



AN ACT REVISING DEFINITIONS RELATED TO FISH AND GAME VIOLATIONS; AND AMENDING SECTIONS 87-1-513, 87-2-101, 87-2-114, AND 87-2-807, MCA.

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

Section 1. Section 87-1-513, MCA, is amended to read:

"87-1-513. Disposition of proceeds of sale. (1) The money obtained upon the sale of seized property must be retained and accounted for by the department when the person having the property in possession at the time of seizure is prosecuted or when a prosecution of the person is pending. If the person charged with ~~violation of the violating fish and game law~~ is found guilty of or forfeits bond for violation of the fish and game laws of the state convicted or forfeits bond or bail, the money received for the sale of seized property must be paid over to the state treasurer and be deposited to the credit of the fish and game fund; except as provided in subsection (2). If the party from whom the property was taken is not found guilty of any violation of the fish and game laws of this state, the money must be paid to the party from whom the game birds, wild animals, fish, or parts or portions thereof were taken. An officer is not liable for any damage ~~on account of~~ caused by any search, examination, seizure, or sale. When wild animals, game birds, or fish are seized as provided in this part and the person or persons who killed or captured the wild animals, game birds, or fish cannot be ascertained or when the animals sold were killed pursuant to 87-1-225, then the money received from the sale of the wild animals, game birds, or fish must be paid directly to the state treasurer. The cost of advertising notice of sale, as required by 87-1-511, must be paid from the fish and game fund.

(2) The proceeds, after the department's cost of conducting the sale and costs incurred in donating game animal meat are deducted, from the sale of seized game animal meat must be deposited in the state special revenue fund to the credit of the department of public health and human services for the purposes of awarding grants to the Montana food bank network in this state. Money from the grants awarded to the Montana food bank network must be used for the processing of donated game animal meat. Any grant funds remaining after donated game animal meat is processed may be used for other appropriate purposes by the Montana food bank network."

Section 2. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in ~~87-1-102, chapter 3, and this chapter~~ Title 87, chapters 1 through 3, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(4) "Commission" means the state fish, wildlife, and parks commission.

(5) "Conviction" means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated.

~~(5)~~(6) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

~~(6)~~(7) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(7)~~(8) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); the species perca flavescens (yellow perch); all species of the genus pomoxis (crappie); and the species ictalurus punctatus (channel catfish).

~~(8)~~(9) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(9)~~(10) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves.

~~(10)~~(11) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(11)~~(12) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

~~(12)~~(13) "Person" means individuals, associations, partnerships, and corporations.

(14) "Possession" has the meaning provided in 45-2-101.

~~(13)~~(15) "Predatory animals" means coyote, weasel, skunk, and civet cat.

~~(14)~~(16) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(15)~~(17) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(16)~~(18) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

Section 3. Section 87-2-114, MCA, is amended to read:

"87-2-114. Misdemeanor and felony possession of hunting or fishing license or permit -- penalties. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of a hunting or fishing license or permit if the person knowingly, as defined in 45-2-101, carries or has physical control over a valid and unused:

(a) hunting license or permit issued to another person while in any location that the species to be hunted may inhabit;

(b) resident hunting license or permit or resident fishing license or permit issued to a nonresident; or

(c) hunting license or permit or fishing license or permit that was issued in violation of applicable law or rule.

(2) The following exceptions apply to the prohibition in subsection (1):

(a) A person may carry or have physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person.

(b) The prohibition does not apply to a properly obtained and validated license or permit attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section is guilty of a misdemeanor and is punishable as provided in 87-1-102(1).

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued or by knowingly, as defined in 45-2-101, carrying, having physical control of, or selling two or more licenses or permits that were issued in violation of applicable law or rule, is guilty of a felony and upon conviction shall be fined not more than \$50,000; or be imprisoned in the state prison for not more than 5 years, or both.

(5) In addition to the penalties set out in subsections (3) and (4), a person convicted under this section ~~or who pleads guilty to a violation of this section shall lose~~ forfeit all hunting, fishing, and trapping permit and license privileges for not less than 3 years ~~or up to a lifetime~~ revocation for life from the date of conviction."

Section 4. Section 87-2-807, MCA, is amended to read:

"87-2-807. Taking migratory game birds for propagation -- avicultural permit. (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101(9), for the purpose of propagation. Before issuing an avicultural permit, the department shall determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

- (a) the species of migratory game birds allowed to be taken under the permit;
- (b) whether eggs or hatched birds, or both, may be taken;
- (c) the number of eggs or hatched birds, or both, that may be taken;
- (d) areas in which collection may be made;
- (e) means by which collection may be made;
- (f) the time period for which the permit is valid; and
- (g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates the migratory game birds, and the owner may sell or transfer the birds as private property, subject to any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing the permit.

(5) The department shall adopt rules implementing this section."

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

I hereby certify that the within bill,
HB 0337, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 337
INTRODUCED BY M. MENAHAN

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