

SB

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<TARGET><BILL>SB 60</BILL><SUBJECT>SB
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February 14, 2017

The Honorable Pete Kelly
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Kelly:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; creating an exemption from payment of restitution for certain unlawful takings of big game animals; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; and adding a definition of 'electronic form.'

The bill would allow a person to correct a citation for not having a sport fishing, hunting, or trapping license, tag, or permit on their person, by bringing a copy of the license, tag, or permit that was valid at the time of the citation to the office of the citing officer or to court. There are many reasons why a person many not have a fishing, hunting, or trapping license on their person in the field. This provision would prevent what may have been an honest mistake from turning into an unnecessary conviction.

In addition, the bill would allow a person to show actual possession of a license or permit in paper or electronic form. Electronic form would mean the display of a license or permit on an electronic device, such as a mobile telephone, tablet, or computer. However, tags are not conducive to display in electronic format, and therefore are excluded from this provision.

In order to better manage issuance of a fishing, hunting, or trapping license, if a person has had their fishing, hunting, or trapping privileges revoked or suspended in this or any other state, this bill would prohibit them from obtaining a fishing, hunting, or trapping license in Alaska. A person should not be able to avoid sanctions merely by obtaining another license.

The bill also gives greater discretion to prosecutors and law enforcement by allowing almost all fish and game offenses to be charged as violations rather than criminal offenses. Currently, if a person violates certain fish and game laws, they can only be charged with a criminal offense. A criminal

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conviction is not always appropriate, nor is it necessarily the best outcome for the State or the offender. By creating the option of a violation where the offender acts without any culpable mental state, prosecutors and law enforcement can more appropriately enforce the State's fish and game laws while maximizing public use and enjoyment.

One of the ways Alaska manages its fish and game resources is through the sale of hunting and fishing licenses. The sale of licenses helps track the harvest of resources and sustains important conservation and management programs. Under the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs, the State receives significant federal funding for fish and game management activities that is matched at a 3:1 ratio using license revenue. When a person fails to obtain a license, the State loses an important funding source used to manage fish and game resources. The bill would allow the State to collect restitution when a person fails to obtain a lawful hunting or fishing license, including lost federal funds.

The bill also increases the strict liability fine limits on commercial fishing violations as well as restitution amounts for unlawfully taking an animal. The increased fines and restitution amounts are necessary to ensure that more people can use and enjoy the resource by deterring illegal fishing and hunting that harms other users.

Protecting the proper use of Alaska's resources is one of our most important responsibilities. I urge your prompt and favorable action on this measure.

Sincerely,



Bill Walker
Governor

Enclosure

**SB 60 – FISH & GAME: OFFENSES;LICENSES;PENALTIES
LEGISLATION SECTIONAL ANALYSIS**

February 15, 2017

Summary: This legislation will provide the Alaska Wildlife Troopers the authority to issue correctable citations, similar to those available for driver's licenses. This bill will prohibit a person from receiving a sport fishing, hunting, or trapping license in Alaska if their privileges have been suspended or revoked in this or another state. This bill increases the restitution for animals harvested illegally, standardizes penalties for offenses, and also provides an additional tool for the Alaska Wildlife Troopers in charging wildlife, fisheries, and habitat crimes by allowing for some offenses to be reduced to violations. Finally, the bill allows for the display of a license in an electronic format to reflect modernization efforts made to the fish and game licensing program.

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

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

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

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

(f) provides that a person charged with failing to have the appropriate sport fishing, hunting or trapping license in their actual possession may not be convicted if the person produces a license previously issued to the person that was valid at the time of the offense not later than 30 days after the issuance of the citation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Under AS 16.05.925 (b), this subsection provides for restitution amounts that the court may impose for illegally taken big game animals in Alaska. This section increases the restitution amounts by at least 50% that a person convicted of unlawfully taking big game may have to pay

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

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

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

- (1) The defendant voluntarily and immediately reports the unlawful take of the animal to ADFG or a state law enforcement officer engaged in fish and wildlife protection; and
- (2) Surrenders all salvaged portions of the animal including the horns, antlers, hide and skull as applicable.

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

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

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

Section 21 Under AS 16.10.030 "penalties for violations" and relating to section 20, this subsection provides for a person who violates AS 16.10.030 through AS 16.10.050 without any culpable mental state is guilty of a violation offense as provided in AS 12.55.

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

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

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

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

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

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

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

Section 29 Provides an effect July 1, 2017.