



THE STATE
of **ALASKA**

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Representative Matt Claman
Room 118 Capitol Building
Juneau, Alaska 99801

Re: HB 98 which allows for the
aggregation of property offenses
that occur within a period of 180 days

Dear Representative Claman:

Thank you for speaking with me about HB 98 which allows for the aggregation of property offenses that occur within a period of 180 days. As I noted, under current law, amounts involved in property crimes can be aggregated if they are committed under "one course of conduct."¹ Case law has provided for the aggregation of offenses which have occurred over a greater time period than 180 days.² HB 98 removes the "one course of conduct" requirement as long as the offenses occur within a 180 day time frame.

In order to avoid a potential conflict in the law, the Department of Law recommends amending AS 11.46.980 to include the proposed aggregation language in section 1 of HB 98 rather than locating it in the theft in the second degree offense itself.³ Locating all of the aggregation language in one statute will make it clear that the legislature intended for there to be *both* an aggregation provision which requires "one course of conduct," as is provided in current law, as well as a provision which does not require "one course of conduct" but is limited to a 180 day time period. Amending AS 11.46.980 will also make it easier for practitioners to locate all of the relevant aggregation language.

¹ See 11.46.980(c).

² See *Buckwalter v. State*, 23 P.3d 81 (Alaska App. 2001).

³ The current version of HB 98 has the proposed aggregation language in the offense of theft in the second degree (AS 11.46.130).

You also asked about the historical changes to the felony threshold for the crime of fraudulent use of an access device.⁴ The crime of fraudulent use of an access device was first enacted in 1978, however, there were no dollar amounts included in this initial version of the offense.⁵ The statute was amended in 2000, at which time the legislature specified that if the value of property or services taken was less than \$50 the offense would be a class B misdemeanor, if the value of property or services taken was \$50 or more but less than \$500 it was a class A misdemeanor, if the value of property or services taken was \$500 or more but less than \$25,000 it was a class C felony, and anything over \$25,000 would be a class B felony.⁶

In 2005, the legislature made additional changes to crimes involving the theft of access devices in HB 131. First, the crime of theft in the second degree was amended to include the theft of an access device.⁷ Therefore, the taking of an access device, regardless of whether it was used, was made a class C felony. Second, the felony level threshold for fraudulent use of an access device was reduced to \$50 or more.⁸

According to testimony provided in committee on HB 131, these types of offenses had increased 100 percent nationwide.⁹ Numerous states had lowered or eliminated the value level needed for a felony level threshold for these types of offenses.¹⁰ There was also testimony that \$50 was the median used by other states for similar crimes.¹¹ When comparing the fifty dollar threshold to other crimes in Alaska, it was noted that the crime of forgery is a felony regardless of the amount that is forged.¹² Therefore, if a person forges a check for five dollars, that conduct is a felony.¹³

⁴ AS 11.46.285.

⁵ Sec. 4, ch. 166, SLA 1978. (In 1978 the crime was called “obtaining a credit card by fraudulent means.”)

⁶ Sec. 4, ch. 65, SLA 2000.

⁷ Sec. 3, ch. 67, SLA 2005.

⁸ See sec. 3, ch. 67, SLA 2005. If the amount of property or services taken was less than \$50 it was a class A misdemeanor, but the B misdemeanor level offense for fraudulent use of an access device was repealed.

⁹ Testimony Ben Mulligan, Staff to Representative Stoltze at 1:15:28 PM, Hearing on HB 131 before the Senate Finance Comm. 24th Leg., 1st Sess. (May 2, 2005).

¹⁰ *Id.*

¹¹ Testimony of John Skidmore, Assistant District Attorney, 3rd Judicial District, Department of Law at 9:26:42 AM, Hearing on HB 131 before the Senate Judiciary Comm. 24th Leg., 1st Sess. (April 21, 2005).

¹² Testimony of John Skidmore, Assistant District Attorney, 3rd Judicial District, Department of Law at 1:12:29 PM, Hearing on HB 131 before the House Judiciary Comm. 24th Leg., 1st Sess. (March 18, 2005).

¹³ *Id.*

In 2014, the legislature again amended the felony threshold for fraudulent use of an access device and brought it up to \$750.¹⁴ This change brought the felony level threshold in line with other property offenses which were amended at the same time. Since 2014, the felony level threshold for property offenses has changed a couple of times and is currently at \$750.¹⁵

I hope the above information is helpful. Please let me know if we can be of any further assistance.

Sincerely,

KEVIN G. CLARKSON
ATTORNEY GENERAL

By:



Kaci Schroeder
Assistant Attorney General

¹⁴ Sec. 11, ch. 83, SLA 2014.

¹⁵ See sec. 13, ch. 36, SLA 2016 and sec. 6, ch. 1, 4SSLA 2017.