

SENATE BILL NO. 178

INTRODUCED BY BARKUS, KLOCK, LEWIS, PERRY, BRUEGGEMAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT RECOGNIZING A LANDOWNER'S RIGHT TO USE REASONABLE  
5 MEANS TO PROTECT PRIVATE PROPERTY FROM DAMAGE CAUSED BY GAME ANIMALS; DESCRIBING  
6 REASONABLE, NONLETHAL MEANS OF PROPERTY PROTECTION, INCLUDING THE ERECTION OF  
7 BARRIERS TO EXCLUDE GAME ANIMALS FROM PRIVATE PROPERTY AND THE DRIVING, HERDING, OR  
8 HAZING OF GAME ANIMALS; PROVIDING FOR LANDOWNER IMMUNITY FROM CRIMINAL AND CIVIL  
9 LIABILITY FOR THE INCIDENTAL DEATH OR INJURY OF GAME ANIMALS AS A RESULT OF THE  
10 LANDOWNER'S USE OF REASONABLE MEANS TO PROTECT PRIVATE PROPERTY FROM DAMAGE  
11 CAUSED BY GAME ANIMALS; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO  
12 ISSUE PERMITS AND ADOPT RULES FOR THE USE OF AIRCRAFT BY LANDOWNERS TO PROTECT  
13 THEIR PROPERTY BY DRIVING, HERDING, OR HAZING GAME ANIMALS; AMENDING SECTIONS 87-4-225,  
14 87-3-125, AND SECTION 87-3-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15  
16 WHEREAS, Article II, section 3, of the Montana Constitution establishes a person's inalienable right to  
17 acquire, possess, and protect private property; and

18 WHEREAS, this inalienable right applies to a landowner's right to protect private property from damage  
19 by wild animals.

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

22  
23 ~~NEW SECTION. Section 1. Issuance of permits for use of aircraft -- rules -- reporting~~  
24 ~~requirements.~~ (1) The department shall adopt rules providing for the issuance of permits to landowners for the  
25 use of aircraft to protect the landowners' property by driving, herding, or hazing game animals.

26 ~~(2) The department may not issue a permit for the purpose of hunting game animals from aircraft or for~~  
27 ~~herding or hazing game animals for hunting purposes.~~

28 ~~(3) The rules must include but are not limited to:~~

29 ~~(a) an application process;~~

30 ~~(b) guidelines for issuing and voiding permits; and~~



1 ~~\_\_\_\_\_ (c) notification requirements.~~

2 ~~\_\_\_\_\_ (4) The department shall issue a permit if the permit application includes permission from the owner of~~  
 3 ~~any adjacent private property allowing wildlife to be hazed or herded onto the adjacent private property and if~~  
 4 ~~the permit is sought for the purpose of the administration or protection of land, water, wildlife, livestock,~~  
 5 ~~domesticated animals, human life, or crops as provided in 16 U.S.C. 742j-1(b).~~

6 ~~\_\_\_\_\_ (5) The department shall respond with an approval or denial of a permit application within 36 hours of~~  
 7 ~~receiving the application.~~

8 ~~\_\_\_\_\_ (6) A landowner who receives a permit shall report quarterly to the department:~~

9 ~~\_\_\_\_\_ (a) the approximate number of game animals driven, herded, or hazed from the property;~~

10 ~~\_\_\_\_\_ (b) the type of game animals driven, herded, or hazed from the property;~~

11 ~~\_\_\_\_\_ (c) the dates that aircraft were used for the purpose of the permit;~~

12 ~~\_\_\_\_\_ (d) a description of the area from which game animals were driven, herded, or hazed; and~~

13 ~~\_\_\_\_\_ (e) the instances that a department employee was in the aircraft or was involved in the driving, herding,~~  
 14 ~~or hazing.~~

15 ~~\_\_\_\_\_ (7) The department shall:~~

16 ~~\_\_\_\_\_ (a) upon issuance of a permit, provide immediate notification to the U.S. fish and wildlife service special~~  
 17 ~~agent in charge who has jurisdiction as provided in 50 CFR 19.31; and~~

18 ~~\_\_\_\_\_ (b) report annually to the U.S. secretary of the interior. The report must include but is not limited to~~  
 19 ~~information required by 16 U.S.C. 742j-1(b) and 50 CFR 19.32.~~

20 ~~\_\_\_\_\_ (8) A permit is in effect until voided by the commission for just cause. A landowner whose permit is~~  
 21 ~~subject to being voided has the right to a public hearing. A permit cannot be voided until after a public hearing~~  
 22 ~~is held and a final decision has been issued by the commission.~~

23

24 ~~\_\_\_\_\_ **Section 2.** Section 87-1-225, MCA, is amended to read:~~

25 ~~\_\_\_\_\_ **"87-1-225. Regulation of wild animals damaging property -- public hunting requirements --**~~

26 ~~**landowner's protection of private property by reasonable nonlethal means.** (1) Subject to the provisions~~  
 27 ~~of subsection (2), a landowner is eligible for game damage assistance under subsection (3) if he the landowner:~~

28 ~~\_\_\_\_\_ (a) allows public hunting during established hunting seasons; or~~

29 ~~\_\_\_\_\_ (b) does not significantly reduce public hunting through imposed restrictions.~~

30 ~~\_\_\_\_\_ (2) The department may provide game damage assistance when public hunting on a landowner's~~

1 property has been denied because of unique or special circumstances that have rendered public hunting  
2 inappropriate:

3 ~~———— (3) Within 48 hours after receiving a request or complaint from any landholder or person in possession  
4 and having charge of any land in the state that wild animals of the state, protected by the fish and game laws  
5 and regulations, are doing damage to the property or crops thereon on the property, the department shall  
6 investigate and arrange to study the situation with respect to damage and depredation. The department may  
7 then decide to open a special season on the game, or, if the special season method be is not feasible, the  
8 department may destroy the animals causing the damage. The department may authorize and grant the holders  
9 of said the property permission to kill or destroy a specified number of the animals causing the damage. No A  
10 wild ferocious animal damaging property or endangering life shall be is not covered by this section.~~

11 ~~———— (4) (a) The legislature recognizes each Montana landowner's right to use reasonable means to protect  
12 that landowner's private property at any time from damage by game animals.~~

13 ~~———— (b) Reasonable means of private property protection include but are not limited to:~~

14 ~~———— (i) the erection of game-proof fences on private land to exclude game animals if the game-proof fences  
15 do not enclose public land;~~

16 ~~———— (ii) the driving, herding, or hazing of game animals for the immediate protection of private property;  
17 except during the general hunting season, if the activity does not occur on public land or against any game  
18 animal on public land without authorization by the department; and~~

19 ~~———— (iii) any similar devices or conduct intended to exclude or remove game animals from private property.~~

20 ~~———— (c) Landowners or their agents who use reasonable means to protect private property from damage by  
21 game animals are immune from criminal or civil liability related to the incidental death or injury of a game animal  
22 that may occur."~~

23

24 ~~———— **Section 3.** Section 87-3-125, MCA, is amended to read:~~

25 ~~———— **"87-3-125. Restrictions on use of motor vehicles while hunting — exception for landowners  
26 engaged in protection of private property.** (1) No A person, while hunting game animals or game birds, may~~

27 ~~not use a motor-driven vehicle other than on an established road or trail unless he the person has reduced a  
28 big game animal to possession and cannot easily retrieve the big game animal. In that case a motor-driven  
29 vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply  
30 or where the landowner has not granted such permission. After the retrieval, the motor-driven vehicle is to be~~

1 returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal  
2 travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail:

3 ~~———— (2) No A person, while hunting game animals or game birds, may not drive or attempt to drive, run or  
4 attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game  
5 animal or game bird with the use or aid of any motor-driven vehicle.~~

6 ~~———— (3) No A person, while hunting game animals or game birds, may not drive through any retired cropland,  
7 brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an  
8 established road or trail unless written permission has been given by the landowner and is in possession of the  
9 hunter.~~

10 ~~———— (4) (a) It is unlawful for a person to use a self-propelled vehicle to intentionally concentrate, drive, rally,  
11 stir up, or harass wildlife, except predators of this state, providing that this subsection:~~

12 ~~———— (b) Subsection (4)(a) does not apply to landowners and their authorized agents engaged in the  
13 immediate protection of that landowner's property at any time, except during the general hunting season. A  
14 landowner or authorized agent who is engaged in the immediate protection of the landowner's private property  
15 pursuant to this subsection (4)(b) is not subject to criminal or civil prosecution for the death or injury to wildlife  
16 resulting from the use of a self-propelled vehicle in protecting the property.~~

17 ~~———— (5) The restrictions in subsections (1) through (3) on motor-driven vehicle use off an established road  
18 or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency  
19 specifically requests or approves state enforcement."~~

20

21 **Section 1.** Section 87-3-126, MCA, is amended to read:

22 **"87-3-126. Restrictions on use of aircraft or boats -- exception for landowners engaged in**  
23 **protection of private property -- permit required -- AUTHORITY TO ISSUE PERMITS AND ADOPT RULES. (1) (a) No**  
24 **A game birds bird or game or fur-bearing animals animal may not be killed, taken, or shot at from any aircraft,  
25 including helicopters; ~~nor may any.~~**

26 **(b) An aircraft or helicopter may not be used for the purpose of concentrating, pursuing, driving, rallying,  
27 or stirring up any game or migratory birds or game or fur-bearing animals; ~~nor may any.~~**

28 **(c) Subsection (1)(b) does not apply to landowners and their authorized agents engaged in the  
29 immediate protection of that landowner's private property at any time, except during the general hunting season,  
30 and who hold a permit as provided in [section 1]. A landowner or authorized agent who is engaged in the**

1 ~~immediate protection of the landowner's private property pursuant to this subsection (1)(c) is not subject to~~  
 2 ~~criminal or civil prosecution for the death or injury to wildlife resulting from the use of an aircraft or helicopter in~~  
 3 ~~protecting the property.~~

4 ~~(d)(c)~~ A powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat,  
 5 sailboat, or any boat under sail may not be used for the purpose of killing, capturing, taking, pursuing,  
 6 concentrating, driving, or stirring up any upland game birds or game or fur-bearing animals.

7 (2) It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any  
 8 game or fur-bearing animals and communicate the location ~~thereof~~ of the game or fur-bearing animals to any  
 9 person on the ground by means of any air-to-ground communication signal or other device ~~whatsoever~~ as an  
 10 aid to hunting or pursuing wildlife.

11 (3) Within the boundaries of a national forest, except as permitted by the department, it is unlawful to  
 12 use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded  
 13 at federal aviation agency approved airports, aircraft landing fields, or heliports ~~which that~~ have been established  
 14 on private property or ~~which that~~ have been established by any federal, state, county, or municipal governmental  
 15 body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies.  
 16 The provisions of this subsection do not apply:

17 (a) during emergency situations;

18 (b) ~~or~~ when search and rescue operations are being conducted; or

19 (c) for predator control as permitted by the department of livestock.

20 (4) AN AIRCRAFT OR HELICOPTER MAY BE USED FOR THE PURPOSE OF HERDING, DRIVING, OR HAZING WILD  
 21 ANIMALS DAMAGING PRIVATE PROPERTY OR CROPS ON THE PROPERTY IN QUESTION PURSUANT TO A PERMIT ISSUED BY  
 22 THE DEPARTMENT. THE COMMISSION SHALL ADOPT RULES FOR THE ISSUANCE OF THE PERMIT. THE PERMIT MAY BE  
 23 CONDITIONED TO ADDRESS INDIVIDUAL CIRCUMSTANCES OF EACH APPLICATION FOR A PERMIT. THE DEPARTMENT MAY NOT  
 24 ISSUE PERMITS DURING ANY LEGAL HUNTING SEASON FOR THE SPECIES FOR WHICH A PERMIT WAS REQUESTED. THE  
 25 PERMITTING PROGRAM MUST COMPLY WITH REQUIREMENTS OF FEDERAL LAW FOR SUCH ACTIVITY."

26  
 27 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an  
 28 integral part of Title 87, chapter 3, part 1, and the provisions of Title 87, chapter 3, part 1, apply to [section 1].

29  
 30 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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