

S B

339



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:


P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 455-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Bettye Fahrenkamp
Chair
Senator Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: January 11, 1990

RE: Senate Bill 339 -- "An Act relating to damage to, interference with, and tampering with subsistence fishing or subsistence hunting gear; and providing for an effective date."

SB 339 is designed to discourage the destruction of subsistence fishing and subsistence hunting gear. The bill establishes class A misdemeanor penalties for individuals who recklessly damage, interfere with or tamper with subsistence gear. If convicted of a class A misdemeanor, an individual is subject to a fine of up to \$5,000 and imprisonment for up to a year.

SB 339 was introduced in response to concerns about user group conflicts in regions where there is increasing pressure on wildlife and fisheries populations. I know of incidents in the Bristol Bay region where individuals have set up their subsistence fishing gear, left for a period of time, and have come back to find it wrecked.

These incidents of destruction are much more serious than ordinary crimes against property because they threaten an individual's or a family's ability to obtain the food they need to survive through the winter. For this reason, the bill includes a paragraph that provides for restitution, including compensation for the fish and game that otherwise would have been caught by the subsistence gear.

Your consideration of this bill would be greatly appreciated.

Attachments

Collateral references. — 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

Sec. 11.46.487. Forfeiture of property upon conviction. Firearms and other personal property, except a motor vehicle, used in aid of a violation of AS 11.46.460, 11.46.462, or 11.46.484(a)(7) may be forfeited to the state upon conviction of the offender for the crime. (§ 3 ch 52 SLA 1988)

Sec. 11.46.488. Littering. [Repealed, § 3 ch 149 SLA 1980. For current law, see AS 46.06.080.]

Sec. 11.46.490. Definitions. In AS 11.46.400 — 11.46.490, unless the context requires otherwise,

- (1) "highway" has the meaning given in AS 19.45.001;
- (2) "motor vehicle" has the meaning given in AS 28.40.100;
- (3) "official traffic control device" means a traffic control device that has been placed on a highway by authority of a state or municipal agency, a utility, or a contractor employed by a state or municipal agency or a utility;
- (4) "oil or gas pipeline or supporting facilities" means real property or tangible personal property used in the exploration for, production or refining of, or pipeline transportation of oil, gas, or gas liquids, except for property used solely in the retail distribution of oil or gas;
- (5) "tamper" means to interfere with something improperly, meddle with it, or make unwarranted alterations to its existing condition;
- (6) "traffic control device" includes a sign, signal, road marker, barricade, flare, warning light, reflector, railroad sign or signal, shield, insignia, milepost, or similar device intended to warn, inform, or control the flow of pedestrian, equestrian, bicycle, or motor vehicle traffic;
- (7) "utility" means an enterprise, whether publicly or privately owned or operated, which provides gas, electric, steam, water, sewer, or communications service, and any common carrier;
- (8) "widely dangerous means" means any difficult-to-confine substance, force, or other means capable of causing widespread damage, including fire, explosion, avalanche, poison, radioactive material, bacteria, collapse of a building, or flood. (§ 4 ch 166 SLA 1978; am § 4 ch 52 SLA 1988)

Reviser's notes. — Reorganized in 1988 to alphabetize the defined terms.

Cross references. — For definition of terms used in this chapter, see AS 11.46.990; for definition of terms used in

this title, see AS 11.81.900.

Effect of amendments. — The 1988 amendment added paragraphs (1)-(3) and inserted paragraph (6).

result (AS 11.81.630), and second-degree murder is an offense in which the culpable mental state pertaining to the result ("death") is imputed to be recklessness. *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982).

Nor to be considered in determining recklessness of conduct. — Due process is not violated by the provision in AS 11.81.900(a)(3) that intoxication is not to be considered in determining recklessness with regard to circumstances surrounding one's conduct. *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982).

Assault with a dangerous weapon. — The supreme court declined to hold that intoxication ought to be considered with respect to the general criminal intent necessary to the commission of the former crime of assault with a dangerous weapon. *Menard v. State*, 578 P.2d 966

(Alaska 1978). (Decided under former AS 11.70.030.)

Failure to remain at scene of accident. — Trial court did not err in instructing the jurors that they could not consider defendant's intoxication in deciding whether he acted knowingly with regard to the offenses of failing to remain at the scene of an accident and failing to render assistance to an injured person. *Williams v. State*, 737 P.2d 360 (Alaska Ct. App. 1987).

Applied in *Fox v. State*, 685 P.2d 1267 (Alaska Ct. App. 1984); *Abruska v. State*, 705 P.2d 1261 (Alaska Ct. App. 1985).

Cited in *Baden v. State*, 667 P.2d 1275 (Alaska Ct. App. 1983); *Brown v. State*, 739 P.2d 182 (Alaska Ct. App. 1987); *Stevens v. State*, 748 P.2d 771 (Alaska Ct. App. 1988).

Collateral references. — Drunkenness as affecting murder in second degree, 8 ALR 1052.

Intoxication as affecting deliberation, 79 ALR 904.

Modern status of rules as to voluntary intoxication as defense to criminal charge, 8 ALR3d 1236.

Drug addiction or related mental state as defense to criminal charge, 73 ALR3d 16.

When intoxication deemed voluntary so as to constitute a defense to criminal charge, 73 ALR3d 195.

Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630. AS 11.81.600 — 11.81.630 apply only to this title. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Stated in *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982).

Cited in *Brown v. State*, 739 P.2d 182 (Alaska Ct. App. 1987).

Article 6. Definitions.

Section 900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when

§ 11
the j
circu
fact
perso
perso
cond
had
that
(3)
stan
pers
tiffia
the)
const
sona
unav
pers
(4)
or to
fense
risk
must
const
able
(b)
requi
(1)
(A)
fense
(B)
prepr
(2)
bene
bene
(3)
pelle
perso
rate
unit
(4)
(11),
(5)
tal s
(6)
11.71

'00

AS

sci-
in-
not
did-
re-
at
en-
vil-
Ct.

67
te,
,
75
te,
te-
Ct.

ite
3d
so
al

S
3)

32

s

i
s
-
:

1

the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;



(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(2) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(3) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(4) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(5) "conduct" means an act or omission and its accompanying mental state;

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

| | | | |
|------------------------------------------------------------------------------|-------------------------|------------------------------------------------|--------------------|
| DEPARTMENT Fish and Game | DIVISION Subsistence | BILL NUMBER SB 339 | SPONSOR Zharoff |
| SHORT TITLE OF BILL Interfering with Subsistence Hunting and Fishing Gear | | | |
| DEPARTMENT POSITION Neutral | | | |
| PREPARED BY Robert Bosworth | DATE 1-17-90 | COMMISSIONER'S SIGNATURE <i>[Signature]</i> | DATE 1/17/90 |

SUMMARY

| | |
|---------------------------------------------------------|------------------------------------------------------|
| OTHER AGENCIES AFFECTED BY BILL Public Safety Law | CONSTITUENT GROUP(S) AFFECTED BY BILL Subsistence |
| ORGANIZATIONAL SUPPORT FOR BILL | ORGANIZATIONAL OPPOSITION TO BILL Unkown |

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Informal communication with constituents have suggested that interference with subsistence gear has occurred. The likelihood of such interference is expected to diminish with the passage of the bill, which makes such interference a misdemeanor.

ANALYSIS OF BILL PROGRAM EFFECTS

The effect of the bill would be to provide special protection for gill nets, crab pots, traplines, fish wheels, etc., all of which, at one time or another, no doubt have been subject to interference. Subsistence harvesters are among those least able to suffer such losses. Compensation for losses due to interfering with gear could be a problem, due to difficulty in determining the amount of the loss.

AMENDMENTS PROPOSED

The bill could be clarified with language specifying specific gear types (or examples: gill nets, traplines, fish wheels, crab pots, ect.). An affidavit from the victim should be acceptable as a basis for restitution. Interference may need to be better defined.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Damage to Subsistence Gear
Sponsor: Zharoff
Requestor: _____

Agency Affected: Public Safety, ADF&G
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact in FY90.

Prepared by: Warren W. Wiley
Division: Commissioner's Office
Approved by Commissioner: *Warren W. Wiley*
Agency: ADF&G

Phone: 465-4100
Date: 1/17/90
Date: Jan 17 1990

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Interfering With Subsistence BRU: Fish and Wildlife Protection
Gear
 Sponsor: Senators Zharoff, Kelly Component: Enforcement
 Requestor: Senate Resources

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|---------|-----|-----|-----|-----|-----|-----|
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|-----------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER/PROG RCPT | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Captain Conrad G. Seibel
 Division: Fish & Wildlife Protection

Phone: 269-5509
 Date: 1/12/90

Approved by Commissioner: A. H. English
 Agency: Department of Public Safety

Date: 1-17-90
 Page 1 of 1

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to... interference
 ...subsistence fishing or... hunting gear..."
 Sponsor: Sen. Zharoff
 Requestor: Senate Resources

Agency Affected: Department of Law
 BRU: Prosecution
 Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 19, 1990
Richard I. Pegues / FOR /
 Approved by Commissioner: Douglas B. Baily, Attorney General Date: January 19, 1990
 Agency: Department of Law

Distribution (by preparer):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 339

This bill amends AS 16.05 by adding a new section that provides that a person who recklessly damages, interferes with, or tampers with the subsistence fishing or subsistence hunting gear of another person is guilty of a class A misdemeanor. The new section also provides that a court shall order a person convicted of this offense to make restitution to the victim under AS 12.55.045, including compensation for actual expenses incurred by the victim to replace or substitute for fish and game that may otherwise have been caught.

Data is not available that would indicate to what extent interference with subsistence hunting and fishing occurs. It is the department's view that such occurrences probably also constitute the offense of criminal mischief in the fourth degree, under AS 11.46.486, which is a class B misdemeanor. Consequently, the bill will have the effect of raising this offense from a class B misdemeanor to a class A misdemeanor. Because the level of the offense is changed, and not the number of offenses, there should not be a fiscal impact for the Department of Law.