

CS FOR HOUSE BILL NO. 452(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/5/04
Referred: 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 the Department of Public Safety; and providing for an effective**
5 **date."**

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

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

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

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

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

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

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

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

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

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

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

1 activity is the subject of the report;

2 (7) on request, annual statistical reports of a fisherman, buyer, or
3 processor to the fisherman, buyer, or processor whose activity is the subject of the
4 report, or to a designee of the fisherman, buyer, or processor whose activity is the
5 subject of the report;

6 (8) **any of the records and reports** [FISH TICKETS, FISH TICKET
7 INFORMATION, SALTWATER CHARTER LOGBOOKS, SALTWATER
8 CHARTER LOGBOOK INFORMATION, AND ANNUAL STATISTICAL
9 REPORTS OF FISHERMEN, BUYERS, AND PROCESSORS AND
10 INFORMATION IN THOSE REPORTS] to the Department of Public Safety **for law**
11 **enforcement purposes**;

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

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

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

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

23 **Article 6. Sport Fishing Services.**

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

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

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

1 incidents in a year;

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

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

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

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

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

14 (e) A person who holds a sport fishing operator license may not aid in the
15 commission of a violation of AS 16.05 - AS 16.40 or a regulation adopted under
16 AS 16.05 - AS 16.40, including regulations relating to the proper method to release
17 fish, by a sport fishing guide who is employed by the person or by a sport fisherman
18 who is a client of the person.

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

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

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

25 (3) holds a license to carry passengers for hire issued by the United
26 States Coast Guard if the person operates a vessel in the provision of sport fishing
27 guide services and the license is required by the United States Coast Guard for the area
28 in which the fishing guide provides fishing guide services;

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

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

31 (6) satisfies all additional requirements adopted in regulation by the

1 Board of Fisheries.

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

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

7 (1) holds a current sport fishing guide license; and

8 (2) holds a current sport fishing operator license or is an employee of a
9 person who holds a current sport fishing operator license.

10 (d) A sport fishing guide may provide sport fishing guide services only to
11 persons who have engaged the services of the sport fishing operator by whom the
12 sport fishing guide is employed. A sport fishing guide may not contract directly with
13 a person to provide sport fishing guide services to a person unless the sport fishing
14 guide also holds a current sport fishing operator license.

15 (e) While engaged in providing sport fishing guide services, a sport fishing
16 guide shall have readily available for inspection

17 (1) a current sport fishing guide license;

18 (2) the current licenses, tags, and permits that are required to engage in
19 the sport fishery for which the sport fishing guide services are being provided;

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

22 (4) proof of

23 (A) employment as a sport fishing guide by a person who holds
24 a current sport fishing operator license; or

25 (B) current licensure as a sport fishing operator.

26 (f) A sport fishing guide may not

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

29 (2) permit the commission by a client of the sport fishing guide of a
30 violation of AS 16.05 - AS 16.40 or a regulation adopted under AS 16.05 - AS 16.40
31 that the sport fishing guide knows or reasonably believes is being or will be committed

1 without

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

3 (B) reporting the violation.

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

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

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

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

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

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

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

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

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

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

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

29 (b) A person who, without any culpable mental state, violates AS 16.40.270(e)
30 is guilty of a violation.

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

1 (1) first offense in a three-year period, guilty of a violation; 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 sport fishing guide license of a person who is convicted under (a) or (c)(2) of this
6 section.

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

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

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

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

16 (A) sport fishing services; or

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

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

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

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

29 * **Sec. 4.** AS 25.27.244(s)(2)(A) is amended by adding new sub-subparagraphs to read:

30 (xviii) sport fishing operator license under
31 AS 16.40.260;

1 (xix) sport fishing guide license under AS 16.40.270;

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

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

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

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