62nd Legislature

1	HOUSE BILL NO. 541
2	INTRODUCED BY J. WELBORN
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND
5	PARKS FROM REGULATING DOMESTIC LIVESTOCK TRAILING AS A COMMERCIAL ACTIVITY;
6	EXEMPTING DOMESTIC LIVESTOCK TRAILING FROM THE MONTANA ENVIRONMENTAL POLICY ACT;
7	AMENDING SECTIONS 87-1-301 AND 87-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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9	WHEREAS, the Montana Department of Fish, Wildlife, and Parks (MDFWP) is considering whether to
10	deem and classify domestic livestock trailing as a commercial use that is subject to licensing or permitting by the
11	department, the payment of a licensing or permitting fee, and an environmental review under the Montana
12	Environmental Policy Act; and
13	WHEREAS, MDFWP has adopted administrative rules governing the commercial use of lands under the
14	control, administration, and jurisdiction of the department; and
15	WHEREAS, livestock grazing, farming, haying, fencing, and timber harvest have been exempted from
16	those rules; and
17	WHEREAS, given those exemptions for farming and ranching activities, the Legislature believes that
18	domestic livestock trailing should also be exempt; and
19	WHEREAS, domestic livestock trailing is a necessary component of ranching and farming in Montana;
20	and
21	WHEREAS, in order to sustain Montana's valuable farm and ranching economy and land bases
22	associated with that economy, farmers and ranchers must be encouraged and have the right to engage in
23	activities that allow them to remain in farming and ranching; and
24	WHEREAS, MDFWP's attempt to classify domestic livestock trailing as a commercial use and to subject
25	trailing activities to environmental review interferes with the Legislature's directive under Article XII, section 1, of
26	the Montana Constitution to enact laws that protect, enhance, and develop all agriculture; and
27	WHEREAS, the Legislature has a strong interest in protecting the health of Montana's agriculture
28	industry.
29	

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



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2	Section 1. Section 87-1-301, MCA, is amended to read:
2	"87-1-301. Powers of commission. (1) The commission:
4	(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,
4 5	fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment
6	
7	of all other responsibilities of the department as provided by law; (b) shall establish the hunting, fishing, and trapping rules of the department;
8	(c) except as provided in 87-1-303(3), shall establish the rules of the department governing the use of
9	lands owned or controlled by the department and waters under the jurisdiction of the department;
9 10	(d) must have the power within the department to establish wildlife refuges and bird and game preserves;
11	(c) shall approve all acquisitions or transfers by the department of interests in land or water, except as
12	provided in 87-1-209(4);
12	(f) shall review and approve the budget of the department prior to its transmittal to the budget office;
13	(g) shall review and approve the budget of the department prior to its transmittanto the budget office,
14	less than \$5,000; and
16	
	(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided
17	in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as
18	provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider
19	landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular
20	hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal
21	opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting
22	district where a restriction on elk hunting on public property is proposed.
23	(2) The commission may adopt rules regarding the use and type of archery equipment that may be
24	employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in
25	archery equipment change.
26	(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons,
27	conditions, programs, or other provisions that the commission considers appropriate to promote or enhance
28	hunting by Montana's youth and persons with disabilities.
29	(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:
30	(i) separate deer licenses from nonresident elk combination licenses;
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1	(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the
2	deer tag;
3	(iii) condition the use of the deer licenses; and
4	(iv) limit the number of licenses sold.
5	(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and
6	appropriate to regulate the harvest by nonresident big game combination license holders:
7	(i) for the biologically sound management of big game populations of elk, deer, and antelope;
8	(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and
9	(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321
10	through 87-1-325.
11	(5) The commission may adopt rules establishing license preference systems to distribute hunting
12	licenses and permits:
13	(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant
14	who has been unsuccessful for a shorter period of time; and
15	(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying
	landowner" means the owner of land that provides some significant babitat hanafit for wildlife, as determined by
16	landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by
16 17	the commission.
17	the commission.
17 18	the commission. (6) (a) The commission may adopt rules to:
17 18 19	 the commission. (6) (a) The commission may adopt rules to: (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and
17 18 19 20	 the commission. (6) (a) The commission may adopt rules to: (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting
17 18 19 20 21	 the commission. (6) (a) The commission may adopt rules to: (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.
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 17 18 19 20 21 22 23 24 25 26 27 	the commission. (6) (a) The commission may adopt rules to: (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts. (b) The commission shall consider, but is not limited to consideration of, the following factors: (i) harvest of lions by resident and nonresident hunters; (ii) history of quota overruns; (iii) composition, including age and sex, of the lion harvest; (iv) historical outfitter use; (v) conflicts among hunter groups;



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Section 2. Section 87-1-303, MCA, is amended to read:

87-1-303. Rules for use of lands and waters. (1) The Except as provided in subsection (3), the commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

8 (2) The commission may adopt and enforce rules governing recreational uses of all public fishing 9 reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes 10 that it operates under agreement with or in conjunction with a federal or state agency or private owner. These 11 rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and 12 public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating 13 speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of 14 conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, 15 sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the 16 shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this 17 section must be areas that are legally accessible to the public. These rules are subject to review and approval 18 by the department of public health and human services with regard to issues of public health and sanitation before 19 becoming effective. Copies of the rules must show that endorsement.

(3) The commission may not regulate or classify domestic livestock trailing as a commercial activity or
 commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land
 owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through

- 23 <u>3.</u>"
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<u>NEW SECTION.</u> Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable
 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
 remains in effect in all valid applications that are severable from the invalid applications.

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NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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