

HOUSE BILL NO. 516  
INTRODUCED BY R. DEVLIN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT LAW ENFORCEMENT PRACTICES OF GAME WARDENS BE CONSISTENT WITH SIMILAR PRACTICES OF OTHER LAW ENFORCEMENT ENTITIES; REVISING THE ENFORCEMENT POWERS OF WARDENS REGARDING SEARCH AND SEIZURE; PROVIDING THAT ANY RULE OR REGULATION OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS OR THE FISH, WILDLIFE, AND PARKS COMMISSION THAT CANNOT BE READILY AND SIMPLY APPLIED BY A REASONABLE AND PRUDENT PERSON UNDER FIELD CONDITIONS MAY NOT BE USED TO CONVICT A PERSON CHARGED WITH A FISH AND GAME VIOLATION; REVISING THE DEFINITION OF "UNLAWFULLY TAKEN WILDLIFE" BY PROVIDING THAT WILDLIFE MAY NOT BE CONSIDERED TO BE UNLAWFULLY TAKEN UNTIL A FINDING IS MADE BY A COURT THAT THE WILDLIFE WAS TAKEN OR KILLED ILLEGALLY; AND AMENDING SECTIONS 87-1-207, 87-1-506, AND 87-3-117, MCA."

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

NEW SECTION. **Section 1. Game animal identification rules.** Any rule or regulation adopted by the commission or the department or applied by employees of the department regarding the field identification of game animals that cannot be readily and simply applied by a reasonable and prudent person under field conditions may not be used to sustain the conviction of a person charged with a violation of state fish and game laws.

**Section 2.** Section 87-1-207, MCA, is amended to read:

**"87-1-207. Establishment of checking stations.** The department is authorized to establish checking stations where ~~deemed~~ considered necessary to inspect licenses of hunters and ~~fishermen~~ anglers and to inspect any game animals, fish, or fur-bearing animals in the possession of hunters and ~~fishermen~~ anglers. The conduct of department personnel and procedures used by department personnel at checking stations pertaining to roadblocks and searches of persons and property must conform to the restrictions established by law and the courts on law enforcement personnel generally."

**Section 3.** Section 87-1-506, MCA, is amended to read:

**"87-1-506. Enforcement powers of wardens.** (1) A warden may:

- (a) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;
- (b) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package, or their contents upon probable cause to believe that any fish and game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;
- (c) search, only with a search warrant and only when accompanied by a county sheriff or deputy sheriff, any dwelling house or other building;
- (d) upon adjudication of a court of competent jurisdiction that a game animal, fish, game bird, or fur-bearing animal was taken or killed illegally, seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department; However, except for indispensable parts of an animal that constitute minimally essential evidentiary materials, a warden may not seize animals or their parts until there is a finding, as provided in 87-1-112, by a court of competent jurisdiction that the animal was taken or killed illegally.
- (e) upon adjudication of a court of competent jurisdiction that a game animal, fish, game bird, or fur-bearing animal was taken or killed illegally, seize and hold, subject to law or the orders of the department, devices that have been used to unlawfully take game, fish, birds, or fur-bearing animals;
- (f) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;
- (g) enforce the disorderly conduct and public nuisance laws, 45-8-101 and 45-8-111, as they apply to the operation of motorboats on all waters of the state;
- (h) as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title 37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides in the state; and
- (i) exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules.

(2) Except for the authority granted in subsection (1)(b), a warden shall observe the same standards for arrest, search, seizure, trespass, roadblocks, and other law enforcement activities that are required of other law enforcement personnel by statute or by the courts.

~~(2)~~(3) The meat of game animals that are seized pursuant to subsection (1)(d) must be donated directly to the Montana food bank network, or to public or charitable institutions, to the extent reasonably feasible. Any

meat that the department is unable to donate must be sold pursuant to 87-1-511, with the proceeds to be distributed as provided in 87-1-513(2)."

**Section 4.** Section 87-3-117, MCA, is amended to read:

**"87-3-117. Definitions of lawfully taken wildlife and unlawfully taken wildlife.** As used in 87-3-118 and this section, the following definitions apply:

(1) "Lawfully taken wildlife" means wildlife, as defined in 87-5-102, that is taken or possessed by hunting, fishing, or trapping in conformance with this title and the regulations adopted by the commission and the department under authority of this title.

(2) "Unlawfully taken wildlife" means wildlife that is not lawfully taken wildlife. However, wildlife may not be considered to have been unlawfully taken until there is a finding, as provided in 87-1-112, by a court of competent jurisdiction that a person has taken or killed wildlife illegally."

NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 1, and the provisions of Title 87, chapter 1, part 1, apply to [section 1].

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