

BUSINESS REPORT
MONTANA SENATE
63rd LEGISLATURE - REGULAR SESSION
SENATE FISH AND GAME COMMITTEE

Date: Tuesday, January 22, 2013
Place: Capitol

Time: 3:00 PM
Room: 422

BILLS and RESOLUTIONS HEARD:

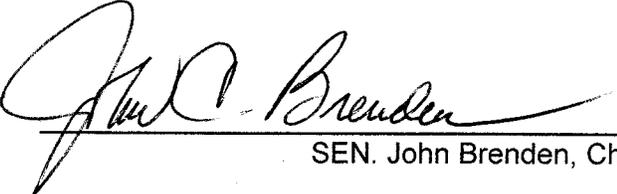
SB 101 - Revise qualifications to obtain permit to hunt from vehicle - Tom Facey
SB 156 - Revising qualifications for nonresident relative of resident licenses - Chas Vincent
SB 155 - Require EIS for FWP land acquisition - Chas Vincent

EXECUTIVE ACTION TAKEN:

SB 123 - Provide for hunters against hunger - Kendall Van Dyk

Partial Action on SB 118 - Setting aside special license for residents 65 and older - Fred Thomas

Comments:


SEN. John Brenden, Chair

MONTANA STATE SENATE
Roll Call
FISH AND GAME COMMITTEE

DATE: 1-22-13

| <u>NAME</u> | <u>PRESENT</u> | <u>ABSENT/ EXCUSED</u> |
|------------------------------------|----------------|----------------------------|
| SENATOR JOHN BRENDEN, CHAIRMAN | ✓ | |
| SENATOR RICK RIPLEY, VICE CHAIRMAN | ✓ | |
| SENATOR DEBBY BARRETT | ✓ | |
| SENATOR TOM FACEY | ✓ | |
| SENATOR JENNIFER FIELDER | ✓ | |
| SENATOR BRAD HAMLETT | ✓ | |
| SENATOR LARRY JENT | ✓ | |
| SENATOR JIM PETERSON | | Excused |
| SENATOR FRED THOMAS | ✓ | |
| SENATOR KENDALL VAN DYK | ✓ | |
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SENATE STANDING COMMITTEE REPORT

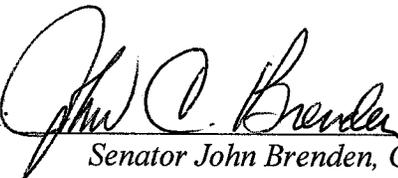
January 22, 2013

Page 1 of 2

Mr. President:

We, your committee on **Fish and Game** recommend that **Senate Bill 123** (first reading copy -- white) **do pass as amended.**

Signed:


Senator John Brenden, Chair

And, that such amendments read:

1. Title, page 1, line 8.

Following: "DATE"

Insert: " AND A TERMINATION DATE"

2. Page 1, line 25.

Strike: "meat processors"

Insert: "a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3)"

3. Page 1, line 26.

Following: "donated"

Insert: "or seized"

4. Page 1, line 26 through line 27.

Strike: ", including" on line 26 through "exists" on line 27

5. Page 1, line 28.

Strike: "meat processors"

Insert: "a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3)"

6. Page 5, line 22.

Following: Line 21

Insert: "NEW SECTION: **Section 7. Termination.** [This act] terminates June 30, 2019."

Committee Vote:

Yes 10, No 0

Fiscal Note Required

SB0123001SC.swr

- END -

MONTANA STATE SENATE
Roll Call Vote
FISH AND GAME COMMITTEE

DATE 1-22-13 BILL NO SB 118 MOTION NO. _____
 MOTION: SUBSTITUTE MOTION that SB118 BE
Amended by segregating sections 1-3
from SECTION 4.

| <u>NAME</u> | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---------------------------------|-----|----|--|
| SENATOR RICK RIPLEY, VICE CHAIR | | ✓ | |
| SENATOR DEBBY BARRETT | | ✓ | |
| SENATOR TOM FACEY | ✓ | | |
| SENATOR JENNIFER FIELDER | ✓ | | |
| SENATOR BRADLEY MAXON HAMLETT | ✓ | | |
| SENATOR LARRY JENT | ✓ | | |
| SENATOR JIM PETERSON | | ✓ | |
| SENATOR FRED THOMAS | ✓ | | |
| SENATOR KENDALL VAN DYK | | ✓ | |
| SENATOR JOHN BRENDEN, CHAIR | | ✓ | |
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MONTANA STATE SENATE
Roll Call Vote
FISH AND GAME COMMITTEE

DATE 1-22-13 BILL NO SB 118 MOTION NO. _____
 MOTION: SUBSTITUTE MOTION by SEN. THOMAS
THAT SB 118 BE AMENDED WITH SECTION 4.

| <u>NAME</u> | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|---------------------------------|-----|----|--|
| SENATOR RICK RIPLEY, VICE CHAIR | ✓ | | |
| SENATOR DEBBY BARRETT | ✓ | | |
| SENATOR TOM FACEY | ✓ | | |
| SENATOR JENNIFER FIELDER | ✓ | | |
| SENATOR BRADLEY MAXON HAMLETT | ✓ | | |
| SENATOR LARRY JENT | ✓ | | |
| SENATOR JIM PETERSON | ✓ | | |
| SENATOR FRED THOMAS | ✓ | | |
| SENATOR KENDALL VAN DYK | ✓ | | |
| SENATOR JOHN BRENDEN, CHAIR | ✓ | | |
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MONTANA STATE SENATE
Roll Call Vote
FISH AND GAME COMMITTEE

DATE 1-22-13 BILL NO SB 118 MOTION NO. _____
 MOTION: MOTION VOTE THAT SB 118 BE DO PASS
AS AMENDED.

| <u>NAME</u> | <u>AYE</u> | <u>NO</u> | <u>If Proxy Vote, check here & include signed Proxy Form with minutes</u> |
|---------------------------------|------------|-----------|---|
| SENATOR RICK RIPLEY, VICE CHAIR | ✓ | | |
| SENATOR DEBBY BARRETT | | ✓ | |
| SENATOR TOM FACEY | ✓ | | |
| SENATOR JENNIFER FIELDER | | ✓ | |
| SENATOR BRADLEY MAXON HAMLETT | ✓ | | |
| SENATOR LARRY JENT | | ✓ | |
| SENATOR JIM PETERSON | | ✓ | |
| SENATOR FRED THOMAS | ✓ | | |
| SENATOR KENDALL VAN DYK | | ✓ | |
| SENATOR JOHN BRENDEN, CHAIR | ✓ | | |
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Montana Fish, Wildlife & Parks

MEMORANDUM

TO: Senator John Brenden, Chairman
Senate Fish and Game Committee

FROM: Rebecca Jakes Dockter, Chief Legal Counsel, Department of Fish, Wildlife
& Parks
Aimee Fausser, Agency Legal Counsel, Department of Fish, Wildlife &
Parks

DATE: January 18, 2013

RE: Analysis of potential liability under Senate Bill 123

Question Presented: Under Senate Bill 123 (SB 123), would the Department be liable in the event that someone became ill from consuming a wild game donation?

Brief Answer: No, the Department would not be liable as a result of SB 123, as amended. The January 17 amendment to SB 123 provides for donations to nonprofits rather than to meat processors, and therefore brings the Department under the protection of the Bill Emerson Good Samaritan Food Donation Act ("the Act"), 42 USCS §1791. The Act provides protection from liability when food and grocery products are donated to nonprofit organizations for distribution to individuals in need.

Rationale:

Senate Bill 123, as amended to provide for donations to nonprofits rather than meat processors, would protect the Department from potential liability issues in the event that someone became ill from consuming a wild game donation. The Bill Emerson Good Samaritan Food Donation Act ("the Act"), 42 USCS §1791, protects individuals and organizations, including governmental entities, from liability when they donate food to a nonprofit organization in good faith. This includes protection from liability arising from the nature, age, packaging, or condition of apparently wholesome food.¹ Under the Act, the only liability that could potentially result from a donation would have to result from "an act or omission...constituting gross negligence or intentional misconduct." 42 USCS

¹ Apparently wholesome food is defined as food "that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions." 42 USCS §1791(b)(2).

§1791(c)(3). It should be noted that the Act's protection only extends to donations to nonprofit organizations, and so the January 17 amendment to SB 123 is critical for gaining protection under the Act.

The Act provides donors with protection from liability even in cases where there might be some question as to whether the donate food meets the "apparently wholesome" standard. When the food in question is suspected to not meet the standard, an entity that donates food products shall not be subject to civil or criminal liability if the nonprofit organization that receives the donated food is: 1) informed by the donor of the distressed or defective condition of the donated food, 2) agrees to recondition the donated food to comply with quality and labeling standards prior to distribution, and 3) is knowledgeable of the standards to do so. 42 USCS §1791(e).

The amended language of SB 123 would result in a very low risk of liability for the Department. The monetary donations contemplated by SB 123 do not create liability concerns for the Department, since the Department would only be a pass-through entity and no action on the part of the Department would contribute to potential liability. Further, any concerns about the quality of specific donations of meat could also be easily resolved through the Department's implementation of the law. SB 123 places responsibility on the Department to establish guidelines for the donations of game animals to nonprofit organizations. The Department could easily craft these guidelines so as to ensure that the Act is complied with, and mitigate any potential liability for donations of food under the proposed Hunters Against Hunger program.

c: Jason Mohr

Mohr, Jason

From: Kropp, Jim
Sent: Friday, January 18, 2013 12:31 PM
To: Mohr, Jason
Subject: FW: SB 123

Hi Jason,

I just wanted to ensure that you had received this for Senator Brenden's request related to SB 123 yesterday. FWP will also be sending you our legal opinion from the committee as well. Thanks jk

From: Brent Weisgram [mailto:bweisgram@mfbn.org]
Sent: Thursday, January 17, 2013 4:55 PM
To: Kate Devino; Kropp, Jim
Subject: SB 123

Kate and Jim,

Regarding the question of liability in the event someone became ill from consuming a wild game donation there are a couple of answers and factors regarding that type of a situation and ultimate liability.

#1) The primary line of preventing foodborne illness begins during the processing. That is why we only accept wild game from approved commercial processors who are trained and insure that the wild game is inspected, processed and stored according to food safety guidelines.

#2) The second line of defense it that the staff of MFBN handling the donations all are Servsafe Food Safety Certified as are all partner agency members who are receiving, storing, and distributing the wild game to clients in need.

#3) Lastly, The Good Samaritan Act protects donors of food and grocery products who are donating food in good faith, see below.

Protecting Our Food Partners

Millions of pound of food and groceries go to waste each year. To encourage companies and organizations to donate healthy food that would otherwise go to waste, they are protected from criminal and civil liability under the Good Samaritan Food Donation Act.

The Federal Bill Emerson Good Samaritan Food Donation Act

On October 1, 1996, President Clinton signed this act to encourage donation of food and grocery products to non-profit organizations for distribution to individuals in need. This law:

- * Protects you from liability when you donate to a non-profit organization;
- * Protects you from civil and criminal liability should the product donated in good faith later cause harm to the recipient;
- * Standardizes donor liability exposure. You or your legal counsel do not need to investigate liability laws in 50 states; and
- * Sets a floor of "gross negligence" or intentional misconduct for persons who donate grocery products. According to the new law, gross negligence is defined as "voluntary and conscious conduct by a person with knowledge (at the time of conduct) that the conduct is likely to be harmful to the health or well-being of another person."

The text of the bill itself follows:

The Bill Emerson Food Donation Act

One Hundred Fourth Congress of the United States of America

At the Second Session

Begun and held at the City of Washington on Wednesday, the third day of January, one thousand nine hundred and ninety-six.

An Act

To encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. CONVERSION TO PERMANENT LAW OF MODEL GOOD SAMARITAN FOOD DONATION ACT AND TRANSFER OF THAT ACT TO CHILD NUTRITION ACT OF 1966.

(a) Conversion to Permanent Law. -- Title IV of the National and Community Service Act of 1990 is amended --

1. by striking the title heading and sections 401 and 403 (42 U.S.C. 12671 and 12673); and
2. in section 402 (42 U.S.C. 12672) --

(A) in the section heading, by striking "model" and inserting "bill emerson"

(B) in subsection (a), by striking "Good Samaritan" and inserting "Bill Emerson Good Samaritan:"

(C) in subsection (b)(7), to read as follows:

"(7) GROSS NEGLIGENCE. -- The term 'gross negligence' means voluntary and conscious conduct (including a failure to act) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.";

(D) by striking subsection (c) and inserting the following:

"(c) LIABILITY FOR DAMAGES FROM DONATED FOOD AND GROCERY PRODUCTS.

"(1) LIABILITY OF PERSON OR GLEANER. -- A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals.

"(2) LIABILITY OF NONPROFIT ORGANIZATION. -- A nonprofit organization shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution to needy individuals.

"(3) EXCEPTION. -- Paragraphs (1) and (2) shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the person, gleaner or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct."; and

(E) in subsection (f), by adding at the end the following: "Nothing in this section shall be construed to supersede State or local health regulations."

(b) TRANSFER TO CHILD NUTRITION ACT OF 1966. -- Section 402 of the National and Community Service Act of 1990 (42 U.S.C. 12762) (as amended by subsection (a))

1. is transferred from the National and Community Service Act of 1990 to the Child Nutrition Act of 1966;
2. is redesignated as section 22 of the Child Nutrition Act of 1966; and
3. is added at the end of such Act.

(c) CONFORMING AMENDMENT. -- The table of contents for the National and Community Service Act of 1990 is amended by striking the items relating to title IV.

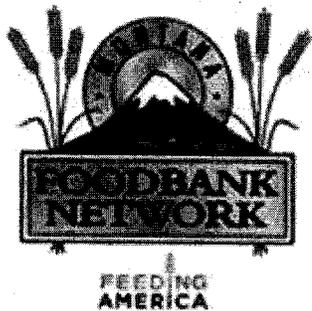
Newt Gingrich
Speaker of the House of Representatives
Strom Thurmond
President of the Senate Pro Tempore
Approved 10/01/96

William J. Clinton
President of the United States
P.L. 104-210

I hope this answers the question and feel free to contact me if you need anything else.

Best Regards,

Brent



Brent Weisgram
Chief Operations Officer

Montana Food Bank Network

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(406) 542-3770 FAX

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DONATE

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