

CS FOR HOUSE BILL NO. 41(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/13/15

Offered: 4/6/15

Sponsor(s): REPRESENTATIVES TILTON AND MUÑOZ

SENATOR Costello

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 200
- 7 (B) Sport fishing guide license 100
- 8 (C) Sport fishing operator and sport fishing guide combined
- 9 license 200.

10 * **Sec. 2.** AS 16.05.395 is amended to read:

11 **Sec. 16.05.395. Sport fishing vessel registration.** A [FOR CALENDAR
12 YEAR 2005 AND SUBSEQUENT CALENDAR YEARS, A] person may not use a
13 vessel to provide sport fishing services under AS 16.40.261 - 16.40.300 [AS 16.40.260
14 - 16.40.299] unless the vessel is registered with the department and proof of

1 registration is attached to and clearly visible on the vessel while the vessel is used to
 2 provide sport fishing services. The department shall register vessels used to provide
 3 sport fishing services, and provide proof of registration, without charge. The
 4 department may adopt regulations as the department finds necessary to implement this
 5 section.

6 * **Sec. 3.** AS 16.05.395, as amended by sec. 2 of this Act, is amended to read:

7 **Sec. 16.05.395. Sport fishing vessel registration.** A person may not use a
 8 vessel to provide sport fishing services [UNDER AS 16.40.261 - 16.40.300] unless the
 9 vessel is registered with the department and proof of registration is attached to and
 10 clearly visible on the vessel while the vessel is used to provide sport fishing services.
 11 The department shall register vessels used to provide sport fishing services, and
 12 provide proof of registration, without charge. The department may adopt regulations
 13 as the department finds necessary to implement this section.

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

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

17 (1) holds a current business license under AS 43.70 to provide services
 18 to sport 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 the person's employees to sport fishermen, that
 22 provides coverage of at least \$100,000 for each incident, and \$300,000 for all
 23 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 operator license and has current insurance coverage as required in
 29 (a)(2) of this section.

30 (c) A person who holds a current sport fishing operator license may contract to
 31 provide sport fishing guide services to a sport fisherman through an employee who

1 holds a current sport fishing guide license under AS 16.40.271.

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

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

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

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

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

16 (3) holds a current sport fishing license from the state;

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

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

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

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

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

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

28 (d) A sport fishing guide may provide sport fishing guide services only to
29 persons who have engaged the services of the sport fishing operator by whom the
30 sport fishing guide is employed. A sport fishing guide may not contract directly with a
31 person to provide sport fishing guide services to a person unless the sport fishing

1 guide also holds a current sport fishing operator license.

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

4 (1) a current sport fishing guide license;

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

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

9 (4) proof of

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

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

13 (f) A sport fishing guide may not

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

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

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

21 (B) reporting the violation.

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

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

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

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

30 (4) other information that the department or board requires by
31 regulation.

1 (b) A person who holds a license issued under AS 16.40.261 or 16.40.271
2 shall comply with the reporting requirements in this section and reporting
3 requirements adopted in regulation by the department or board. The department and
4 the board may adopt by regulation requirements for timely submission of reports
5 required under this section or under regulations adopted by the department or board.

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

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

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

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

15 **Sec. 16.40.291. Penalty.** (a) Except as provided in (b) and (c) of this section, a
16 person who knowingly violates AS 16.40.261 - 16.40.300 or a regulation adopted
17 under AS 16.40.261 - 16.40.300 is guilty of a class A misdemeanor. However, this
18 subsection does not apply to the failure to hold a current business license under
19 AS 16.40.261(a)(1) as required under AS 43.70.

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

22 (c) A person who knowingly violates AS 16.40.271(e) or who knowingly fails
23 to comply with a requirement for timely submission of reports required by a regulation
24 adopted under AS 16.40.281(b) is, for a

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

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

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

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

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

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

4 (2) "sport fishing guide services" means assistance, for compensation
5 or with the intent to receive compensation, to a sport fisherman to take or to attempt to
6 take fish by accompanying or physically directing the sport fisherman in sport fishing
7 activities during any part of a sport fishing trip; "sport fishing guide services" does not
8 include

9 (A) sport fishing services; or

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

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

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

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

22 * **Sec. 5.** AS 25.27.244(s)(2) is amended to read:

23 (2) "license"

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

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

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

- 1 (iii) teacher certificate under AS 14.20;
- 2 (iv) authorization under AS 18.08 to perform
3 emergency medical services;
- 4 (v) asbestos worker certification under AS 18.31;
- 5 (vi) boiler operator's license under AS 18.60.395;
- 6 (vii) certificate of fitness under AS 18.62;
- 7 (viii) hazardous painting certification under AS 18.63;
- 8 (ix) security guard license under AS 18.65.400 -
9 18.65.490;
- 10 (x) license relating to insurance under AS 21.27;
- 11 (xi) employment agency permit under AS 23.15.330 -
12 23.15.520;
- 13 (xii) registration as a broker-dealer, an agent, a state
14 investment adviser, or an investment adviser representative under
15 AS 45.55.030;
- 16 (xiii) certification as a pesticide applicator under
17 AS 46.03.320;
- 18 (xiv) certification as a storage tank worker or contractor
19 under AS 46.03.375;
- 20 (xv) certification as a water and wastewater works
21 operator under AS 46.30;
- 22 (xvi) commercial crewmember fishing license under
23 AS 16.05.480 other than an entry permit or interim-use permit under
24 AS 16.43;
- 25 (xvii) fish transporter permit under AS 16.05.671;
- 26 (xviii) sport fishing operator license under
27 AS 16.40.261;
- 28 (xix) sport fishing guide license under AS 16.40.271;
- 29 [REPEALED]
- 30 (xix) REPEALED]
- 31 (B) does not include

1 (i) a vessel license issued under AS 16.05.490 or
2 16.05.530;

3 (ii) [REPEALED

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

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

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

8 * **Sec. 6.** AS 41.21.506(b) is amended to read:

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

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

13 (2) establish a registration, licensing, or comparable procedure for
14 professional fishing guides and such additional fishing guide controls as the
15 commissioner considers necessary; **notwithstanding the requirements established**
16 **by the commissioner to implement this paragraph, the commissioner shall**
17 **establish a procedure by which the holder of a valid sport fishing operator license**
18 **issued under AS 16.40.261 may petition for, and the director of the division of**
19 **parks, or the director's designee, shall expeditiously issue, a waiver to allow the**
20 **sport fishing operator license holder to use the services in the Kenai River Special**
21 **Management Area of a guide licensed under AS 16.40.271 who has not completed**
22 **the procedures and additional controls that are required by the department**
23 **under this paragraph; the waiver authorized in this paragraph applies only for**
24 **the duration of the sport fishing season during which the waiver application is**
25 **submitted and only if the sport fishing operator license holder**

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

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

31 * **Sec. 7.** AS 41.21.506(b), as amended by sec. 6 of this Act, is amended to read:

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

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

5 (2) establish a registration, licensing, or comparable procedure for
 6 professional fishing guides and such additional fishing guide controls as the
 7 commissioner considers necessary [; NOTWITHSTANDING THE
 8 REQUIREMENTS ESTABLISHED BY THE COMMISSIONER TO IMPLEMENT
 9 THIS PARAGRAPH, THE COMMISSIONER SHALL ESTABLISH A
 10 PROCEDURE BY WHICH THE HOLDER OF A VALID SPORT FISHING
 11 OPERATOR LICENSE ISSUED UNDER AS 16.40.261 MAY PETITION FOR,
 12 AND THE DIRECTOR OF THE DIVISION OF PARKS, OR THE DIRECTOR'S
 13 DESIGNEE, SHALL EXPEDITIOUSLY ISSUE, A WAIVER TO ALLOW THE
 14 SPORT FISHING OPERATOR LICENSE HOLDER TO USE THE SERVICES IN
 15 THE KENAI RIVER SPECIAL MANAGEMENT AREA OF A GUIDE LICENSED
 16 UNDER AS 16.40.271 WHO HAS NOT COMPLETED THE PROCEDURES AND
 17 ADDITIONAL CONTROLS THAT ARE REQUIRED BY THE DEPARTMENT
 18 UNDER THIS PARAGRAPH; THE WAIVER AUTHORIZED IN THIS
 19 PARAGRAPH APPLIES ONLY FOR THE DURATION OF THE SPORT FISHING
 20 SEASON DURING WHICH THE WAIVER APPLICATION IS SUBMITTED AND
 21 ONLY IF THE SPORT FISHING OPERATOR LICENSE HOLDER

22 (A) EMPLOYING THE LICENSED GUIDE HAS LOST THE
 23 SERVICES OF A LICENSED GUIDE BECAUSE OF UNFORESEEN
 24 CIRCUMSTANCES; AND

25 (B) IS UNABLE TO HIRE AS A REPLACEMENT AN
 26 AVAILABLE LICENSED GUIDE WHO HAS SATISFIED ALL THE
 27 REQUIREMENTS OF THIS PARAGRAPH, INCLUDING THOSE
 28 REQUIRED BY REGULATION].

29 * **Sec. 8.** AS 16.05.340(a)(27); AS 16.40.261, 16.40.271, 16.40.281, 16.40.291, 16.40.300;
 30 AS 25.27.244(s)(2)(A)(xviii), and 25.27.244(s)(2)(A)(xix) are repealed.

31 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 REGULATIONS. Notwithstanding AS 44.62.190, the Department of Fish and Game
3 may use and enforce regulations previously adopted to administer former AS 16.40.260 -
4 16.40.299 to the extent those regulations do not conflict with the provisions of this Act. The
5 Department of Fish and Game shall update and readopt those regulations in accordance with
6 AS 44.62 (Administrative Procedure Act) to conform to the provisions of this Act. The
7 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
8 effective date of the law implemented by the regulation.

9 * **Sec. 10.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

10 * **Sec. 11.** Sections 3, 7, and 8 of this Act take effect January 1, 2021.

11 * **Sec. 12.** Except as provided in secs. 10 and 11 of this Act, this Act takes effect January 1,
12 2016.