

HOUSE BILL NO. 41

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES TILTON AND MUÑOZ

Introduced: 1/21/15

Referred: House Special Committee on Fisheries, Finance

A BILL

FOR AN ACT ENTITLED

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

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

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

5 (27) Fishing services licenses

6 (A) Sport fishing operator license 100

7 (B) Sport fishing guide license 50

8 (C) Sport fishing operator and sport fishing guide combined
9 license 100.

10 * **Sec. 2.** AS 16.05.340(a)(27), added by sec. 1 of this Act, is amended to read:

11 (27) Fishing services licenses

12 (A) Sport fishing operator license 150 [100]

13 (B) Sport fishing guide license 75 [50]

14 (C) Sport fishing operator and sport fishing guide combined

1 license 150 [100].

2 * **Sec. 3.** AS 16.05.340(a)(27), as amended by sec. 2 of this Act, is amended to read:

3 (27) Fishing services licenses

4 (A) Sport fishing operator license 200 [150]

5 (B) Sport fishing guide license 100 [75]

6 (C) Sport fishing operator and sport fishing guide combined
7 license 200 [150].

8 * **Sec. 4.** AS 16.05.395 is amended to read:

9 **Sec. 16.05.395. Sport fishing vessel registration.** A [FOR CALENDAR
10 YEAR 2005 AND SUBSEQUENT CALENDAR YEARS, A] person may not use a
11 vessel to provide sport fishing services under AS 16.40.261 - 16.40.300 [AS 16.40.260
12 - 16.40.299] unless the vessel is registered with the department and proof of
13 registration is attached to and clearly visible on the vessel while the vessel is used to
14 provide sport fishing services. The department shall register vessels used to provide
15 sport fishing services, and provide proof of registration, without charge. The
16 department may adopt regulations as the department finds necessary to implement this
17 section.

18 * **Sec. 5.** AS 16.05.395, as amended by sec. 4 of this Act, is amended to read:

19 **Sec. 16.05.395. Sport fishing vessel registration.** A person may not use a
20 vessel to provide sport fishing services [UNDER AS 16.40.261 - 16.40.300] unless the
21 vessel is registered with the department and proof of registration is attached to and
22 clearly visible on the vessel while the vessel is used to provide sport fishing services.
23 The department shall register vessels used to provide sport fishing services, and
24 provide proof of registration, without charge. The department may adopt regulations
25 as the department finds necessary to implement this section.

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

27 **Sec. 16.40.261. Sport fishing operator license.** (a) The department shall issue
28 an annual sport fishing operator license to a person who

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

31 (2) presents proof satisfactory to the department of a general liability

1 insurance policy or marine protection and indemnity insurance policy, covering the
 2 services provided by the person and the person's employees to sport fishermen, that
 3 provides coverage of at least \$100,000 for each incident, and \$300,000 for all
 4 incidents in a year;

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

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

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

11 (c) A person who holds a current sport fishing operator license may contract to
 12 provide sport fishing guide services to a sport fisherman through an employee who
 13 holds a current sport fishing guide license under AS 16.40.271.

14 (d) A person who holds a current sport fishing operator license may not
 15 directly provide sport fishing guide services to a sport fisherman unless the person also
 16 holds a current sport fishing guide license under AS 16.40.271(b).

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

22 **Sec. 16.40.271. Sport fishing guide license.** (a) A natural person may obtain
 23 an annual sport fishing guide license if the person

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

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

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

1 (4) holds a current sport fishing license from the state;
 2 (5) pays the license fee prescribed by AS 16.05.340(a); and
 3 (6) satisfies all additional requirements adopted in regulation by the
 4 Board of Fisheries.

5 (b) A natural person may obtain an annual sport fishing operator and sport
 6 fishing guide combined license if the person satisfies the requirements for a sport
 7 fishing operator license under AS 16.40.261 and for a sport fishing guide license under
 8 this section and pays the license fee prescribed by AS 16.05.340(a).

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

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

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

20 (1) a current sport fishing guide license;
 21 (2) the current licenses, tags, and permits that are required to engage in
 22 the sport fishery for which the sport fishing guide services are being provided;
 23 (3) a driver's license or similar identification card that is issued by a
 24 state or federal agency and that bears a photograph of the fishing guide; and
 25 (4) proof of

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

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

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

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

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

(B) reporting the violation.

Sec. 16.40.281. Reports. (a) The department may collect information from sport fishing guides, including

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

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

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

(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.

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

(d) A person who is required to complete reports under this section may not be issued a new license under AS 16.40.261 or 16.40.271 unless the department has received all reports required under this section for the preceding year.

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

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

Sec. 16.40.291. Penalty. (a) Except as provided in (b) and (c) of this section, a

1 person who knowingly violates AS 16.40.261 - 16.40.300 or a regulation adopted
 2 under AS 16.40.261 - 16.40.300 is guilty of a class A misdemeanor. However, this
 3 subsection does not apply to the failure to hold a current business license under
 4 AS 16.40.261(a)(1) as required under AS 43.70.

5 (b) A person who, without any culpable mental state, violates AS 16.40.271(e)
 6 is guilty of a violation.

7 (c) A person who knowingly violates AS 16.40.271(e) or who knowingly fails
 8 to comply with a requirement for timely submission of reports required by a regulation
 9 adopted under AS 16.40.281(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 class
 12 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(a).

17 **Sec. 16.40.300. Definitions.** In AS 16.40.261 - 16.40.300,

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

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

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

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

* **Sec. 7.** AS 25.27.244(s)(2) is amended to read:

(2) "license"

(A) means, except as provided in (B) of this paragraph, a license, certificate, permit, registration, or other authorization that, at the time of issuance, will be valid for more than 150 days and that may be acquired from a state agency to perform an occupation, including the following:

(i) license relating to boxing or wrestling under AS 05.10;

(ii) authorization to perform an occupation regulated under AS 08;

(iii) teacher certificate under AS 14.20;

(iv) authorization under AS 18.08 to perform emergency medical services;

(v) asbestos worker certification under AS 18.31;

(vi) boiler operator's license under AS 18.60.395;

(vii) certificate of fitness under AS 18.62;

(viii) hazardous painting certification under AS 18.63;

(ix) security guard license under AS 18.65.400 - 18.65.490;

(x) license relating to insurance under AS 21.27;

(xi) employment agency permit under AS 23.15.330 - 23.15.520;

(xii) registration as a broker-dealer, an agent, a state investment adviser, or an investment adviser representative under AS 45.55.030;

(xiii) certification as a pesticide applicator under AS 46.03.320;

(xiv) certification as a storage tank worker or contractor under AS 46.03.375;

(xv) certification as a water and wastewater works operator under AS 46.30;

(xvi) commercial crewmember fishing license under AS 16.05.480 other than an entry permit or interim-use permit under AS 16.43;

(xvii) fish transporter permit under AS 16.05.671;

(xviii) sport fishing operator license under AS 16.40.261;

(xix) sport fishing guide license under AS 16.40.271;

[REPEALED]

(xix) REPEALED]

(B) does not include

(i) a vessel license issued under AS 16.05.490 or 16.05.530;

(ii) [REPEALED]

(iii)] a business license issued under AS 43.70;

(iii) [(iv)] an entry permit or interim-use permit issued under AS 16.43; or

(iv) [(v)] a driver's license issued under AS 28.15;

* **Sec. 8.** AS 41.21.506(b) is amended to read:

(b) The commissioner shall adopt regulations under AS 44.62 (Administrative Procedure Act) that are necessary to achieve the purposes of AS 41.21.500 - 41.21.514 and to implement the plan adopted under (a) of this section. The regulations must

(1) designate incompatible uses and prohibit or restrict them; and

(2) establish a registration, licensing, or comparable procedure for professional fishing guides and such additional fishing guide controls as the commissioner considers necessary; notwithstanding the requirements established

by the commissioner to implement this paragraph, the commissioner shall establish a procedure by which the holder of a valid sport fishing operator license issued under AS 16.40.261 may petition for, and the director of the division of parks, or the director's designee, shall expeditiously issue, a waiver to allow the sport fishing operator license holder to use the services in the Kenai River Special Management Area of a guide licensed under AS 16.40.271 who has not completed the procedures and additional controls that are required by the department under this paragraph; the waiver authorized in this paragraph applies only for the duration of the sport fishing season during which the waiver application is submitted and only if the sport fishing operator license holder

(A) employing the licensed guide has lost the services of a licensed guide because of unforeseen circumstances; and

(B) is unable to hire as a replacement an available licensed guide who has satisfied all the requirements of this paragraph, including those required by regulation.

* Sec. 9. AS 41.21.506(b), as amended by sec. 8 of this Act, is amended to read:

(b) The commissioner shall adopt regulations under AS 44.62 (Administrative Procedure Act) that are necessary to achieve the purposes of AS 41.21.500 - 41.21.514 and to implement the plan adopted under (a) of this section. The regulations must

(1) designate incompatible uses and prohibit or restrict them; and

(2) establish a registration, licensing, or comparable procedure for professional fishing guides and such additional fishing guide controls as the commissioner considers necessary [; NOTWITHSTANDING THE REQUIREMENTS ESTABLISHED BY THE COMMISSIONER TO IMPLEMENT THIS PARAGRAPH, THE COMMISSIONER SHALL ESTABLISH A PROCEDURE BY WHICH THE HOLDER OF A VALID SPORT FISHING OPERATOR LICENSE ISSUED UNDER AS 16.40.261 MAY PETITION FOR, AND THE DIRECTOR OF THE DIVISION OF PARKS, OR THE DIRECTOR'S DESIGNEE, SHALL EXPEDITIOUSLY ISSUE, A WAIVER TO ALLOW THE SPORT FISHING OPERATOR LICENSE HOLDER TO USE THE SERVICES IN THE KENAI RIVER SPECIAL MANAGEMENT AREA OF A GUIDE LICENSED

1 UNDER AS 16.40.271 WHO HAS NOT COMPLETED THE PROCEDURES AND
 2 ADDITIONAL CONTROLS THAT ARE REQUIRED BY THE DEPARTMENT
 3 UNDER THIS PARAGRAPH; THE WAIVER AUTHORIZED IN THIS
 4 PARAGRAPH APPLIES ONLY FOR THE DURATION OF THE SPORT FISHING
 5 SEASON DURING WHICH THE WAIVER APPLICATION IS SUBMITTED AND
 6 ONLY IF THE SPORT FISHING OPERATOR LICENSE HOLDER

7 (A) EMPLOYING THE LICENSED GUIDE HAS LOST THE
 8 SERVICES OF A LICENSED GUIDE BECAUSE OF UNFORESEEN
 9 CIRCUMSTANCES; AND

10 (B) IS UNABLE TO HIRE AS A REPLACEMENT AN
 11 AVAILABLE LICENSED GUIDE WHO HAS SATISFIED ALL THE
 12 REQUIREMENTS OF THIS PARAGRAPH, INCLUDING THOSE
 13 REQUIRED BY REGULATION].

14 * **Sec. 10.** AS 16.05.340(a)(27); AS 16.40.261, 16.40.271, 16.40.281, 16.40.291, 16.40.300;
 15 AS 25.27.244(s)(2)(A)(xviii), and 25.27.244(s)(2)(A)(xix) are repealed.

16 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 TRANSITION: REGULATIONS. Notwithstanding AS 44.62.190, the Department of
 19 Fish and Game may continue to use and enforce regulations previously adopted to administer
 20 AS 16.40.260 - 16.40.299 to the extent those regulations do not conflict with the provisions of
 21 this Act. The Department of Fish and Game shall update and readopt those regulations in
 22 accordance with AS 44.62 (Administrative Procedure Act) to conform to the provisions of
 23 this Act.

24 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 RETROACTIVITY. Sections 1, 4, and 6 - 8 of this Act are retroactive to January 1,
 27 2015.

28 * **Sec. 13.** Section 2 of this Act takes effect January 1, 2016.

29 * **Sec. 14.** Section 3 of this Act takes effect January 1, 2017.

30 * **Sec. 15.** Sections 5, 9, and 10 of this Act take effect January 1, 2025.

31 * **Sec. 16.** Except as provided in secs. 13 - 15 of this Act, this Act takes effect immediately

1 under AS 01.10.070(c).