

HB

232

ALASKA STATE HOUSE OF REPRESENTATIVES

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State Capitol

Room 204

REPRESENTATIVE JOHN COGHILL

Memorandum

Date: April 29, 2005

To: Representative Lesil McGuire
Judiciary Committee Chair

From: Representative John Coghill

Re: HB 232 "An Act relating to property crimes."

I am requesting that HB 232 be scheduled for hearing at your earliest convenience. I have attached backup information. Thank you for your consideration.

LEGAL SERVICES

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

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FAX (907) 465-2029
Mail Stop 3101


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

MEMORANDUM

April 30, 2005

SUBJECT: HB 232 - Sectional Summary (Work Order No. 24-LS0381A)

TO: Representative John Coghill

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have requested a sectional summary of the above-described bill. Please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Sections 1 - 13 of the bill make corresponding amendments to theft and property offenses. The Alaska criminal code differentiates between levels of theft and property offenses based upon the value of the property taken, altered, damaged, or destroyed. These values were set when the criminal code was recodified in 1978. Generally, the levels are from lowest to highest: less than \$50 is a class B misdemeanor; \$50 to less than \$500 is a class A misdemeanor; \$500 to less than \$25,000 is a class C felony; \$25,000 or more is class B felony. Sections 1 - 13 adjust the valuations for the class A misdemeanor and class C felony offenses by changing the \$500 limit to \$2,500. Thus class A misdemeanors, which used to include property valuations of \$50 - \$499, are now \$50 - \$2,499 under the bill and class C felonies, which used to include property valuations of \$500 to \$24,999, are now \$2,500 to \$24,999.

Section 14 provides an applicability section.

GPL:med
05-326.med

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MEMORANDUM

January 17, 2005

SUBJECT: Monetary Amounts Differentiating Theft Offenses
(Work Order No. 24-LS0381)

TO: Representative John Coghill
Attn: Willow

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You requested a bill draft to raise the amount of monetary loss required for felony theft from \$500 to \$2,500. In discussing this request with Willow I informed her that this same monetary limit of \$500 applies to numerous other property type offenses to differentiate between felony and misdemeanor offenses. Merely changing the theft offenses might lead to some anomalous results, such as a person steals \$500 in cash from a business and gets a misdemeanor while a person shoplifts merchandise with a value of \$500¹ gets a felony. A person who writes a bad check in the amount of \$500,² engages in credit card fraud in the amount of \$500, commits criminal mischief (damages property) in the amount of \$500,³ misapplies property in the amount of \$500,⁴ steals a vehicle and causes damage to the owner in the amount of \$500,⁵ fraudulently uses an access device to obtain property or services in the amount of \$500,⁶ commits unlawful possession of property and the value of the property is \$500,⁷ removes identification marks on property

¹ AS 11.46.220.

² AS 11.46.280.

³ AS 11.46.482.

⁴ AS 11.46.620.

⁵ AS 11.46.360.

⁶ AS 11.46.285.

⁷ AS 11.46.270.

Representative John Coghill
January 17, 2005
Page 2

with a value of \$500,⁸ would also receive a felony while a person merely convicted of one of the theft offenses⁹ would only receive a misdemeanor.

My point is that all of these crimes against property are interrelated and were designed by the legislature to equally punish persons who cause equal monetary damage to their victims. That said the \$500 limit was selected by the legislature in 1978 and due to inflation represents a much lower limit than it did at that time. Raising the limit as you suggest seems perfectly reasonable but if you wish to make that change it might be wise to make the same change to each of the property crimes listed in this memorandum.

GPL:lmb
05-003.lmb

⁸ AS 11.46.260.

⁹ See AS 11.46.100.

Willow Seay

From: Doug Wooliver [dwooliver@courts.state.ak.us]
Sent: Wednesday, April 13, 2005 10:21 AM
To: Willow Seay
Subject: RE: HB 232

Good morning, Willow. Sorry for taking so long to get back with you but I have been trying to get some idea of how this would impact the courts. This will definitely save us time and money. What I have been unable to figure out is how much of either. I will probably submit an indeterminate negative fiscal note saying that the bill will save us money but that we don't have a way to quantify the amount. I have checked with the Department of Law to see if they have some idea of savings and they don't have that kind of information either. I will check with the Public Defender Agency to see if any of the statistics they have will help us with this.

Doug

-----Original Message-----

From: Willow Seay [mailto:Willow_Seay@legis.state.ak.us]
Sent: Tuesday, April 05, 2005 3:50 PM
To: dwooliver@courts.state.ak.us
Subject: HB 232

Doug,

Would you please take a look at HB 232 and let our office know what the court system thinks about the bill. Our intent is to ease up the system and am hoping that you could give some insight as to whether or not that would be the case.

Thank you,

Willow Seay
Legislative Aide
Rep. John Coghill

Willow Seay

From: Linda Wilson [linda_wilson@admin.state.ak.us]
Sent: Thursday, April 14, 2005 1:48 PM
To: Rep. John Coghill; Willow Seay; Rynnieva Moss
Subject: HB 232

Rep. Coghill, thank you so much for introducing this bill. The Agency has been seeking the introduction of a bill like this to raise the dollar amount of theft related crimes, so that we are more in line with current dollar values. For the most part, these amounts were set in the mid-seventies, and have not been adjusted since for inflation. If I can be of any help please let me know.

Also, thanks for your important work on HB 53 protecting the right of parents and families.
Linda Wilson

Willow Seay

From: Todd Sharp [todd_sharp@dps.state.ak.us]
Sent: Thursday, April 21, 2005 8:13 AM
To: Willow Seay
Cc: Cliff Stone
Subject: HB232

DPS does not have any major objection to the raising of the \$ value on these crimes. Overall it just reduces the # of felonies filed and grand juries needed. It should result in about the same amount of work on the part of law enforcement to investigate, prepare reports etc. whether the case is a C felony or A misdemeanor.

ALASKA DEPARTMENT OF LAW
CRIMINAL DIVISION

HICKEY
CRIMINAL
REVISION IN '11

CRIMINAL LAW MANUAL



DANIEL W. HICKEY, CHIEF PROSECUTOR
PROFESSOR BARRY J. STERN, EDITOR

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AUGUST 1985

INTRODUCTION: HISTORY OF THE ALASKA
CRIMINAL CODE REVISION AND SUBSEQUENT AMENDMENTS

In 1975, Alaska's criminal law was primarily based on Oregon statutes that existed at the end of the nineteenth century.^{1/} Prior to 1899, the Alaska Government Act of 1884 had provided that "the general laws of the State of Oregon now in force are hereby declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this act or the laws in the United States."^{2/} In 1899, Congress approved a criminal code for Alaska based primarily on Oregon law.^{3/} Most of these century-old Oregon criminal statutes were still in effect in Alaska in 1975 even though Oregon itself enacted a revised criminal code in 1971. In 1975, Alaska's criminal law was filled with outdated statutes, imprecise and obsolete terminology, needless distinctions and overly specific and sometimes unconstitutional provisions. The criminal law seemed to deal more adequately with concerns of nineteenth century Oregon than it did with problems of twentieth century Alaska.

1/ See generally, Brown, The Sources of the Alaska and Oregon Codes (pts. 1,2,), 2 U.C.L.A. - ALASKA L. REV. 15,87.

2/ Alaska Government Act of 1884, ch. 53, § 7, 23 Stat. 25-26 (1884).

3/ Act of March 3, 1899, ch. 429, 430, Stat. 1253. Other provisions were derived from New York and Ohio. See Brown, supra note 1, at 94-97.

AS 11.46.110

CONSOLIDATION OF THEFT OFFENSES: PLEADING AND PROOF

NEW CRIMINAL CODE

Sec. 11.46.110. CONSOLIDATION OF THEFT OFFENSES: PLEADING AND PROOF. (a) Each instance of conduct defined as theft under AS 11.46.100 constitutes theft in the first, second, third, or fourth degree.

(b) An accusation of theft is sufficient if it alleges that the defendant committed theft of property or services of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(c) Proof that the defendant engaged in conduct constituting theft as defined in AS 11.46.100 is sufficient to support a conviction based upon any indictment, information, or complaint for theft. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE - None.

COMMENTARY

From Senate Journal Supp. No. 47, at 32 (June 12, 1978):

AS 11.46.110 specifies the procedural consequences resulting from the consolidation of theft offenses. Under the Code a charge of theft is sufficient without designating the particular means by which the property or services was obtained. The section serves to underscore one of the chief aims of the article: elimination of the confusing distinctions among the most typical theft offenses. See generally, State v. Jim, 13 Or. App. 201, 508 P.2d 462 (1973) interpreting similar language in the Oregon consolidated theft statute.

See also TD III, 22-23.

CROSS REFERENCES

Theft defined - AS 11.46.100
Degrees of theft - AS 11.46.120 -- 11.46.150

AS 11.46.120 -- 11.46.150

THEFT IN THE FIRST, SECOND,
THIRD, AND FOURTH DEGREE

NEW CRIMINAL CODE

Sec. 11.46.120. THEFT IN THE FIRST DEGREE. (a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is \$25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4, ch. 166 SLA 1978)

Sec. 11.46.130. THEFT IN THE SECOND DEGREE. (a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive; or

(3) the property is taken from the person of another.

(b) Theft in the second degree is a class C felony. (§ 4, ch. 166 SLA 1978)

Sec. 11.46.140. THEFT IN THE THIRD DEGREE. (a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$50 or more but less than \$500; or

(2) the property is a credit card.

(b) Theft in the third degree is a class A misdemeanor.
(§ 4, ch. 166 SLA 1978)

Sec. 11.46.150. THEFT IN THE FOURTH DEGREE. (a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor.
(§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

See former AS 11.20.140-510, statutes on theft related offenses for various penalties; AS 11.15.250, Larceny from the person.

COMMENTARY

From Senate Journal Supp. No. 47, at 32-33 (June 12, 1978):

A. Section 11.46.120. Theft in the First Degree

A person commits theft in the first degree, a class B felony, when he commits theft as described in AS 11.46.100 and the value of the property or service that is the subject of theft is \$25,000 or more.

B. Section 11.46.130. Theft in the Second Degree

Subsection (1) provides that theft in the [second] degree, a class C felony, is committed if a person commits theft as described in AS 11.46.100 and the value of the property or services that is the subject of theft is \$500 or more.

Subsection (2) provides that the theft of any firearm or explosive, regardless of value, is theft in the second degree. This provision is included because of the frequency with which stolen firearms and explosives are used in committing other crimes. The terms "firearm" and "explosive" are defined in AS 11.46.900(b).

Subsection (3) provides that the theft of any property from the person is treated as second degree theft. This is consistent with existing AS 11.15.250, larceny from a person, which treats non-forcible thefts from the person (i.e., picking

a pocket) as a felony, regardless of the value of the stolen property. Note, however, that if force is used the defendant has committed the more serious crime of robbery.

C. Sections 11.46.140-150. Theft in the Third and Fourth Degree

Theft of property or services worth between \$50 and \$500 or the theft of a credit card (defined in AS 11.81.900(b)(8)) is a class A misdemeanor, theft in the third degree.

Theft in the fourth degree, a class B misdemeanor, is committed by the theft of property or services worth less than \$50.

See also TD III, 24-27.

CROSS REFERENCES

Definition of "property," "services," "firearm," "explosive," "credit card" - AS 11.81.900(b)

Theft defined - AS 11.46.100

Consolidation of theft offenses: pleading and proof - AS 11.46.110

Determination of value; aggregation of amounts - AS 11.46.980

Offenses defined by age or value - AS 11.81.615

Robbery in the first and second degree - AS 11.41.500, 11.41.510

The requirements of this statutes are (1) the obtaining of property by the defendant (2) knowing it to have been lost, mislaid or delivered to him by mistake and (3) failing to take reasonable measures to restore the property to its owner (4) with intent to deprive the owner of the property. Subsection (b) specifically lists notification of a peace officer or the owner as a "reasonable measure" to restore property.

See also TD III, 28-30.

CROSS REFERENCES

Definition of "property," "peace officer" - AS 11.81.-900(b)

Definition of "intentionally," "knowingly" - AS 11.81.-900(a)

Definition of "obtain," "property of another," "deprive" - AS 11.46.990

Theft defined - AS 11.46.100(2)

Consolidation of theft offenses: pleading and proof - AS 11.46.110

Theft in the first, second, third, and fourth degree - AS 11.46.120 -- 11.46.150

AS 11.46.160

THEFT OF LOST OR MISLAID PROPERTY

NEW CRIMINAL CODE

Sec. 11.46.160. THEFT OF LOST OR MISLAID PROPERTY. (a)
A person commits theft of lost or mislaid property if the person obtains property of another knowing that the property was lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and the person fails to take reasonable measures to restore the property to the owner with intent to deprive the owner of the property.

(b) As used in this section "reasonable measures" includes notifying the identified owner or a peace officer.
(§ 4, ch. 166 SIA 1978)

PRIOR CRIMINAL CODE

Sec. 11.20.260. RETENTION OF LOST PROPERTY. A person who finds lost property and appropriates it to his own use or to the use of another person not entitled to it, without (1) immediately or within a reasonable time advertising that fact in a paper of general circulation published nearest the place where found, and setting out a full and true description of the property, with marks of identification, if any, or (2) notifying the peace officer nearest to the place where found and giving a full and true description of the property, together with the time, place and circumstances under which found, is guilty of larceny and is punishable as provided in § 140 of this chapter. The finder of the property may retain it until reimbursed for the cost of advertising and preserving or protecting the property.

COMMENTARY

From Senate Journal Supp. No. 47, at 35 (June 12, 1978):

Pursuant to AS 11.46.100(2), a person commits theft if he commits conduct described in AS 11.46.160, theft of lost or mislaid property.

AS 11.46.180

THEFT BY DECEPTION

NEW CRIMINAL CODE

Sec. 11.46.180. THEFT BY DECEPTION. (a) A person commits theft by deception if, with intent to deprive another of property or to appropriate property of another to oneself or a third person, the person obtains the property of another by deception.

(b) In a prosecution based on theft by deception, if the state seeks to prove that the defendant used deception by promising performance which the defendant did not intend to perform or knew would not be performed, that intent or knowledge may not be established solely by or inferred solely from the fact that the promise was not performed.

(c) As used in this section, "deception" has the meaning ascribed to it in AS 11.81.900 but does not include falsity as to matters having no pecuniary significance or "puffing" by statements unlikely to deceive reasonable persons in the group addressed. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

Sec. 11.20.360. OBTAINING MONEY OR PROPERTY BY FALSE PRETENSES. A person who, by false pretenses or by a privy or false token, and with intent to defraud, obtains, or attempts to obtain money or property from another, or who obtains, or attempts to obtain, with intent to defraud, the signature of a person to a writing, the false making of which is a forgery, upon conviction, is punishable by imprisonment in the penitentiary for not less than one nor more than five years.

See also AS 11.20.380, False invoice to defraud insurer; AS 11.20.390, Fraudulent conveyance; AS 11.20.450, False pretenses on soliciting for organizations.

COMMENTARY

From Senate Journal Supp. No. 47, at 35-37 (June 12, 1978):

AS 11.46.80 provides that a person commits theft if, acting with the specified intent "he obtains property of another by deception." To insure that the criminal courts are not swamped with cases which should be treated as civil breach of contract claims, subsection (b) requires that the deception be established by more than a mere showing that the defendant's promise was not kept.

"Deception" is defined in AS 11.81.900(b)(14) to cover five forms of conduct. Paragraph (A) codifies the traditional false pretenses concept of knowingly creating a false impression, but broadens its scope to include confirming another's impression which the defendant does not believe to be true. The false impression may relate to law, value, intention, or other state of mind. The traditional restriction to "existing facts" is rejected, as is the requirement of a "false token."

If the defendant knowingly fails to correct a false impression which he has previously created he has committed deception under paragraph (B). Paragraph (C) provides that deception also occurs when a seller knowingly prevents a buyer from acquiring relevant information to the disposition of property or services.

Paragraph (D) reaches the conduct currently covered by AS 11.20.400 - conveying an interest in property and failing to disclose a claim which impairs the enjoyment of the property.

Paragraph (E) provides that a person obtains property by deception if he promises performance which he intends or knows will not be performed. The original promise is actually the creating of a false impression under paragraph (A). However, it is advisable to provide specifically for theft by a false promise to emphasize that the common law restriction to "existing facts" cannot be interpreted to exempt false promises from the coverage of the theft statute.

AS 11.46.180 provides that "deception" does not include falsity as to matters having no pecuniary significance, such as a false statement by a car salesman that he belongs to the Elks in order to sell a car to an enthusiastic Elk. The subsection also provides that "deception" does not include "puffing" by statements unlikely to deceive ordinary persons in the group addressed. An example of "puffing" would be a salesman's statement that "this shampoo will make persons of the opposite sex fall all over you."

It should also be noted in AS 11.46.985 the Code specifically rejects any possible defense that deception cannot occur unless a person was deceived. Frauds involving machines, ranging from inserting a slug into a parking meter to large scale computer frauds, will be covered under the consolidated theft statute.

See also TD III, 30-34.

CROSS REFERENCES

Definition of "property," "deception" - AS 11.81.900(b)
Definition of "deprive another of property," "appropriate property of another to himself or a third person," "property of another," "obtains" - AS 11.46.990
Definition of "intentionally," "knowingly" - AS 11.81.-900(a)
Theft defined - AS 11.46.100(3)
Consolidation of theft offenses: pleading and proof - AS 11.46.110
Theft in the first, second, third, and fourth degree - AS 11.46.120 -- 11.46.150
Scheme to defraud - AS 11.46.600
Deceptive business practices - AS 11.46.710
Deceiving a machine - AS 11.46.985

AS 11.46.190

THEFT BY RECEIVING

NEW CRIMINAL CODE

Sec. 11.46.190. THEFT BY RECEIVING. (a) A person commits theft by receiving if the person buys, receives, retains, conceals, or disposes of stolen property with reckless disregard that the property was stolen.

(b) As used in this section, "receives" includes acquiring possession, control, or title, or lending on the security of the property. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

Sec. 11.20.350. BUYING, RECEIVING, OR CONCEALING STOLEN PROPERTY. A person who buys, receives, or conceals money, goods, bank notes, or other thing which may be the subject of larceny and which has been taken, embezzled, or stolen from another person, knowing it to have been taken, embezzled, or stolen, is punishable by a fine of not more than \$1,000 and by imprisonment for not less than one year nor more than three years.

COMMENTARY

From Senate Journal Supp. No. 47, at 37-38 (June 12, 1978):

The Code provision provides that a person commits theft if he "buys, receives, retains, conceals, or disposes of stolen property with reckless disregard that the property was stolen." The term "stolen property" is defined in AS 11.46.990(7).

The statute does not require that the defendant "know" that the property was stolen; reckless disregard as to this element is sufficient. The definition of recklessly in AS 11.81.900(a)(3) would require the state to establish that the defendant was actually aware and consciously disregarded a substantial and unjustifiable risk that the property was stolen. Further, the defendant's disregard of the risk that the property was stolen must constitute "a gross deviation from the standard of conduct that a reasonable person would observe in the situation." Buying a new color television from a person in the street for \$50 would be an example of conduct done with "reckless disregard" as to whether the property was stolen.

See also TD III, 34-36.

CROSS REFERENCES

Definition of "stolen property" - AS 11.46.990
Definition of "recklessly" - AS 11.81.900(a)
Definition of "property" - AS 11.81.900(b)
Theft defined - AS 11.46.100(4)
Consolidation of theft offenses: pleading and proof -
AS 11.46.110
Theft in the first, second, third, and fourth degree -
AS 11.46.120 -- 11.46.150

AS 11.46.200

THEFT OF SERVICES

NEW CRIMINAL CODE

Sec. 11.46.200. THEFT OF SERVICES. (a) A person commits theft of services if

(1) the person obtains services, known by that person to be available only for compensation, by deception, force, threat, or other means to avoid payment for the services; or

(2) having control over the disposition of services of others to which the person is not entitled, the person knowingly diverts those services to the person's own benefit or to the benefit of another not entitled to them; or

(3) the person obtains the use of computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, with reckless disregard that the use by that person is unauthorized.

(b) Absconding without paying for hotel, restaurant, or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.

(c) A person may not be prosecuted under this section for theft of cable, microwave, subscription, or pay television or other telecommunications service if the service was obtained through the use of a device designed and used to intercept electromagnetic signals directly from a satellite, including a device commonly referred to as a home earth station. (§ 4,

ch. 166 SLA 1978; paragraph (a)(3) added by § 1, ch. 79 SLA 1984; subsection (c) added by § 1, ch. 114 SLA 1984)

PRIOR CRIMINAL CODE

See former AS 11.20.480, Defrauding hotel or boardinghouse operator; AS 11.20.495, Fraudulent use of telecommunication service.

COMMENTARY

From Senate Journal Supp. No. 47, at 38 (June 12, 1978):

The purpose of AS 11.46.200 is to protect both individuals and commercial enterprises that supply services to the public from conduct now only partly covered by existing statutes. "Services" is defined broadly in AS 11.81.900(b)(50) to include all types of services mentioned in existing law but, in addition, specifically covers theft of labor and professional services.

Subsection (a)(1) covers the obtaining of services by deception, force, threat or other means to avoid payment for the services. Enforceability is simplified by subsection (b), which provides that absconding without paying for hotel, restaurant or other similar services is prima facie evidence that the services were obtained by deception.

Theft of services also occurs when a person improperly diverts services under his control to his or another's benefit. Paragraph (a)(2) would cover, for example, the foreman of a painting crew who has his subordinates paint his house on company time.

[Note: The legislature did not adopt any commentary to accompany the 1984 amendments to this statute.]

See also TD III, 39-41.

CROSS REFERENCES

Definition of "services," "deception," "force," "threat," "knowingly" - AS 11.81.900

Definition of "obtain," "access," "computer," "computer network," "computer system," "computer program," "data" - AS 11.46.990

Theft defined - AS 11.46.100(5)

Consolidation of theft offenses - AS 11.46.110 -- 11.46.--

150

Criminal mischief in the third degree - AS 11.46.484

Criminal use of a computer - AS 11.46.740

AS 11.46.210

THEFT BY FAILURE TO MAKE REQUIRED
DISPOSITION OF FUNDS RECEIVED OR HELD

NEW CRIMINAL CODE

Sec. 11.46.210. THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF FUNDS RECEIVED OR HELD. (a) A person commits theft by failure to make required disposition of funds received or held if the person

(1) obtains property from anyone or personal services from an employee upon an agreement or subject to a known legal obligation to make specified payment or other disposition to a third person, whether from that property or its proceeds or from the person's own property to be reserved in equivalent amount; and

(2) exercises control over the property or services as the person's own and fails to make the required payment or disposition.

(b) It is not a defense to a prosecution based on theft by failure to make required disposition of funds received or held that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.

(c) In a prosecution based on theft by failure to make required disposition of funds received or held, the fact that the defendant was a fiduciary or an officer or employee of a government or a financial institution is prima facie evidence

(1) that the defendant exercised control over property or services as the defendant's own if the defendant

failed to pay or account upon lawful demand or if an audit reveals a shortage or falsification of accounts; and

(2) that the defendant knew any legal obligation relevant under (a)(1) of this section. (§ 4, ch. 166 SLA 1978; subsection (b) amended by § 10, ch. 102 SLA 1980)

PRIOR CRIMINAL CODE - None.

COMMENTARY

From Senate Journal Supp. No. 47, at 39-40 (June 12, 1978):

It is questionable whether existing Alaska law covers the situation where a person receives property or services by promising to dispose of it in a certain way, exercises control over the property or services and fails to fulfill the obligation. The most typical examples are the employer who withholds amounts from his employees' pay for taxes, or the storekeeper who receives contributions for charity later to be transmitted by check to the ultimate charity recipient, and simply keeps the money.

The conduct described by subsection (a)(1) is criminal only if the holder of the funds knows of his legal obligation to pay. Enforcement of this section is made easier by the prima facie evidence provision of subsection (c) that an employee or officer of the government or a financial institution or a fiduciary knows his relevant legal obligations. Such a person is also presumed to have dealt with the held funds as his own if he fails to account for the funds on lawful demand, or if an audit reveals a shortage or falsification of accounts. The terms "government" and "fiduciary" are defined in AS 11.-81.990(b). The term "financial institution" is defined in AS 11.46.990(3).

Subsection (b) provides an exception to the rule that requires stolen property to be specifically identified. A person who violates this section will not escape conviction simply because he has mingled the victim's money with his own funds.

From Senate Journal Supp. No. 44, at 8 (May 29, 1930):

The amendment makes no substantive change in this statute but conforms language in subsection (b) to the Code's consolidated theft statute. The amendment clarifies that a person who engages in conduct described in AS 11.46.210 is prosecuted for "Theft" under AS 11.46.120-150 and not for

"Theft by Failure to Make Required Disposition of Funds Received or Held" (See AS 11.46.110).

See also TD III, 41-42.

CROSS REFERENCES

Definition of "property," "services," "fiduciary," "government" - AS 11.81.900(b)

Definition of "financial institution," "obtains" - AS 11.-46.990

Definition of "knowingly" - AS 11.81.900(a)

Theft defined - AS 11.46.100(6)

Consolidation of theft offenses: pleading and proof - AS 11.46.110

Theft in the first, second, third, and fourth degree - AS 11.46.120 -- 11.46.150

Misapplication of property - AS 11.46.620

AS 11.46.220, 11.46.230

CONCEALMENT OF MERCHANDISE;
REASONABLE DETENTION AS A DEFENSE

NEW CRIMINAL CODE

Sec. 11.46.220. CONCEALMENT OF MERCHANDISE. (a) A person commits the crime of concealment of merchandise if without authority the person knowingly conceals on or about the person the merchandise of a commercial establishment, not purchased by the person, while still upon the premises of the commercial establishment, with intent to deprive the owner of the merchandise or with intent to appropriate the merchandise.

(b) Merchandise found concealed upon or about the person which has not been purchased by the person is prima facie evidence of knowing concealment.

(c) Concealment of merchandise is

(1) a class C felony if the merchandise is a firearm or the value of the merchandise is \$500 or more;

(2) a class A misdemeanor if the value of the merchandise is \$50 or more but less than \$500;

(3) a class B misdemeanor if the value of the merchandise is less than \$50. (§ 4, ch. 166 SLA 1978; amended by § 11, ch. 102 SLA 1980)

Sec. 11.46.230. REASONABLE DETENTION AS DEFENSE. (a) In a civil or criminal action upon the complaint of a person who has been detained in or in the immediate vicinity of a commercial establishment for the purpose of investigation or

questioning as to the ownership of merchandise, it is a defense that

(1) the person was detained in a reasonable manner and for not more than a reasonable time to permit investigation or questioning by a peace officer or by the owner of the commercial establishment or the owner's agent; and

(2) the peace officer, owner, or owner's agent had probable cause to believe that the person detained was committing or attempting to commit concealment of merchandise.

(b) As used in this section, "reasonable time" means the time necessary to permit the person detained to make a statement or refuse to make a statement, and any additional time necessary to examine employees and records of the commercial establishment relative to the ownership of the merchandise. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

See former AS 11.20.275, Concealment of merchandise; AS 11.20.277, Reasonable detention as defense.

COMMENTARY

From Senate Journal Supp. No. 47, at 40 (June 12, 1978):

AS 11.46.220 is derived from existing AS 11.20.275 but allows for felony prosecutions when over \$500 in merchandise is involved.

AS 11.46.230 is derived from existing AS 11.20.277. It provides that a peace officer, or the owner of a store or his agent can detain a person when he has probable cause that the person has committed shoplifting. Note that the more clearly defined term "probable cause" has been substituted for the existing term "reasonable cause" in subsection (a)(2).

From Senate Journal Supp. No. 44, at 8 (May 29, 1980):

The 1980 amendments to AS 11.46.220 make two changes to the Concealment of Merchandise statute. The first is a

technical one and clarifies the intent element in language that more closely parallels the general theft provisions. See AS 11.46.100(1). While the definition of "intent to deprive" (AS 11.46.990(2)) is broad enough to include conduct included within the definition of "intent to appropriate" (AS 11.46.-990(1)), it is preferable to closely parallel the general language of the theft statutes in the Concealment of Merchandise statute.

The second change is to provide that the concealment of any firearm, regardless of value, is a class C felony. This amendment is intended to conform the Concealment of Merchandise statute with the general theft statutes which provide that the theft of any firearm is a class C felony. See, AS 11.46.-130(a)(2).

See also TD III, 42-43.

CROSS REFERENCES

Definition of "intentionally," "knowingly" - AS 11.81.-900(a)

Definition of "deprive" - AS 11.46.990

Determination of value; aggregation of amounts - AS 11.-46.980

Offenses defined by age or value - AS 11.81.615

AS 11.46.260, 11.46.270

REMOVAL OF IDENTIFICATION
MARKS; UNLAWFUL POSSESSION

NEW CRIMINAL CODE

Sec. 11.46.260. REMOVAL OF IDENTIFICATION MARKS. (a) A person commits the crime of removal of identification marks if, with intent to cause interruption to the ownership of another, the person defaces, erases, or otherwise alters or attempts to deface, erase, or otherwise alter any serial number or identification mark placed or inscribed on a propelled vehicle, bicycle, firearm, movable or immovable construction tool or equipment, appliance, merchandise, or other article or its component parts.

(b) Removal of identification marks is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared is \$500 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is \$50 or more but less than \$500;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared is less than \$50. (§ 4, ch. 166 SLA 1978)

Sec. 11.46.270. UNLAWFUL POSSESSION. (a) A person commits the crime of unlawful possession if the person possesses a propelled vehicle, bicycle, firearm, movable or immovable construction tool or equipment, appliance,

merchandise or other article or its component parts knowing that the serial number or identification mark placed on it by the manufacturer or owner for the purpose of identification has been defaced, erased, or otherwise altered with the intent of causing interruption to the ownership of another.

(b) Unlawful possession is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared is \$500 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is \$50 or more but less than \$500;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared is less than \$50. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE - None.

COMMENTARY

From Senate Journal Supp. No. 47, at 40-41 (June 12, 1978):

The crime of removal of identification marks prohibits the defacing, erasing or the altering of a serial number or identification mark "with intent to cause interruption to the ownership of another." The intent element prevents conviction of persons who alter their own property.

The crime of unlawful possession prohibits the possession of property "knowing that the serial number or identification mark ... has been erased, altered, changed or removed with the intent of causing interruption to ownership of another." There should be few problems in convincing a jury that a person discovered, for example, with ten television sets in his basement, all with their serial numbers removed, possessed that property knowing it had been altered with the intent to cause interruption to the ownership of another.

See also TD III, 46-47.

CROSS REFERENCES

Definition of "propelled vehicle," "firearm," "possess" - AS 11.81.900(b)

Definition of "intentionally," "knowingly" - AS 11.81.-900(a)

Theft by deception - AS 11.46.180

Determination of value; aggregation of amounts - AS 11.-46.980

Offenses defined by age or value - AS 11.81.615

AS 11.46.280

ISSUING A BAD CHECK

NEW CRIMINAL CODE

Sec. 11.46.280. ISSUING A BAD CHECK. (a) A person commits the crime of issuing a bad check if the person issues a check knowing that it will not be honored by the drawee.

(b) In a prosecution under this section, it is prima facie evidence that the drawer knew the check would not be honored by the drawee if

(1) payment of the check was refused by the drawee for lack of funds upon presentation within 30 days after issue, and the drawer failed to make full satisfaction of the amount due within 15 days after notice of dishonor was deposited as first class mail, addressed to the drawer at the address appearing on the dishonored check or the drawer's last known address; or

(2) the drawer had no account with the drawee at the time the check was issued.

(c) In this section,

(1) "amount due" means the face amount of the dishonored check plus all costs and protest fees assessed by the drawee;

(2) "check" means a draft, check, or similar sight order for the payment of money, but does not include a post-dated check or a promissory note:

(3) a person "issues" a check when as a drawer the person delivers it or causes it to be delivered to a person who

thereby acquires a right against the drawer with respect to the check; a person who draws a check with the intent that it be so delivered is considered to have issued it if the delivery occurs.

(d) Issuing a bad check is

(1) a class B felony if the face amount of the check is \$25,000 or more;

(2) a class C felony if the face amount of the check is \$500 or more but less than \$25,000;

(3) a class A misdemeanor if the face amount of the check is \$50 or more but less than \$500;

(4) a class B misdemeanor if the face amount of the check is less than \$50. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

Sec. 11.20.210. ISSUING CHECKS WITHOUT FUNDS OR CREDIT. A person is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both, if he

(1) makes, draws, utters, or delivers a check, draft or order drawn upon a bank or other depository, for payment of money, knowing at the time of the making, drawing, uttering or delivering that the maker or drawer does not have sufficient funds or credit with the bank or other depository for its payment in full, upon presentation, and without informing the payee or the person to whom it is delivered, at the time of the making, uttering, drawing or delivery of it, that the person making, drawing, uttering or delivering the check, draft or order does not have sufficient funds or credit with the bank or other depository for its payment in full, upon presentation, or

(2) has funds or credits at the time he makes, draws, utters, or delivers a check, draft or order sufficient for its payment, but who has knowingly drawn, made, uttered or delivered other checks, drafts or orders which, if presented in due course, would exhaust the funds or credits; or

(3) knows at the time he makes, draws, utters or delivers a check, draft or order, that for other reasons the

funds or credits will be exhausted by the time check, draft or order is presented; or

(4) knowingly, after drawing, making, uttering or delivering a check, draft or order, exhausts by any means the funds or credits upon which the check, draft or order is drawn before it is presented for payment.

Sec. 11.20.220. EVIDENCE OF KNOWLEDGE OF INSUFFICIENT FUNDS. The making, drawing, uttering, or delivering of a check, draft, or order, payment of which is refused by the drawee, is prima facie evidence of knowledge of insufficient funds or credit with the bank or other depository, against the maker or drawer, if the maker or drawer has not paid the drawee the amount due with cost and protest fees, within two days after receiving notice that the check, draft or order has not been paid by the drawee.

See also, AS 11.20.230, Drawing a check with insufficient funds; AS 11.20.240, Punishment for violation of § 230 of this chapter; AS 11.20.250, Evidence of intent to defraud.

COMMENTARY

From Senate Journal Supp. No. 47, at 41 (June 12, 1978):

The crime of issuing a bad check is committed when a person issues (defined in subsection (c)(3)) a check (defined in subsection (c)(2)) knowing that it will not be honored by the drawee. The penalty for issuing a bad check parallels the general theft provisions and is based on the face value of the check.

Under subsection (b), the state meets its initial burden of proving knowledge if it shows that the issuer of the bad check had no account with the drawee at the time the check was issued or that the drawee refused the check within 30 days of issue and the drawer of the check failed to make full satisfaction within 15 days after notice of dishonor was sent to him.

See also TD V, 28-31.

CROSS REFERENCES

Definition of "knowingly" - AS 11.81.900(a)

Theft by deception - AS 11.46.180

Determination of "value"; aggregation of amounts - AS 11.-46.980

AS 11.46.285, 11.46.290

FRAUDULENT USE OF A CREDIT CARD;
OBTAINING A CREDIT CARD BY FRAUDULENT MEANS

NEW CRIMINAL CODE

Sec. 11.46.285. FRAUDULENT USE OF A CREDIT CARD. (a) A person commits the crime of fraudulent use of a credit card if, with intent to defraud, the person uses a credit card to obtain property or services with knowledge that

- (1) the card is stolen or forged;
- (2) the card is expired or has been revoked or cancelled; or
- (3) for any other reason that person's use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

(b) Fraudulent use of a credit card is

- (1) a class C felony if the value of the property or services obtained is \$500 or more;
- (2) a class A misdemeanor if the value of the property or services obtained is \$50 or more but less than \$500;
- (3) a class B misdemeanor if the value of the property or services obtained is less than \$50. (§ 4, ch. 166 SLA 1978)

Sec. 11.46.290. OBTAINING A CREDIT CARD BY FRAUDULENT MEANS. (a) A person commits the crime of obtaining a credit card by fraudulent means if

(1) the person buys a credit card from a person other than the issuer or, as other than the issuer, the person sells a credit card;

(2) with intent to defraud, the person obtains control of a credit card as a security for debt; or

(3) with intent to defraud, the person makes a false statement in an application for a credit card.

(b) Obtaining a credit card by fraudulent means under (a)(1) or (2) of this section is a class C felony. Obtaining a credit card by fraudulent means under (a)(3) of this section is a class A misdemeanor. (§ 4, ch. 166 SLA 1978)

PRIOR CRIMINAL CODE

See former AS 11.22, Alaska Credit Card Crimes Act.

COMMENTARY

From Senate Journal Supp. No. 47, at 41-42 (June 12, 1978):

Obtaining property or services through the unauthorized use of a credit card is proscribed in AS 11.46.285. Penalties for the prohibited conduct parallel those provided for theft. However, because it is highly unlikely that the fraud will involve \$25,000, B felony penalties are not provided. Note that amounts obtained pursuant to one course of conduct may be aggregated in determining the degree of the crime. See AS 11.46.980, infra.

The crime of obtaining a credit card by fraudulent means specifies three forms of unlawful acts involving credit cards. The penalty for the conduct described in subsection (a)(1) and (2) is a class C felony, while A misdemeanor penalties are provided for violation of subsection (a)(3).

See also TD V, 53-56.

CROSS REFERENCES

Definition of "intent to defraud," "obtain" - AS 11.46.990
Definition of "credit card," "property," "services" -
AS 11.81.900(b)
Definition of "knowingly" - AS 11.81.900(a)