

CS FOR HOUSE BILL NO. 452(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/22/04

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE HEINZE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to licensing and regulation of sport fishing operators and sport fishing**
2 **guides; authorizing the Department of Fish and Game and the Alaska Commercial**
3 **Fisheries Entry Commission to release records and reports to the Department of**
4 **Natural Resources; and providing for an effective date."**

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

6 * **Section 1.** AS 16.05.340(a) is amended by adding a new paragraph to read:

- 7 (26) Fishing services licenses
- 8 (A) Sport fishing operator license\$100
- 9 (B) Sport fishing guide license50
- 10 (C) Sport fishing operator and sport fishing
- 11 guide combined license 100

12 * **Sec. 2.** AS 16.05.815(a) is amended to read:

- 13 (a) Except as provided in (b) and (c) of this section, records required by
- 14 regulations of the department concerning the landings of fish, shellfish, or fishery

1 products, and annual statistical reports of fishermen, buyers, and processors required
2 by regulation of the department are confidential and may not be released by the
3 department or by the Alaska Commercial Fisheries Entry Commission except as set
4 out in this subsection. The department may release the records and reports set out in
5 this subsection to the Alaska Commercial Fisheries Entry Commission. The
6 department and the Alaska Commercial Fisheries Entry Commission may release the
7 records and reports set out in this subsection to the recipients identified in this
8 subsection if the recipient, other than a recipient under (5) - (9) of this subsection,
9 agrees to maintain the confidentiality of the records and reports. The department and
10 the Alaska Commercial Fisheries Entry Commission may release

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

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

19 (3) any of the records and reports to the Department of Revenue **or the**
20 **Department of Natural Resources** to assist the **department** [DEPARTMENT OF
21 REVENUE] in carrying out its statutory responsibilities;

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

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

28 (6) on request, the report of a person to the person whose fishing
29 activity is the subject of the report, or to a designee of the person whose fishing
30 activity is the subject of the report;

31 (7) on request, annual statistical reports of a fisherman, buyer, or

1 processor to the fisherman, buyer, or processor whose activity is the subject of the
 2 report, or to a designee of the fisherman, buyer, or processor whose activity is the
 3 subject of the report;

4 (8) fish tickets, fish ticket information, saltwater charter logbooks,
 5 saltwater charter logbook information, and annual statistical reports of fishermen,
 6 buyers, and processors and information in those reports to the Department of Public
 7 Safety;

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

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

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

18 * **Sec. 3.** AS 16.40 is amended by adding new sections to read:

19 **Article 6. Sport Fishing Services.**

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

22 (1) holds a current business license under AS 43.70 to provide services
 23 to sport fishermen;

24 (2) presents proof satisfactory to the department of a general liability
 25 insurance policy or marine protection and indemnity insurance policy, covering the
 26 services provided by the person and person's employees to sport fishermen, that
 27 provides coverage of at least \$100,000 for each incident, and \$300,000 for all
 28 incidents in a year;

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

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

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

4 (c) A person who holds a current sport fishing operator license may contract to
 5 provide sport fishing guide services to a sport fisherman through an employee who
 6 holds a current sport fishing guide license under AS 16.40.270.

7 (d) A person who holds a current sport fishing operator license may not
 8 directly provide sport fishing guide services to a sport fisherman unless the person also
 9 holds a current sport fishing guide license under AS 16.40.270(b).

10 (e) A person who holds a sport fishing operator license may not aid in the
 11 commission of a violation of AS 16.05 - AS 16.40 or a regulation adopted under
 12 AS 16.05 - AS 16.40 by a sport fishing guide who is employed by the person or by a
 13 sport fisherman who is a client of the person.

14 **Sec. 16.40.270. Sport fishing guide license.** (a) A natural person may obtain
 15 an annual sport fishing guide license if the person

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

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

20 (3) holds a license to carry passengers for hire issued by the United
 21 States Coast Guard if the person operates a vessel in the provision of sport 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 (4) holds a current sport fishing license from this state;

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

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

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

1 (c) A person may not provide sport fishing guide services unless the person
 2 (1) holds a current sport fishing guide license; and
 3 (2) holds a current sport fishing operator license or is an employee of a
 4 person who holds a current sport fishing operator license.

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

10 (e) While engaged in providing sport fishing guide services, a sport fishing
 11 guide shall physically possess

- 12 (1) a current sport fishing guide license;
 13 (2) the current licenses, tags, and permits that are required to engage in
 14 the sport fishery for which the sport fishing guide services are being provided;
 15 (3) a driver's license or similar identification card that is issued by a
 16 state or federal agency and that bears a photograph of the fishing guide;
 17 (4) proof of
 18 (A) employment as a sport fishing guide by a person who holds
 19 a current sport fishing operator license; or
 20 (B) current licensure as a sport fishing operator;
 21 (5) proof of current certification in first aid by the American Red Cross
 22 or a similar organization; and
 23 (6) proof of licensure by the United States Coast Guard to carry
 24 passengers for hire if the sport fishing guide operates a vessel in the provision of sport
 25 fishing guide services and the license is required by the United States Coast Guard for
 26 the area in which the sport fishing guide provides sport fishing guide services.

27 (f) A sport fishing guide may not
 28 (1) aid in the commission of a violation of AS 16.05 - AS 16.40 or a
 29 regulation adopted under AS 16.05 - AS 16.40 by a client of the sport fishing guide; or
 30 (2) permit the commission by a client of the sport fishing guide of a
 31 violation of AS 16.05 - AS 16.40 or a regulation adopted under AS 16.05 - AS 16.40

1 that the sport fishing guide knows or reasonably believes is being or will be committed
2 without

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

4 (B) reporting the violation.

5 **Sec. 16.40.280. Reports.** (a) The department shall collect information from
6 sport fishing guides, including

7 (1) the name and license number of each vessel licensed under
8 AS 16.05.490 that is used in providing sport fishing guide services;

9 (2) the amount of fishing effort, catch, and harvest by clients of a sport
10 fishing guide;

11 (3) the locations fished during the provision of sport fishing guide
12 services; and

13 (4) other information that the department or board requires by
14 regulation.

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

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

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

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

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

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

30 (b) A person who, without any culpable mental state, violates AS 16.40.270(e)
31 is guilty of a violation and upon conviction is punishable by a fine of not more than

1 \$500.

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

3 (1) first offense in a three-year period, guilty of a violation and upon
4 conviction is punishable by a fine of not more than \$500; and

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

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

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

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

12 (1) "sport fishing guide" means a person who is licensed to provide
13 sport fishing guide services to persons who are engaged in sport fishing;

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

19 (A) sport fishing services; or

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

23 (3) "sport fishing services" means the indirect provision of assistance,
24 for compensation or with the intent to receive compensation, to a person engaged in
25 sport fishing in taking or attempting to take fish or shellfish by a business that
26 employs a sport fishing guide to provide sport fishing guide services to the person
27 during any portion of a sport fishing trip; "sport fishing services" does not include

28 (A) an activity for which a sport fishing guide license is
29 required; or

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

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

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

7 * **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

8 * **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect January 1, 2005.