

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86/2

10857 HOUSE JUDICIARY

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB451-ACS-TC-2-19-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Therapeutic Courts BRU Alaska Court System
 Component Trial Courts
 Sponsor House Rules
 Requester Alaska Court System Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	308.6	308.6	308.6	308.6	308.6	308.6
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	308.6	308.6	308.6	308.6	308.6	308.6

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	308.6	308.6	308.6	308.6	308.6	308.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	308.6	308.6	308.6	308.6	308.6	308.6

Estimate of any current year (FY2004) cost: 308.6
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	5	5	5	5	5	5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The amount requested in this fiscal note is the same amount proposed to be reduced from the court's base budget. This is not new money, it represents funds that has been in the court's base budget since FY02.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 2/20/04 9:04 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/20/2004
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB451
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to therapeutic courts BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor House Rules
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill would continue the two pilot therapeutic courts in Bethel and Anchorage, and continue the Anchorage judge position. This bill should not have any further fiscal impact on the operations of the Public Defender Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division: Public Defender Agency Date/Time 3/1/04 12:00 AM
 Approved by: Mike Miller, Commissioner Date _____
 Agency: Administration



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

Doug Wooliver
Administrative Attorney

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

February 20, 2004

The Honorable Lesil McGuire
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative McGuire:

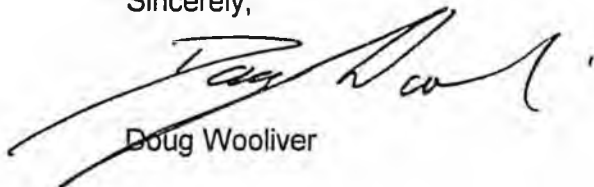
The Alaska Court System respectfully requests that you schedule HB 451 for a hearing before the House Judiciary Committee at your earliest convenience.

House Bill 451 was introduced at the request of the court system to delay the termination dates of two pilot therapeutic court programs in Anchorage and Bethel. As you may recall, those felony-level courts were established in 2001 by the passage of HB 172. They are each scheduled to run for three years, after which the Judicial Council is to evaluate the programs and publish a study for the court and the legislature to review. Unfortunately, because of the timing of the report, both programs will end more than a year before the legislature has an opportunity to decide whether they should continue. In order to fix this problem, HB 451 extends the termination date of the HB 172-courts until after the legislature has had the opportunity to evaluate their effectiveness.

Additionally, HB 451 deletes a sunset clause that was placed on the Anchorage superior court judge position that was added by HB 172. The new judge was necessary not only to do the work of the therapeutic court but also to help absorb the growing felony caseload in Anchorage. The sunset clause will take effect this summer at the same time the therapeutic court program is scheduled to end. Not only will that mean the end of the felony therapeutic court, it will also mean that Anchorage will have one less judge for other superior court work. The therapeutic court judge in Anchorage spends most of her time on general superior court work unrelated to therapeutic court cases. If we lose the judicial position it will impact all superior court cases in Anchorage.

Thank you in advance for your support on this bill and on therapeutic courts in general.

Sincerely,



Doug Wooliver

Sponsor Statement
HB 451
Alaska Court System
2/19/04

HB 451 extends the termination dates for two pilot therapeutic court programs until after a planned study of those courts has been completed and reviewed by the legislature. The bill also removes a sunset clause on the Anchorage superior court judge position that was added, in part, to administer one of those therapeutic courts.

In 2001 the legislature passed HB 172, which established felony-level therapeutic courts in Anchorage and Bethel. Each court was set up as a pilot program scheduled to run for three years. The Anchorage court admits those with a felony conviction for driving under the influence of an alcoholic beverage, inhalant, or controlled substance (DUI). The Bethel court admits those convicted of either felony DUI or certain felony drug offenses. The findings section of HB 172 explained the purposes of these courts:

The purposes of therapeutic courts are lasting sobriety of offenders, protection of society from alcohol-related and drug-related crime, prompt payment of restitution to victims of crimes, effective interaction and use of resources among criminal justice and community agencies, and long-term reduction of costs relating to arrest, trial, and incarceration.

In order to determine the effectiveness of these courts the Judicial Council was charged with evaluating them and publishing a study for legislative review. Unfortunately, both the Anchorage and Bethel programs sunset long before the evaluation is scheduled to be completed and, because the report is to be published in July, many months more before the legislature has an opportunity to review that evaluation. If the legislature looks at the evaluation study and decides that the programs should continue, it will be too late; both programs would have ended more than a year earlier.

In order to fix this problem, HB 451 extends the termination date of the pilot programs until after the legislature has had an opportunity to review their effectiveness.

House Bill 451 also removes a sunset clause in HB 172 that will terminate the Anchorage superior court judge position that was added by that bill. The new judge was necessary not only to do the work of the therapeutic court but also to help absorb the growing felony caseload in Anchorage. The sunset clause will take effect this summer at the same time the therapeutic court program is scheduled to end. Not only will that mean the end of the felony therapeutic court, it will also mean that Anchorage will have one less judge for other superior court work. The therapeutic court judge in Anchorage spends most of her time on general superior court work unrelated to therapeutic court cases. If we lose the judicial position it will impact all superior court cases in Anchorage.

The loss of a superior court judge in Anchorage will return us to the number of judges initially established in 1984. Since that time the felony caseload in Anchorage has increased approximately 100%. We simply cannot afford to lose a superior court position in Anchorage and to return to a level of judicial coverage that was appropriate 20 years ago.

Thank you for your consideration of this bill.

HB

452

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB452CS-DPS-ABWE-4-1-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title Act relating to lic. and reg. of sport fishing operators RDU Alaska State Troopers
Component Alaska Bureau of Wildlife Enforcement
Sponsor Rep. Heinze
Requester (H) Judiciary Component No. 2746

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

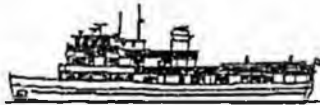
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
CSHB 452(JUD) relates to licensing and regulation of sport fishing services operators and fishing guides. Certain provisions of the bill will allow Wildlife Enforcement Troopers to check additional documents during the course of contact with fishing guides, but such activity will occur in the normal course of business.

Section 2 of this proposal would allow the Department of Public Safety access for law enforcement purposes to records maintained by the Alaska Department of Fish & Game to facilitate more timely and complete investigations.

No fiscal impact is anticipated to the Alaska State Troopers as a result of passage of this bill.

Prepared by: Lt. Al Storey Phone 907-269-4532
Division: Alaska State Troopers Date/Time 4/1/04 8:42 AM
Approved by: Commissioner William Tandeske Date 4/1/2004
Agency: Department of Public Safety



THE BOAT COMPANY
Wilderness Adventure Tours

March 15, 2004

Testimony before House Labor and Commerce Committee Members
on
HB452, GUIDED SPORT FISHING

by Captain Joel Hanson, TBC Alaska Affairs Consultant

Dear Chairman Anderson and Committee Members,

The Boat Company is a twenty-five year old Alaska corporation providing high-quality educational cruises throughout Southeast Alaska's Inside Passages during summer and on the Pacific shores of Costa Rica and Panama during winter. We currently operate two 150 foot long vessels, each equipped to accommodate a modest compliment of 22 passengers. Both our vessels carry multiple small skiffs on deck which we regularly launch and use for shore excursions, sightseeing, sport fishing, etc. For more information on our company you may investigate our web site at www.theboatcompany.com.

We feel that HB452 as currently written will fail to legitimize, protect, or improve our sport fish guiding services, as suggested by the Sponsor Statement. In fact, this bill promises to compromise our safety measures, and will impose burdensome, redundant and expensive requirements on an operation of our modest size. Therefore, we respectfully request that you hold this bill in committee pending substantial revision by the sponsor.

Please consider the following specific comments:

New Licenses and Fees w/o New Privileges and Benefits

The licenses and fees proposed in this bill simply add to guide's regulatory obligations and costs without providing any discernible (comparable?) new benefits.

The Boat Company's guides collectively spend about \$1,600 on sport fishing licenses every year, yet they do not participate in sport fishing pastimes in the classic "recreational" sense. They purchase sport fishing licenses in order to perform their jobs as guides. With the passage of HB452, The Boat Company's guides collectively will need to spend twice the current amount (or about \$3,200) in order to perform exactly the same job as a guide. The proposed fees, therefore, constitute a doubling of the cost of guiding without any increase in benefits to the guide.

This legislation needs to make a clear distinction between the rights/obligations of sport fishermen and the rights/obligations of guides. The Boat Company recommends the following approach: A sport fishing guide license should authorize the holder to perform all the normal duties associated with guiding—such as assisting clients with gear-tying, baiting, choosing lures, briefly demonstrating casting or reeling techniques, assisting with netting or harpooning fish and dressing or processing catch—regardless of whether the guide also holds a sport fishing license.

This approach differentiates between sport fish guiding and sport fishing. It requires a guide to have a guide license but does not require a guide to have a sport fishing license *unless the guide also wants to catch fish*. Thus, guide licenses and associated fees carry distinct obligations and privileges from sport fishing licenses and associated fees.

Chain of Guilt

Section 16.40.260 (e) reads, "A person who holds a sport fishing operator license may not aid in the commission of a violation... by a sport fishing guide who is employed by the person or by a sport fisherman who is a client of the person."

We feel that this legislation needs to define what is meant by the term "aid in the commission of a violation," and it needs to specify the degree to which an operator may be subject to penalties upon conviction. Without clarification, HB452 creates an automatic chain of guilt whereby a sport fishing operator on shore becomes fully liable (punishable to the maximum extent of the law) for even minor fishing violations committed by a client under the care of a guide tens or hundreds of miles away.

Unreasonable Burden to "physically possess" Paperwork

Section 16.40.270 (e) demands that, while engaged in providing sport fishing guide services, a sport fishing guide shall "physically possess" all the current licenses, tags, and permits that are required to engage in the sport fishery for which the sport fishing guide services are being provided. Failure to do so would impose severe criminal penalties, not commensurate to the "crime".

This means that a guide operating in an open skiff must have a large stack of paperwork either in his jacket, in a zip-lock baggie under his shirt, in a zip-lock baggie in the steering console, or all of the above (actually, the amount of paperwork that would need to be shuffled depending on skiff and assigned guide may require a small filing cabinet). The required paperwork includes boat registration, copy of proof of insurance, copy of proof of employment, copy of fisheries business license, copy of guide operator license, sport fishing guide license, guide registration, copy of US Coast Guard Captain's license, picture ID, sport fishing license, a king salmon stamp if clients are fishing for kings—which a guide is not currently required to possess because a guide is prohibited from fishing for king salmon with clients! –and this section would require a guide operating in an open skiff to "physically possess" a sport fishing charter logbook, which is an item the size of an elongated telephone directory! An impediment to mobility to say the least! Any failure to "physically possess" any of these items carries Class A and B misdemeanor criminal penalties, plus monetary fines – punishments that are very severe compared to the "crime" of not physically carrying papers that are otherwise readily accessible. And, based on the strict interpretation of laws by certain zealous Fish & Game enforcement officers (see below their interpretation of "immediately"), the clarity of "physically possess" will allow an officer to fine and criminally cite guides for not having all this paperwork on his or her self. This is an unreasonable, burdensome and arbitrary requirement whose execution offers no benefit.

For the time being, Fisheries Enforcement has been gracious enough to concede that open skiffs which operate from nearby mother ships may retain the sport fishing charter logbooks on the mother ship as a reasonable and practical alternative to the

requirement for guides to "physical possess" them in an open skiff. HB452 needs to specifically enable this practice and expand it to include other required licenses and documentation which a guide cannot reasonably be expected to retain in a wallet.

Unreasonable Burden to Uphold Unreasonable Recording Requirements

When a sport fisherman catches a king salmon, regulations require the fisherman to "immediately" record the catch on the back of the sport fisherman's license. Recent legal proceedings in Juneau have demonstrated that Fisheries Enforcement personnel's strict interpretation of the term "immediately" makes it difficult for guides and guests to ever be in compliance. And, under certain circumstances, such as when guides and clients are operating in rainy weather and rough seas in open skiffs, safety is affected. Since some of this proposed legislation seems to be in response to the aforementioned legal proceedings, and since some proposed sections relate to reporting requirements, we request that the legislature impose a reasonableness requirement for rules that govern timing of recording, such as and including the "immediately" requirement.

THE
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DOCUMENT(S)
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Kenai River Sportfishing Association, inc.
PO Box 1228 • 224 Kenai Avenue, Suite 102
Soldotna, Alaska 99669
907.262.8588 phone 907.262.8582 fax
www.kenairiversportfishing.org kenairiv@ptalaska.net

Dedicated to preserving the greatest sportfishing river in the world, the Kenai.

March 31, 2004

Kenai River Sportfishing Association
PO Box 1228
Soldotna, AK 99669

The Honorable Cheryl Heinze
Alaska State Legislature
State Capitol, Room 108
Juneau, AK 99801-182

Dear Representative Heinze:

The Kenai River Sportfishing Association promotes responsible sportfishing in the state of Alaska. We strongly support HB 452, which would license and regulate sportfishing service operators and fishing guides in the state of Alaska.

We support this bill for the following reasons:


1. Since 1985, the sportfishing service operators and fishing guides on the Kenai River have had such regulation, which provides minimum requirements for the industry, provides assurance to clients of minimum standards and has not proved to be an undo burden on businesses.
2. The bill will provide statewide regulation for the sportfishing industry, bringing the rest of the state up to standards followed by the Kenai River Special Management Area, the state's most popular sportfishing region.
3. The bill is the right step in having legitimate statewide standards for the sportfishing industry, on par with the big game guide industry, where clients have recourse when minimum standards are not met.

We urge you to pass HB 452 and bring the rest of the state up to the professional standards set by the Kenai River Special Management Area. The bill assures minimum standards for the sportfishing industry, and will be beneficial for both businesses and clients.

Thank you for your consideration on this important bill.

Sincerely,


Ron Rainey, Board Chair
Kenai River Sportfishing Association


Ricky Gease, Executive Director
Kenai River Sportfishing Association

FAX COVER SHEET

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

WARNING: THE INFORMATION CONTAINED IN THIS FAX IS CONFIDENTIAL. IT IS INTENDED TO BE REVIEWED ONLY BY THE INDIVIDUAL NAMED BELOW. IF THE READER OF THIS TRANSMITTAL PAGE IS NOT THE INTENDED RECIPIENT OR A REPRESENTATIVE OF THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY REVIEW, DISSEMINATION OR COPYING OF THIS FAX OR THE INFORMATION CONTAINED HEREIN IS PROHIBITED. IF YOU HAVE RECEIVED THIS FAX IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE AND RETURN THIS FAX TO THE SENDER AT THE ABOVE ADDRESS. THANK YOU.

TO: HOUSE JUDICIARY ATTN: VANESSA

FAX: 6592 PHONE: 4990

NUMBER OF PAGES
(Including cover sheet): 5 DATE SENT _____ TIME _____ SENT BY _____

DISPOSAL OF ORIGINAL: MAIL FILE THROW AWAY HOLD FOR PICKUP

NOTES/INSTRUCTIONS: RE: AMENDMENTS TO HB 452.
DO THE ATTACHED AMENDMENTS REFLECT THE
INTENT OF THE COMMITTEE?
GEORGE UTERMOHLE
6660

23-LS1619S

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 fish, by a
17 sport fishing guide who is employed by the person or by a sport fisherman who is a
18 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

23-LS1619\S

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without

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

(B) reporting the violation.

Sec. 16.40.280. 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 16.40.260 or 16.40.270 shall comply with the reporting requirements in this section and reporting requirements adopted in regulation 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 16.40.260 or 16.40.270 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. 16.40.290. Penalty. (a) Except as provided in (b) and (c) of this section, a person who knowingly violates AS 16.40.260 - 16.40.299 or a regulation adopted under AS 16.40.260 - 16.40.299 is guilty of a class A misdemeanor.

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

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

AMDT #1

23-LS1619S

AMDT #1

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

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

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

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

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

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

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

(A) sport fishing services; or

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

(3) "sport fishing services" means the indirect provision of assistance, for compensation or with the intent to receive compensation, to a person engaged in 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. 4. AS 25.27.244(s)(2)(A) is amended by adding new subparagraphs to read:

(xviii) sport fishing operator license under AS

16.40.260;

AMDT #3

23-LS1619\S

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(xix) sport fishing guide license under AS 16.40.270;

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

AS 16.40.270,

new section to

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

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

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

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: George Utermohle, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March ~~25~~³¹, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1619\Q, HB 452, incorporating the attached three amendments. The bill was passed out of committee today.

If you have any questions, please call me at 4990.

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

PASSED

#1
Amendment ~~to~~ H B 452 "Q" version
by Gruenberg

page 6 lines 29-30. strike "and upon conviction is punishable by a fine of not more than \$500".

page 7 lines ~~5~~ 1-2. strike "and upon conviction is punishable by a fine of not more than \$500".

CSHB 452, version Q

Conceptual Amendment #2 - PASSED
by Rep. Gara

Page 4, Line 16

After "AS 16.40" (? - conceptual for purposes of proper placement in this subsection)

Insert ", including rules governing the proper release of fish".

(to conform to the statute, I'm not sure if instead of "rules" you should say "statutes and regulations" ... use your best judgment.)

CSHB 452, version @

Conceptual Amendment #3 - PASSED
by Rep. McGuire

Add the licenses created by this bill to the types of licenses that CSED (Child Support Enforcement Division) can "go after" if someone defaults on their child support payments.

23-LS1619\Q
Utermohle
3/29/04

CS FOR HOUSE BILL NO. 452()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

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 license 50
- 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 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 by a sport fishing guide who is employed by the person or by a
17 sport fisherman who is a client of the person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (f) A sport fishing guide may not

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

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

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

2 (B) reporting the violation.

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

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

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

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

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

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

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

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

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

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

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

28 (b) A person who, without any culpable mental state, violates AS 16.40.270(e)
29 is guilty of a violation and upon conviction is punishable by a fine of not more than
30 \$500.

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 upon
2 conviction is punishable by a fine of not more than \$500; and

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

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

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

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

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

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

17 (A) sport fishing services; or

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

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

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

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

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

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

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

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

DIFFERENCES BETWEEN L&C CS FOR HB 452 AND PROPOSED BLANK CS FOR JUDICIARY COMMITTEE

- The title is amended to reflect the changes the blank CS makes by including the Department of Public Safety to the list of Departments that can receive the records.

- Page 3 Sec. 8 lines 6-11 of the blank CS is amended to read "**any of the records and reports** to the Department of Public Safety **for law enforcement purposes;**" in order to allow the Department of Public Safety to be able to access the records they need to do their job properly.

>When the Division of Protection was moved from the Department of Fish and Game in 1972 and placed in the Department of Public Safety it caused a problem with record access. There is no statutory reference in the Department of Public Safety mission relating to fish and game enforcement. The only official responsibilities pertaining to fish and game enforcement by the Department of Public Safety are found in the 1972 Governor's Administrative Order #16 which states:

"That the responsibility for the enforcement of statutes and regulations enacted or adopted for the protection of the State's fish and game resources which involve criminal or civil penalty shall henceforth be administered by the Department of Public Safety;"

The language in this section allows the Department of Public Safety to carry out their duties more effectively as they were meant to.

- Page 5 sub (e) lines 14-15. A change has been made to allow guides to have their guide licenses "readily available" for inspection instead of on their person. The guides we talked to and

those we heard from in the last committee thought that having the guide license on their person at all times was an unfair burden and an unrealistic expectation.

- Page 5, sub. (5 & 6) lines 21-26 of the Labor & Commerce CS are removed. Sub. 5&6 deal with the types of information the guides have to have on their person or "readily available". We removed the requirement to have Red Cross certification and proof of licensure by the US coast Guard since both of these are necessary to receive a guide license so if a person has a guide license they must have the others as well. This is mainly just to cut back on the paperwork guides need to carry by consolidating the licenses as much as possible.

- Page 6 sec. (a) line 5 is amended to change "shall" to "may". This change was made to allow the Department of Fish and Game to tailor the reporting requirements to the needs of the specific area they are collecting them from. As it was written, it was thought that the Department of Fish and Game would have had no leeway in deciding their reporting requirements and would have been forced to require information they didn't need on all types of fish and would possibly have been swamped by unnecessary information.

23-LS1619D
Uternohle
2/27/04

CS FOR HOUSE BILL NO. 452()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

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 license 50
- 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).

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

- (1) holds a current sport fishing guide license; and
- (2) holds a current sport fishing operator license or is an employee of a person who holds a current sport fishing operator license.

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

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

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

(f) A sport fishing guide may not

- (1) aid in the commission of a violation of AS 16.05 - AS 16.40 or a 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

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.

DEPARTMENT OF FISH AND GAME COMMENTS

ON GUIDE LICENSING BILL HB 452

Representative Heinze introduced HB 452 on February 16. This bill would require sport fishing business owners and guides to be licensed with the State. The bill is based on an earlier bill developed by a Board of Fisheries Guide Licensing Task Force in the mid-1990s and introduced by Representative Austerman in 1997.

After discussing HB 452 with department staff, fellow legislators, and hearing comments from various sport fishing charter/guide groups and individuals from around the state the Representative made several changes to the original bill. These changes were incorporated into CS (Committee Substitute) HB 452 which is dated February 27, 2004.

The four major areas affected by the language changes in CSHB 452 are:

1. The reporting provisions that required fishing guides to record the names of their clients on a daily basis, along with their sport fishing license number, the number of fish they harvested, and associated confidentiality provisions have been removed.
2. Sport fishing outfitters and transporters have been removed from the provisions of this bill. The CS language only speaks to licensing sport fishing guide businesses (lodges, charter vessel companies, etc.) and sport fishing guides that provide direct assistance and personal direction to their clients.
3. Businesses and guides that only assist personal use or subsistence fishermen in their fishing activities have been removed from the provisions of this bill. The CS language only speaks to licensing those businesses and guides that provide services of direct assistance and personal direction to sport anglers.
4. The definitions have been modified to only include sport fishing guide businesses and guides. Definitions of outfitters, transporters, and fishing clubs have been removed. A definition of a sport fishing guide was added.

The department has received a number of comments from sport fish guide groups and individuals in Southeast and Southcentral Alaska pertaining to both the original bill language and the CS language. We would like to respond to some of these comments so everyone has the same understanding on various aspects of this licensing bill.

1. Some guides believe that if the guide licensing program is administered by the Division of Sport Fish it will clearly designate the guided sport fishery as a sport fishery, not a commercial fishery.

We agree with this concept. The Board of Fisheries has received numerous proposals and testimony over the years that the guided sport fishery is a commercial fishery and should be regulated as such. Having a sport guide licensing program administered by the Division of Sport Fish will designate that these fisheries are sport fisheries.

2. Some guides believe that if this bill passes the Board of Fisheries will have to make separate allocations for all species to this new user group.

We do not agree with this idea. First of all the Board already has the authority to regulate guided sport fisheries differently than unguided sport fisheries. Secondly, this bill would not change the makeup of the various guided sport fisheries, it would only require them to be licensed and to report on their guiding activities.

3. Some guides believe that if the Division of Sport Fish administers the guide licensing program, they will become "allocative advocates" for this user group at Board of Fisheries meetings.

This is not true. Both fisheries divisions are tasked with providing the board and the public the most accurate and complete information regarding fishing issues. However, both divisions are strictly prohibited from entering into allocation discussions or debates. The Division of Sport Fish will continue to operate in this manner regardless of whether we administer the guide licensing program or not.

4. Some guides believe that the funds generated from the license fees associated with this bill will go into the General Fund or will be viewed as just another source of revenue by the Division of Sport Fish.

This is not true. All funds generated by this bill's license fees will go into the dedicated Fish and Game Fund, just like funds from the sale of sport fishing licenses and king salmon tags. These funds will be used to administer the provisions of the licensing bill including the reporting requirements.

The Division of Sport Fish is currently spending \$80,000 per year to operate the existing business and guide registration and saltwater charter vessel logbook programs, which have no fees associated with them. We estimate that this bill would generate approximately \$356,000 and we would expend \$346,000 to administer the licensing and reporting programs.

5. Some guides are requesting higher license fees for nonresident sport fishing business owners and fishing guides.

Due to a recent court ruling, the department has been advised by the Department of Law that the State must be able to prove that it is more costly to administer the licensing program for nonresident owners or guides than it is for residents before we can increase costs for nonresidents. Based on an analysis of such costs, there does not appear to be significant differences between the two groups to merit a differential fee structure.

The department welcomes any comments you may have on CSHB 452 and its provisions. Please contact:

Rob Bentz
Deputy Director
Division of Sport Fish
at: rob_bentz@fishgame.state.ak.us

**DEPARTMENT RESPONSES TO ISSUES RAISED DURING LABOR AND
COMMERCE COMMITTEE HEARING FOR HB 452 ON MARCH 17**

- 1. During public testimony several individuals stated that the proposed license fees are either too high or not necessary at all.*

The license fees proposed in HB 452 are:

- a sport fishing guide services operator license for the owner of the guiding business for \$100;
- a sport fishing guide license for the person providing direct assistance to the clients for \$50; and
- a combined operator/guide license for a person who is both the owner of the business and the guide who accompanies the clients for \$100.

Right now owners of sport fishing businesses and sport fishing guides do not pay the Department of Fish and Game anything. The current registration requirements for businesses and guides are free. The saltwater charter vessel logbook is free. The proposed license fees will cover the cost of the licensing program and reporting requirements. The department is not proposing this legislation as a revenue generating mechanism.

The proposed reporting requirements will provide the department and the Board of Fisheries with comprehensive information on the impacts of guided sport fishing activities in both saltwater and freshwater. Better information will lead to better regulations that will protect and improve the state's sport fishing resources.

We believe that these fees are a small price to pay for individuals that are making money by aiding in the harvest of public property resources owned by everyone.

- 2. Several people testifying stated that the paperwork that would be necessary according to the reporting requirements in HB 452 would be duplicative and unreasonably burdensome.*

We are assuming that the "duplicative" comments coming from saltwater charter vessel operators indicates they believe they will have to continue filling out the existing charter logbook, along with whatever reporting requirements are required within HB 452. This is not the case.

We envision that the reporting requirements within HB 452 for saltwater charter operations will be very similar to the current logbook forms. However, there will only be ONE reporting document, not two.

Freshwater guide operators, that currently have no reporting requirements other than on the Kenai River, will also have only ONE type of reporting document to complete.

We do not believe that requiring sport fishing guides to record their catch, harvest, and effort information in an accurate, timely, and enforceable manner is burdensome. We view it as an obligation for anyone involved in the harvest of public property resources.

- 3. One individual asked about how the provisions of HB 452 would be enforced?*

We envision that enforcement of the license and reporting requirements would be very similar to the existing enforcement of the sport fishing business and guide registration programs and the charter vessel logbook program. Business owners and guides would have to present their licenses to enforcement agents when contacted on the water and would have to have their reporting form filled out while the fish and clients are still on site.

- 4. Several people testified that they felt a \$500 fine for the first violation for a sport fishing guide not having all of the required documents on their physical person while guiding was too high.*

The wording in HB 452 states: "... is guilty of a violation and upon conviction is punishable by a fine of not more than \$500."

The MAXIMUM fine is \$500. A judge will decide the amount of the fine, on a case by case basis, depending on the circumstances of the case.

- 5. One person testified that they did not believe transporters of personal use fishermen should be included within the provisions of HB 452.*

The original language of HB 452 did include transporters and outfitters as well as guides who provided services to individuals engaged in subsistence, personal use, and sport fisheries.

The language of CSHB 452 (the current version before the Labor and Commerce Committee) has all references to transporters and outfitters removed. It also has no mention of subsistence or personal use fisheries. Only businesses and guides working with sport fishing clients are impacted by the provisions of CSHB 452.



SITKA'S SECRETS

March 16, 2004

Dear Labor & Commerce Committee Member,

I am *against* **HB452** because I believe the reasons for the bill, as stated in the Sponsor Statement are invalid.

- **HB452 will not aid in the regulation of the sport fish guiding industry.**
 - The sport fish guiding industry already follows regulations made by the Board of Fisheries.
 - The sport fish guiding industry already fills out logbooks, and reports where we fish, and type and quantity of fish harvested, to the Sport Fish Division.
 - The Sport Fish Division already requires the sport fish guiding industry to be registered as a guide and business.

- **HB452 will not increase the public's confidence or safety of the sport fish guiding industry.**
 - The sport fish guiding industry is already registered with the Sport Fish Division and licensed by the Department of Community and Economic Development.
 - The sport fish guiding industry is already licensed and regulated by the US Coast Guard for safety.

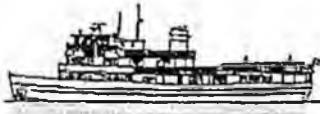
- **HB452 will not "legitimize" nor "protect" my business.**
 - We already have a State Business License from the DCED.
 - We already register with the Sport Fish Division as a fishing guide, and a fishing guide business.
 - We are already licensed by the US Coast Guard.
 - We already register with the City and Borough of Sitka.
 - We are already members of the Maritime Consortium for drug tests.
 - We are already members of the Sitka Convention & Visitors Bureau.
 - We are already members of the AK Tourism Industry Association.
 - We already carry a policy with Charter Lakes Marine Insurance.

As a resident and small business operator, I find HB452 costly and meaningless, and urge you to not move HB452 from this committee. Thank you very much.

Sincerely,

Beverly P. Minn Kent F. Hall

500 Lincoln Street #641 Sitka, Alaska 99835 (907) 747-5089 email: bevandkent@hotmail.com



THE BOAT COMPANY
Wilderness Adventure Tours

March 15, 2004

Testimony before House Labor and Commerce Committee Members
on
HB452, GUIDED SPORT FISHING

by Captain Joel Hanson, TBC Alaska Affairs Consultant

Dear Chairman Anderson and Committee Members,

The Boat Company is a twenty-five year old Alaska corporation providing high-quality educational cruises throughout Southeast Alaska's Inside Passages during summer and on the Pacific shores of Costa Rica and Panama during winter. We currently operate two 150 foot long vessels, each equipped to accommodate a modest compliment of 22 passengers. Both our vessels carry multiple small skiffs on deck which we regularly launch and use for shore excursions, sightseeing, sport fishing, etc. For more information on our company you may investigate our web site at www.theboatcompany.com.

We feel that HB452 as currently written will fail to legitimize, protect, or improve our sport fish guiding services, as suggested by the Sponsor Statement. In fact, this bill promises to compromise our safety measures, and will impose burdensome, redundant and expensive requirements on an operation of our modest size. Therefore, we respectfully request that you hold this bill in committee pending substantial revision by the sponsor.

Please consider the following specific comments:

New Licenses and Fees w/o New Privileges and Benefits

The licenses and fees proposed in this bill simply add to guide's regulatory obligations and costs without providing any discernible (comparable?) new benefits.

The Boat Company's guides collectively spend about \$1,600 on sport fishing licenses every year, yet they do not participate in sport fishing pastimes in the classic "recreational" sense. They purchase sport fishing licenses in order to perform their jobs as guides. With the passage of HB452, The Boat Company's guides collectively will need to spend twice the current amount (or about \$3,200) in order to perform exactly the same job as a guide. The proposed fees, therefore, constitute a doubling of the cost of guiding without any increase in benefits to the guide.

This legislation needs to make a clear distinction between the rights/obligations of sport fishermen and the rights/obligations of guides. The Boat Company recommends the following approach: A sport fishing guide license should authorize the holder to perform all the normal duties associated with guiding—such as assisting clients with gear-tying, baiting, choosing lures, briefly demonstrating casting or reeling techniques, assisting with netting or harpooning fish and dressing or processing catch—regardless of whether the guide also holds a sport fishing license.

This approach differentiates between sport fish guiding and sport fishing. It requires a guide to have a guide license but does not require a guide to have a sport fishing license *unless the guide also wants to catch fish*. Thus, guide licenses and associated fees carry distinct obligations and privileges from sport fishing licenses and associated fees.

Chain of Guilt

Section 16.40.260 (e) reads, "A person who holds a sport fishing operator license may not aid in the commission of a violation...by a sport fishing guide who is employed by the person or by a sport fisherman who is a client of the person."

We feel that this legislation needs to define what is meant by the term "aid in the commission of a violation," and it needs to specify the degree to which an operator may be subject to penalties upon conviction. Without clarification, HB452 creates an automatic chain of guilt whereby a sport fishing operator on shore becomes fully liable (punishable to the maximum extent of the law) for even minor fishing violations committed by a client under the care of a guide tens or hundreds of miles away.

Unreasonable Burden to "physically possess" Paperwork

Section 16.40.270 (e) demands that, while engaged in providing sport fishing guide services, a sport fishing guide shall "physically possess" all the current licenses, tags, and permits that are required to engage in the sport fishery for which the sport fishing guide services are being provided. Failure to do so would impose severe criminal penalties, not commensurate to the "crime".

This means that a guide operating in an open skiff must have a large stack of paperwork either in his jacket, in a zip-lock baggie under his shirt, in a zip-lock baggie in the steering console, or all of the above (actually, the amount of paperwork that would need to be shuffled depending on skiff and assigned guide may require a small filing cabinet). The required paperwork includes boat registration, copy of proof of insurance, copy of proof of employment, copy of fisheries business license, copy of guide operator license, sport fishing guide license, guide registration, copy of US Coast Guard Captain's license, picture ID, sport fishing license, a king salmon stamp if clients are fishing for kings—which a guide is not currently required to possess because a guide is prohibited from fishing for king salmon with clients!—and this section would require a guide operating in an open skiff to "physically possess" a sport fishing charter logbook, which is an item the size of an elongated telephone directory! An impediment to mobility to say the least! Any failure to "physically possess" any of these items carries Class A and B misdemeanor criminal penalties, plus monetary fines – punishments that are very severe compared to the "crime" of not physically carrying papers that are otherwise readily accessible. And, based on the strict interpretation of laws by certain zealous Fish & Game enforcement officers (see below their interpretation of "immediately"), the clarity of "physically possess" will allow an officer to fine and criminally cite guides for not having all this paperwork on his or her self. This is an unreasonable, burdensome and arbitrary requirement whose execution offers no benefit.

For the time being, Fisheries Enforcement has been gracious enough to concede that open skiffs which operate from nearby mother ships may retain the sport fishing charter logbooks on the mother ship as a reasonable and practical alternative to the

requirement for guides to "physical possess" them in an open skiff. HB452 needs to specifically enable this practice and expand it to include other required licenses and documentation which a guide cannot reasonably be expected to retain in a wallet.

Unreasonable Burden to Uphold Unreasonable Recording Requirements

When a sport fisherman catches a king salmon, regulations require the fisherman to "immediately" record the catch on the back of the sport fisherman's license. Recent legal proceedings in Juneau have demonstrated that Fisheries Enforcement personnel's strict interpretation of the term "immediately" makes it difficult for guides and guests to ever be in compliance. And, under certain circumstances, such as when guides and clients are operating in rainy weather and rough seas in open skiffs, safety is affected. Since some of this proposed legislation seems to be in response to the aforementioned legal proceedings, and since some proposed sections relate to reporting requirements, we request that the legislature impose a reasonableness requirement for rules that govern timing of recording, such as and including the "immediately" requirement.

Alaska State Legislature

Interim:
716 W. 4th Ave., #650
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Fax: (907) 269-0177



Session:
Alaska Sta. Capitol, Rm 1081
Juneau, AK 99801-1182

Phone: (907) 465-4930
Fax: (907) 465-3834
Toll Free: (800) 331-4930
Rep.Cheryll.Heinze@legis.state.ak.us

Representative Cheryll Heinze

District 24 - Anchorage

TO: Representative Lesil McGuire, Chairman
House Judiciary Committee

DATE: March 19th, 2004

I would request that you schedule HB 452 for a hearing before your committee.

Enclosed are:

1. Sponsor Statement
2. HB 452
3. Fiscal Note from Dept. of Sport Fish
4. Fiscal Note from the Dept. of Public Safety
5. HB 452 Talking Points
6. Dept. of Fish and Game Comments on Guide Licensing Bill 452
7. Selection of insurance rates for various Guide/Outfitter policies

Sincerely,

Representative Cheryll Heinze

Alaska State Legislature



Representative Cheryll Heinze Sponsor Statement HB 452

“An Act relating to licensing and regulation of sport fishing operators and sport fishing guides; authorizing the Department of Fish and Game and the Alaska Commercial Fisheries Entry Commission to release records and reports to the Department of natural Resources; and providing for an effective date.”

Currently Alaska lacks a unified set of standards for sport fish guiding. This makes it difficult to protect fish habitats and ensure the maximum utilization of Alaska's resources. HB 452 is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the state. This legislation will enhance public confidence in the guided sport fishery and the data upon which management decisions are made. HB 452 will establish licensing and reporting requirements for businesses and guides providing sport fishing guide services in fresh and salt waters of Alaska.

The bill establishes two types of licenses: a sport fishing services operator license and a fishing guide license, and establishes minimum requirements and fees for obtaining each license. Under the provisions of the bill, sport fishing service operators must meet licensing, insurance, and other requirements established by the Board of Fisheries. It requires that fishing guides operate under the authority of a sport fishing service operator license, either by holding that license themselves or by being employed by, or under contract with, a holder of a fishing service operator license. The bill also requires that the licensed guide be certified in first aid, have applicable U.S. Coast Guard vessel licenses, and meet other requirements adopted by the Board of Fisheries.

HB 452 establishes reporting requirements, including where guided sport fishing activities are conducted and the quantity of fish harvested. The bill ensures that sensitive information will be kept confidential. I urge you to support this bill.

23-LS1619\D
Utermohle
2/27/04

CS FOR HOUSE BILL NO. 452()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

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 license 50
- 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.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: H.B. 452
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish & Game
 Title Guided Sport Fishing RDU Sport Fisheries
 Component Sport Fisheries
 Sponsor Representative Heinze
 Requester House Labor and Commerce Component No. 464

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	246.8	246.8	246.8	246.8	246.8	246.8
Travel	10.0	10.0	10.0	10.0	10.0	10.0
Contractual	65.0	65.0	65.0	65.0	65.0	65.0
Supplies	6.5	6.5	6.5	6.5	6.5	6.5
Equipment	17.3	5.0	5.0	5.0	5.0	5.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	345.6	333.3	333.3	333.3	333.3	333.3

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (1024)	355.6	359.1	362.7	336.4	370.0	373.7
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Fish and Game Fund)	345.6	333.3	333.3	333.3	333.3	333.3
TOTAL	345.6	333.3	333.3	333.3	333.3	333.3

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	4	4	4	4	4	4
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The operating expenditures reflect the hiring of four new full-time employees and one new part-time employee necessary to collect and process the data generated annually from licenses sold and reporting requirements. Other expenses associated with the issuing of licenses and collection of data include office supplies, computers, and postage. We assume higher costs in the first year of implementation due to the one-time purchase of equipment such as computers.

We have assumed that the revenues generated by passage of this legislation will increase roughly 1% each year as the number of guides and operators increases from year to year.

(Continued on Page 2)

Prepared by: Kelly Hepler, Director Phone 267-2195
 Division Sport Fish Date/Time 3/16/04 2:31 PM
 Approved by: Commissioner Kevin Duffy Date 3/16/2004
 Agency Alaska Department of Fish & Game

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. H.B. 452

ANALYSIS CONTINUATION

Revenues generated by the sale of licenses will be deposited into the Fish and Game Fund and will be used to issue licenses and collect information per the reporting requirements stipulated by the proposed law.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB452-DPS-ABWE-3-16-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Act Relating to Licensing Sport Fishing Svcs RDU Alaska State Troopers
 Component Bureau of Wildlife Enforcement
 Sponsor Rep. Heinze
 Requester (H) Labor & Commerce Component No. 2746

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

All of the provisions of this bill pertain to AS 16.05 and AS 16.40. They are directed towards governing the sports fishing services operators and fishing guide services.

Certain provisions of the bill will allow Wildlife Enforcement Troopers to check additional documents during the course of contacts with fishing guides, but such activity will occur in the normal course of business.

There is no anticipated fiscal impact to the Alaska State Troopers as a result of passage of this bill.

Prepared by: Lt. Al Storey Phone 269-4532
 Division Alaska State Troopers Date/Time 3/16/04 9:21 AM
 Approved by: Commissioner William Tandeske Date 3/16/2004
 Agency Department of Public Safety

HB 452 TALKING POINTS
(as of 2-19-04)

This bill is intended to legitimize and protect the sport fishing industry by establishing professional standards and ensuring accurate reporting of guiding activity throughout the state.

This legislation will enhance public confidence in the guided sport fishery and the data upon which management decisions are made.

The bill establishes two types of licenses; a sport fishing services operator license and a fishing guide license; and establishes minimum requirements and fees for obtaining each license.

The number of guide businesses has remained nearly constant. The average number of registered guide businesses from 1998 through 2003 is 2,135 and has ranged from 2,065 to 2,242.

The number of fishing guides is increasing. The average number of registered guides from 1998 through 2003 is 4,559 and has ranged from 3,823 to 4,826.

The average percentage of guide businesses owned by Alaska residents from 1998 through 2003 is 90% and has ranged from 89% to 91%.

The percentage of nonresident fishing guides is increasing. The average percentage of guides who are Alaska residents from 1998 through 2003 is 72% and has ranged from 70% to 76%.

This bill establishes mandatory reporting requirements for all sport fishing businesses and sets license fees that cover the cost of the licensing program and reporting requirements.

DEPARTMENT OF FISH AND GAME COMMENTS

ON GUIDE LICENSING BILL HB 452

Representative Heinze introduced HB 452 on February 16. This bill would require sport fishing business owners and guides to be licensed with the State. The bill is based on an earlier bill developed by a Board of Fisheries Guide Licensing Task Force in the mid-1990s and introduced by Representative Austerman in 1997.

After discussing HB 452 with department staff, fellow legislators, and hearing comments from various sport fishing charter/guide groups and individuals from around the state the Representative made several changes to the original bill. These changes were incorporated into CS (Committee Substitute) HB 452 which is dated February 27, 2004.

The four major areas affected by the language changes in CSHB 452 are:

1. The reporting provisions that required fishing guides to record the names of their clients on a daily basis, along with their sport fishing license number, the number of fish they harvested, and associated confidentiality provisions have been removed.
2. Sport fishing outfitters and transporters have been removed from the provisions of this bill. The CS language only speaks to licensing sport fishing guide businesses (lodges, charter vessel companies, etc.) and sport fishing guides that provide direct assistance and personal direction to their clients.
3. Businesses and guides that only assist personal use or subsistence fishermen in their fishing activities have been removed from the provisions of this bill. The CS language only speaks to licensing those businesses and guides that provide services of direct assistance and personal direction to sport anglers.
4. The definitions have been modified to only include sport fishing guide businesses and guides. Definitions of outfitters, transporters, and fishing clubs have been removed. A definition of a sport fishing guide was added.

The department has received a number of comments from sport fish guide groups and individuals in Southeast and Southcentral Alaska pertaining to both the original bill language and the CS language. We would like to respond to some of these comments so everyone has the same understanding on various aspects of this licensing bill.

1. Some guides believe that if the guide licensing program is administered by the Division of Sport Fish it will clearly designate the guided sport fishery as a sport fishery, not a commercial fishery.

We agree with this concept. The Board of Fisheries has received numerous proposals and testimony over the years that the guided sport fishery is a commercial fishery and should be regulated as such. Having a sport guide licensing program administered by the Division of Sport Fish will designate that these fisheries are sport fisheries.

2. Some guides believe that if this bill passes the Board of Fisheries will have to make separate allocations for all species to this new user group.

We do not agree with this idea. First of all the Board already has the authority to regulate guided sport fisheries differently than unguided sport fisheries. Secondly, this bill would not change the makeup of the various guided sport fisheries, it would only require them to be licensed and to report on their guiding activities.

3. Some guides believe that if the Division of Sport Fish administers the guide licensing program, they will become "allocative advocates" for this user group at Board of Fisheries meetings.

This is not true. Both fisheries divisions are tasked with providing the board and the public the most accurate and complete information regarding fishing issues. However, both divisions are strictly prohibited from entering into allocation discussions or debates. The Division of Sport Fish will continue to operate in this manner regardless of whether we administer the guide licensing program or not.

4. Some guides believe that the funds generated from the license fees associated with this bill will go into the General Fund or will be viewed as just another source of revenue by the Division of Sport Fish.

This is not true. All funds generated by this bill's license fees will go into the dedicated Fish and Game Fund, just like funds from the sale of sport fishing licenses and king salmon tags. These funds will be used to administer the provisions of the licensing bill including the reporting requirements.

The Division of Sport Fish is currently spending \$80,000 per year to operate the existing business and guide registration and saltwater charter vessel logbook programs, which have no fees associated with them. We estimate that this bill would generate approximately \$356,000 and we would expend \$346,000 to administer the licensing and reporting programs.

5. Some guides are requesting higher license fees for nonresident sport fishing business owners and fishing guides.

Due to a recent court ruling, the department has been advised by the Department of Law that the State must be able to prove that it is more costly to administer the licensing program for nonresident owners or guides than it is for residents before we can increase costs for nonresidents. Based on an analysis of such costs, there does not appear to be significant differences between the two groups to merit a differential fee structure.

The department welcomes any comments you may have on CSHB 452 and its provisions. Please contact:

Rob Bentz
Deputy Director
Division of Sport Fish
at: rob_bentz@fishgame.state.ak.us

Markel Insurance Company, Rates were approved effective 5/1/99, Minimum Premium for Guides and Outfitter's Policy is \$750.

	<u>100K/300K</u>	<u>500K/1,000K</u>	<u>1,000K/2,000K</u>
Hiking Backpacking Guide	\$175 Flat	\$225 Flat	\$275 Flat
Each Additional Guide	\$100	\$125	\$200
Dogsled Guide, same as Hiking Backing			
Cross Country Skiing Guide	\$275 Flat	\$325 Flat	\$375 Flat
Each Additional Guide	\$175	\$225	\$275

Great Divide Insurance Company, Rates were approved effective 8/6/97, Minimum Premium for all limits is \$500.

Hiking Backpacking Guide	\$175 Flat	\$225	\$375 Flat
Each Additional Guide	\$100	\$125	\$200
Dog Sled Guide	\$175 Flat	\$225 Flat	\$275 Flat
Each Additional Guide	\$100	\$125	\$200
Cross Country Skiing Guide	\$275 Flat	\$325 Flat	\$375 Flat
Each Additional Guide	\$175	\$225	\$275

Kenai River Professional Guide Association

March 18, 2004

Rep. Cheryl Heinze
State Capitol, Room 108
Juneau, AK 99801-1182
907-465-4930
800-331-4930
fax: 907-465-3834

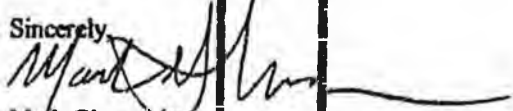
The Kenai River Professional Guide Association would like to extend its support for CSHB452. This long overdue legislation represents a huge step toward legitimizing the professional sport fish guide industry in Alaska. Measures within the bill requiring statewide guide licensing, data collection, operator fees and insurance liability requirements are nothing new to us as commercial operators on the Kenai River but applying these as industry standards statewide is something we wholly support.

Requiring all sport fish guides and sport fish business owners to be licensed with the state and to keep records regarding various services they provide, will produce more accurate and inclusive information to the Alaska Board of Fisheries and other state agencies, which will greatly assist them in making future management decisions.

Moreover, Kenai River Guides have been abiding by stringent State Park Stipulations since 1985 and we are glad to see the remainder of the state adhere to the same standards of professionalism and safety.

Finally, one aspect of the bill we would like to see altered is a possible amendment or deferment of fees based on the fact that Kenai River Guides are already required to pay substantial registration fees through the Department of Natural Resources, division of State Parks. We were recently informed that our fees could possibly double for the 2005 season and this, combined with registration fees contained in CSHB452, would represent an inequitable financial burden on Kenai River Guides. We would like to respectfully request that any fees required by Department of Natural Resources, division of State Parks, of Kenai River Guides, be adjusted, reduced or credited to account for any additional fees required by CSHB452.

Thank you for your time and consideration regarding this important piece of legislation. If we can be of any assistance in constructing the final draft, please feel free to contact us at anytime.

Sincerely,

Mark Glassmaker
KRPGE Vice President

***PO Box 3674
Soldotna, Alaska 99669
www.krpga.org***

HB

468

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB468-LAW-C&FB-2-27-
 Bill Version: HB 468
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to the amount of the bond required to stay execution of a judgment in civil litigation..." RDU: CIVIL
 Component: Commercial & Fair Business
 Sponsor: House Labor & Commerce Committee
 Requester: House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds a new section to AS 43.53 limiting the amount of the bond required to stay execution of a judgment involving signatory, or a signatory's affiliate or successor, to the tobacco product Master Settlement Agreement.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division: Administrative Services Date/Time 2/27/04 3:16 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/27/2004
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB468-ACS-TC-2-26-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Appeal Bonds in Tobacco Product BRU Alaska Court System
Master Settlement Litigation Component Trial Court
 Sponsor House L & C Commtee
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of HB 468.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/26/04 10:43 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/26/2004
 Agency Alaska Court System

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

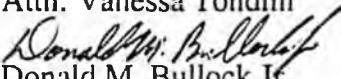
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 17, 2004

SUBJECT: Civil Rule 62(d) and the amount of a supersedeas bond
(CSHB 468(JUD))

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked whether Civil Rule 62(d) would be indirectly amended by the above referenced bill. In my opinion, the answer is no.

The subject bill limits the amount of the supersedeas bond required to stay the execution of judgment but does not change the requirement that a bond must be given. Appellate Rules 204(c) and 205 describe the terms and conditions of a bond on appeal, including the bond amount. On the other hand, Civil Rule 62(d) states that a supersedeas bond must be given to obtain a stay, but does not set the amount. Since the bill speaks to the amount of the bond and does not change the requirement in Civil Rule 62(d) that a bond be filed, the bill neither directly nor indirectly amends Civil Rule 62(d).

The amount of the appeal bond was not an issue in the *Powell* case.¹

DMB:med
04-300.med

¹ *Powell v. City of Anchorage*, 536 P.2d 1228 (Alaska 1973). The appellants sought to stay an injunction issued by the superior court while they appealed the judgment. The appellants sought a stay from the Supreme Court without first making application to the superior court as required by Civil Rule 62. The Supreme Court denied the petitioners' motion for stay of proceedings.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 16, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1719A, HB 468, incorporating the attached three amendments (Amendments # 1, 3, and 4). The bill was passed out of committee today.

Also, please correct the reference to the statutory section on Page 1, Line 7 by changing "AS 43.53" to correctly read "AS 45.53", as that is the chapter being amended.

In addition, a question was brought up in the committee hearing regarding the Indirect Court Rule Amendment. Currently, the bill states that Rules 204 and 205, Alaska Rules of Appellate Procedure, are effected by the bill in its current form. The committee requests a brief legal opinion on whether or not Alaska Civil Rule 62(d) would be indirectly amended as well. (The case of Powell v. City of Anchorage was mentioned in reference, although I don't have the cite). If you determine that R 62(d) is effected, please amend the CS accordingly. If not, nevermind ☺

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

HB 468

Amendment 1 - PASSED

By Rep. McGuire

Page 2, Line 2:

Delete "25,000,000"

Insert "100,000,000"

AMENDMENT 3 HB 468

~~AMENDED~~
PASSED
(on reconsideration)

BY: REP. GARA

Page 1, line 10, after "civil"

Insert: "tobacco-related"

PASSED

HB 468

Amendment #4 by Rep. Gruenberg

P. 2, L. 5

Delete "outside the ordinary course
of business"

AMENDMENT #2 - FAILED

OFFERED IN THE HOUSE
TO: HB 468

BY REPRESENTATIVE GARA

- 1 Page 2, line 1:
- 2 Delete "total"
- 3 Insert "portion of the"
- 4
- 5 Page 2, line 2, following "collectively":
- 6 Insert "that is attributable to the amount of the judgment for punitive damages"
- 7
- 8 ~~Page 2, lines 2 - 3:~~
- 9 ~~Delete "\$25,000,000, regardless of the value of the judgment"~~
- 10 ~~Insert "\$100,000,000"~~

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS
LABOR & COMMERCE COMMITTEE, CHAIRMAN
COMMUNITY & REG AFFAIRS COMMITTEE, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
ADMINISTRATIVE REGULATION REVIEW COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/Anderson.htm>



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FAX: (907) 269-0264

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4939
1-800-465-4939
FAX: (907) 465-2418

Representative Tom Anderson

email: Representative_Tom_Anderson@legis.state.ak.us

Date: February 16, 2004

To: Representative Lesil McGuire, Chair
House Judiciary Committee

From: Representative Tom Anderson, Chairman
House Labor & Commerce Committee *Tom*

Re: HB 468

I respectfully request you schedule HB 468 for Judiciary consideration at your earliest convenience.

Enclosed are:

1. HB 468
2. Sponsor Statement
3. Background material

Thank you for your consideration of this request.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 468 BY: Representative Tom Anderson

TITLE: "An Act relating to the amount of the bond required to stay execution of a judgment in civil litigation involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco product Master Settlement Agreement during an appeal; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for an effective date."

The Tobacco Master Settlement Agreement ("MSA") is vitally important to Alaska and to the 45 other states who are parties to the settlement. It delivers millions of dollars in revenues to Alaska annually, and it will continue to do so for years to come. Yet the continued receipt of these funds is threatened by the huge judgments that have been awarded against the tobacco companies that are funding the settlement. Defendants facing such large judgments almost always have a right to appeal them, and in many cases their appeals are successful in obtaining a reduced judgment or in overturning the judgment entirely. But in order to stay the execution of a money judgment on appeal, a defendant must post a supersedeas (or appeal) bond which, in the diminishing number of states not having limits on appeal bonds, usually equals the amount of the judgment. In Alaska, the bond required is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest.¹ But Alaska courts are permitted to set the bond in a different amount for good cause shown -- meaning judges may set the bond at an amount exceeding the total judgment.²

If a company cannot afford to post a bond in the amount set by the court, the company may be forced to file for bankruptcy -- which carries with it an automatic stay of the debtor's obligation to pay its creditors -- in order to stop the plaintiff from taking its assets during the appeal. Such a stay could disrupt payments by the company, including payments to Alaska and the other states under the MSA. This problem has been most vividly demonstrated by the ongoing Engle case in Florida, in which a class of smokers was awarded \$145 billion in punitive damages. Had there not been an appeal bond cap in place at the time, the defendant tobacco companies would clearly have gone bankrupt, resulting in the termination of all MSA settlement payments nationwide, and precluding the ability to pursue a fair and orderly appeal. However, because Florida had previously enacted bond cap legislation, the settlement payments continued during the appeal, and the appellate court ultimately rejected and reversed the verdict in its entirety.

¹ Alaska R. App. P. 204(d).

² Id.

To date, 26 states have recognized the possibility of enormous appeal bonds causing signatory companies to be unable to meet their obligations to the states under the MSA, and these states have passed legislation or amended court rules to limit the size of the required bond in cases involving large judgments. In addition, five other states do not require a defendant to post a bond at all during an appeal. Some states have passed legislation applying broadly to all litigants, while other states have passed more limited legislation applying only to MSA signatories, successors, and affiliates. The bond limits range from \$1 million to \$150 million. Nearly all of the statutes include a provision allowing for a higher bond amount up to the full value of the judgment if the court determines the appellant dissipating assets to avoid paying a judgment.

HB 468 imposes a \$25 million limit on the supersedeas bond MSA signatories, successors, and affiliates must post to stay the execution of a judgment in Alaska. This bond limit would not change any other aspect of the law -- meaning it does not change the rules by which the trial is conducted, or affect who ultimately wins or loses the lawsuit -- or affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld on appeal. Plaintiffs are also protected by the provision in the proposed legislation allowing the court to require a bond amount up to the value of the judgment if the appellant is dissipating its assets to avoid paying a judgment. HB 468 thus would not injure plaintiffs in any way, and it would protect the state by ensuring it will continue to receive its MSA payments while the tobacco companies fully appeal an adverse judgment.

I urge your support for this legislation.

**Alaska Should Join Other States
To Limit The Size Of Appeal Bonds and Protect Its
Tobacco Settlement Revenues**

The Tobacco Master Settlement Agreement (“MSA”) is vitally important to Alaska and to the 45 other states who are parties to the settlement. It delivers millions of dollars in revenues to Alaska annually, and it will continue to do so for years to come. It also delivers real benefits to the state through its non-monetary provisions, which restrict advertising by participating (but not by non-participating) manufacturers and are designed to help reduce youth smoking.

Yet the continued receipt of these funds is threatened by litigation against the tobacco companies that are funding the settlement. The ability of the tobacco companies to meet their obligations under the MSA ultimately depends upon their financial viability. It may seem far-fetched to worry about the financial viability of tobacco companies, but the litigation onslaught they are currently facing presents a real risk to their ability to make MSA payments.

This memorandum explains what Alaska can do to minimize that risk and protect the state’s ongoing receipt of MSA money.

A. The Enormous Litigation Risks Confronting The MSA Signatories Threaten Alaska’s Master Settlement Agreement Revenues

Within the last several years, the tobacco companies have faced gargantuan judgments. In 2000, the Engle class action in Florida resulted in a verdict of \$145 billion, which was reversed on appeal in May 2003. In California, two individual suits resulted in verdicts of \$28 billion and \$3 billion respectively, although both of these verdicts were reduced by the trial judge. In March 2003, a judge in the case of Price v. Philip Morris in Illinois ordered one tobacco company to pay compensatory damages of \$7.1 billion and punitive damages of \$3 billion in a class action. This decision is currently being appealed.

As the Engle case demonstrates, many extraordinarily large verdicts are reduced or overturned on appeal. In order for a verdict to be overturned, however, a defendant must be able to appeal and do so while remaining in business. The problem is that in most states, a defendant must post an appeal bond at least equal to the size of the judgment in order to stay the execution of the judgment during the appeal. In Alaska, the bond required to stay the execution of a money judgment is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest.¹ But Alaska courts are permitted to set the bond in a different amount or to order alternate security for good cause shown -- meaning that judges may theoretically set the bond at any amount they deem appropriate, even if that amount exceeds the total judgment.²

¹ Alaska R. App. P. 204(d).

² Id.

If a defendant cannot afford to post an appeal bond in the amount set by the court, a plaintiff could potentially seize the defendant's bank accounts, or its manufacturing facilities, or any property located anywhere that the plaintiff can find, even though the defendant may be in the middle of an appeal. In order to stop the plaintiff from taking its assets during the appeal, the defendant may have no alternative other than to file for bankruptcy, which carries with it an automatic stay of the debtor's obligation to pay its creditors.

However, a stay in bankruptcy is indiscriminate: while it would allow tobacco companies subject to huge judgments to appeal while the stay is in place without fear that plaintiffs could seize their assets, it would also prevent the companies from making their payments to Alaska and the other states under the MSA. This potential problem has been most vividly demonstrated by the ongoing Price case in Illinois. In March 2003, the judge in that case set the appeal bond at \$12 billion -- an amount that the company could not possibly have posted.³ If the company had been forced to post such a large bond, it most likely would not have been able to continue to make the billions of dollars in payments that it owes under the MSA. Because of concern about this disastrous result, 37 state attorneys general (including Alaska's) and the National Conference of State Legislatures petitioned the Price court to allow a lower bond to be posted so that MSA payments would not be jeopardized. The bond was eventually lowered to \$6.8 billion, but even this reduced amount would bankrupt many companies.

As the Price case demonstrates, the state has a vital interest in ensuring tobacco companies can appeal massive judgments in Alaska by posting a bond under state law, rather than being forced into bankruptcy.

B. Other States Have Recognized The Risks That Litigation Against MSA Signatories Pose To Their Continued Receipt Of Tobacco Settlement Funds, And They Have Enacted Appeal Bond Caps

Increasingly, states have become aware of the potential consequences of high appeal bonds and have imposed reasonable limits on the size of these bonds. In 2000, legislators in Florida became concerned because the Engle class action against the tobacco companies was proceeding in that state. It was estimated that the punitive damages awarded in the case could be so large that these companies could not afford to post a bond, thereby forcing the companies to seek a stay from the bankruptcy court. While legislators had no particular sympathy for tobacco companies, they recognized that these companies, like every defendant, are at least entitled to a full and fair appeal, and they also recognized that Florida and every other state might lose an important income stream from the MSA payments if the companies were driven out of business. Thus, the legislature enacted a cap on the size of the appeal bond that would have to be posted with regard to the punitive damages aspect of any judgment. The cap limited appeal bonds to the

³ "Confidential Talks Continue on \$12 Billion Bond Issue in Light Cigarette Class Action," Mealey's Litigation Report: Tobacco (Apr. 14, 2003).