

HOUSE BILL NO. 379

INTRODUCED BY RIPLEY, ANDERSEN, BARRETT, BERGREN, BITNEY, BOOKOUT-REINICKE, D. BROWN, R. BROWN, BRUEGGEMAN, E. CLARK, CYR, DEVLIN, EVERETT, FISHER, FUCHS, HAWK, HEDGES, JACKSON, KASTEN, LAMBERT, LEHMAN, MAEDJE, MAHLUM, MATTHEWS, MCCARTHY, MCGEE, MCKENNEY, MCNUTT, MENDENHALL, MOOD, NELSON, O'NEIL, A. OLSON, B. OLSON, PATTISON, PETERSON, RICE, ROBERTS, ROME, ROSS, SCHRUMPF, SHEA, SINRUD, SMITH, STEINBEISSER, TESTER, B. THOMAS, F. THOMAS, WAITSCHIES, WINDY BOY, WITT, YOUNKIN, TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE RIGHTS OF ALTERNATIVE LIVESTOCK RANCHES; AUTHORIZING ALTERNATIVE LIVESTOCK RANCHES TO OPERATE PURSUANT TO PROVISIONS OF LAW IN EFFECT PRIOR TO THE PASSAGE OF INITIATIVE MEASURE NO. 143; AMENDING SECTIONS 87-4-412, ~~AND 87-4-417, AND 87-4-428~~, MCA; REPEALING SECTIONS 87-4-414 AND 87-4-433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the alternative livestock ranchers in Montana applied for and received licenses from the State of Montana after relying on the status of existing laws and upon the encouragement of the Legislature and past administrations that alternative livestock ranching was a viable agricultural diversification; and

WHEREAS, the alternative livestock ranchers who obtained licenses prior to the passage of Initiative Measure No. 143 had vested property rights and have invested millions of dollars in their business licenses, animals, real property, and facilities; and

WHEREAS, the passage of Initiative Measure No. 143 substantially impaired and prohibited the intended business purposes for most, if not all, alternative livestock ranchers in Montana; and

WHEREAS, there are serious financial consequences to Montana should Initiative Measure No. 143 constitute an unconstitutional taking of private property without just compensation; and

WHEREAS, this act is intended to reduce the state of Montana's liability should a court find that Initiative Measure No. 143 is an unconstitutional taking of private property without just compensation.

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

NEW SECTION. **Section 1. Rights of alternative livestock ranch -- alternative livestock as private**

property -- source. (1) An alternative livestock ranch has vested property rights in its alternative livestock ranch license, alternative livestock, facilities, real property, and the goodwill of business created. An alternative livestock ranch may:

(a) acquire, breed, grow, keep, pursue, handle, harvest, use, sell, harvest for a fee or other remuneration, or dispose of the alternative livestock and their progeny in any quantity and at any time of year;

(b) transfer their alternative livestock ranch licenses to third parties; and

(c) modify the alternative livestock ranch facilities.

(2) All alternative livestock lawfully possessed on a licensed alternative livestock ranch are private property for which the licensee is responsible as provided by law.

(3) Alternative livestock must be lawfully acquired by the licensee. Alternative livestock may be kept only on a licensed alternative livestock ranch. A licensee who keeps alternative livestock owned by, leased to, or leased from another person shall comply with all of the requirements of this part as if the animal belonged to the licensee. Records and reports submitted by the licensee pursuant to 87-4-417 must identify any alternative livestock kept by the licensee during the reporting period and the name and address of the owner or lessee.

(4) Except as otherwise provided in this part, laws applicable to game animals do not apply to alternative livestock raised on a licensed alternative livestock ranch.

NEW SECTION. Section 2. Marking of alternative livestock. (1) A licensee shall mark alternative livestock in a manner approved by the department of livestock, as required under subsection (2), and that indicates ownership and provides individual identification of animals for inspection, transportation, reporting, and taxation purposes.

(2) The department of livestock is responsible for the control, tracking, and distribution of identification tags used for the marking of alternative livestock. The department of livestock shall require that all imported alternative livestock be marked within 30 days of importation and that all other alternative livestock be marked prior to January 1 of each year. Alternative livestock must be marked with identification that:

(a) is unique to the animal;

(b) is nontransferable;

(c) has an emblem owned and registered by the department of livestock that is embossed on each identification tag; and

(d) allows for the identification of alternative livestock from a distance.

(3) Upon the request of a licensee, the department of livestock may grant a temporary waiver as to the

time for identification and to the manner of identification if necessary to address a special circumstance.

Section 3. Section 87-4-412, MCA, is amended to read:

"87-4-412. Term of license -- renewal -- transfer prohibited -- TRANSFERABILITY. ~~(4)~~ (1) An alternative livestock ranch license expires on March 1 of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license upon payment of the renewal fee if the licensee has complied with all recording and reporting requirements.

~~(2) An alternative livestock ranch license for a specific facility is not transferable.~~

(2) AN ALTERNATIVE LIVESTOCK RANCH LICENSE FOR A SPECIFIC FACILITY IS TRANSFERABLE WITH THE CONSENT OF THE DEPARTMENT. THE DEPARTMENT'S CONSENT MUST BE GIVEN IF:

(A) THE TRANSFEREE OWNS OR LEASES THE PREMISES ON WHICH THE OPERATIONS ARE TO BE CONDUCTED;

(B) THE TRANSFEREE OR THE TRANSFEREE'S PRINCIPAL MANAGER:

(I) HAS NOT BEEN CONVICTED OF OR HAS NOT FORFEITED BOND OF \$100 OR MORE FOR MORE THAN ONE VIOLATION OF THE FISH AND GAME LAWS OR APPLICABLE REGULATIONS OF ANY STATE OR THE UNITED STATES WITHIN A 5-YEAR PERIOD PRIOR TO APPLICATION;

(II) HAS NOT AT ANY TIME PLEADED GUILTY TO OR BEEN CONVICTED OF A FELONY, UNLESS CIVIL RIGHTS HAVE BEEN RESTORED PURSUANT TO LAW. A PERSON MAY NOT APPLY FOR A TRANSFER AT ANY TIME DURING WHICH A DEFERRED OR SUSPENDED FELONY SENTENCE IS IN EFFECT.

(III) IS AT LEAST 18 YEARS OF AGE.

(C) THE ALTERNATIVE LIVESTOCK RANCH AND FACILITIES ARE IN COMPLIANCE WITH REQUIREMENTS IN PLACE AT THE TIME THE LICENSE WAS ISSUED;

(D) THE ALTERNATIVE LIVESTOCK RANCH IS NOT UNDER QUARANTINE BY THE DEPARTMENT;

(E) ALTERNATIVE LIVESTOCK TO BE TRANSFERRED ARE NOT PROHIBITED UNDER THIS PART AND DEPARTMENT RULES; AND

(F) THE TRANSFER IS NOT PROPOSED AS A MEANS TO EVADE A REQUIREMENT IMPOSED ON THE LICENSEE."

Section 4. Section 87-4-417, MCA, is amended to read:

"87-4-417. Records and reporting -- rules. (1) Each alternative livestock ranch licensee shall keep and maintain for 3 years accurate written records of all alternative livestock purchases, transfers, sales, births, and deaths, on forms provided by the department, showing:

(a) the number of each species of alternative livestock purchased by the alternative livestock ranch

licensee and from whom purchased;

(b) the number of each species of alternative livestock transferred or sold, the date of transfer or sale, and the name and address of the person to whom the transfer or sale was made; and

(c) individual identification of each alternative livestock that was purchased, transferred, sold, or born or that died. However, a calf or fawn that dies prior to being marked pursuant to ~~87-4-414(4)~~ [section 2(2)] need not be identified.

(2) Unless a different reporting frequency has been established pursuant to subsection (3), within 2 weeks after January 1 and July 1 of each year, the alternative livestock ranch licensee shall file a report with the department, showing the number and species of alternative livestock that were on hand as of January 1 and July 1 and the number and species of alternative livestock that escaped, that were bought, sold, transferred, recaptured, or born, or that died during the reporting period.

(3) The department may establish by rule the conditions under which the frequency of reporting requirements may be reduced to one report a year or increased to three reports a year. The department may establish by rule the conditions under which a licensee may submit an abbreviated report. In adopting those rules, the department shall consider the number of animals present on an alternative livestock ranch, the number of reported transactions during previous reporting periods, a history of accurate recordkeeping, and a historical absence of violations."

SECTION 5. SECTION 87-4-428, MCA, IS AMENDED TO READ:

"87-4-428. Right to administrative hearing. (1) A licensee must be given notice and an opportunity for a hearing before the department may refuse to renew a license, revoke a license, or discipline a licensee, deny a license modification, or issue a license modification with stipulations.

(2) The notice and an opportunity for a hearing and any judicial appeal must be conducted as provided in Title 2, chapter 4, parts 6 and 7."

NEW SECTION. SECTION 6. CRITERIA FOR MODIFICATION OF LICENSE. (1) A NEW ALTERNATIVE LIVESTOCK RANCH LICENSE MAY NOT BE ISSUED IN THIS STATE.

(2) AN APPLICATION FOR AN ALTERNATIVE LIVESTOCK RANCH LICENSE MODIFICATION MAY BE DENIED IN ITS ENTIRETY OR ISSUED WITH STIPULATIONS IF NECESSARY TO PREVENT PUBLIC SAFETY HAZARDS OR SIGNIFICANT NEGATIVE IMPACTS TO MONTANA'S WILDLIFE RESOURCES. DENIAL OF AN APPLICATION OR STIPULATIONS ATTACHED TO A LICENSE MODIFICATION MUST BE BASED ON ONE OR MORE OF THE FOLLOWING POTENTIAL IMPACTS ATTRIBUTED TO THE PHYSICAL

LOCATION OF THE ALTERNATIVE LIVESTOCK RANCH:

(A) SUBSTANTIAL LOSS OR DESTRUCTION OF CRITICAL SEASONAL GAME ANIMAL HABITAT OR HABITAT OF FEDERALLY DESIGNATED THREATENED OR ENDANGERED SPECIES UNDER THE ENDANGERED SPECIES ACT OF 1973, 16 U.S.C. 1531, ET SEQ., INCLUDING BUT NOT LIMITED TO CRITICAL BREEDING, BIRTHING, REARING, AND WINTERING AREAS;

(B) BLOCKAGE OR DISRUPTION OF MAJOR TRADITIONAL SEASONAL MIGRATION CORRIDORS OR MAJOR TRAVEL ROUTES;

(C) AN UNACCEPTABLE THREAT OF INTRODUCTION OR TRANSMISSION OF SERIOUS DISEASES OR PARASITES TO NATIVE WILDLIFE POPULATIONS, AS DETERMINED BY THE STATE VETERINARIAN APPOINTED PURSUANT TO 81-1-301;

(D) AN UNACCEPTABLE THREAT OF ESCAPE OF ALTERNATIVE LIVESTOCK AND ESTABLISHMENT OF FERAL POPULATIONS THAT WOULD RESULT IN HABITAT DAMAGE OR COMPETITION WITH OR GENETIC HYBRIDIZATION OF NATIVE WILDLIFE POPULATIONS.

(3) THE DENIAL OF AN APPLICATION FOR LICENSE MODIFICATION OR THE ISSUANCE OF A LICENSE MODIFICATION WITH STIPULATIONS MUST BE BASED ON SUBSTANTIVE AND CREDIBLE EVIDENCE.

(4) AN APPLICATION FOR A LICENSE MODIFICATION MAY NOT BE FOR THE PURPOSE OF CHARGING A FEE FOR THE HARVEST OF ALTERNATIVE LIVESTOCK.

(5) IF THE DEPARTMENT DETERMINES THAT IT WILL PROPOSE TO DENY AN APPLICATION FOR A LICENSE MODIFICATION OR ISSUE A LICENSE MODIFICATION WITH STIPULATIONS, THE APPLICANT MUST BE GIVEN AN OPPORTUNITY TO MAKE CHANGES TO THE APPLICATION WITHIN 30 DAYS OF RECEIPT OF THE DEPARTMENT'S WRITTEN DETERMINATION IN ORDER TO MITIGATE OR CORRECT ANY PROBLEMS OR DEFICIENCIES. THE DEPARTMENT SHALL RECONSIDER THE APPLICATION WITH THE PROPOSED CHANGES WITHIN 30 DAYS OF RECEIPT OF CHANGES TO THE APPLICATION BEFORE GRANTING, PROPOSING TO DENY, OR PROPOSING TO ISSUE A LICENSE MODIFICATION WITH STIPULATIONS.

(6) (A) AN APPLICANT MAY REQUEST THAT THE ALTERNATIVE LIVESTOCK ADVISORY COUNCIL REVIEW A DEPARTMENT PROPOSAL TO DENY AN APPLICATION FOR A LICENSE MODIFICATION OR TO ISSUE A LICENSE MODIFICATION WITH STIPULATIONS BY PETITIONING THE ALTERNATIVE LIVESTOCK ADVISORY COUNCIL FOR REVIEW WITHIN 10 DAYS OF THE DEPARTMENT'S PROPOSED DECISION. THE ALTERNATIVE LIVESTOCK ADVISORY COUNCIL SHALL ISSUE A RECOMMENDATION TO THE COMMISSION TO EITHER GRANT THE LICENSE MODIFICATION, PROPOSE TO DENY THE LICENSE MODIFICATION, OR ISSUE THE LICENSE MODIFICATION WITH STIPULATIONS.

(B) UPON RECEIPT OF THE ALTERNATIVE LIVESTOCK ADVISORY COUNCIL'S RECOMMENDATION PURSUANT TO SUBSECTION (6)(A), THE COMMISSION SHALL DECIDE WHETHER TO GRANT THE LICENSE MODIFICATION, PROPOSE TO DENY THE LICENSE MODIFICATION, OR ISSUE THE LICENSE MODIFICATION WITH STIPULATIONS. THE COMMISSION DECISION THEN BECOMES THE DEPARTMENT'S PROPOSED DECISION, SUBJECT TO AN OPPORTUNITY FOR HEARING PURSUANT TO 87-4-428.

(7) THE DEPARTMENT MAY ESTABLISH BY RULE ADDITIONAL CRITERIA FOR LICENSE MODIFICATIONS.

NEW SECTION. Section 7. Repealer. Sections 87-4-414 and 87-4-433, MCA, are repealed.

NEW SECTION. Section 8. Codification instruction. [~~Sections 1 and 2~~] [SECTIONS 1, 2, AND 6] are intended to be codified as an integral part of Title 87, chapter 4, part 4, and the provisions of Title 87, chapter 4, part 4, apply to [~~sections 1 and 2~~] 1, 2, AND 6].

NEW SECTION. Section 9. 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].

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 11. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to actions taken and decisions made by the state on or after November 7, 2000.

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