

SENATE BILL NO. 118

INTRODUCED BY V. JACKSON

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

1  
2  
3  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA INVASIVE SPECIES ACT; PROVIDING  
6 LEGISLATIVE FINDINGS AND DEFINITIONS; CREATING THE INVASIVE SPECIES COUNCIL; CREATING  
7 THE INVASIVE SPECIES ACCOUNT; PROVIDING FOR COOPERATIVE AGREEMENTS; DEFINING  
8 DEPARTMENTAL DUTIES; GRANTING RULEMAKING AUTHORITY; AUTHORIZING THE DESIGNATION OF  
9 INVASIVE SPECIES MANAGEMENT AREAS; PROVIDING FOR THE PREVENTION OF INFESTATIONS;  
10 AUTHORIZING INSPECTION OF VEHICLES AND VESSELS; GRANTING CITATION AUTHORITY;  
11 PROHIBITING THE TRANSFER AND TRANSPORT OF INVASIVE SPECIES AND AQUATIC PLANTS;  
12 PROVIDING EXCEPTIONS; AUTHORIZING EMERGENCY DECLARATIONS; PROVIDING CIVIL AND  
13 CRIMINAL PENALTIES; AMENDING SECTIONS 10-3-103 AND 87-5-721, MCA; AND PROVIDING AN  
14 IMMEDIATE EFFECTIVE DATE."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17  
18 NEW SECTION. **Section 1. Short title.** [Sections 1 through 20] may be cited as the "Montana Invasive  
19 Species Act".

20  
21 NEW SECTION. **Section 2. Legislative findings and purpose.** (1) The legislature finds that:

22 (a) preventing the introduction and infestation of invasive species is the most effective and least costly  
23 strategy for combating invasive species that, once established, are often difficult to control;

24 (b) many Montana resources have already been negatively affected by invasive species, including  
25 spotted knapweed (*Centaurea maculosa*) and leafy spurge (*Euphorbia esula*);

26 (c) there are many areas of Montana that need protection from an increasing number of invasive species  
27 that may be introduced or imported into the state, including the zebra mussel (*Dreissena polymorpha*) and the  
28 quagga mussel (*Dreissena bugensis*); and

29 (d) in order to maintain a clean and healthful environment:

30 (i) Montana needs to enhance its capacity to prioritize risks, prevent new infestations, employ early

1 detection and emergency response techniques, educate and engage the public, and apply state-of-the-art control  
2 and management strategies for invasive species;

3 (ii) a combination of management strategies will be needed, including the use of prevention check  
4 stations, prohibitions on the transportation of invasive species, and the designation of management areas to  
5 prevent the introduction or spread of invasive species;

6 (iii) a strong combination of public and private effort is needed; and

7 (iv) the multitude of public and private entities with an interest in invasive species prevention and control  
8 in Montana need a mechanism to cooperate and collaborate to address the immediate threat of invasive species.

9 (2) The purpose of [sections 1 through 20] is to address concerns about the increasing threat of invasive  
10 species by providing policy direction, planning, and authority to maintain a clean and healthful environment by  
11 preventing the introduction and infestation of invasive species throughout the state.

12

13 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 20], the following definitions  
14 apply:

15 (1) "Council" means the invasive species council provided for in [section 4].

16 (2) "Departments" means the department of agriculture, the department of fish, wildlife, and parks, the  
17 department of public health and human services, and the department of livestock.

18 (3) "Invasive species" means:

19 (a) a nonnative species whose introduction, spread, or establishment has caused, causes, or is likely  
20 to cause harm to the economy, environment, or human health; and

21 (b) upon the mutual agreement of the directors of the departments and the executive officer of the board  
22 of livestock, a species that is native but has caused, is causing, or is likely to cause catastrophic economic harm  
23 to the economy, environment, or human health.

24 (4) "Person" means an individual, partnership, corporation, association, limited partnership, limited  
25 liability company, governmental subdivision, agency, or public or private organization of any character.

26

27 **NEW SECTION. Section 4. Invasive species council -- membership -- compensation.** (1) There is  
28 an invasive species council consisting of 11 members.

29 (2) The directors of the department of agriculture and the department of fish, wildlife, and parks shall  
30 serve as two of the members and equally share the responsibility of presiding officer.

1 (3) The governor shall appoint the other nine members, who shall serve staggered 3-year terms,  
2 including:

3 (a) a representative of the department of livestock;

4 (b) a representative of an involved state agency;

5 (c) a tribal representative;

6 (d) a county government official;

7 (e) a representative of a nonprofit wildlife, fisheries, nature, or natural resource group;

8 (f) an industry representative with an interest in invasive species;

9 (g) a conservation district representative;

10 (h) a resident with an interest in aquatic issues; and

11 (i) a resident with an interest in terrestrial issues.

12 (4) (a) Unless otherwise provided by law, each member of the council is entitled to receive \$50 per day  
13 compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official  
14 council business. Council members who conduct official council business in their city of residence are entitled  
15 to receive a midday meal allowance, as provided for in 2-18-502.

16 (b) Compensation under subsection (4)(a) must be paid from the invasive species account established  
17 in [section 6].

18

19 **NEW SECTION. Section 5. Invasive species council -- duties.** (1) The council shall:

20 (a) address any immediate threat posed by invasive species;

21 (b) coordinate local, state, tribal, and federal efforts to prevent and control the infestation of invasive  
22 species;

23 (c) develop an invasive species strategic plan;

24 (d) act as an advisory group to the governor on invasive species issues; and

25 (e) prioritize appropriations from the invasive species account established in [section 6], except as  
26 provided in [section 6(4)].

27 (2) The council may recommend rules for adoption by state agencies.

28 (3) The council is staffed by an invasive species coordinator and staff employed by the department of  
29 agriculture.

30

1            **NEW SECTION. Section 6. Invasive species account -- deposits -- appropriations.** (1) There is an  
2        invasive species account in the state special revenue fund.

3            (2) Money transferred from the general fund or received from any other lawful source, including but not  
4        limited to gifts, grants, donations, securities, or other assets, public or private, may be deposited in the account.

5            (3) Subject to subsection (4), money deposited in the account must be used to:

6            (a) accomplish the purposes of [sections 1 through 20], including education and outreach campaigns,  
7        prevention of infestations, restoration of infested areas, and detection, control, and management of invasive  
8        species in Montana; and

9            (b) compensate the invasive species coordinator and staff provided for in [section 5(3)].

10          (4) Any private contribution deposited in the account for a particular purpose, as stated by the donor,  
11        must be used exclusively for that purpose.

12          (5) Funds in the invasive species account must be invested. Any interest and income earned on the  
13        account must be deposited in the account.

14

15          **NEW SECTION. Section 7. Cooperative agreement for invasive species detection and control.**

16        (1) The departments may enter into a cooperative agreement with any person to adopt and implement efforts to  
17        detect and control invasive species.

18          (2) The departments may delegate certain clearly identified elements of their authority and duties to  
19        another agency of the state or to a tribal or federal unit of government with appropriate expertise and  
20        administrative capacity upon mutual agreement with that agency or unit.

21          (3) A cooperative agreement may include provisions for funding to implement the agreement.

22

23          **NEW SECTION. Section 8. Departmental responsibilities.** (1) The departments shall work together  
24        to accomplish the purposes of [sections 1 through 20].

25          (2) The responsibility of the departments for the prevention and control of invasive species infestations  
26        is delegated according to their respective jurisdiction, powers, and duties as authorized by law or pursuant to  
27        subsection (3).

28          (3) The council shall designate which of the departments has primary responsibility for combating a  
29        particular invasive species if that responsibility and jurisdiction is not already specified in law.

30          (4) Each of the departments shall develop a list of invasive species under its jurisdiction as established

1 by law or designated by the council. This list is not exclusive. A species may be treated as invasive even if it is  
2 not listed.

3 (5) The departments shall work with the council to identify and implement education and outreach  
4 programs that increase public knowledge and understanding of prevention and control of invasive species.

5  
6 **NEW SECTION. Section 9. Rulemaking authority.** The departments may adopt rules as necessary  
7 for the prevention, early detection, and control of invasive species under the departments' jurisdiction according  
8 to law or by designation of the council for purposes authorized in [sections 1 through 20], including rules for the:

9 (1) implementation of a strategic plan;

10 (2) transportation of aquatic plants, invasive species, or any agent likely to be a carrier of an invasive  
11 species; and

12 (3) designation, treatment, and management of an invasive species management area.

13  
14 **NEW SECTION. Section 10. Invasive species management area -- designation.** (1) When an  
15 invasive species is identified within an area, the director of the department with jurisdiction over that invasive  
16 species, pursuant to [section 8], may designate an area of land or body of water as an invasive species  
17 management area by written order or by rule, taking into consideration:

18 (a) the likelihood that the designation and specific regulations will effectively reduce the spread of the  
19 invasive species to another area;

20 (b) the extent of the distribution of the invasive species in the state; and

21 (c) other factors as determined by the director of the department with jurisdiction over the invasive  
22 species.

23 (2) An order designating an invasive species management area must specify:

24 (a) the invasive species present;

25 (b) the method or methods that may be used to control or eradicate the species; and

26 (c) the time within which control or eradication methods must be completed.

27 (3) Signs indicating that the area is an invasive species management area must be posted along the  
28 boundaries and within the designated area as far as practical. The signs must include information about the  
29 specific regulations that apply to the management area.

30 (4) (a) A landowner within the invasive species management area may contest the designation and

1 request to have land excluded from the designation under the provisions of Title 2, chapter 4, part 6.

2 (b) When a designation is contested, the department with jurisdiction over the invasive species is  
3 required to prove:

4 (i) that the designation is in the best interest of the state as a whole;

5 (ii) that the designation and associated treatment and control methods are reasonably likely to control  
6 the spread of or eradicate an invasive species; and

7 (iii) inclusion of any land requested to be excluded is necessary to achieve the intent of subsection  
8 (4)(b)(ii).

9

10 **NEW SECTION. Section 11. Invasive species management area -- treatment.** (1) The department  
11 that designates an invasive species management area pursuant to [section 10] shall work cooperatively with  
12 affected land managers and landowners within the boundaries of the designated area to develop treatment and  
13 control methods best suited for controlling or eradicating the invasive species within the management area.

14 (2) If negotiations with a land manager or landowner fail, the designating department may arrange for  
15 the treatment, control, and eradication of the invasive species without the consent of the land manager or  
16 landowner.

17

18 **NEW SECTION. Section 12. Invasive species management area -- regulation.** (1) Any vehicle or  
19 vessel, as defined in 61-1-101, authorized for use in an invasive species management area by the department  
20 that made the designation pursuant to [section 10] must be cleaned in a manner prescribed by that department  
21 prior to exiting the designated area to prevent the spread of invasive species.

22 (2) In a body of water designated as an invasive species management area, taking from the water or  
23 possessing any bait animal, dead or alive, including but not limited to crayfish, leeches, and minnows, is  
24 prohibited unless approved by the department of fish, wildlife, and parks.

25 (3) After use in a body of water within a designated invasive species management area, all vessels, bait  
26 containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be  
27 drained of all water before being transported on land or a public highway, as defined in 61-1-101, except where  
28 allowed by the department of fish, wildlife, and parks or the department of agriculture.

29

30 **NEW SECTION. Section 13. Prevention of infestation -- statewide regulation -- check stations.**

1 (1) Any vehicle or vessel, as defined in 61-1-101, that travels within or through the state must be cleaned in a  
2 manner prescribed by the department of fish, wildlife, and parks to ensure that it is free from any presence of  
3 invasive species.

4 (2) (a) In order to maintain a clean and healthful environment, the departments may establish check  
5 stations to examine the exterior of vehicles and vessels for compliance with [section 12(1) and (3)] or subsection  
6 (1) of this section.

7 (b) A check station may be established at or near a state border, within or near an invasive species  
8 management area, and at any other appropriate location designated by the departments, including public boat  
9 ramps.

10 (c) A vehicle or vessel must stop at a check station on its route unless a medical emergency makes  
11 stopping likely to result in death or serious bodily injury.

12 (d) If during an inspection the presence of an invasive species is found, the vehicle or vessel upon which  
13 the invasive species is found may not leave the inspection station until it is cleaned and decontaminated by  
14 employees of the departments.

15 (e) At a check station all vessels, bait containers, livewells, bilges, and other boating-related equipment,  
16 excluding marine sanitary systems, must be drained of all water before being transported on land or a public  
17 highway, as defined in 61-1-101, except where allowed by the department of fish, wildlife, and parks or the  
18 department of agriculture.

19  
20 **NEW SECTION. Section 14. Implied consent to search.** Implied consent to inspect the exterior of a  
21 vehicle or vessel for the presence of invasive species pursuant to [sections 13 and 18(2)(c)] is given upon  
22 registration of that vehicle or vessel pursuant to 61-3-321 and 61-3-562.

23  
24 **NEW SECTION. Section 15. Authorization to issue citations.** Employees of the departments with  
25 jurisdiction over invasive species by law or designation of the council may issue citations to any person violating  
26 the provisions of [sections 1 through 20].

27  
28 **NEW SECTION. Section 16. Invasive species possession and transfer prohibited -- exceptions.**  
29 A person may not import, purchase, sell, barter, distribute, propagate, transport, introduce, or possess an invasive  
30 species except:

- 1 (1) when transporting a specimen to any of the departments or another destination as directed by any
- 2 of the departments in a sealed container for the purpose of containing, identifying, or reporting the presence of
- 3 the species or for an approved educational purpose;
- 4 (2) when done by a government agency for an approved purpose;
- 5 (3) with a proper permit issued by the state or federal government; or
- 6 (4) as allowed by rule.

7

8 **NEW SECTION. Section 17. Transport of aquatic plants prohibited -- exceptions.** Transportation

9 of aquatic plants on any public highway, as defined in 61-1-101, is prohibited except:

- 10 (1) when transporting a specimen to any of the departments or another destination as directed by any
- 11 of the departments in a sealed container for the purpose of containing, identifying, or reporting the presence of
- 12 the species;
- 13 (2) when legally purchased or traded by or from commercial sources for aquariums, ornamental use,
- 14 wetlands, and riparian restoration purposes; and
- 15 (3) as allowed by rule.

16

17 **NEW SECTION. Section 18. Emergency response.** (1) The governor may declare an invasive species

18 emergency if the introduction or spread of an invasive species is imminent.

- 19 (2) If an emergency is declared pursuant to subsection (1):
- 20 (a) an emergency meeting of the council may be held;
- 21 (b) funds may be expended pursuant to 10-3-311; and
- 22 (c) with probable cause, law enforcement may conduct stops and inspections of the exterior of any
- 23 vehicle or vessel, as defined in 61-1-101, on a public highway, as defined in 61-1-101, to prevent further
- 24 transmission of the invasive species.

25

26 **NEW SECTION. Section 19. Penalty.** (1) Except as provided in subsection (2), the following penalties

27 apply:

- 28 (a) The offense of negligently violating the provisions of or rules adopted under [sections 12, 13, 16, and
- 29 17] pertaining to an invasive species management area is a misdemeanor punishable by a fine not to exceed
- 30 \$500.

1 (b) The offense of purposely or knowingly violating the provisions of or rules adopted under [sections  
2 12, 13, 16, and 17] pertaining to an invasive species management area is a misdemeanor punishable by a fine  
3 not to exceed \$1,000.

4 (c) Purposely or knowingly attempting to introduce an invasive species in Montana is a felony. Any  
5 person found guilty under this subsection (1)(c) is subject to a criminal penalty of up to 2 years in prison, a fine  
6 not to exceed \$5,000, or both. A person convicted of violating this subsection (1)(c) may also be required to pay  
7 restitution for any cost incurred to mitigate the effect of the violation.

8 (d) A civil penalty not to exceed \$250 may be imposed on any person who violates any other provision  
9 of [sections 1 through 20] or rules adopted under [sections 1 through 20] not enumerated in subsections (1)(a)  
10 through (1)(c).

11 (2) A warning without penalty may be issued to any person violating the provisions of [sections 1 through  
12 20] or rules adopted under [sections 1 through 20] if it is determined a warning best serves the public interest.

13 (3) Civil penalties collected under this section must be deposited in the general fund.  
14

15 **NEW SECTION. Section 20. No effect on existing law.** [Sections 1 through 20] may not be construed  
16 to terminate, modify, or exempt a person from action required by other state or federal law.  
17

18 **Section 21.** Section 10-3-103, MCA, is amended to read:

19 **"10-3-103. Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

20 (1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and  
21 emergency services.

22 (2) "Department" means the department of military affairs.

23 (3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss  
24 of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms,  
25 wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires,  
26 explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts,  
27 infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving  
28 radiation byproducts or other hazardous materials, bioterrorism, or incidents involving weapons of mass  
29 destruction.

30 (4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and

1 emergency functions and responsibilities, other than those for which military forces or other state or federal  
2 agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage  
3 resulting from emergencies or disasters.

4 (5) "Division" means the division of disaster and emergency services of the department.

5 (6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that  
6 timely action can avert or minimize.

7 (7) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena,  
8 requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to  
9 property or natural resources. The term includes:

10 (i) the imminent threat of an emergency; and

11 (ii) an emergency declared pursuant to [section 18].

12 (b) The term does not include a state of emergency or disaster declared by the governor pursuant to  
13 10-3-302 or 10-3-303.

14 (8) "Political subdivision" means any county, city, town, or other legally constituted unit of local  
15 government in this state.

16 (9) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other  
17 chief executive officer of a political subdivision.

18 (10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes,  
19 or other readily fabricated dwellings."

20

21 **Section 22.** Section 87-5-721, MCA, is amended to read:

22 **"87-5-721. Penalty -- license and permit revocation and denial.** (1) Except as provided in subsection  
23 (2), a person who violates a provision of this part is guilty of a misdemeanor punishable as provided in 87-1-102,  
24 and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title  
25 to the person and deny any application by the person for a license or permit under this title for a period not to  
26 exceed 2 years from the date of the conviction.

27 (2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

28 (a) is guilty of an offense punishable by a fine of not less than \$500 or more than \$5,000 and  
29 imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in  
30 lieu of imprisonment. A sentencing court may not defer or suspend \$500 of the fine amount.

1 (b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The  
 2 damages may be recovered on behalf of the public by the department or by the county attorney of the county in  
 3 which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the  
 4 department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

5 (c) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any  
 6 current hunting, fishing, or trapping license issued under this title and the privilege to hunt, fish, or trap in this state  
 7 for not less than 24 months. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24  
 8 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24  
 9 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the  
 10 privilege to hunt, fish, or trap in this state for the lifetime of that person.

11 (3) Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of  
 12 origin, or destroyed within ~~6 months of a conviction or sooner if ordered by the court a time set by the department,~~  
 13 not to exceed 6 months. The person in possession of the exotic wildlife may choose the method of disposition.  
 14 If the person in possession of the exotic wildlife does not comply with this requirement, the department may  
 15 confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge  
 16 any person convicted of a violation of this part for the costs associated with the handling, housing, transporting,  
 17 or destroying of the exotic wildlife."

18  
 19 NEW SECTION. Section 23. Codification instruction. [Sections 1 through 20] are intended to be  
 20 codified as an integral part of Title 80, chapter 7, and the provisions of Title 80, chapter 7, apply to [sections 1  
 21 through 20].

22  
 23 NEW SECTION. Section 24. Severability. If a part of [this act] is invalid, all valid parts that are  
 24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
 25 the part remains in effect in all valid applications that are severable from the invalid applications.

26  
 27 NEW SECTION. Section 25. Effective date. [This act] is effective on passage and approval.

28 - END -