

MEMORANDUM**State of Alaska****Department of Law**

TO:	Sam Cotten, Commissioner Department of Fish and Game	DATE:	February 2, 2018
CC:	Bruce Dale, Director Division of Wildlife Conservation Tom Brookover, Director Division of Sport Fish Carol Petraborg, Director Division of Administrative Services	TEL. NO.:	907.269.5232
FROM:	Cheryl Brooking Assistant Attorney General Natural Resources	SUBJECT:	HB 260, and generally, electronic signatures, licenses, and other records

This memo is to address certain questions about HB 260, and general considerations regarding the use of electronic documents by the Department of Fish and Game.

For sport fishing, hunting, trapping, fur dealing, fish/fur/game farming, taxidermy, or control of nuisance wild birds and nuisance wild small mammals for compensation, all licenses, permits, tickets, tags etc. must be in actual possession and available to show upon request.¹ The current practice is for all hunting, fishing and trapping licenses to be physically signed on a paper document, but this is not a statutory requirement. The *statute* (Title 16) does not specify in what form the license or other document must be so all licenses, tags, stamps, and other documents may be provided in electronic form under the current statutes, but some *regulations* now require paper form for licenses, tags, stamps, permits, and harvest records.

The Uniform Electronic Transactions Act, first adopted in 2004, allows electronic documents and signatures by agreement of the parties to the transaction.²

No statutory change is necessary to allow licenses to be signed and carried electronically, but precautions should be in place to promote accuracy and security, and some regulations would need to be amended. Confirmation of citizenship and residency are required at time of purchase. Currently a license can be emailed and printed and physically signed. A person could carry the physical license or carry a photo of the

¹ AS 16.05.330; 5 AAC 75.005; 5 AAC 77.015; 5 AAC 92.012(b).

² See AS 09.80.010-195, generally. "A record or signature may not be denied legal effect or enforceability solely because it is in electronic form." AS 09.80.040(a).

license on a cell phone. Possible use of an electronic signature could reduce a step or two, and would give the department a signed license for the department's records.

No statutory change is necessary to authorize documents to be in possession in electronic form, but certain regulations would need to be amended to reflect the ability to contemporaneously record the take of fish or game. For example, 5 AAC 75.006(a) provides:

(1) a nontransferable harvest record is required and must be in the possession of each person taking and retaining a finfish for which an annual limit has been established; for a licensed angler, *a harvest record appears on the back of the angler's sport fishing license*; for an angler not required to have a sport fishing license, a harvest record may be obtained, without charge, from department offices and fishing license vendors;

(2) immediately upon landing a finfish for which an annual limit has been established, the angler shall enter the date, location (body of water fished), and species of the catch, *in ink, on the harvest record*; [Emphasis added.]

This regulation would need to be amended to allow either a harvest record in paper separate from the license for all license holders, or a method of recording electronically.

Similarly, with regard to taking game, 5 AAC 92.010 requires:

(a) The number of each harvest ticket issued to a hunter *must be entered on the hunter's license*. A harvest ticket issued the previous calendar year and still valid must also be *entered on the hunting license*. [Emphasis added.]

(b) After killing an animal for which a harvest ticket is required, the hunter shall remove immediately, before leaving the kill site, the day and month of the kill from the harvest ticket without removing any other day or month, and shall keep the validated harvest ticket in possession until the animal has been delivered to the location where it will be processed for human consumption.

Subsection (a) of this regulation would need to be amended to allow either a game harvest record in paper separate from the license for all license holders, or a method of recording electronically. Subsection (b) would need to be amended if the department is to issue electronic harvest tickets so that the kill can be promptly recorded in some manner.

The current version of HB 260 would add a new section, AS 16.05.348, and specifies particular licenses, tags or identification cards that could be in possession in electronic form. The "licenses" would be sport fishing, hunting, or trapping. The "tags" listed in subsection 348(b) are the waterfowl conservation tag and king salmon tag.

Commercial fishing licenses, fish and wildlife permits, and harvest records for fish and wildlife are among items that are not listed.

As stated above, under current statutes the department has the authority to allow any license, permit, or other documentation that must be in the actual possession of an individual to be in electronic form or to use an electronic signature. Regulations could be amended as changes are ready to be implemented by the department. **In considering HB 260, it would be helpful for the legislature to clarify whether it seeks to restrict the department's authority such that the department could only allow the items listed in subsection (b) to be in electronic form.**

As the enforcement agency, the Alaska Wildlife Troopers recommend the following considerations:

- An individual must produce a license upon request of a Trooper. Use of an electronic license could be an option, rather than a requirement. In some situations a paper license would be more feasible. (The burden of keeping a phone battery charged would be on the user.)
- The department could consider whether a photograph of a printed and signed license is acceptable. The department could also consider allowing secure electronic signatures.
- The use of a myAlaska account, which is now used for Permanent Fund dividends and by other state departments, could provide security and proof of residency.
- Harvest records that are now required to be recorded on the back of a license could be handled electronically or through a separate paper document to be in the possession of the individual.
- As changes in technology continue to advance, enforcement in the field should be an ongoing consideration.