by AS 16.05.340(a); and

25 (4) satisfies all additional requirements adopted in regulation by the
26 Board of Fisheries.

27 (b) A person may not provide sport fishing services unless the person holds a
28 current sport fishing services operator license and has current insurance coverage as
29 required in (a)(2) of this section.

30 (c) A person who holds a current sport fishing services operator license may
31 contract to provide fishing guide services to a sport, personal use, or subsistence

1 fisherman through an employee who holds a current fishing guide license under
2 AS 16.40.270.

3 (d) A person who holds a current sport fishing services operator license may
4 not directly provide fishing guide services to a sport, personal use, or subsistence
5 fisherman unless the person also holds a current fishing guide license under
6 AS 16.40.270(b).

7 (e) A person who holds a sport fishing services operator license may not aid in
8 the commission of a violation of AS 16.05 - AS 16.40 or a regulation adopted under
9 AS 16.05 - AS 16.40 by a fishing guide who is employed by the person or by a sport,
10 personal use, or subsistence fisherman who is a client of the person.

11 **Sec. 16.40.270. Fishing guide license.** (a) A natural person may obtain an
12 annual fishing guide license if the person

13 (1) is a citizen of the United States, Canada, or Mexico, or is a resident
14 alien;

15 (2) is certified in first aid by the American Red Cross or a similar
16 organization;

17 (3) holds a license to carry passengers for hire issued by the United
18 States Coast Guard if the person operates a vessel in the provision of fishing guide
19 services and the license is required by the United States Coast Guard for the area in
20 which the fishing guide provides fishing guide services;

21 (4) holds a current sport fishing license from this state;

22 (5) pays the license fee prescribed by AS 16.05.340(a); and

23 (6) satisfies all additional requirements adopted in regulation by the
24 Board of Fisheries.

25 (b) A natural person may obtain an annual sport fishing services operator and
26 fishing guide combined license if the person satisfies the requirements for a sport
27 fishing services operator license under AS 16.40.260 and for a fishing guide license
28 under this section and pays the license fee prescribed by AS 16.05.340(a).

29 (c) A person may not provide fishing guide services unless the person

30 (1) hold a current fishing guide license; and

31 (2) holds a current sport fishing services operator license or is an

1 employee of a person who holds a current sport fishing services operator license.

2 (d) A fishing guide may provide fishing guide services only to persons who
3 have engaged the services of the sport fishing services operator by whom the fishing
4 guide is employed. A fishing guide may not contract directly with a person to provide
5 fishing guide services to that person unless the fishing guide also holds a current sport
6 fishing services operator license.

7 (e) While engaged in providing fishing guide services, a fishing guide shall
8 physically possess

9 (1) a current fishing guide license;

10 (2) the current licenses, tags, and permits that are required to engage in
11 the sport, personal use, or subsistence fishery for which the fishing guide services are
12 being provided;

13 (3) a driver's license or similar identification card that is issued by a
14 state or federal agency and that bears a photograph of the fishing guide;

15 (4) proof of employment as a fishing guide by a person who holds a
16 current sport fishing services operator license, or proof of current licensure as a sport
17 fishing services operator;

18 (5) proof of current certification in first aid by the American Red Cross
19 or a similar organization; and

20 (6) proof of licensure by the United States Coast Guard to carry
21 passengers for hire if the fishing guide operates a vessel in the provision of fishing
22 guide services and the license is required by the United States Coast Guard for the area
23 in which the fishing guide provides fishing guide services.

24 (f) A fishing guide may not

25 (1) aid in the commission of a violation of AS 16.05 - AS 16.40 or a
26 regulation adopted under AS 16.05 - AS 16.40 by a client of the fishing guide; or

27 (2) permit the commission by a client of the fishing guide of a
28 violation of AS 16.05 - AS 16.40 or a regulation adopted under AS 16.05 - AS 16.40
29 that the fishing guide knows or reasonably believes is being or will be committed
30 without

31 (A) attempting to prevent it, short of using force; and

1 (B) reporting the violation.

2 **Sec. 16.40.280. Reports.** (a) The department shall collect information from
3 sport fishing services operators and fishing guides, including

- 4 (1) the names of clients;
5 (2) the sport fishing license or permit numbers of clients;
6 (3) the numbers of fish by species harvested by clients;
7 (4) the number of rod-hours fished by clients;
8 (5) the locations fished during the provision of fishing guide services;

9 and

10 (6) other information that the department or board requires by
11 regulation.

12 (b) A person who holds a license issued under AS 16.40.260 or 16.40.270
13 shall comply with the reporting requirements in this section and reporting
14 requirements adopted in regulation by the department or board.

15 (c) A person who is required to complete reports under this section may not
16 provide false information or omit material facts in a report.

17 (d) A person who is required to complete reports under this section may not be
18 issued a new license under AS 16.40.260 or 16.40.270 unless the department has
19 received all reports required under this section for the preceding year.

20 (e) Information collected under this section is confidential to the extent
21 provided under AS 16.05.815.

22 (f) The department or board may adopt regulations under AS 44.62
23 (Administrative Procedure Act) that it considers necessary to implement this section.

24 **Sec. 16.40.290. Penalty.** (a) Except as provided in (b) and (c) of this section,
25 a person who knowingly violates AS 16.40.260 - 16.40.299 or a regulation adopted
26 under AS 16.40.260 - 16.40.299 is guilty of a class A misdemeanor.

27 (b) A person who, without any culpable mental state, violates AS 16.40.270(e)
28 is guilty of a violation and upon conviction is punishable by a fine of not more than
29 \$500.

30 (c) A person who knowingly violates AS 16.40.270(e) is, for a

- 31 (1) first offense in a three-year period, guilty of a violation and upon

1 conviction is punishable by a fine of not more than \$500; and

2 (2) second or subsequent offense in a three-year period, guilty of a
3 class B misdemeanor.

4 (d) In addition to any other penalty provided by law, a court may revoke the
5 fishing guide license of a person who is convicted under (c)(2) of this section.

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

7 **Sec. 16.40.299. Definitions.** In AS 16.40.260 - 16.40.299,

8 (1) "fishing club" means an organization that offers the use of real or
9 personal property or services to persons who pay a membership fee for the privilege of
10 using the real or personal property or services for sport, personal use, or subsistence
11 fishing;

12 (2) "fishing guide services" means assistance, for compensation or
13 with the intent to receive compensation, to a sport, personal use, or subsistence
14 fisherman to take or to attempt to take fish by accompanying or physically directing
15 the fisherman in sport, personal use, or subsistence fishing activities during any part of
16 a trip; "fishing guide services" does not include

17 (A) sport fishing services; or

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

21 (3) "outfitting" means the provision of equipment or services,
22 including the renting of vessels without a vessel operator, to a sport, personal use, or
23 subsistence fisherman in the field; "outfitting" does not include the sale of fishing
24 tackle, bait, or fuel; in this paragraph, "field" means an area that is

25 (A) outside of established developments usually associated
26 with a city, town, or village; and

27 (B) not reasonably accessible by foot from the state highway
28 system; in this subparagraph, "highway" has the meaning given in
29 AS 19.45.001;

30 (4) "sport fishing services" means the provision to a sport, personal
31 use, or subsistence fisherman, for compensation or with the intent to receive

1 compensation, of fishing guide services through a fishing guide, of outfitting services,
2 or of fishing club services; "sport fishing services" does not include

3 (A) an activity for which a fishing guide license is required; or

4 (B) booking and other ancillary services provided by a tour

5 broker or agent to a sport fishing services operator.

6 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 TRANSITION; REGULATIONS. The Board of Fisheries and the Department of Fish
9 and Game each may proceed to adopt regulations necessary to implement the changes made
10 by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but
11 not before the effective date of the statutory changes.

12 * **Sec. 6.** Section 5 of this Act takes effect immediately under AS 01.10.070(c).

13 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect January 1, 2005.