

**HB**

**384**

**HFIN**

**FILE**

Sec

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 21, 2006

FURTHER REFERRALS:

Date of Committee Action: 4/4/06

The FINANCE Committee considered:

HB 384

HOUSE BILL NO. 384

FINES AND OFFENSES

"An Act relating to fines and offenses; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."

Recommends it be replaced with [ ] HCS or [X] HCS for HB 384 (Jud)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR [ ] Same Title [ ] New Title

- [ ] attach amendments
[ ] add new referral to \_\_\_\_\_ Committee
[ ] Letter of Intent \_\_\_\_\_ Committee

- List of Abbrev for Depts.: ADM, CED, COR, CRT, EED, DEC, DEG, GOV, HSS, LEG, LAW, LWF, MVA, DNR, DPS, REV, DOT, CA

Table with columns: NEW FISCAL NOTES, List by Dept(s), \*FN#, Fiscal, Indet., Zero. Includes handwritten 'GOV' and a checkmark in the Indet. column.

Table with columns: PREVIOUS FISCAL NOTES, List by Depts:, FN#, Fiscal, Indet., Zero.

Table with columns: Signing with recommendations, Printed Last Name, DP, DNP, NR, AM. Includes handwritten signatures and names like Keethula, Foster, Moses, and Meyer.

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB384(JUD)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: All  
Title: Fines and Offenses RDU \_\_\_\_\_  
Component \_\_\_\_\_  
Sponsor: Rep. Anderson  
Requester: House Finance Committee Component No. \_\_\_\_\_

### Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

### POSITIONS

Full-time						
Part-time						
Temporary						

### ANALYSIS: (Attach a separate page if necessary)

This legislation would increase fine amounts for a number of statutory violations. The bill would result in some increase in revenue to the State; however, it is not possible to accurately determine the precise amount.

Prepared by: Jack Kreinheder, Senior Analyst Phone: 465-4676  
Division: Office of Management and Budget Date/Time: 4/5/06 3:33 PM  
Approved by: Cheryl Frasca, Director Date: 4/5/2006  
Agency: Office of Management and Budget

# ALASKA STATE HOUSE OF REPRESENTATIVES

Labor & Commerce Committee, Chair

Administrative Regulation Review, Chair

Judiciary Committee, Vice-Chair

Health, Education and Social Services



716 W 4<sup>th</sup> Ave  
Suite 610  
Anchorage, AK 99501

Phone (907) 269-0265  
Fax (907) 269-0264

## Representative Tom Anderson

### Sponsor Statement CSHB 384(JUD)

*"An Act relating to fines and offenses; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."*

**HB 384** proposes to raise the maximum amount a person may be fined to \$750 when found guilty of an infraction or violation as currently provided for in statute. The exception to this is found in *Sec. 2* of this bill that sets \$750 as the minimum fine, with the amount of \$1,000 established as the cap for this type of offense.

In addition, this bill brings fish and game penalty language in Title 16 into alignment with the current statutory definition for a Class A Misdemeanor. In 2002, the Alaska Legislature doubled the fines for Class A misdemeanors from \$5,000 to \$10,000. However, several important Title 16 penalties listed a maximum fine of \$5,000 and thus remained locked at that level. Since some of these penalties went into effect around statehood, it is appropriate to update the maximum fines.

Violations or infractions are both minor offenses and are often confused with one another. Violations are about the same as traffic infractions, except that violations are not traffic offenses. Violations were created as a new class of offense in 1978 when the criminal code was completely revised. Both violations and infractions are non-criminal offenses for which no jail time can be imposed. In 1978, the maximum fine set for infractions was \$300, although some violations impose a \$500 minimum fine. This dollar amount has not changed in almost 30 years.

This increase in the dollar amount is consistent with today's values and begins to allow for inflation since 1978. The increase in the maximum monetary penalty will serve as a further deterrence to those not only found guilty, but for those contemplating any action that might lead to such an act leading to an infraction or violation under law.

In today's society, the most serious infractions and violations are the types of offenses that the public observes daily. The public expects that enforcement action will be taken to insure our collective safety. By increasing the fines levied against those that are found guilty, we act to serve the better good.

# FISCAL NOTE

*Changed to  
inset.*

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 384(JUD)  
(H) Publish Date: 2/21/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Fines and Offenses RDU Alaska Court System  
Component Trial Courts  
Sponsor Representative Anderson  
Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 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 384.

Prepared by: Doug Wooliver, Administrative Attorney  
Division: Alaska Court System  
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director  
Agency: Alaska Court System

Phone: 463-4750  
Date/Time: 2-10-06 @ 9:00 am  
Date: 2/10/2006

# FISCAL NOTE

*Change to impact*

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 384(JUD)  
(H) Publish Date: 2/21/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Fines and Offenses RDU: Office of the Commissioner  
Sponsor: Representative Anderson Component: Alaska Labor Relations Agency  
Requester: House JUD Component Number: 1200

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Section 21 would change the penalty in AS 23.40.180 (Public Employment Relations Act) for violation of a decision or order from a misdemeanor punishable by a fine of up to \$500, to a violation with no monetary penalty.

Section 29 would change the penalty in AS 42.40.830 (Alaska Railroad Labor Relations) for violation of a decision or order from a misdemeanor punishable by a fine of up to \$500, to a violation with no monetary penalty.

There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Mark Torgerson, Hearing Examiner Phone: 269-4895  
Division: Alaska Labor Relations Agency Date/Time: 2/17/06 9:37 AM  
Approved by: Greg O'Claray, Commissioner Date: 2/17/2006  
Agency: Department of Labor and Workforce Development

*Approved by DA*

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSHB 384(JUD)  
(H) Publish Date: 2/21/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title: "An Act relating to fines and offenses, amending RDU CRIMINAL  
Rule 8(b), Alaska District Court Rules of Criminal Procedure..." Component Criminal Justice Litig: "on  
Sponsor Representative Anderson  
Requester House Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2007	FY 2006	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
This bill makes various amendments throughout statute to increase the penalty for a violation to \$750. It also reclasses certain offenses as violations. In some cases the change represents an increase from a previous statutory level (frequently \$500), in some cases a fine would be imposed where one had not been. Even in the latter instance, it is unlikely that we will experience increases in the amount of time spent on prosecution because offenders choose to contest the higher or new fine. As a result we are not anticipating a fiscal impact to the Department of Law if this legislation passes.

Prepared by: Kathryn Daughheteo, Director Phone 465-3673  
Division: Administrative Services Division Date/Time 2/13/06 11:16 AM  
Approved by: Kathryn Daughheteo for David Márquez, Attorney General Date 2/13/2006  
Agency: Department of Law



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

**BILL ANALYSIS**

DEPARTMENT Public Safety	DIVISION Alaska State Troopers	BILL NUMBER None - Title 16	SPONSOR Alaska Dept. of Fish & Game
SHORT TITLE OF BILL An Act amending the fines for an A misdemeanor in Title 16 which include; non-resident guide requirements; hunting same day airborne; operation of fish traps; Erection of fish traps prohibited on land or water owned by the State; use of drum or purse seine and termination device for shellfish/bottom fish pots; unlawful taking and sale of migratory fish and shellfish taken on the high seas; purchase of fish by the pound; and bringing these fines up to the current statutorily allowable amount as defined under AS 12.55.035 (b)(7); and providing for an effective date.			
DEPARTMENT POSITION Support			
PREPARED BY Lt. James Helgoc	DATE 1/6/06	COMMISSIONER'S SIGNATURE	DATE

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

**BACKGROUND/LEGISLATIVE INTENT**

In October 2002, the Alaska Legislature doubled the fines for Class A misdemeanors from \$5,000 to \$10,000. The intent is to bring the penalties for violating these sections up to the current \$10,000 maximum for an A Misdemeanor. Several important AS16 penalties list a maximum fine of \$5,000 and thus remained locked at that level while others that did not list the fine increased to \$10,000. These inconsistencies add confusion to title 16 and are inconsistent with the penalties/fines listed in AS12.55.035 (B) (7).

The reason these changes are needed is that well-meaning persons, many years ago, listed the \$5,000 maximums as a convenience in statute, not foreseeing that the base misdemeanor fine would be doubled in 2002. Some of these penalties went into effect around statehood and it is appropriate that we now update the maximum fines.

While some of these (fish traps and purse seine drums) are rarely, if ever, encountered these days, some of them (same day airborne and unlawful sale of migratory fish) are highly appropriate for the increase. Since they are all current laws, it seems appropriate to update them all.

**ANALYSIS OF BILL PROGRAM EFFECTS**

Sectional analysis:

Non-Resident Guide Requirement

AS 16.05.407 (d) is amended to read:

A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) of this section, is guilty of a Class A misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY A FINE OF NOT MORE THAN \$5,000, OR BY BOTH].

Hunting Same Day Airborne

AS 16.05.783 (c) is amended to read:

(c) A person who violates this section is guilty of a Class A misdemeanor [ AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN 5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]. In addition, the court may order the aircraft and equipment used in or in aid of a violation of this section to be forfeited to the state.

Waste of Salmon

As 16.05.831 (c) is amended to read:

A person who violates this section or a regulation adopted under it is guilty of a Class A misdemeanor. [PUNISHABLE BY A FINE OF NOT MORE THAN \$10,000, OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH]. In addition, a person who violates this section is subject to a civil action by the state for the cost of replacing the salmon wasted.

Activities by Aliens Prohibited

AS 16.05.905 (b) is amended to read:

An alien person who violates (a) of this section is guilty of a Class A misdemeanor, and upon conviction is punishable by a confiscation and forfeiture of the fishing vessel used in the violation [ OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY A FINE OF NOT MORE THAN \$10,000, OR BY ALL OR ANY TWO OF THE FORGOING PUNISHMENTS].

Interference With Commercial Fishing Gear

AS 16.10.055 is amended to read:

A person who willfully or with reckless disregard of the consequences, interferes with or damages the commercial fishing gear of another person is guilty of a Class A misdemeanor. For the purposes of this section "interference" means the physical disturbance of gear which results in economic loss or loss of fishing time, and "reckless disregard of the consequences" means a lack of consideration for the consequences of one's acts in a manner that is reasonably likely to damage the property of another.

Operation of Fish Traps

AS 16.10.090 is amended to read:

A person who violates AS 16.10.070 is guilty of a Class A misdemeanor [AND IS PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY A FINE OF NOT MORE THAN \$5,000 OR BOTH].

Erection of Fish Traps Prohibited on Land or Water Owned by the State

AS 16.10.110 is amended to read:

A person who violates AS 16.10.100 is guilty of a Class A misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY A FINE OF NOT MORE THAN \$5,000, OR BY BOTH].

Use of Drum for Purse Seine and Termination Device for Shellfish/Bottom fish Pots

AS 16.10.130 is amended to read:

A person who violates AS 16.10.120 or 16.10.125 is guilty of a Class A misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY A FINE OF NOT MORE THAN \$1,000, OR BY BOTH].

Unlawful Taking and Sale of Migratory Fish and Shellfish Taken on the High Seas

AS 16.10.220 is amended to read:

A person who violates AS 16.10.200 and 16.10.210 is guilty of a Class A misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

Penalty

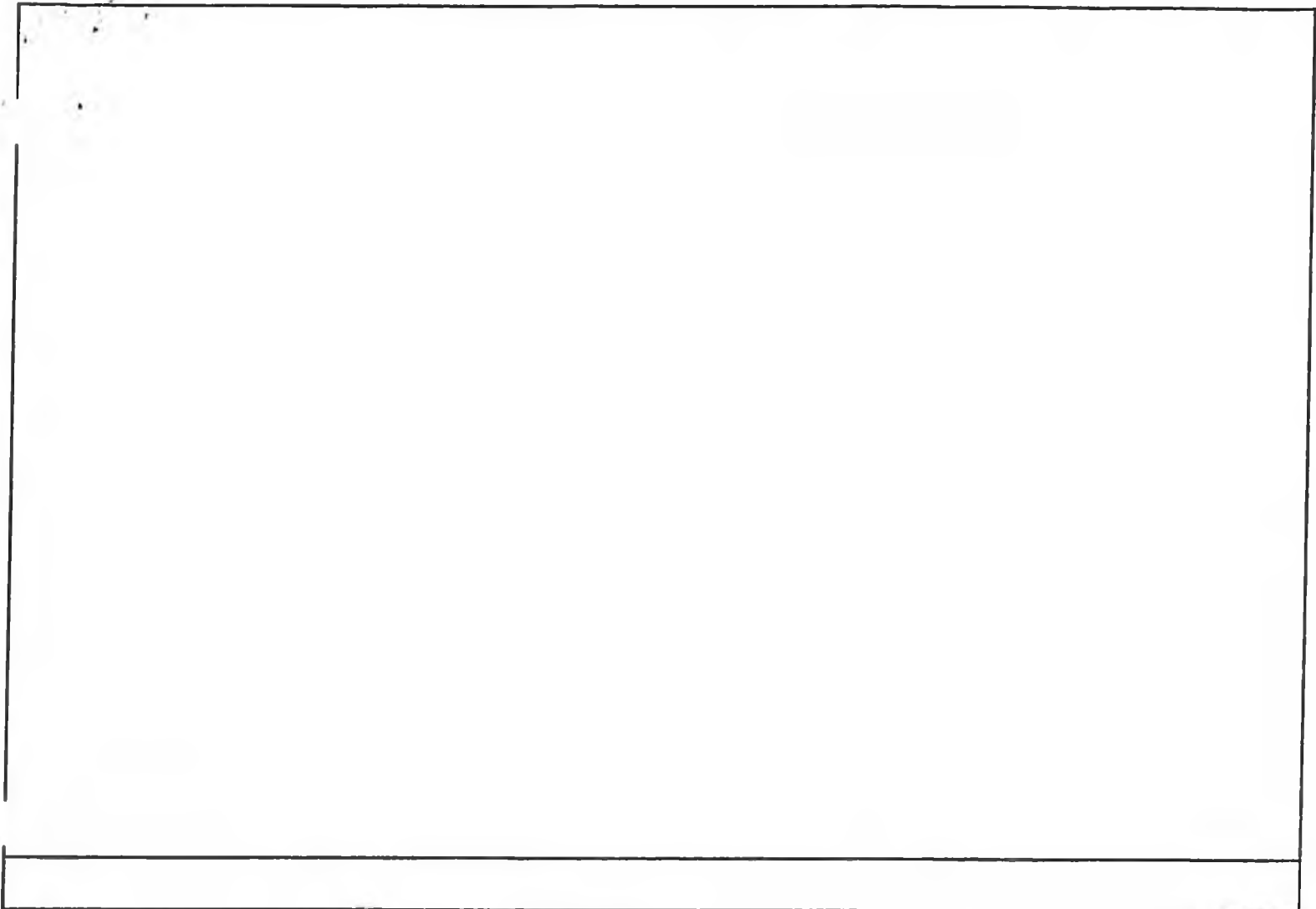
AS 16.10.250 is amended to read:

A person, association, or corporation violating AS 16.10.240 or contributing to or cooperating in the violation of AS 16.10.240 is guilty of a Class A misdemeanor [ AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$5,000. OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]. Vessels and equipment used in or in aid of a violation of AS 16.10.240 may be seized and disposed of as provided in AS 16.05.190. Conviction under AS 16.10.240 is grounds for suspension of a fishing license or permit by the department.

Purchase of Fish by the Pound

AS 16.10.270 (b) is amended to read:

(b) A person who violates this section is guilty of a Class A misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY A FINE OF NOT MORE THAN \$5,000, OR BY BOTH].



## **HB384 Sectional Analysis**

*Prepared by Department of Public Safety*

**Section 5:** AS 05.25.090(b) is amended to read:

(b) A person who violates

- (1) AS 05.25.010, 05.25.020, 05.25.030(b), 05.25.060(2), or a regulation adopted under this chapter relating to As 05.25.010 or 05.25.020 is guilty of a violation **[AS DEFINED IN AS 11.81.900 AND MAY BE FINED UP TO \$500]**;
- (2) AS 05.25.055 is guilty of a violation **[AS DEFINED IN AS 11.81.900]** and may be fined up to \$50

Paragraph (1) would modify the maximum amount that could be fined for violations of several provisions of AS 05.25. Under this proposal, the maximum amount would not be specifically stated, but would fall within the range identified for violations. Those parameters are identified in AS 12.55.035(b)(7). The verbiage of "as defined in AS 11.81.900" should be retained as a means of defining "violation".

Paragraph (2) under this section also needs to retain the verbiage "as defined in AS 11.81.900". There is no need to include language about being fined up to \$50. That amount is already listed within the bail schedule as set by the Supreme Court.

**Section 6:** As 12.55.035(b) is amended to read:

(7) \$750 [~~\$500~~] for a violation or an infraction

This section is the core of what AST's efforts were hoping to accomplish. AS 12.55.035(b)(7) will raise the maximum amount that can be access for a violation to \$750. The proposed language also adds infractions to this statute. It is suggested that infractions, since they are unique to only title 28, be defined in this statute. Possible language could be: "or an infraction as defined as AS 28.40.050(c)".

Bringing these two minor offenses together for purposes of determining the maximum penalty will serve to clarify much of the confusion that currently exist not only in law enforcement circles, but also in some of the magistrate courts across the state.

**Section 8:** AS 16.05.420(b) is amended to read:

(b) A person may not male a false statement, or omit a merial fact, in an application for a license, tag, permit, sport fishing vessel registration issued under AS 16.05.130 – 16.05.430. A person who without any culpable mental state makes a false statement as to the person's identity or residency in an application for a license, tag, permit, or sport fishing vessel registration issued under AS 16.05.330 – 16.05.430 is guilty of a violation and upon conviction is punishable by a fine of not more than \$750

[\$300}. A person who knowingly violates this subsection is guilty of a class A misdemeanor.

It is suggested that "and upon a conviction is punishable by a fine of not more than \$750" be deleted from the proposed language. In its place, substitute "subject to the penalties specified in AS 12.55.035 (b)(7).

**Section 12:** AS 16.10.030 is amended to read:

Sec. 16.10.030 Penalty for violations of AS 16.10.010 – 16.10.050. A person who violates AS 16.10.010 – 16.10.050 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$100 nor more than \$750 [\$500}.

This is proposed as a housekeeping provision to come into compliance with the new language if the proposals of section 6 within this bill are adopted.

Consideration should be given, however, as to why this offense is titled a misdemeanor but has a maximum penalty of between \$100 and \$750. Perhaps this offense should be called a Class B Misdemeanor with no specific monetary penalty spelled out. Conversely, if it is desired to not have penalties of any greater amount than \$100 to \$750, the offense should be titled as a violation subject to the penalties as specified in AS 12.55.035(b)(7).

**Section 35:** AS 28.39.010(b) is amended to read:

(b) A person who violates (a) of this section is guilty of an infraction [AND IS SUBJECT TO A \$300 FINE UNDER AS 28.40.050(c)].

This is essentially a housekeeping change in order to make the maximum amount that could be assessed under this provision of title 28 falls within the cap as established by the provisions of section 6 of this bill. For clarification as to the penalty, the following verbiage is suggested:

(b) A person who violates (a) of this section is guilty of an infraction subject to the penalty specified in AS 12.55.035(b)(7).

**Section 36:** AS 28.40.050(b) is amended to read:

(b) A person convicted of a misdemeanor for a violation of a provision of this title for which another penalty is not specifically provided is punishable by a fine of not more than \$750 [\$500], or by imprisonment for not more than 90 days, or both. In addition, the privilege to drive or the registration of vehicles may be suspended or revoked.

This section raises the maximum amount that could be assessed for a misdemeanor for violating title 28 to \$750 plus the stated amount of jail time.

It is unclear as to why misdemeanor offenses under title 28 have a monetary cap, currently \$500 but proposed as \$750, plus have a provision for imprisonment of not more than 90 days.

Perhaps this statute could be simplified by simply stating that offenses as identified by this section are Class B Misdemeanors without establishing any particular monetary amount.

**Section 37:** AS 28.40.050(c) is amended to read:

(c) Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction {AND IS PUNISHABLE BY A FINE NOT TO EXCEED \$300}.

This section essentially raises the maximum amount of penalty that can be assessed for a violation of title 28 for those offenses that are not specified by law as any other degree of offense. It is recommended that the proposed language include a defined reference for the penalty such as "subject to the penalty specified in AS 12.55.035(b)(7).

# STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

P.O. BOX 25526  
JUNEAU, AK 99802-5526  
PHONE: (907) 465-4100  
FAX: (907) 465-2332

#### MEMORANDUM

TO: The Honorable Tom Anderson  
Representative, Alaska State Legislature

FROM: Sarah A. Gilbertson  
Legislative Liaison, ADF&G

DATE: February 14, 2006

SUBJECT: Sectional Analysis for CS for HB 384 (JUD)

---

Sections 7, 9-11, and 13-19 have a different purpose and reasoning than the other sections.

In 2002, the Alaska Legislature increased the maximum fine for Class A misdemeanors from \$5,000 to \$10,000. Several important AS 16 (fish & game) penalties list the maximum misdemeanor fine as \$5,000 (which was the maximum Class A misdemeanor fine for many years) and thus did not increase when the legislature increased all other Class A misdemeanor fines. This issue was not brought to the attention of legislators in 2002 and is now being addressed as part of CS for HB 384 (JUD).

The sections below update and bring uniformity to the old wording to now include "class A misdemeanor" so they will reflect the new standard the legislature created in 2002. Additionally, maximum fines will be automatically adjusted in the future should the legislature make changes to the Class A Misdemeanor fines. Currently, a Class A misdemeanor carries a maximum penalty of \$10,000 and up to one year imprisonment.

Section 7 modifies the maximum fine from \$5,000 to a Class A misdemeanor for violation of AS 16.05.407, which requires non-residents taking brown bear, grizzly bear, mountain goat, or sheep to be accompanied by a licensed guide-outfitter or a resident who is related within the second degree of kindred.

Section 9 modifies the maximum fine from \$5,000 to a Class A misdemeanor for violation of AS 16.05.783, which prohibits persons from shooting or assisting in shooting wolves and wolverines on the same day that the person has been airborne.

Section 10 modifies the maximum imprisonment time from 6 months to one year as required by a Class A misdemeanor for violation of AS 16.05.831, which prohibits a person from intentionally wasting salmon. The legislature previously set the maximum fine at \$10,000 and this change brings the entire section into alignment with other fisheries crimes that are punishable with up to one year in jail.

**Section 11** is already set at a maximum fine of \$10,000 and one year imprisonment but should be modified for uniformity to be a Class A misdemeanor. This penalty is for violation of AS 16.05.905, which prohibits alien persons not lawfully admitted to the United States from engaging in commercial fishing activities or taking marine mammals.

**Section 13** states that the penalty is a "misdemeanor" but should designate it a Class A misdemeanor for clarity and uniformity. This section pertains to AS 16.10.055, which prohibits persons from interfering with or damaging the commercial fishing gear of another person.

**Section 14** modifies the maximum fine from \$5,000 to a Class A misdemeanor for a violation of AS 16.10.070, which prohibits persons from operating fish traps.

**Section 15** modifies the maximum fine from \$5,000 to a Class A misdemeanor for violation of AS 16.10.100, which prohibits the construction or maintenance of fish traps.

**Section 16** modifies the maximum fine from \$1,000 and a maximum of six months imprisonment to a Class A misdemeanor for violation of AS 16.10.120 & 125. AS 16.10.120 prohibits the use of a drum or reel in operation of a purse seine, and AS 16.10.125 requires the use of a termination device on shellfish and bottomfish pots so when they are lost they will cease fishing after a period of time. These changes are needed to bring these crimes into alignment with other commercial fishing penalties.

**Section 17** modifies the maximum fine from \$5,000 to a Class A misdemeanor for AS 16.10.200 & 210. AS 16.10.200 prohibits a person from possessing or selling migratory fish and shellfish that were taken unlawfully and AS 16.10.220 prohibits a person from possessing or purchasing migratory fish or shellfish that have been taken unlawfully.

**Section 18** modifies the maximum fine from \$5,000 to a Class A misdemeanor for violation of AS 16.10.240 which prohibits the exportation of live crab from the state.

**Section 19** modifies the maximum fine from \$5,000 to a Class A misdemeanor for violation of AS 16.10.270 which requires the purchaser of raw fish to determine the weight of fish that are purchased.

\* \* \*

# 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

February 17, 2006

**SUBJECT:** CSHB 384( ) - Fines and Offenses for Noncriminal Violations and Infractions and certain misdemeanors outside of the criminal code for which no term of imprisonment may be imposed (Work Order No. 24-LS0985\Y)

**TO:** Representative Tom Anderson

**FROM:** Gerald P. Luckhaupt  
Legislative Counsel 

You have asked for a memorandum discussing the rationale for my inclusion of various provisions outside of AS 16 and AS 28 in this bill. Originally your office supplied me with a bill draft from the Department of Public Safety that sought to substantially increase the fines for seat belt and child car seat offenses and increase the maximum fine that can be imposed under AS 28 for a motor vehicle or driver's license infraction.<sup>1</sup>

Your office then supplied me additional materials from the Department of Public Safety in which the department reasoned that since we were increasing the maximum penalty for motor vehicle infractions that we should increase the maximum penalty for all noncriminal violations so they match the new maximum for infractions.<sup>2</sup> The department also proposed amending AS 22.15.120 and AS 05.25.090. At this time you directed me to work with Dean Guaneli.

Mr. Guaneli and I discussed the proposals and had concerns with raising the maximum penalties for these noncriminal offenses while there existed criminal offenses with lesser penalties. These concerns basically concerned proportionality, due process, and basic common sense. First it seems rather absurd to convict a person of a criminal offense, a misdemeanor, but to impose a penalty that is less than the penalty for a noncriminal offense, a violation or an infraction. Violations and infractions, by definition noncriminal offenses, are our least blameworthy offenses and should have the lowest penalties on the range of penalties the legislature authorizes for offenses. Violations and infractions, as noncriminal offenses, can only have a fine as punishment - no term of imprisonment can be authorized or imposed for their violation. Misdemeanors, a criminal offense, are the

---

<sup>1</sup> Currently \$300, the materials you supplied wanted the maximum raised to \$750.

<sup>2</sup> The maximum penalty for a violation is \$500. AS 12.55.035.

next step up and typically imprisonment for less than one year and a fine are authorized and imposed for their violation.<sup>3</sup> Felonies, a criminal offense, are the next step and involve periods of imprisonment of greater than one year, a fine, and a loss of certain civil rights.<sup>4</sup> With these proposed increases we would now have violations and infractions with a greater punishment than various misdemeanors that exist outside of AS 11. Further, the state would have to provide all the criminal safeguards, appointed counsel, trial by jury, etc., for these misdemeanor offenses with only a small fine as punishment while the state would not provide those criminal safeguards to persons accused of violations and infractions who would be subject to a greater punishment. We also knew of misdemeanor offenses outside of AS 11 that imposed a term of imprisonment but authorized a fine of less than these proposed increases. In short, we saw problems with increasing the maximum penalty for violations and infractions unless something was done with these unclassified misdemeanors outside of AS 11.

We also identified a problem with the piecemeal increase in maximum penalties that had traditionally occurred instead of a coordinated decision to increase the penalties of all similar offenses. For example, the maximum penalty for a violation was increased a number of years ago to \$500 but the penalty for an infraction, a comparable offense was not increased. Now we were considering an increase to the infraction maximum that leapfrogged the violation maximum. Mr. Guaneli and I agreed that making the penalties for violations and infractions the same seemed to improve the criminal law. Setting that maximum at whatever amount the legislature decided was appropriate and specifying the penalty for each in AS 12.55.035 also seemed to be an improvement.

To these ends I devoted a considerable period of time to identify all the unclassified misdemeanor offenses that exist outside of AS 11 (our criminal code) that only carry a penalty of a small fine and do not allow for the imposition of any period of imprisonment. These unclassified misdemeanor offenses are primarily relics from territorial and early statehood days when the state basically classified any miscellaneous offense as a misdemeanor and then decided whether to impose a term of imprisonment, a fine, or both for its violation. In the bill draft I converted each of these offenses to a

---

<sup>3</sup> The legislature has created two levels of misdemeanors in Alaska, a class A misdemeanor with imprisonment of up to one year (AS 12.55.135) and a fine (AS 12.55.035) and a class B misdemeanor with imprisonment of up to 90 days (AS 12.55.135) and a fine (AS 12.55.035). Unclassified misdemeanors exist outside of AS 11 and the penalty for their violation is provided in the sections creating the misdemeanor or if no penalty is provided the misdemeanor is classified as a class A misdemeanor. AS 11.81.250(c).

<sup>4</sup> The legislature has created class A, B, and C felonies and left certain serious felonies in AS 11 unclassified. Unclassified felonies outside of AS 11 exist and the penalty for their violation is listed in the statute creating the felony. If no penalty is provided then the felony is treated as a class C felony. AS 11.81.250(b).

Representative Tom Anderson

February 17, 2006

Page 3

violation.<sup>5</sup> I did this as, while these offenses were labeled misdemeanors, the legislature had not, in most cases in over 40 years of these offenses being on the books, felt they were serious enough to impose a period of imprisonment for their violation.<sup>6</sup>

I also searched out all the misdemeanor offenses outside of AS 11 that impose a period of imprisonment but a fine of \$500 or less and increased the possible fine to \$750 to match the increase being made to the noncriminal violations.<sup>7</sup> The legislature could also choose to convert each of these sections to a class A or class B misdemeanor, as appropriate, and remove any reference to a specific penalty thereby adopting the appropriate penalty in AS 12.55.135(imprisonment) and 12.55.035(fine).

In addition, I searched out all violations and infractions outside of AS 11 and removed any reference to a specific penalty thereby adopting the penalty authorized in AS 12.55.035.<sup>8</sup> If a violation or infraction outside of AS 11 provided for a minimum fine I retained that minimum and increased the maximum to \$750.<sup>9</sup>

At the specific request of the Department of Public Safety I converted a number of unclassified misdemeanors in AS 16 to class A misdemeanors as punishments authorized for violation of these sections were equal to class A misdemeanors.<sup>10</sup>

The provisions relating generally to the increase in the maximum fine for a violation or an infraction can be found in secs. 6, 29, 37, and 44.

GPL:med  
06-139.med

---

<sup>5</sup> These provisions can be found in secs. 2, 22, 23, 32, 34, and 40.

<sup>6</sup> An alternative would be for the legislature to convert each of these offenses to a class B misdemeanor if the legislature believes that these offenses should remain as criminal offenses.

<sup>7</sup> These provisions can be found in secs. 20, 21, 25, 26, 27, 28, 30, 31, 33, 36, 38, and 41.

<sup>8</sup> These provisions can be found in secs. 3, 5, 34, 35, 37, 39, 42, and 43.

<sup>9</sup> These provisions can be found in secs. 4, 12, and 24.

<sup>10</sup> These provisions can be found in secs. 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, and 19.