

1 HOUSE BILL NO. 131

2 INTRODUCED BY P. CLARK

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LANGUAGE AND PENALTIES REGARDING
6 THE UNLAWFUL POSSESSION, SHIPPING, TRANSPORTATION, SALE, PURCHASE, OR EXCHANGE OF
7 GAME FISH, BIRDS, GAME ANIMALS, AND FUR-BEARING ANIMALS; AMENDING SECTIONS 87-1-102,
8 87-3-111, 87-3-112, 87-3-115, 87-3-117, AND 87-3-118, MCA; AND REPEALING SECTION 87-3-113, MCA."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 **Section 1.** Section 87-1-102, MCA, is amended to read:

13 **"87-1-102. Penalties -- violation of state law.** (1) A person who purposely, knowingly, or negligently
14 violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor,
15 except if a felony is expressly provided by law, and shall be fined an amount not less than \$50 or more than
16 \$1,000 or imprisoned in the county detention center for not more than 6 months, or both, unless a different
17 punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture
18 of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this
19 state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the
20 court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the
21 department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender
22 all licenses, as ordered by the court, to the department within 10 days.

23 (2) (a) ~~Except as provided in subsection (2)(f), a~~ A person convicted of unlawfully taking, killing,
24 possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly
25 bear or any part of these animals shall be fined an amount not less than \$500 or more than \$2,000 or imprisoned
26 in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or
27 forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued
28 by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or
29 forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department
30 shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping

1 licenses to the department within 10 days.

2 (b) ~~Except as provided in subsection (2)(f), a~~ A person convicted of unlawfully taking, killing, possessing,
3 or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not
4 less than \$300 or more than \$1,000 or imprisoned in the county detention center for not more than 6 months,
5 or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting,
6 fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months
7 from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction
8 or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all
9 hunting, fishing, and trapping licenses to the department within 10 days.

10 (c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount
11 not less than \$200 or more than \$600 or imprisoned in the county detention center for not more than 60 days,
12 or both.

13 (d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing,
14 transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of
15 any provision of this title shall be fined an amount not less than \$100 or more than \$1,000, imprisoned in the
16 county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture
17 of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months
18 from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts
19 possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the
20 person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the
21 department within 10 days.

22 (e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a
23 privilege is denied shall be imprisoned in the county detention center for not less than 5 days or more than 6
24 months. In addition, that person may be fined an amount not less than \$500 or more than \$2,000.

25 ~~(f) A person convicted of purposely or knowingly taking, killing, possessing, or transporting a trophy~~
26 ~~animal as described in 87-1-115 or any part of those animals shall be fined an amount not less than \$500 or~~
27 ~~more than \$3,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition,~~
28 ~~that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational~~
29 ~~use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 5 years from~~
30 ~~the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or~~

1 ~~forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting,~~
2 ~~fishing, and trapping licenses to the department within 10 days.~~

3 (3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the
4 use of spotlights, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state
5 for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon
6 conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a
7 department-sponsored hunter education course.

8 (4) A person convicted or who has forfeited bond or bail under this section and whose license privileges
9 are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or
10 permit during the period when license privileges have been forfeited. A person convicted of unlawfully
11 purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the
12 period when license privileges have been forfeited shall be fined an amount not less than \$500 or more than
13 \$2,000, imprisoned in the county jail for not more than 60 days, or both.

14 (5) A person convicted or who has forfeited bond or bail under this section and who has been ordered
15 to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title
16 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date
17 of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking
18 of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a
19 drawing for a special license or permit for the same species of game animal that was unlawfully taken for an
20 additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully
21 applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special
22 license or permit shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county
23 detention center for not more than 60 days, or both.

24 (6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the
25 first conviction or who is convicted of two or more of the following offenses at different times within a 10-year
26 period is subject to the penalties provided in subsection (6)(b):

- 27 (i) hunting during a closed season;
28 (ii) spotlighting;
29 (iii) hunting without a license;
30 (iv) unlawful taking of more than double the legal bag limit;

- 1 (v) unlawful possession of more than double the legal bag limit; and
2 (vi) waste of game by abandonment in the field.
- 3 (b) (i) A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection
4 (6)(a) shall be fined an amount not less than \$2,000 or more than \$5,000 or be imprisoned in the county jail for
5 not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit
6 all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this
7 state for 60 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period.
8 (ii) The department shall notify the offender of the loss of privileges.
9 (iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10
10 days after having received notice from the department that privileges have been revoked.
- 11 (7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first
12 conviction is subject to the penalties provided in subsection (7)(b):
13 (i) hunting during a closed season;
14 (ii) spotlighting;
15 (iii) hunting without a license; and
16 (iv) unlawful taking of more than double the legal bag limit.
- 17 (b) (i) A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection
18 (7)(a) shall be fined an amount not less than \$5,000 or more than \$10,000 or be imprisoned in the county jail
19 for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit
20 all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this
21 state for life.
22 (ii) The department shall notify the offender of the loss of privileges.
23 (iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10
24 days after having received notice from the department that privileges have been revoked.
- 25 (8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this
26 section to pay the costs of imprisonment under this section.
- 27 (9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles.
28 However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap
29 upon conviction or forfeiture of bond or bail for a violation of this title.
- 30 (10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition

1 to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

2 (11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit
3 issued under this title, the administrative authority or the department shall notify the person of the suspension
4 and the person shall surrender the license or permit to the department within 10 days.

5 (12) For the purposes of this section, the terms "knowingly", "negligently", and "purposely" have the
6 same meaning as provided in 45-2-101."

7

8 **Section 2.** Section 87-3-111, MCA, is amended to read:

9 **"87-3-111. Unlawful to buy, sell, possess, or transport fish or game possession, shipping, or**
10 **transportation of game fish, birds, game animals, or fur-bearing animals -- exceptions -- penalties.** (1) It
11 is unlawful for a person to purchase, sell, offer to sell, possess, ship, or transport all or part of any game fish,
12 upland game bird, migratory game bird, game animal, or fur-bearing animal that is protected by the laws of this
13 state that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of
14 Montana, except as specifically permitted by the laws of this state.

15 (2) The provisions of this ~~This~~ section ~~do~~ does not prohibit:

16 (a) ~~the possession or transportation within the state of all or part of any legally taken fish, upland game~~
17 ~~bird, migratory game bird, game animal, or fur-bearing animal;~~

18 ~~——(b)(a) the sale, purchase, possession, shipping, or transportation of hides, heads, or mounts of lawfully~~
19 ~~killed, captured, or taken upland game birds, migratory game birds, game fish, birds, game animals, or~~
20 ~~fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly~~
21 ~~bear is prohibited, except as provided in 87-3-110;~~

22 ~~(e)(b) the possession, shipping, or transportation, sale, or purchase of naturally shed antlers or the~~
23 ~~antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that~~
24 ~~has not been unlawfully killed, captured, or taken or accidentally killed;~~

25 ~~(d)(c) the possession, shipping, or transportation, sale, or purchase of the bones of an elk, antelope,~~
26 ~~moose, or deer that has been lawfully killed or that has died of from natural causes and that has not been~~
27 ~~unlawfully killed, captured, or taken or accidentally killed;~~

28 ~~(e)(d) the donation and sale possession, shipping, or transportation of paddlefish roe as caviar under~~
29 ~~the provisions of 87-4-601; or~~

30 ~~(f)(e) the possession, shipping, or transportation, sale, or purchase of captive-reared migratory~~

1 waterfowl.

2 (3) It is unlawful for a person to possess, ship, or transport live fish away from the body of water in which
3 the fish were taken, except:

4 (a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

5 (b) for fish species approved by the commission for use as live bait and subject to any restrictions
6 imposed by the commission; or

7 (c) within ~~and along~~ the boundaries of the eastern Montana fishing district, as established by ~~the~~
8 ~~1994-95~~ commission regulations.

9 ~~(4) A person violating any of the provisions of this section is guilty of a misdemeanor and upon~~
10 ~~conviction shall be punished as provided in 87-1-102: The possession of all or part of a dead game fish, bird,~~
11 ~~game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the~~
12 ~~same are found killed, captured, or took the game fish, bird, game animal, or fur-bearing animal.~~

13 ~~(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed,~~
14 ~~shipped, or transported must be determined from the schedules of restitution values in 87-1-111 and 87-1-115.~~
15 ~~The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or~~
16 ~~transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as~~
17 ~~defined in 46-1-202, may be aggregated in determining the value.~~

18 ~~(6) (a) If a person is convicted under this section or forfeits bond or bail after being charged with a~~
19 ~~violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal~~
20 ~~or combination thereof does not exceed \$1,000, then the person is subject to the penalties in 87-1-102.~~

21 ~~(b) If a person is convicted under this section or forfeits bond or bail after being charged with a violation~~
22 ~~of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or~~
23 ~~combination thereof exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned~~
24 ~~in the state prison for a term not to exceed 5 years, or both. In addition, a person who is convicted under this~~
25 ~~section or who forfeits bond or bail after being charged with a violation of this section shall lose all hunting,~~
26 ~~fishing, and trapping licenses and permits and license privileges for a minimum of 3 years or up to a lifetime~~
27 ~~revocation from the date of conviction. The department shall notify the person of the loss of privileges as~~
28 ~~imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, to the~~
29 ~~department within 10 days of notification by the department.~~

30

1 **Section 3.** Section 87-3-112, MCA, is amended to read:

2 **"87-3-112. Possession of ~~unlawfully killed animals and of unlawful use of~~ fishing implements.**

3 (1) ~~The possession of dead bodies or any part thereof of any of the game fish, game or nongame birds, or game~~
4 ~~or fur-bearing animals defined by the fish and game laws of the state of Montana is prima facie evidence that~~
5 ~~the person or persons in whose possession the same are found have killed, caught, or taken the same. The~~
6 ~~possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is~~
7 ~~prima facie evidence that the person or persons in whose possession the same these implements are found~~
8 ~~were using the same implements to fish.~~

9 (2) ~~It is unlawful to possess, have, hold, purchase, keep in storage, or possess for any other purpose~~
10 ~~any game fish, game bird, nongame bird, game animal, fur-bearing animal, or parts thereof which were~~
11 ~~unlawfully killed, captured, or taken. No A person may not unlawfully use any fishing rod and line, fishing lines,~~
12 ~~spear, gig, or barbed fork."~~

13

14 **Section 4.** Section 87-3-115, MCA, is amended to read:

15 **"87-3-115. Violation by carriers.** ~~No A person or the agent or employee of any common carrier,~~
16 ~~association, stage, express, railway, or transportation company may not transport or receive for transportation~~
17 ~~or carriage or sell or offer for sale any of the ~~game animals~~ fish, game or nongame birds, ~~fish~~ game animals,~~
18 ~~fur-bearing animals, the skins of fur-bearing animals, or parts thereof, except as specifically provided for by~~
19 ~~87-3-114. All fish, game or nongame birds, ~~fish~~, game animals, fur-bearing animals, or parts thereof had in~~
20 ~~possession or ~~which~~ that have been shipped or are being transported in violation of any of the provisions of~~
21 ~~87-3-113 through 87-3-115 shall 87-3-114 or this section must be seized, confiscated, and disposed of as~~
22 ~~provided by law."~~

23

24 **Section 5.** Section 87-3-117, MCA, is amended to read:

25 **"87-3-117. Definitions of lawfully killed, captured, or taken wildlife and unlawfully killed, captured,**
26 **or taken wildlife.** As used in 87-3-111, 87-3-118, and this section, the following definitions apply:

27 (1) "Lawfully killed, captured, or taken wildlife" means ~~wildlife, as defined in 87-5-102, that is killed,~~
28 ~~captured, or taken or possessed by hunting, fishing, or trapping in conformance with this title and, the regulations~~
29 ~~adopted by the commission, and the rules adopted by the department under authority of this title.~~

30 (2) "Unlawfully killed, captured, or taken wildlife" means ~~wildlife that is not lawfully killed, captured, or~~

1 taken wildlife."

2

3 **Section 6.** Section 87-3-118, MCA, is amended to read:

4 **"87-3-118. Felony Unlawful sale or possession of wildlife game fish, birds, game animals, or**
 5 **fur-bearing animals -- penalty.** (1) A person commits the offense of unlawful sale of unlawfully taken wildlife
 6 a game fish, bird, game animal, or fur-bearing animal if the person purposely or knowingly:

7 (a) sells, ~~barter~~s, purchases, or exchanges unlawfully taken wildlife for anything of value; or

8 ~~— (b) offers to sell, barter, purchase, or exchange unlawfully taken wildlife for anything of value~~ all or part
 9 of any game fish, bird, game animal, or fur-bearing animal.

10 (2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than
 11 \$1,000 if the person purposely or knowingly has actual or constructive possession of or transports or causes to
 12 be transported unlawfully taken wildlife having a value of more than \$1,000. The value of the unlawfully taken
 13 wildlife game fish, bird, game animal, or fur-bearing animal must be determined from the ~~schedule~~ schedules
 14 of restitution values set out in 87-1-111 and 87-1-115. The value of game fish, birds, game animals, or
 15 fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in
 16 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the
 17 value.

18 (3) ~~(a) A person commits the offense of unlawful sale or possession of wildlife if the person purposely~~
 19 ~~or knowingly:~~

20 ~~— (i) sells, barter~~s, purchases, or exchanges wildlife for anything of value;

21 ~~— (ii) attempts to sell, barter, purchase, or exchange wildlife for anything of value;~~

22 ~~— (iii) transports, causes to be transported, or is in the process of transporting out of state wildlife for~~
 23 ~~purposes of sale, barter, purchase, or exchange for anything of value.~~

24 ~~— (b) For the purposes of this subsection (3), "wildlife" includes the edible meat, internal organs, tissue,~~
 25 ~~fluids, or sex organs of wildlife having a value of more than \$1,000 or edible meat of wildlife in excess of 150~~
 26 ~~pounds, except meat allowed to be sold under the provisions of 71-3-1505.~~

27 ~~— (c) For purposes of determining the total pounds of edible meat of wildlife, any nonwildlife meat or~~
 28 ~~ingredients mixed with the meat of wildlife must be included in the total. This section does not prohibit:~~

29 (a) the sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or
 30 fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide,

1 head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

2 (b) the sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a
3 skull attached from a game animal that has died from natural causes and that has not been unlawfully killed,
4 captured, or taken or accidentally killed;

5 (c) the sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from
6 natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

7 (d) the donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of
8 87-4-601; or

9 (e) the sale, purchase, or exchange of captive-reared migratory waterfowl.

10 ~~(4) (a) For purposes of this section, the value of all wildlife actually or constructively possessed,~~
11 ~~transported, sold, bartered, bought, or exchanged for anything of value within a 45-day period must be added~~
12 ~~together to determine whether the value of the wildlife is greater than \$1,000. If a person is convicted under this~~
13 ~~section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part~~
14 ~~of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed \$1,000, then~~
15 ~~the person shall be fined an amount not less than \$50 or more than \$1,000 or be imprisoned in the county~~
16 ~~detention center for not more than 6 months, or both.~~

17 (b) In addition to the penalties in subsection (4)(a), the person, upon conviction or forfeiture of bond or
18 bail, may lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a
19 period set by the court. The department shall notify the person of any loss of privileges as imposed by the court,
20 and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification
21 by the department.

22 ~~(5) (a) A person who violates this section is guilty of a felony and upon conviction shall be fined not~~
23 ~~more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a~~
24 ~~person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting,~~
25 ~~fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime~~
26 ~~revocation from the date of conviction. If a person is convicted under this section or forfeits bond or bail after~~
27 ~~being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal,~~
28 ~~or fur-bearing animal or combination thereof exceeds \$1,000, then the person shall be fined not more than~~
29 ~~\$50,000 or be imprisoned in the state prison for not more than 5 years, or both.~~

30 (b) In addition to the penalties in subsection (5)(a), the person, upon conviction or forfeiture of bond or

1 bail, shall lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a
2 minimum of 3 years or up to a lifetime revocation from the date of conviction. The department shall notify the
3 person of the loss of privileges as imposed by the court, and the person shall surrender all licenses and permits,
4 as ordered by the court, within 10 days of notification by the department."

5

6 NEW SECTION. Section 7. Repealer. Section 87-3-113, MCA, is repealed.

7

- END -