

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 22, 2017

2:03 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Mia Costello
Senator Kevin Meyer
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Pete Kelly

COMMITTEE CALENDAR

SENATE BILL NO. 60

"An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; creating an exemption from payment of restitution for certain unlawful takings of big game animals; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 60

SHORT TITLE: FISH & GAME: OFFENSES;LICENSES;PENALTIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/15/17	(S)	READ THE FIRST TIME - REFERRALS
02/15/17	(S)	RES, JUD, FIN
02/27/17	(S)	RES AT 3:30 PM BUTROVICH 205
02/27/17	(S)	Heard & Held

02/27/17 (S) MINUTE(RES)
03/01/17 (S) RES AT 3:30 PM BUTROVICH 205
03/01/17 (S) Moved SB 60 Out of Committee
03/01/17 (S) MINUTE(RES)
03/03/17 (S) RES RPT 2DP 3NR 2AM
03/03/17 (S) DP: GIESSEL, VON IMHOF
03/03/17 (S) NR: WIELECHOWSKI, HUGHES, MEYER
03/03/17 (S) AM: COGHILL, STEDMAN
03/22/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

MAJOR BERNARD CHASTAIN, Deputy Director
Alaska Wildlife Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Introduced SB 60 on behalf of the administration.

AARON PETERSON, Assistant Attorney General
Office of Special Prosecutions
Criminal Division
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions and provided information related to SB 60.

ACTION NARRATIVE

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CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 2:03 p.m. Present at the call to order were Senators Meyer, Costello, Wielechowski, and Chair Coghill.

SB 60-FISH & GAME: OFFENSES;LICENSES;PENALTIES

[2:04:00 PM](#)

CHAIR COGHILL announced the consideration of SB 60 and welcomed Major Chastain to present the bill.

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MAJOR BERNARD CHASTAIN, Deputy Director, Alaska Wildlife Troopers, Department of Public Safety (DPS), advised that the bill has four primary points. First, it allows Alaska Wildlife

Troopers to issue a correctable citation for someone who has a valid hunting, sport fishing or trapping license but does not have it in their possession when they are engaged in such activity. Second, it prohibits a person from obtaining a sport fishing, hunting, or trapping license in Alaska if their right to engage in such activity has been revoked or suspended in this or any other state. Third, it increases restitution amounts for unlawfully taking big game animals and increases strict liability commercial fishing fines for first, second, and third offenses. Fourth, it creates an option of charging Title 16 offenses as a violation or a misdemeanor and standardizes the penalties in Title 16.

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MAJOR CHASTAIN provided a sectional analysis for SB 60 speaking to the following prepared document:

Section 1 This section amends AS 16.05.330(a) to include "permit" in addition to "license" and "tag" for purposes of clarifying the proper types of documentation a person must have in their actual possession when engaging in certain activities, and reorders the activities of "trapping" and "fur dealing" to exclude the latter from being a correctable citation.

Under AS 16.05.330, a person engaged in the activities listed in 1-5 in section one, must have in their actual possession a license, tag or permit to legally engage in that activity. Section one re-orders the activities into two separate categories; 1 and 2 are considered sport activities and 3, 4 and 5 are considered commercial activities. The purpose for this is contained in section three of this bill.

Section 2 This section amends AS 16.05.330(d) to make it unlawful for a person to obtain a sport fishing, hunting, or trapping license if the person's rights to engage in those activities is revoked or suspended in Alaska.

Section 3 This section amends AS 16.05.330 by adding three subsections:

(f) Provides that a person charged with failing to have the appropriate sport fishing, hunting or trapping license in their actual possession may not be

convicted if the person produces a license previously issued to the person that was valid at the time of the offense not later than 30 days after the issuance of the citation.

(g) Allows that a license or permit may be in actual possession in paper or electronic form.

(h) The third subsection specifically states any peace officer presented with an electronic device under this section shall be immune from any liability resulting from damage to the device.

CHAIR COGHILL asked if there would be recourse if the officer was a bad actor and dropped the device in the water.

MAJOR CHASTAIN replied he would think it could certainly be reviewed.

Section 4 Under AS 16.05.430 fish and game penalties, this section removes the specific fines and penalties associated with an unclassified misdemeanor and replaces it with a class A misdemeanor established under AS 12.55.

Section 4 specifically exempts the correctable citation section 16.05.330(f) from the penalties portion of the statute. Additionally, it aligns other areas of Title 16 and appropriately makes the crimes listed a class A misdemeanor.

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Section 5 Related to section 4, this section adds a new subsection and creates the ability to charge some offenses as violations that are currently only allowed to be charged as misdemeanors. It also addresses the Pittman-Robertson Act and federal matching dollars lost by the State of Alaska when the state is defrauded by a defendant who does not purchase the proper license and/or tag as required by law to participate in a given hunt or fishery.

CHAIR COGHILL commented on the benefit of providing latitude to charge an offense as a violation.

MAJOR CHASTAIN continued the sectional review of SB 60.

Section 5 of this bill creates two new subsections within AS 16.05.430:

Subsection (c) establishes that a person may be charged with the violation offense if there is no culpable mental state established.

Subsection (d) provides the court with the ability to impose additional restitution to the state of Alaska equal to the amount of lost federal matching funds from the Pittman-Robertson/Johnson/Wallop-Breaux programs when the state is defrauded by a defendant who does not purchase the appropriate license or tag or claims residency when they are not a resident. If the court decides to implement the additional restitution for the loss of federal funds, the court will be instructed to deposit the restitution into the fish and game fund.

SENATOR COSTELLO referenced page 4, line 24, and asked if culpable mental state is defined.

CHAIR COGHILL said yes and suggested Major Chastain explain that when he comes to it.

MAJOR CHASTAIN continued the sectional review of SB 60.

Section 6 This section raises the strict liability commercial fishing violation fines from the amounts established in 1988, when this section was enacted, to the same amount adjusted for inflation. The fine increase will serve as both a deterrent and tool for Alaska Wildlife Troopers to effectively enforce the states most important fisheries.

CHAIR COGHILL asked him to explain what that means here because strict liability has to do with a culpable mental state.

MAJOR CHASTAIN explained that culpable mental state must be proven in a court of law and it applies to conduct that is done knowingly, intentionally, recklessly or with criminal negligence. Strict liability means the individual is strictly liable for the offense, regardless of intent. Without culpable mental state is a violation offense that carries a maximum \$500 penalty.

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SENATOR MEYER stated support for increasing the fine for a third commercial fishing violation to \$18,000 rather than \$15,000.

MAJOR CHASTAIN replied it's a policy call for the legislature.

SENATOR MEYER asked how often someone is convicted of a commercial fishing violation three times within ten years.

MAJOR CHASTAIN estimated that it happens several times a year, typically in places such as Bristol Bay where the fishery is very competitive.

MAJOR CHASTAIN continued the sectional review of SB 60.

Section 7 This section requires the court system to transmit notice of all convictions under this section to the Commercial Fisheries Entry Commission (CFEC). Commercial fishers are applied points similar to driver's licenses when a person is convicted of certain commercial fishing offenses.

Section 8 Amends AS 16.05.782 and removes the penalty section from (a) which cleans up the subsection and makes it clearer. This section makes it clear that a person may not take a brown or grizzly bear within one-half mile of a solid waste disposal facility. The penalties for this section will now be contained within sections 9 and 10.

Section 9 Related to section 8, this section removes the unnecessary reference to section (a) and maintains the additional penalties of an additional fine for failing to salvage the hide and skull of the Brown Bear.

Sections 10-15 generally standardize penalties in the statutes listed by providing an additional option of charging a person with a violation offense when appropriate:

Section 10 this section amends AS 16.05.782 and adds two new subsections that establish the penalties as a class A misdemeanor for a criminal offense and also provide the additional option of charging a person with a violation offense when appropriate.

Section 11 Under AS 16.05.783 "Same day airborne hunting" statutes, this section removes the specific fines and penalties associated with an unclassified misdemeanor and replaces it with a class A misdemeanor for consistency in penalties.

CHAIR COGHILL added that it still allows forfeiture.

MAJOR CHASTAIN agreed and continued the sectional review of SB 60.

Section 12 Under the "Prohibition of hunting adjacent to highway between Yukon River and Arctic ocean" statute, this section amends (b) and adds that the penalties for violation of this section is a Class A misdemeanor punishable as provided in AS 12.55.

Section 13 Related to section 12, this section adds a new subsection under AS 16.05.789 (c). This section provides the additional option of charging a person with a violation offense when appropriate.

Section 14 Under AS 16.05.790 "Obstruction or hindrance of lawful fishing, hunting or trapping" statutes, this section adds a new subsection to allow for charging some offenses of this section as a violation offence when there is no culpable mental state.

Section 15 Under AS 16.05.831(c) "Waste of salmon" statute, this section removes the specific fines and penalties associated with an unclassified misdemeanor and replaces it with a class A misdemeanor.

Section 16 Under AS 16.05.901 a new subsection is added in this section to provide for charging offenses committed under AS 16.05.871-AS 16.05.896 as a violation offence punishable as provided in AS 12.55.

Section 17 Under AS 16.05.925 "Penalty for violations", subsection (a) is amended to provide consistency in the penalties as provided under AS 12.55 and provides an exemption for a new subsection added under (c).

Under AS 16.05.925 (b), this subsection provides for restitution amounts that the court may impose for

illegally taken big game animals in Alaska. This section increases the restitution amounts by at least 50% that a person convicted of unlawfully taking big game may have to pay to the state if the court chooses to implement restitution. Alaska's game belongs to all of us collectively. When a big game animal is unlawfully taken, it defrauds the state of the value of that animal to its citizens. This value varies greatly depending on the species of animal, the location of the take, the social value of the animal, the economic value of the animal and the food source value to the people of the state. These restitution values may be imposed by the court if the case warrants applying restitution. In most cases, it does not make the state "whole" for the loss of the animal, but helps pay the state back for the illegal take.

Current restitution amounts were enacted in 1984 and have gone untouched since then.

MAJOR CHASTAIN pointed out that the restitution amounts in this bill reflect the changes that were made in committees when a similar bill was heard last session. For example, restitution for moose increased 150 percent. The standard increase for inflation was 50 percent.

CHAIR COGHILL asked if the monies from restitution can be used for habitat improvement.

MAJOR CHASTAIN deferred the question to the Department of Law. He clarified that restitution is not a fine. It is an additional amount that can be applied for the illegal take of an animal.

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MAJOR CHASTAIN continued the sectional review of SB 60.

Section 18 Under AS 16.05.925 a new subsection was added relating to subsection (b). Subsection (c) establishes that a defendant may not be ordered to pay restitution to the state under this section if:

- (1) The defendant voluntarily and immediately reports the unlawful take of the animal to ADFG or a state law enforcement officer engaged in fish and wildlife protection; and

- (2) Surrenders all salvaged portions of the animal including the horns, antlers, hide and skull as applicable.

This subsection will provide an incentive for persons who have unlawfully taken a big game animal and wish to turn themselves in. This protects hunters who want to do the right thing from paying additional restitution amounts.

MAJOR CHASTAIN highlighted that this committee passed that amendment last year.

CHAIR COGHILL commented on honest mistakes versus scamming the system.

MAJOR CHASTAIN continued the sectional review of SB 60.

Section 19 Under AS 16.05.940 (38) a new definition is added. This paragraph defines "electronic form" as it pertains to section 3 under AS 16.05.330(g). It provides for display of [license] images on an electronic device such as a mobile telephone, tablet or computer that will satisfy the display of fishing and hunting licenses.

CHAIR COGHILL asked if there is need to clarify that viewing the license on an electronic device does not include any authority for the officer to search the device.

MAJOR CHASTAIN replied it is generally accepted that the officer only has permission to look at the license on the electronic device.

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MAJOR CHASTAIN continued the sectional review of SB 60.

Section 20 Under AS 16.10.030 "penalty for violations of AS 16.10.010-AS 16.10.050" this subsection is amended to provide that a person who violates AS 16.10.010 through AS 16.10.050 is guilty of a Class A misdemeanor as provided in AS 12.55.

Section 21 Under AS 16.10.030 "penalties for violations" and relating to section 20, this subsection provides for a person who violates AS 16.10.030 through AS 16.10.050 without any culpable

mental state is guilty of a violation offense as provided in AS 12.55.

Section 22 Under AS 16.10.090 "penalties for violation of AS 16.10.070", this section is amended to reflect that a person who violates AS 16.10.070 is guilty of a Class A misdemeanor as provided in AS 12.55.

Section 23 Under AS 16.10.090 "penalties for violation of AS 16.10.070", this section provides that a person, who without any culpable mental state violates AS 16.10.070 is guilty of a violation offense as provided in AS 12.55.

Section 24 Under AS 16.10.110 penalty for violation of AS 16.10.100, "Erection of fish traps" statutes, this section removes the specific fines and penalties associated with an unclassified misdemeanor and replaces it with a class A misdemeanor as provided in AS 12.55.

Section 25 Under As 16.10.110 and related to section 24, a new subsection has been added under AS 16.10.110 (b). This subsection establishes that a person who, without any culpable mental state, violates AS 16.10.100 is guilty of a violation as provided in AS 12.55.

Section 26 Under AS 16.10.130, penalty for violations of AS 16.10.120 and AS 16.10.125, this section removes the penalties associated with an unclassified misdemeanor and replaces it with a Class A misdemeanor as provided in AS 12.55.

Section 27 Under AS 16.10.130 and related to section 26, a new subsection has been added under (b) that establishes that a person who, without any culpable mental state, violates AS 16.10.120 or AS 16.10.125 is guilty of a violation as provided in AS 12.55.

Section 28 This section amends the uncodified law of Alaska to make it clear that the act applies to offenses that occur on or after the effective date of the Act.

Section 29 Provides an effect July 1, 2017.

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CHAIR COGHILL asked Aaron Peterson to discuss culpable mental states.

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AARON PETERSON, Assistant Attorney General, Office of Special Prosecutions, Criminal Division, Department of Law, explained that culpable mental states in Alaska law are intentional, knowingly, recklessly, and criminal negligence. The culpable mental state for fish and game offenses is referred to as modified civil negligence. That is that the person knew or should have known that what they were doing was a violation.

CHAIR COGHILL asked if the default is strict liability if a violation doesn't have a specific mental state attached to it.

MR. PETERSON directed attention to the offenses covered under 16.05.925(a) that says a person who violates AS 16.05.920 or regulations adopted under the chapter is guilty of a class A misdemeanor. Mental state is not mentioned so based on the court ruling in Rice the mental state would be modified civil negligence. Several other places in AS 16.05 also criminalize offenses and violators are guilty of a misdemeanor. Again, there is no mental state mentioned so the standard is knew or should have known.

CHAIR COGHILL summarized that they would need to know the hunting area and have had the hunting regulations presented to them.

MR. PETERSON replied the prosecution only has to prove that the person should have known (that a season was closed for example) because the hunting regulations are available in any number of locations and online. The court came to this conclusion in part because of the difficulty with proving somebody was aware of a certain thing or intended a certain result.

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CHAIR COGHILL asked if restitution monies must go into the general fund.

MR. PETERSON said in criminal cases with forfeiture the restitution funds go to the general fund. When restitution is due for damage to a resource (primarily fisheries) the funds go into the criminal fund sub-fund and are used for the protection of that resource.

CHAIR COGHILL discussed his intention to offer a committee substitute.

SENATOR MEYER asked if he would entertain amendments.

CHAIR COGHILL answered yes.

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SENATOR MEYER said he believes the fine structure for the third offense should be higher than \$15,000.

CHAIR COGHILL responded that it's clear that Alaska is permissive with regard to licensing issues and fines.

CHAIR COGHILL held SB 60 in committee for further consideration.

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:43 p.m.