

HOUSE BILL NO. 541

INTRODUCED BY J. WELBORN

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM REGULATING DOMESTIC LIVESTOCK TRAILING AS A COMMERCIAL ACTIVITY; EXEMPTING DOMESTIC LIVESTOCK TRAILING FROM THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTIONS 87-1-301 AND 87-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Montana Department of Fish, Wildlife, and Parks (MDFWP) is considering whether to deem and classify domestic livestock trailing as a commercial use that is subject to licensing or permitting by the department, the payment of a licensing or permitting fee, and an environmental review under the Montana Environmental Policy Act; and

WHEREAS, MDFWP has adopted administrative rules governing the commercial use of lands under the control, administration, and jurisdiction of the department; and

WHEREAS, livestock grazing, farming, haying, fencing, and timber harvest have been exempted from those rules; and

WHEREAS, given those exemptions for farming and ranching activities, the Legislature believes that domestic livestock trailing should also be exempt; and

WHEREAS, domestic livestock trailing is a necessary component of ranching and farming in Montana; and

WHEREAS, in order to sustain Montana's valuable farm and ranching economy and land bases associated with that economy, farmers and ranchers must be encouraged and have the right to engage in activities that allow them to remain in farming and ranching; and

WHEREAS, MDFWP's attempt to classify domestic livestock trailing as a commercial use and to subject trailing activities to environmental review interferes with the Legislature's directive under Article XII, section 1, of the Montana Constitution to enact laws that protect, enhance, and develop all agriculture; and

WHEREAS, the Legislature has a strong interest in protecting the health of Montana's agriculture industry.

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:
- 3 **"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,
- 5 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment
- 6 of all other responsibilities of the department as provided by law;
- 7 (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;
- 10 (d) must have the power within the department to establish wildlife refuges and bird and game preserves;
- 11 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as
- 12 provided in 87-1-209(4);
- 13 (f) shall review and approve the budget of the department prior to its transmittal to the budget office;
- 14 (g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but
- 15 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;

- 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
16 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by
17 the commission.
- 18 (6) (a) The commission may adopt rules to:
- 19 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and
- 20 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting
21 districts.
- 22 (b) The commission shall consider, but is not limited to consideration of, the following factors:
- 23 (i) harvest of lions by resident and nonresident hunters;
- 24 (ii) history of quota overruns;
- 25 (iii) composition, including age and sex, of the lion harvest;
- 26 (iv) historical outfitter use;
- 27 (v) conflicts among hunter groups;
- 28 (vi) availability of public and private lands; and
- 29 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."
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