

1 HOUSE BILL NO. 541

2 INTRODUCED BY J. WELBORN

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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 AUTHORIZING DOMESTIC LIVESTOCK TRAILING ACROSS LANDS DESIGNATED AS WILDLIFE
8 MANAGEMENT AREAS; AMENDING SECTIONS 87-1-301 AND 87-1-303, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE."

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

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

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

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

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

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

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

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

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2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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4 **Section 1.** Section 87-1-301, MCA, is amended to read:
5 **"87-1-301. Powers of commission.** (1) The commission:
6 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,
7 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment
8 of all other responsibilities of the department as provided by law;
9 (b) shall establish the hunting, fishing, and trapping rules of the department;
10 (c) except as provided in 87-1-303(3), shall establish the rules of the department governing the use of
11 lands owned or controlled by the department and waters under the jurisdiction of the department;
12 (d) must have the power within the department to establish wildlife refuges and bird and game preserves;
13 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as
14 provided in 87-1-209(4);
15 (f) shall review and approve the budget of the department prior to its transmittal to the budget office;
16 (g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but
17 less than \$5,000; and
18 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided
19 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as
20 provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider
21 landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular
22 hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal
23 opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting
24 district where a restriction on elk hunting on public property is proposed.
25 (2) The commission may adopt rules regarding the use and type of archery equipment that may be
26 employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in
27 archery equipment change.
28 (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons,
29 conditions, programs, or other provisions that the commission considers appropriate to promote or enhance
30 hunting by Montana's youth and persons with disabilities.

- 1 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:
- 2 (i) separate deer licenses from nonresident elk combination licenses;
- 3 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the
- 4 deer tag;
- 5 (iii) condition the use of the deer licenses; and
- 6 (iv) limit the number of licenses sold.
- 7 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and
- 8 appropriate to regulate the harvest by nonresident big game combination license holders:
- 9 (i) for the biologically sound management of big game populations of elk, deer, and antelope;
- 10 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and
- 11 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321
- 12 through 87-1-325.
- 13 (5) The commission may adopt rules establishing license preference systems to distribute hunting
- 14 licenses and permits:
- 15 (a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant
- 16 who has been unsuccessful for a shorter period of time; and
- 17 (b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying
- 18 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by
- 19 the commission.
- 20 (6) (a) The commission may adopt rules to:
- 21 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and
- 22 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting
- 23 districts.
- 24 (b) The commission shall consider, but is not limited to consideration of, the following factors:
- 25 (i) harvest of lions by resident and nonresident hunters;
- 26 (ii) history of quota overruns;
- 27 (iii) composition, including age and sex, of the lion harvest;
- 28 (iv) historical outfitter use;
- 29 (v) conflicts among hunter groups;
- 30 (vi) availability of public and private lands; and

1 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."
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Section 2. Section 87-1-303, MCA, is amended to read:

4 **"87-1-303. Rules for use of lands and waters.** (1) ~~The~~ Except as provided in subsection (3), the
5 commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by
6 the commission or lands that it operates under agreement with or in conjunction with a federal or state agency
7 or private owner. The rules must be adopted in the interest of public health, public safety, and protection of
8 property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in
9 87-1-209.

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

22 (3) (A) The commission may not regulate or classify domestic livestock trailing as a commercial activity
23 or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land
24 owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through
25 3.

26 (B) THE COMMISSION MAY AUTHORIZE DOMESTIC LIVESTOCK TRAILING ACROSS LAND OWNED OR CONTROLLED
27 BY THE DEPARTMENT THAT IS DESIGNATED AS A WILDLIFE MANAGEMENT AREA. THE COMMISSION MAY ADOPT RULES
28 GOVERNING THE TIMING OF AND THE ROUTE TO BE USED FOR DOMESTIC LIVESTOCK TRAILING ACTIVITIES TO THE EXTENT
29 THAT THE RULES ARE NECESSARY BOTH TO ENABLE THE TRAILING OF DOMESTIC LIVESTOCK ACROSS THE DESIGNATED
30 WILDLIFE MANAGEMENT AREA AND TO PROTECT AND ENHANCE STATE LANDS. THE RULES MAY NOT:

- 1 (I) REQUIRE A FEE FOR DOMESTIC LIVESTOCK TRAILING OR RELATED ACTIVITIES; OR
2 (II) PROHIBIT OR UNREASONABLY INTERFERE WITH DOMESTIC LIVESTOCK TRAILING ACTIVITIES.
3 (4) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:
4 (A) "DOMESTIC LIVESTOCK" MEANS DOMESTIC ANIMALS KEPT FOR FARM AND RANCH PURPOSES, INCLUDING BUT
5 NOT LIMITED TO HORSES, CATTLE, SHEEP, GOATS, AND DOGS.
6 (B) "DOMESTIC LIVESTOCK TRAILING" MEANS THE ENTERING UPON AND CROSSING OF DEPARTMENT LANDS AND
7 THE USE OF THE LANDS FOR FORAGE BY DOMESTIC LIVESTOCK FOR A MAXIMUM OF 96 CONSECUTIVE HOURS."

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9 NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable
10 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
11 remains in effect in all valid applications that are severable from the invalid applications.

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

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