

SENATE CS FOR CS FOR HOUSE BILL NO. 452(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/7/04

Referred: Finance

Sponsor(s): REPRESENTATIVES HEINZE, Lynn

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to licensing and regulation of sport fishing operators and sport fishing**
2 **guides; relating to licensing and registration of sport fishing vessels; authorizing the**
3 **Department of Fish and Game and the Alaska Commercial Fisheries Entry Commission**
4 **to release records and reports to the Department of Natural Resources and the**
5 **Department of Public Safety; and providing for an effective 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 is amended by adding a new section to read:

1 **Sec. 16.05.395. Sport fishing vessel registration.** For calendar year 2005
 2 and subsequent calendar years, a person may not use a vessel to provide sport fishing
 3 services under AS 16.40.260 - 16.40.299 unless the vessel is registered with the
 4 department and proof of registration is attached to and clearly visible on the vessel
 5 while the vessel is used to provide sport fishing services. The department shall
 6 register vessels used to provide sport fishing services, and provide proof of
 7 registration, without charge. The department may adopt regulations as the department
 8 finds necessary to implement this section.

9 * **Sec. 3.** AS 16.05.420 is amended to read:

10 **Sec. 16.05.420. License, tag, [AND] permit, and registration violations.**

11 (a) A false statement of a material fact in an application for a license, tag, [OR]
 12 permit, and sport fishing vessel registration issued under AS 16.05.330 - 16.05.430
 13 voids the license, tag, [OR] permit, or registration for which the application is made.

14 (b) A person may not make a false statement, or omit a material fact, in an
 15 application for a license, tag, [OR] permit, or sport fishing vessel registration issued
 16 under AS 16.05.330 - 16.05.430. A person who without any culpable mental state
 17 makes a false statement as to the person's identity or residency in an application for a
 18 license, tag, [OR] permit, or sport fishing vessel registration issued under
 19 AS 16.05.330 - 16.05.430 is guilty of a violation and upon conviction is punishable by
 20 a fine of not more than \$300. A person who knowingly violates this subsection is
 21 guilty of a class A misdemeanor.

22 (c) A person to whom a license, [OR] tag, or sport fishing vessel registration
 23 has been issued under this chapter may not alter, change, loan, or transfer the license,
 24 [OR] tag, or sport fishing vessel registration. A person may not use a license, [OR]
 25 tag, or sport fishing vessel registration that has been issued under this chapter to
 26 another person.

27 * **Sec. 4.** AS 16.05.490(a) is amended to read:

28 (a) As a condition to delivery or landing of fish or engaging in commercial
 29 fishing in the state, a license is required for a commercial vessel [, INCLUDING A
 30 VESSEL USED IN CHARTER SERVICE FOR THE RECREATIONAL TAKING
 31 OF FISH AND SHELLFISH].

1 * **Sec. 5.** AS 16.05.815(a) is amended to read:

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

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

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

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

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

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

31 (6) on request, the report of a person to the person whose fishing

1 activity is the subject of the report, or to a designee of the person whose fishing
2 activity is the subject of the report;

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

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

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

18 (10) fish tickets and fish ticket information regarding halibut to the
19 International Pacific Halibut Commission; [AND]

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

23 **(12) any of the records and reports to the Department of Natural**
24 **Resources to assist the department in carrying out its statutory responsibilities in**
25 **regard to sport fishing operations and sport fishing guides within the Kenai River**
26 **Special Management Area under AS 41.21.500 - 41.21.514.**

27 * **Sec. 6.** AS 16.40 is amended by adding new sections to read:

28 **Article 6. Sport Fishing Services.**

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

31 (1) holds a current business license under AS 43.70 to provide services

1 to sport fishermen;

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

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

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

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

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

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

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

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

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

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

30 (3) holds a license to carry passengers for hire issued by the United
31 States Coast Guard if the person operates a vessel in the provision of sport fishing

1 guide services and the license is required by the United States Coast Guard for the area
2 in which the fishing guide provides fishing guide services;

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

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

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

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

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

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

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

15 (d) A sport fishing guide may provide sport fishing guide services only to
16 persons who have engaged the services of the sport fishing operator by whom the
17 sport fishing guide is employed. A sport fishing guide may not contract directly with
18 a person to provide sport fishing guide services to a person unless the sport fishing
19 guide also holds a current sport fishing operator license.

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

22 (1) a current sport fishing guide license;

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

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

27 (4) proof of

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

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

31 (f) A sport fishing guide may not

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

3 (2) permit the commission by a client of the sport fishing guide of a
4 violation of AS 16.05 - AS 16.40 or a regulation adopted under AS 16.05 - AS 16.40
5 that the sport fishing guide knows or reasonably believes is being or will be committed
6 without

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

8 (B) reporting the violation.

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

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

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

15 (3) the locations fished during the provision of sport fishing guide
16 services; and

17 (4) other information that the department or board requires by
18 regulation.

19 (b) A person who holds a license issued under AS 16.40.260 or 16.40.270
20 shall comply with the reporting requirements in this section and reporting
21 requirements adopted in regulation by the department or board. The department and
22 the board may adopt by regulation requirements for timely submission of reports
23 required under this section or under regulations adopted by the department or board.

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

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

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

31 (f) The department or board may adopt regulations under AS 44.62

1 (Administrative Procedure Act) that it considers necessary to implement this section.

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

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

7 (c) A person who knowingly violates AS 16.40.270(e) or who knowingly fails
8 to comply with a requirement for timely submission of reports required by a regulation
9 adopted under AS 16.40.280(b) is, for a

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

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

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

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

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

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

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

25 (A) sport fishing services; or

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

29 (3) "sport fishing services" means the indirect provision of assistance,
30 for compensation or with the intent to receive compensation, to a person engaged in
31 sport fishing in taking or attempting to take fish or shellfish by a business that

1 employs a sport fishing guide to provide sport fishing guide services to the person
 2 during any portion of a sport fishing trip; "sport fishing services" does not include

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

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

7 * **Sec. 7.** AS 25.27.244(s)(2)(A) is amended by adding new sub-subparagraphs to read:

8 (xviii) sport fishing operator license under
 9 AS 16.40.260;

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

11 * **Sec. 8.** AS 16.05.340(a)(26); AS 16.40.260, 16.40.270, 16.40.280, 16.40.290, 16.40.299;
 12 AS 25.27.244(s)(2)(A)(xviii), and 25.27.244(s)(2)(A)(xix) are repealed January 1, 2010.

13 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 14 read:

15 TRANSITION; REGULATIONS. The Board of Fisheries and the Department of Fish
 16 and Game each may proceed to adopt regulations necessary to implement the changes made
 17 by secs. 1, 3, 4, 5, and 6 of this Act. The regulations take effect under AS 44.62
 18 (Administrative Procedure Act), but not before the effective date of the statutory changes.

19 * **Sec. 10.** Sections 2 and 9 of this Act take effect immediately under AS 01.10.070(c).

20 * **Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2005.