

S

B

6

|

|



Official Business

# Alaska State Legislature

## Senate

### Labor & Commerce Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### SB 611:

Revises the criminal penalties for reckless operation of an aircraft to bring them into accord with the revised criminal code.

Provides for a class A misdemeanor for reckless or careless operation of an aircraft while under the influence of alcohol or drugs.

Class B misdemeanor:

- 1) operating an aircraft without a two-way radio
- 2) while a crew member is under the influence of alcohol or drugs;
- 3) to fly a land plane so low over water that it can not safely be landed on ground
- 4) or to fly with passengers under certain adverse weather conditions.

Currently, these violations are listed as misdemeanors, without the revised criminal code categories. No effective date provided.



# Alaska State Legislature

## Senate

Official Business

### Labor & Commerce Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### SUMMARY SB 611:

Section 1: Relates to classes of misdemeanor offenses for various infractions of statutes and regulations affecting the operation of aircraft.

Section 2: Provides that a person operating a civil aircraft without a license or permit issued in accordance with this chapter and federal law is guilty of a class A misdemeanor. Further, a person who flies or causes a civil aircraft to be flown in this state, without a license or permit for that aircraft, is guilty of a class B misdemeanor.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL  
JUNEAU, ALASKA 99811

January 19, 1982

The Honorable Bob Mulcahy  
Chairman, Senate Labor and Commerce Committee  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Re: SB 611, Criminal Penalties for  
Unlawful Operation of Aircraft

Dear Senator Mulcahy:

Michael Thill of your staff recently requested that this department provide a fiscal note and position statement on SB 611, an Act revising the criminal penalties for unlawful operation of an aircraft. The attached fiscal note estimates that enactment of this bill will not have a fiscal impact on this department.

SB 611 revises the penalty structure for certain offenses involving the unlawful operation of an aircraft in a manner that is consistent with the penalty structure of the revised criminal code in Titles 11 and 12. In doing so, it authorizes terms of imprisonment up to a maximum of one year for offenses classified as class A misdemeanors and a maximum sentence of 90 days for offenses classified as class B misdemeanors. We believe that classifying offenses consistent with the penalty structure in the criminal code will help to insure a more rational grading of offenses in terms of seriousness, and we therefore support this bill.

If we can be of further assistance to the committee on this bill, do not hesitate to contact me at your convenience.

Very truly yours,

WILSON L. CONDON  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

By: 

Barry Jeffrey Stern  
Assistant Attorney General

BJS:lb



District Court

State of Alaska

FOURTH JUDICIAL DISTRICT  
604 BARNETTE STREET, RM. 329

FAIRBANKS, ALASKA

99701

October 20, 1981

CHAMBERS OF  
HUGH H. CONNELLY, JUDGE

M.R. Charney,  
Executive Director  
Room 102 Behrends Bldg.  
Juneau, Alaska 99811

Re: Criminal Penalties for  
AS 02.35.030-Airmen License  
Required (See AS 02.35.120  
Penalty)  
and  
AS 02.30.030-Reckless Operation  
(See AS 02.30.040 Penalty)

Dear Mr. Charney,

Recently I heard my second case involving Reckless Operation of an Aircraft in AS 02.30.030, and my first case of Operating a Civil Aircraft Without a License in AS 02.35.030, and would respectfully suggest that these two crimes be made either Class "C" felonies or Class "A" misdemeanors.

In regard to AS 02.30.030-Reckless Operation of Aircraft: When you consider that the operation of a motor vehicle while under the influence of intoxicating liquor or other habit forming drugs is a Class "A" misdemeanor carrying a maximum penalty of \$5000.00 fine or 1 year in jail or both, and also carrying a mandatory minimum jail sentence with no provision for probation or parole on a first offense, the \$500.00 maximum penalty with no possible jail sentence for the Operation of an Aircraft While Under the Influence of Intoxicating Liquor or Drugs appears to be grossly inadequate. When you consider the potential danger to passengers, the pilot himself, the aircraft, people at or near airports, and other aircraft which may be located

Page 2 (Penalties in AS 02.35.120 and AS 02.30.040)

at and near airports, it is my recommendation that the offense of Reckless Operation of Aircraft should be a Class "C" felony, or at least a Class "A" misdemeanor.

In regard to AS 02.35.030-Airmen License Required: In my recent case a person was operating a Cessna 180 airplane without a license. It is respectfully recommended that the penalty provision found in AS 02.35.120 be changed to a Class "A" misdemeanor because of the potential danger to other aircraft, passengers and the public in and around airports.

Cordially,



Hugh H. Connelly  
District Court Judge

HHC/ajw

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 611  
 Title Criminal Penalties for Unlawful Operation of Aircraft  
 Requested by Senate Labor & Commerce Committee Date 1/13/82

II. FISCAL DETAIL

Agency Affected Department of Law  
 Program Category Affected Administration of Justice  
 BRU, Program, Or Subprogram(s) Affected Prosecution  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

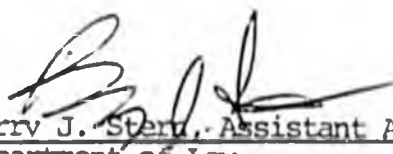
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill restructures the penalties for certain offenses involving the unlawful operation of aircraft and is not expected to have any fiscal impact on the prosecution of cases or result in any additional costs.

IV. DATE January 15, 1982 PREPARED BY  Assistant Attorney General  
 AGENCY Department of Law  
 Original: Legislative Finance PHONE 465-3429  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

No. 2698), 566 P.2d 640 (1977); Johnson v. State, Sup. Ct. Op. No. 1656 (File No. 3424), 580 P.2d 700 (1978); Gonzales v. State, Sup. Ct. Op. No. 1831 (File No. 3348), 593 P.2d 257 (1979). Stated in Wertz v. State, Sup. Ct. Op. No. 2069 (File No. 4683), 611 P.2d 8 (1980).

**Sec. 12.55.135. Sentences of imprisonment for misdemeanors.**

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the third degree committed in violation of the provisions of an order issued under AS 09.55.600 or 09.55.610 shall be sentenced to a minimum term of imprisonment of 10 days. The execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served. Imposition of sentence may not be suspended, except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in this section, and the minimum sentence provided for in this section may not be otherwise reduced. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980)

**Revisor's note.** — Subsection (c) added by § 2, ch. 139, SLA 1980, refers to "assault in the third degree." However, § 6, ch. 102, SLA 1980, changed assault in the third degree to assault in the fourth degree and § 5, ch. 102, SLA 1980, adds a new assault in the third degree.

**Cross references.** — For classification of felonies and misdemeanors, see AS 11.01.250. For listing of fines, see AS 12.55.035.

**Effect of amendment.** — The 1980 amendment added subsection (c).

**Editor's note.** — Section 23, ch. 166, SLA 1978, in subsection (c), provides: "AS 12.55.125 — 12.55.185, enacted in sec. 12 of this Act, apply only upon conviction of

the crime of murder in the first or second degree, kidnapping, or any crime classified as a class A, B, or C felony or a class A or B misdemeanor. For purposes of AS 12.55.125, 12.55.145, and 12.55.155, the court shall consider prior convictions whether committed before, on, or after the effective date of this Act."

AS 09.55.600 — 09.55.610, referred to in subsection (c), relate to injunctive relief in cases involving domestic violence.

**Consecutive sentencing by district court permissible under former law.** — See State v. Pete, Sup. Ct. Op. No. 372 (File No. 673), 420 P.2d 338 (1966), decided under former AS 11.05.010.

**Sec. 12.55.140. Sentences for violations.** A defendant convicted of a violation may be sentenced to pay a fine of not more than \$300. (§ 12 ch 166 SLA 1978)

**Cross references.** — For classification of felonies and misdemeanors, see AS 11.01.250. For listing of fines, see AS 12.55.035.

**Editor's note.** — Section 23, ch. 166, SLA 1978, in subsection (c), provides: "AS 12.55.125 — 12.55.185, enacted in sec. 12 of this Act, apply only upon conviction of

the crime of murder in the first or second degree, kidnapping, or any crime classified as a class A, B, or C felony or a class A or B misdemeanor. For purposes of AS 12.55.125, 12.55.145, and 12.55.155, the court shall consider prior convictions whether committed before, on, or after the effective date of this Act."

**Sec. 12.55.145**

prior convictions  
(1) a prior conviction for more years has an unconditional discharge upon the commission of the offense

(2) a conviction for the same elements substantially identical to those under Alaska law

(3) two or more criminal episodes of the same nature of the crime, except that offense was detected or apprehended not part of the same

(b) When sentenced, not expressly and authenticated by counsel at least 1

(c) If the defendant is convicted, that conviction, that elements of a prior conviction substantially identical to those under Alaska law, or as specified in (a)(1) purportedly separate conviction under the court and serve a term of not more than five days before the period of denial shall in whole or in part and may be suspended

(d) Matters all pending sitting without a judgment that he is not the defendant if the judgment is not the period specified in (c) not be considered a conviction then the burden of proof is on reasonable doubt should be considered on the defendant

(e) The authentication of the State, the District Court, subdivision of the court (§ 12 ch 166 SLA



COMMITTEE MINUTES FORM

This form is to be prepared and submitted to the Committee Records Staff within the next legislative day following the public hearing or committee meeting. Please submit this form completed with the following information pursuant to Rule 23 of the Uniform Rules.

Committee Name: Senate Labor and Commerce

Date: 8 February, 1982

Members Present: Senator Mulcahy, Chairman

Senator Fahrenkamp

Senator Ziegler

Senator Rodey was excused from a call of Senate;

Public hearing or committee meeting on: SB 513, SB 590, Sb 611

COMMITTEE CALENDAR

<u>bill number</u>	<u>bill title</u>
SB 611	"An act revising the criminal penalties for unlawful operation of an aircraft."

<u>bill number</u>	<u>bill title</u>

WITNESS REGISTER

Witness Name: Senator Bill Ray

Affiliation: Senator and sponsor of the bill

Address: Alaska State Legislature

Phone: 465-4921

Summarized Position Statement: Supported passage of the legislation and expounded on the circumstances which prompted its introduction;

PREVIOUS ACTION

Reference Number:

Statutory Reference:

Amendments Formally Considered:

Member Moving Adoption: Senator Fahrenkamp

Action: Passed or Failed with individual recommendations

Voting Record: 2 do pass (Sen Mulcahy and Sen Fahrenkamp)  
1 No recommendation (Senator Ziegler)

ACTION NARRATIVE

Tape Recording

Number 0000

Chair opens at 013 with members 3 present etc.

Testimony of Senator Ray begins at tape reading 017 and continues through tape reading 164;

(6) "structure" means an object constructed or installed by man, including buildings, towers, smokestacks and overhead transmission lines;

(7) "tree" means any object of natural growth. (§ 1 ch 12 SLA 1951; am Executive Order No. 39, § 11 (1977)).

Effect of amendment. — The 1977 amendment substituted the reference to the Department of Transportation and Public Facilities for a reference to the Department of Public Works in paragraph (4).

Meaning of "bush airfield". — See McLemore v. Harris, Sup. Ct. Op. No. 102 (File No. 197), 374 P.2d 410 (1962).

Sec. 02.25.120. Short title. This chapter may be cited as the Airport Zoning Act. (§ 7 ch 12 SLA 1951)

Chapter 30. Operation of Aircraft.

Section	Section
10. Two-way radios required	30. Reckless operation
20. Unauthorized operation. [Repealed effective January 1, 1980]	40. Penalties
	50. Definitions

Sec. 02.30.010. Two-way radios required. It is unlawful to operate a commercial aircraft carrying passengers for a distance greater than 25 miles from an airport unless the aircraft is equipped with a two-way radio installation capable of transmitting and receiving for a distance of at least 50 miles under normal conditions. (§ 3 ch 128 SLA 1949)

Sec. 02.30.020. Unauthorized operation. [Repealed effective January 1, 1980] Any person who tampers with, taxies, flies or operates an aircraft without the consent of the owner without intent to steal it shall be guilty of a misdemeanor. The consent of the owner of the aircraft shall not be presumed or implied because of the owner's consent on a previous occasion. (§ 4 ch 128 SLA 1949)

Cross reference. — See AS 11.46.480 through 11.46.486, relating to criminal mischief, effective January 1, 1980. repealed this section effective January 1, 1980.

Section repealed effective January 1, 1980. — Section 21, ch. 166, SLA 1978,

Sec. 02.30.030. Reckless operation. (a) No person may operate an aircraft in the air or on the ground or water while under the influence of intoxicating liquor, narcotics, or other habit-forming drugs, or operate an aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger the life or property of another. In a proceeding charging careless or reckless operation of aircraft in violation of this section, the court, in determining whether the operation was careless or reckless, shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics.

(b) No person passenger who i habit-forming d

(c) No person such an altitude or a beach in th

(d) The pilot take off if there surfaces of th performance of SLA 1949)

ALR reference connection with ai ALR 326; 83 ALR

Sec. 02.30.04 this chapter is g by a fine of no

Sec. 02.30.0 to use, navigat or upon the lai

Ch

Section

- 10. Federal law /
- 20. Aircraft licen
- 30. Airman licen
- 40. Registration
- 50. Registration
- 60. Proper offic copies of li
- 70. Receipts for
- 80. Exceptions t
- 90. License and request

Sec. 02.35.0 principles, and Act of 1926, i made applicab by federal lav

ALR referer certificates of ai

Sec. 02.35.1 flown in this s under federal

(b) No person may operate an aircraft occupied by a crew member or passenger who is obviously under the influence of intoxicating liquor or habit-forming drugs.

(c) No person may operate a single engine land plane over water at such an altitude as to make it impossible to effect a landing upon land or a beach in the event of a complete engine failure.

(d) The pilot of an aircraft carrying passengers shall not attempt to take off if there is a coating of snow, frost or ice on the wings or control surfaces of the aircraft in an amount sufficient to reduce the performance of the aircraft and endanger the occupants. (§ 5 ch 128 SLA 1949)

ALR references. — Negligence in connection with aircraft and aviation, 69 ALR 326; 83 ALR 352; 99 ALR 184. Criminal offenses relating to aviation and aircraft, 69 ALR 337; 83 ALR 408; 99 ALR 209.

**Sec. 02.30.040. Penalties.** A person violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500. (§ 7 ch 128 SLA 1949)

**Sec. 02.30.050. Definitions.** In this chapter "operate aircraft" means to use, navigate, pilot or taxi an aircraft in the airspace over this state, or upon the land or water inside this state. (§ 6 ch 128 SLA 1949)

**Chapter 35. Uniform Air Licensing Act.**

<p><b>Section</b></p> <p>10. Federal law followed</p> <p>20. Aircraft license required</p> <p>30. Airman license required</p> <p>40. Registration of aircraft</p> <p>50. Registration of airmen</p> <p>60. Proper officer to make and certify copies of licenses</p> <p>70. Receipts for certified certificates</p> <p>80. Exceptions to application of chapter</p> <p>90. License and permit to be exhibited on request</p>	<p><b>Section</b></p> <p>100. Temporary permit</p> <p>110. Emergency rations and equipment</p> <p>115. Downed aircraft transmitting devices</p> <p>120. Penalties for violation of chapter</p> <p>130. Penalty for violation of § 90 or 110 of this chapter</p> <p>140. Uniformity of interpretation</p> <p>150. "Department" and "commissioner" defined</p> <p>160. Short title</p>
--	--

**Sec. 02.35.010. Federal law followed.** It is declared that the policy, principles, and practices established by the United States Air Commerce Act of 1926, and all amendments to it are adopted and extended and made applicable to cover all air traffic in this state, so far as not covered by federal law. (§ 32-6-2 ACLA 1949)

ALR references. — Registration; permits; licenses, and license taxes, 83 ALR certificates of air worthiness and the like; 336; 99 ALR 179.

**Sec. 02.35.020. Aircraft license required.** No civil aircraft may be flown in this state unless it has an appropriate existing license or permit under federal law. (§ 32-6-3 ACLA 1949)

**Sec. 02.35.030. Airman license required.** No person may act as an airman of a civil aircraft when that aircraft is flown or operated in this state unless that person has an appropriate existing license or permit under federal law. (§ 32-6-4 ACLA 1949)

**Sec. 02.35.040. Registration of aircraft.** No aircraft shall be operated or be flown in this state until a certified copy of federal license or permit, as required in AS 02.35.020, has been filed with the department, and persons operating aircraft in the state shall within 30 days after the first day of January of each year file a certified copy of the federal license or permit with the department. (§ 32-6-5 ACLA 1949; am § 16 ch 123 SLA 1949)

**Sec. 02.35.050. Registration of airmen.** No person may act as an airman of a civil aircraft when that aircraft is flown or operated in the state until a certified copy of that person's federal license or permit, as required in AS 02.35.030, has been filed with the department, and every airman of any civil aircraft in the state shall within 30 days after the first day of January of each year file a certified copy of his federal license or permit with the department. (§ 32-6-6 ACLA 1949; am § 16 ch 123 SLA 1949)

**Sec. 02.35.060. Proper officer to make and certify copies of licenses.** The certified copies of licenses and permits required to be filed with the department under the provisions of this chapter may be made and certified by any officer authorized to administer oaths and having an official seal, inside or outside the state. No charge may be made by the department for the filings required. (§ 32-6-7 ACLA 1949; am § 16 ch 123 SLA 1949)

**Sec. 02.35.070. Receipts for certified certificates.** The department, upon receipt of certified certificates as provided by AS 02.35.020 — 02.35.050, shall immediately issue to the proper party a receipt for the certified certificate, which is prima facie evidence that the party has complied with the registration requirements of this chapter. (§ 32-6-8 ACLA 1949; am § 16 ch 123 SLA 1949)

**Probative value of receipt.** — The receipt for the certified certificate, which is made prima facie evidence by this section, would be better evidence of the issuance and registration and contents of a pilot's license than the testimony of a witness thereto. This receipt would be of equal probative value with the license itself, and cover the additional point of compliance with the law of Alaska. *Smith v. Pacific Alaska Airways, Inc.*, 9 Alaska 86, 89 F.2d 253 (9th Cir.), cert. denied, 9 Alaska 234, 302 U.S. 700, 58 S. Ct. 20, 82 L. Ed. 541 (1937).

**Sec. 02.35.080. Exceptions to application of chapter.** The provisions of this chapter do not apply to the first entry of a civil aircraft or airman while engaged exclusively in commercial flying, constituting an act of interstate or foreign commerce, nor does it apply to a public aircraft. (§ 32-6-10 ACLA 1949)

Sec. certifi  
federa  
operat  
deman  
municip  
official  
airmar  
certific  
aircraft  
operat  
where  
presen  
officer  
employ  
of an  
request

Sec. life or  
permit  
be spe  
nor fo

Sec. may n  
equip  
(1) is as f

(A)  
(B)  
(C)  
(D)  
(E)

lines,  
(F)  
(G)  
(H)  
(I)

fuses,  
(2)  
equip  
(A)  
(B)  
(C)

(b)  
than