

HB

107

SENATE COMMITTEE REPORT

DATE. 2/1/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 107(FIN)

HB 107 HUNTING/FISHING INTERFERENCE

"An Act relating to unlawful obstruction or hindrance of hunting, fishing, trapping, or viewing of fish or game; and amending Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>Guthrie G. Green</i>			X	
<i>Gene Herrault</i> GOOD BILL!	X			
<i>[Signature]</i>	X			
CHAIR: <i>Ralph Jenkins</i>	✓			

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 14, 2006

SUBJECT: SCS CSHB 107(RES): physical interference defined
(Work Order No. 24-LS0444\C)

TO: Representative Jay Ramras
Attn: Jim Pound

FROM: Brian J. Kane *BJK*
Legislative Counsel

You have asked me to define what "physically interfering" means in relation to commercial fishing, sport fishing, and viewing.

However, it appears to me that the real issue here is how the "physically interfering" phrase interacts with the rest of the clause in the proposed AS 16.05.790(a)(3). From my reading of HB 107, the physical interference involves "equipment," not just two people actually coming in contact with each other.

The intent of this clause, as it appears from past notes on the bill, initially was to prevent one from intentionally physically interfering with another's gear or equipment in fishing or viewing situations. The situations you describe of one fisherman stepping in front of another or one viewer stepping in front of another do not seem to fit into the parameters set in (a)(3). From my reading, (a)(3) is more aimed at a situation where one fisherman intentionally cuts the line of another, or something of that type of action. It does not appear that there is any cause of action created when one viewer steps in front of another viewer.

The problem, if this clause is being read in the wrong vein, may be that it reads: "physically interfering or tampering with equipment . . ." Perhaps this is being read as only the "tampering" relating to the equipment and not the physical interference. One solution to this problem may be to change the wording to: "physically interfering *with* or tampering with equipment . . ."

From my reading, and from the apparent intent of the initial bill request, the physical interference is aimed only at these acts being done toward someone's equipment, not an actual physical impediment as described in your examples.

If I may be of further assistance, please advise.

BJK:lmb:med
06-062.lmb

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Juneau, Alaska 99801-1182
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MEMORANDUM

January 31, 2006

SUBJECT: Interaction between hunter and photographer of wildlife
(CSHB 107(FIN); Work Order No. 24-LS0444\X)

TO: Representative Jay Ramras
Attn: Jim Pound

FROM: Brian J. Kane *BJK*
Legislative Counsel

I have been asked to analyze the legal ramifications of a situation where a hunter shoots an animal while a photographer is trying to take a photo of said animal. Specifically, could the photographer make a pecuniary claim for this lost photo opportunity due to the actions of the hunter in shooting the animal?

It does not appear to me that a photographer would have any such claim against the hunter. The obstruction discussed in HB 107 must be intentional. AS 11.81.900(a)(1) defines "intentional":

(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;

Hence, if the hunter is not shooting the animal for the purpose of preventing the photographer from taking the picture, then it does not appear as if the hunter is in violation. If the hunter is lawfully hunting and not intentionally hindering the photographer's viewing of the wildlife, then it does not appear that there are any pecuniary claims on either side of this situation.

BJK:lmb
06-031.lmb

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.

Tourism & Trade

House State Affairs

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House District 10

House of Representatives

Sponsor Statement

SCS CS for HB 107(RES)

Senate Committee Substitute for Committee Substitute House Bill 107 (RES) is a change to existing statute regarding persons who hunt, fish, trap, or view wildlife in Alaska. Presently, if any of these people are obstructed from participating in this most basic of Alaskan experiences, they can seek relief in our courts. The courts are permitted to grant damages for most of the expenses except reasonable actual attorney's fees and costs. SCSCSHB 107 will allow the judge to grant full costs and reasonable and actual attorney fees.

There is a growing sentiment across the country that disturbing wildlife in any manner is unacceptable. Hunting, fishing, trapping, and viewing wildlife are considered an important part of why we live in Alaska and why thousands of tourists visit our state each year. Those individuals or groups who would hinder a wildlife experience know that most people will not take them to court because of the attorney fees and costs involved with litigation.

Alaskans and visitors should not be subjected to having to pay because of interference, obstruction, or hindrance of their most basic rights. SCSCSHB 107 will allow an opportunity for the prevailing party to recoup the actual costs associated with hindering an Alaskan Wildlife Experience.

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
Tourism & Trade
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Changes to AS 16.05.790 & .791

Change 1 (Page 2, Line 4&5)

Physically interfering or tampering language has been added to give law enforcement authority to charge an individual who has cut a trap line, destroyed nets or fish pots etc. to be actually charged with the crime. Currently the charges are filed under criminal mischief.

Change 2 (Page 2, Line 14 & 15)

This language exempts a law enforcement officer while performing their duties. The state was forced recently to settle a case involving a fish and wildlife protection helicopter that allegedly caused all of the fish to jump out of a net.

Change 3 (page 2, Line 20-22)

This language is the actual intent of the bill to allow people to recover reasonable actual attorney fees. There is an exemption for commercial fishing as limited openings often result in potential perceived violations.

**SENATE CS FOR CS FOR HOUSE BILL NO. 107(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

BY THE SENATE RESOURCES COMMITTEE

Offered: 2/1/06

Referred: Judiciary

Sponsor(s): REPRESENTATIVES RAMRAS, Kelly, Neuman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to unlawful obstruction or hindrance of hunting, fishing, trapping, or
2 viewing of fish or game; and amending Rule 82, Alaska Rules of Civil Procedure, and
3 Rule 508, Alaska Rules of Appellate Procedure."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. AS 16.05.790(a) is amended to read:

6 (a) Except as provided in (e) of this section, a person may not intentionally
7 obstruct or hinder another person's lawful hunting, fishing, trapping, or viewing of fish
8 or game by

9 (1) placing one's self in a location in which human presence may alter
10 the

11 (A) behavior of the fish or game that another person is
12 attempting to take or view; or

13 (B) feasibility of taking or viewing fish or game by another
14 person; [OR]

1 (2) creating a visual, aural, olfactory, or physical stimulus in order to
 2 alter the behavior of the fish or game that another person is attempting to take or view;

3 or

4 (3) physically interfering ^{with} or tampering with equipment being used
 5 for lawful hunting, fishing, trapping, or viewing purposes.

6 * Sec. 2. AS 16.05.790(d) is amended to read:

7 (d) In a prosecution under this section, it is an affirmative defense that the
 8 person was

9 (1) a law enforcement officer engaged in performing the duties of
 10 the office; or

11 (2) lawfully entitled to obstruct or hinder the hunting, fishing, trapping,
 12 or viewing of fish or game.

13 * Sec. 3. AS 16.05.791(b) is amended to read:

14 (b) A person aggrieved by a violation of AS 16.05.790 is entitled to recover
 15 general damages and special damages, including license and permit fees, travel costs,
 16 guide-outfitting fees, costs for special equipment and supplies, and other related
 17 expenses. The prevailing party in an action described in this subsection is entitled
 18 to costs and reasonable actual attorney fees.

19 * Sec. 4. The uncoded law of the State of Alaska is amended by adding a new section to
 20 read:

21 INDIRECT COURT RULE CHANGE. The provisions of AS 16.05.791(b), amended
 22 by sec. 3 of this Act, have the effect of amending Rule 82, Alaska Rules of Civil Procedure,
 23 and Rule 508, Alaska Rules of Appellate Procedure, by providing for the award of reasonable
 24 actual attorney fees to the prevailing party in an action brought by a person aggrieved by a
 25 violation of AS 16.05.790.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: SCS CSHB 107(RES)
 (S) Publish Date: 2/01/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title Hunting/Fishing Interference RDU _____
 Component _____
 Sponsor Representative Jay Ramras Component No. _____
 Requester Senate Resources

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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.)

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah A. Gilbertson, Legislative Liaison Phone 465-6137
 Division: Commissioner's Office Date/Time 1/20/06 1:51 PM
 Approved by: Commissioner McKie Campbell Date 1/20/2006
 Agency: Alaska Department of Fish and Game

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: SCS CSHB 107(RES)
 (S) Publish Date: 2/1/06

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to unlawful obstruction or
hindrance of hunting, fishing, trapping, or viewing..." RDU: CIVIL
 Sponsor: Representative Ramras Component: Torts and Workers' Compensation
 Requester: Senate Resources 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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 amends AS 16.05.791(b) by allowing a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or the viewing of fish or game to recover full actual attorney fees and costs of an action to collect damages, fees, and costs. An actual award of fees and costs against the State would be requested in the judgments and claims section of the annual supplemental appropriations bill and are thus not included in this fiscal note. The bill makes an exception for a law enforcement officer while performing the duties of the office.

Passage of this legislation is not anticipated to result in a fiscal impact for the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 1/23/06 8:51 AM
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 1/23/2006
 Agency: Department of Law

Sec. 16.05.790. Obstruction or hindrance of lawful hunting, fishing, trapping, or viewing of fish or game.

Statute text

(a) Except as provided in (e) of this section, a person may not intentionally obstruct or hinder another person's lawful hunting, fishing, trapping, or viewing of fish or game by

(1) placing one's self in a location in which human presence may alter the

(A) behavior of the fish or game that another person is attempting to take or view; or

(B) feasibility of taking or viewing fish or game by another person; or

(2) creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the fish or game that another person is attempting to take or view.

(b) For purposes of (a) of this section, "lawful" means

(1) in compliance with

(A) this title, regulations adopted under this title, or applicable federal statutes and regulations;

(B) the Marine Mammal Protection Act (P.L. 92-522) or the Endangered Species Act (P.L. 93-205); or

(C) federal regulations adopted under 16 U.S.C. 3111 - 3126 relating to subsistence hunting, fishing, or trapping on federal land; and

(2) with the permission of the private landowner if the hunting, fishing, trapping, or viewing of fish or game occurs on private land.

(c) Notwithstanding AS 12.25, only a peace officer may arrest a person for violating this section. A peace officer who has probable cause to believe that a person has violated this section may arrest or cite the person or order the person to desist.

(d) In a prosecution under this section, it is an affirmative defense that the person was lawfully entitled to obstruct or hinder the hunting, fishing, trapping, or viewing of fish or game.

(e) This section does not apply to

(1) lawful competitive practices among persons engaged in lawful hunting, fishing, or trapping;

(2) actions taken on private property with the consent of the owner; or

(3) the obstruction or hindrance of the viewing of fish or game by a person actively engaged in lawful fishing, hunting, or trapping.

(f) A person who violates this section is guilty of a misdemeanor and is punishable by a fine of not more than \$500 or imprisonment for not more than 30 days, or both.

History

(§ 1 ch 47 SLA 1991)

Rule 82. Attorney's Fees.

Text

(a) Allowance to Prevailing Party. Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) Amount of Award.

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

Judgement and, if awarded prejudgement interest

	Contested with trial	Contested without trial	Non Contested
First \$25,000	20%	18%	10%
Next \$75,000	10%	*8%	*3%
Next \$400,000	10%	*6%	*2%
Over \$500,000	10%	*2%	*1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

- (A) the complexity of the litigation;
- (B) the length of trial;
- (C) the reasonableness of the attorneys' hourly rates and the number of hours expended;
- (D) the reasonableness of the number of attorneys used;
- (E) the attorneys' efforts to minimize fees;
- (F) the reasonableness of the claims and defenses pursued by each side;
- (G) vexatious or bad faith conduct;
- (H) the relationship between the amount of work performed and the significance of the matters at stake;

- (I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;
- (J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and
- (K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(4) Upon entry of judgment by default, the plaintiff may recover an award calculated under subparagraph (b)(1) or its reasonable actual fees which were necessarily incurred, whichever is less. Actual fees include fees for legal work performed by an investigator, paralegal, or law clerk, as provided in subparagraph (b)(2).

(c) **Motions for Attorney's Fees.** A motion is required for an award of attorney's fees under this rule or pursuant to contract, statute, regulation, or law. The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days, or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees. A motion for attorney's fees in a default case must specify actual fees.

(d) **Determination of Award.** Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

(e) **Equitable Apportionment Under AS 09.17.080.** In a case in which damages are apportioned among the parties under AS 09.17.080, the fees awarded to the plaintiff under (b)(1) of this rule must also be apportioned among the parties according to their respective percentages of fault. If the plaintiff did not assert a direct claim against a third-party defendant brought into the action under Civil Rule 14(c), then

(1) the plaintiff is not entitled to recover the portion of the fee award apportioned to that party; and

(2) the court shall award attorney's fees between the third-party plaintiff and the third-party defendant as follows:

(A) if no fault was apportioned to the third-party defendant, the third-party defendant is entitled to recover attorney's fees calculated under (b)(2) of this rule;

(B) if fault was apportioned to the third-party defendant, the third-party plaintiff is entitled to recover under (b)(2) of this rule 30 or 20 percent of that party's actual attorney's fees incurred in asserting the claim against the third-party defendant.

(f) **Effect of Rule.** The allowance of attorney's fees by the court in conformance with this rule shall not be construed as fixing the fees between attorney and client.

Rule 508. Costs.

Text

- (a) **Dismissal or Denial.** If an appeal is dismissed or petition denied by the appellate court, costs shall not be allowed to the appellee or respondent, unless otherwise ordered by the court.
- (b) **Affirmance of Judgment.** In all cases of affirmance of a judgment or any order or decision of the superior court, costs shall be allowed to the appellee or respondent unless otherwise ordered by the court.
- (c) **Reversal or Partial Reversal.** In cases of reversal of any judgment, order or decision of the superior court, costs shall be allowed the appellant or petitioner unless otherwise ordered by the court. In cases of partial affirmance and partial reversal, the court will determine which party, if any, shall be allowed costs.
- (d) **Costs to be Awarded.** When costs are awarded in the appellate court, they shall include, unless the court otherwise orders and subject to Rules 210(b)(6) and (c)(6), the filing fee, the costs of preparing the transcript, premiums for any bond under Rule 204(c) or 204(d), and the costs of duplicating and mailing briefs and excerpts of records. Duplicating costs will not be awarded in excess of the rate generally charged by printers in the city in which counsel is located.
- (e) **Attorney's Fees.** Attorney's fees may be allowed in an amount to be determined by the court. If such an allowance is made, the clerk shall issue an appropriate order awarding fees at the same time that an opinion or an order under Rule 214 is filed. If the court determines that an appeal or cross-appeal is frivolous or that it has been brought simply for purposes of delay, actual attorney's fees may be awarded to the appellee or cross-appellee.
- (f) **Procedure.**
- (1) **Bill of Costs.** At the time an opinion or an order under Rule 214 is filed, the clerk shall notify the party or parties entitled to recover costs under subsections (b) and (c) of this rule. That party or parties shall serve and file an itemized and verified bill of costs within 10 days after the date of notice of the opinion or order. Date of notice is defined in Civil Rule 58.1(c). The bill of costs shall be limited to the items specified in subsection (d) of this rule. Failure to file a timely bill of costs is a waiver of the right to recover costs. Objections to the bill of costs may be filed within 7 days after service of the bill. Promptly after expiration of the time for filing objections, the clerk shall issue an itemized award of costs. A hearing on the bill of costs shall not be held unless requested by the clerk. The clerk may not delegate to a deputy clerk the authority to award costs in cases in which objection is filed, except with the approval of the chief justice. Return of the record shall not be delayed pending the award of costs.
- (2) **Reconsideration.** A party aggrieved by an order awarding costs under subsection (f)(1) of this rule or an order awarding attorney's fees under subsection (e) of this rule may file a motion for reconsideration within ten days after the date of notice of the order. The non-moving party may file a response within seven days after service of the motion. Reconsideration of an award of costs or attorney's fees under (f)(1) or (e) will be determined by an individual justice or judge. Full court reconsideration of such individual justice's or judge's decision may be sought pursuant to Appellate Rule 503(h)(2)(B).
- (3) **Rehearing.** If a timely petition for rehearing is filed, the clerk shall not award costs until the court has disposed of the case on rehearing. Supplemental or amended bills of costs may not be filed after disposition of a petition for rehearing unless requested by the court.
- (g) **Exemptions.**

(1) **Workers' Compensation Appeals.** In an administrative appeal from the Alaska Workers' Compensation Board or in an appeal from a denial of a claim of benefits under the Employment Security Act, an award of costs or attorney's fees shall not be made against the claimant in either the supreme court or the superior court unless the court finds that the claimant's position was frivolous, unreasonable, or taken in bad faith.

(2) In an administrative appeal from the Alaska Workers' Compensation Board, full reasonable attorney's fees will be awarded to a successful claimant. Counsel for the claimant shall serve and file an affidavit of services rendered on appeal within 10 days from the date of notice of an opinion or an order under Rule 214. Objections to the affidavit of services may be filed within 7 days of service of the affidavit. An individual justice shall determine the amount of fees to be awarded.

(h) **Execution.** Upon proper application, the clerk of the trial court may issue writs of execution upon the award of costs and attorney's fees made pursuant to this rule, without the approval of a judge of the trial court.

(SCO 439 effective November 15, 1980; amended by SCO 507 effective July 1, 1982; by SCO 508 effective July 1, 1982; by SCO 512 effective October 1, 1982; by SCO 552 effective February 1, 1983; by SCO 554 effective April 4, 1983; by SCO 562, effective May 2, 1983; by SCO 583 effective February 1, 1984; by SCO 619 effective June 15, 1985; by SCO 847 effective January 15, 1988; by SCO 1024 effective July 15, 1990; by SCO 1155 effective July 15, 1994; by SCO 1279 effective July 31, 1997; by SCO 1440 effective October 15, 2001; and by SCO 1482 effective October 15, 2002)

Note: In 1997 the legislature enacted AS 18.16.030(m), which provides that a filing fee may not be required of, and court costs may not be assessed against, a minor in a proceeding to bypass parental consent to an abortion. According to ch. 14, § 10 SLA 1997, AS 18.16.030(m) has the effect of amending Administrative Rule 9, Civil Rule 79, and Appellate Rule 508 by prohibiting filing fees and assessment of court costs in certain actions. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass proceedings in the superior court and a separate rule on judicial bypass appeals. See Probate Rule 20 & Appellate Rule 220.



NATIONAL RIFLE ASSOCIATION OF AMERICA

FOUNDED 1871

**11250 WAPLES MILL ROAD
FAIRFAX, VA 22030**

February 17, 2005

**The Honorable Jay Ramras
Alaska State House of Representatives
Alaska State Capitol
Juneau, AK 99801**

Dear Representative Ramras:

I would like to commend you on having the foresight and courage to introduce legislation designed to preserve the rights of Alaska's outdoorsmen and women. HB 107, "An Act relating to the unlawful obstruction or hindrance of hunting, fishing, trapping or viewing of fish or game is a significant step in the right direction to protect law abiding citizens.

As you may be aware, I have been intricately involved in the rights of Alaska's outdoor community for well over 25 years. Over that time period I have found the environmental/animal rights activists are the most relentless crusaders against our traditional values and way of life. They are in fact "true believers" who care little or nothing for the rights of others, and are especially disdainful of others personal values and viewpoints.

Since the days when Alaskans battled unsuccessfully with "outside interests" over D-2, the environmental community has not wavered from its consistent effort to erode or eliminate such traditional Alaskan activities like hunting and trapping. Although millions of acres were set aside in ANILCA for their sole benefit, it was not enough. To this day they continue in their crusade to shut down more areas, and are becoming bolder in their rhetoric and actions against those of us who choose to live a more natural lifestyle.

HB 107 will go a long way toward preventing the kind of unlawful activities groups like PETA and HSUS encourage their members to take against hunters and other outdoor users. Although hunters have never attempted to pass rules or regulations coercing non-hunters to participate in their activities, or keep them from pursuing activities of their choice, the anti-hunting community has continually supported actions to eliminate hunting and trapping. Tools like those provided in HB 107 are an unfortunate, but necessary remedy to protect the rights of Alaskans who continue to live with a strong connection to the land.

Once again, thank you for introducing such an important piece of legislation. If there is anything I can do to assist you in this endeavor, please don't hesitate to let me know.

Sincerely,

**Eddie Grasser
NRA Field Rep.**

Alaska Outdoor Council Testimony today:

Thank you Mr. Chairman and members of the committee,

My name is Jennifer Yuhas. I am the Executive Director of the Alaska Outdoor Council.

On behalf of the AOC Board of Directors representing over 54 Member Clubs and a collective membership of over 12,000 I would like to express support for HB 107 and thank Representative Ramras for sponsoring this legislation.

Current statute does not guarantee a citizen to be awarded attorney fees when litigating an incidence of obstruction from hunting, fishing, trapping, or wildlife viewing. Since the use of fish and game resources by Alaskan citizens and access to those resources are guaranteed by the Alaska Constitution, we believe the changes the proposed legislation will bring are a necessary correction to an oversight in existing statute.

With regard to Representative LeDoux's question regarding rate of incidence:

While there is a minor frequency of occurrence, this change would serve as a deterrent to those wishing to obstruct the lawful use of fish and game resources and provide peace of mind to our license holders.

By passing this legislation today the committee will join us in validating the constitutional right of Alaska's private citizens to lawfully use fish and game resources.

We express our gratitude to the sponsor and the committee for hearing this legislation today and ask for a speedy passage from this committee.

Jennifer Yuhas, Executive Director
Alaska Outdoor Council, and
Alaska Fish & Wildlife Conservation Fund
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www.alaskaoutdoorcouncil.org

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

January 24, 2006

SUBJECT: Cruise ship hindering possibility under AS 16.05.790(a)
(Work Order No. 24-LS0444\X)

TO: Representative Jay Ramras
Attn: Jim Pound

FROM: Brian J. Kane *BF*
Legislative Counsel

You have posed the following question: Under AS 16.05.790(a), would a cruise ship or other large, non-fishing vessel be guilty of obstructing or hindering lawful fishing if it crossed over a commercial fishing net? The short answer is that it would not be guilty.

The key word in AS 16.05.790(a) applicable here is "intentionally." If this obstruction or hindrance is not done intentionally, then it does not fit the parameters for this misdemeanor. Putting the phrase "intentionally" into context is also helpful.

There are basically four mental states that are statutorily defined for crimes in Alaska. These are listed in AS 11.81.900(a):

(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 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

Representative Jay Ramras
January 24, 2006
Page 2

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.

"Intentionally" is the most stringent of the four standards.

Because "intentionally" is an element of the crime, the state would have to prove beyond a reasonable doubt that the person acted intentionally. Further, a key phrase in the definition of intentionally is the "conscious objective is to cause that result." Hence, the large, non-fishing vessel would have to know the commercial net was there and then intend to obstruct or hinder its use. It appears that the owner or operator of a vessel simply moving in the water that crosses over a net in its normal flow of travel will not be guilty.

If I may be of further assistance, please advise.

BJK:med
06-060.med

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MEMORANDUM

January 31, 2006

SUBJECT: Interaction between hunter and photographer of wildlife
(CSHB 107(FIN); Work Order No. 24-LS0444X)

TO: Representative Jay Ramras
Attn: Jim Pound

FROM: Brian J. Kane ^{BJK}
Legislative Counsel

I have been asked to analyze the legal ramifications of a situation where a hunter shoots an animal while a photographer is trying to take a photo of said animal. Specifically, could the photographer make a pecuniary claim for this lost photo opportunity due to the actions of the hunter in shooting the animal?

It does not appear to me that a photographer would have any such claim against the hunter. The obstruction discussed in HB 107 must be intentional. AS 11.81.900(a)(1) defines "intentional":

(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;

Hence, if the hunter is not shooting the animal for the purpose of preventing the photographer from taking the picture, then it does not appear as if the hunter is in violation. If the hunter is lawfully hunting and not intentionally hindering the photographer's viewing of the wildlife, then it does not appear that there are any pecuniary claims on either side of this situation.

BJK:lmb
06-031.lmb