

HOUSE BILL NO. 369

INTRODUCED BY W. WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ENFORCEMENT OF FISH AND GAME LAWS; LIMITING RULEMAKING AUTHORITY RELATED TO GAME ANIMAL IDENTIFICATION; AWARDING ATTORNEY FEES AND COURT COSTS TO PERSONS CHARGED BUT NOT CONVICTED OF FISH AND GAME CRIMES; LIMITING SEARCH AND SEIZURE POWERS OF GAME WARDENS; PROHIBITING GAME WARDENS FROM VIOLATING FISH AND GAME LAWS AND RULES; PROHIBITING THE USE OF MISREPRESENTATION IN EVIDENCE GATHERING; CLARIFYING CONDUCT PERMITTED AT GAME CHECKING STATIONS; REMOVING NEGLIGENCE AS A BASIS FOR VIOLATING A FISH AND GAME LAW; AND AMENDING SECTIONS 87-1-102, 87-1-125, 87-1-207, 87-1-506, 87-3-117, 87-3-124, 87-3-130, 87-4-407, AND 87-4-427, 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.

NEW SECTION. Section 2. Award of attorney fees and costs. The court shall award reasonable attorney fees and court costs to a person charged with one or more criminal offenses under the provisions of this title for the portion of attorney fees and court costs attributable to each charge that is dismissed or for which the person is found not guilty.

Section 3. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties -- violation of state law. (1) (a) A person who purposely, or knowingly, ~~or~~ negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount of not less than \$50

1 or more than \$1,000, be imprisoned in the county detention center for not more than 6 months, or both unless
2 a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or
3 forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap
4 in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court.

5 (b) (i) If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use
6 state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person
7 shall surrender all licenses, as ordered by the court, to the department within 10 days.

8 (ii) After a forfeiture period imposed pursuant to this section and upon receipt of notification from the court
9 that the defendant has appeared and all terms of the court sentence, including making payment of any fine, costs,
10 or restitution, have been met or the defendant is in compliance with installment payments specified by the court,
11 the department shall reinstate the privileges unless the person is not otherwise entitled to reinstatement. After
12 the privileges are reinstated, the department may revoke the privileges if it is notified by the clerk of court that the
13 person is in default on any installment payment.

14 (iii) A person convicted of hunting, fishing, or trapping while the person's license or privilege is forfeited
15 shall be imprisoned in the county detention center for not less than 5 days or more than 6 months and may be
16 fined an amount of not less than \$500 or more than \$2,000.

17 (2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep,
18 moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined
19 an amount of not less than \$500 or more than \$2,000, be imprisoned in the county detention center for not more
20 than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any
21 current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish,
22 or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer
23 forfeiture period.

24 (b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or
25 mountain lion or any part of these animals shall be fined an amount of not less than \$300 or more than \$1,000,
26 be imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon
27 conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this
28 state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture
29 unless the court imposes a longer forfeiture period.

30 (c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount

1 of not less than \$200 or more than \$600, be imprisoned in the county detention center for not more than 60 days,
2 or both.

3 (d) A person convicted of purposely, ~~or knowingly, or negligently~~ taking, killing, trapping, possessing,
4 transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of
5 any provision of this title shall be fined an amount of not less than \$100 or more than \$1,000, be imprisoned in
6 the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or
7 forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24
8 months from the date of conviction or forfeiture unless the court imposes a longer forfeiture period, and any pelts
9 possessed unlawfully must be confiscated.

10 (e) Upon conviction of or forfeiture of bond or bail imposed for an act of criminal mischief, as defined in
11 45-6-101, involving property owned or administered by the department, a person shall forfeit any current license
12 and the privilege to hunt, fish, or trap in this state for at least 24 months from the date of conviction or forfeiture.

13 (f) Upon conviction of or forfeiture of bond or bail imposed for committing an act of criminal trespass, as
14 defined in 45-6-203, involving property owned or administered by the department or while hunting, fishing, or
15 trapping, the privilege of a person to hunt, fish, or trap in this state may be revoked for up to 24 months from the
16 date of conviction or forfeiture.

17 (3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the
18 use of projected artificial light, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting
19 in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the
20 person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense,
21 a department-sponsored hunter education course.

22 (4) A person convicted or who has forfeited bond or bail under this section and whose license privileges
23 are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or
24 permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing,
25 acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when
26 license privileges have been forfeited shall be fined an amount of not less than \$500 or more than \$2,000, be
27 imprisoned in the county jail for not more than 60 days, or both.

28 (5) A person convicted or who has forfeited bond or bail under this section and who has been ordered
29 to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title
30 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date

1 of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of
2 a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing
3 for a special license or permit for the same species of game animal that was unlawfully taken for an additional
4 period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying
5 for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or
6 permit shall be fined an amount of not less than \$500 or more than \$2,000, be imprisoned in the county detention
7 center for not more than 60 days, or both.

8 (6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the first
9 conviction or who is convicted of two or more of the following offenses at different times within a 10-year period
10 is subject to the penalties provided in subsection (6)(b):

- 11 (i) hunting during a closed season;
- 12 (ii) taking an animal or hunting while using projected artificial light;
- 13 (iii) hunting without a license;
- 14 (iv) unlawful taking of more than double the legal bag limit;
- 15 (v) unlawful possession of more than double the legal bag limit; and
- 16 (vi) waste of game by abandonment in the field.

17 (b) A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection
18 (6)(a) shall be fined an amount of not less than \$2,000 or more than \$5,000, be imprisoned in the county jail for
19 not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all
20 current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this
21 state for 60 months from the date of conviction or forfeiture unless the court imposes a longer forfeiture period.

22 (7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first
23 conviction is subject to the penalties provided in subsection (7)(b):

- 24 (i) hunting during a closed season;
- 25 (ii) taking an animal or hunting while using projected artificial light;
- 26 (iii) hunting without a license; and
- 27 (iv) unlawful taking of more than double the legal bag limit.

28 (b) A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection
29 (7)(a) shall be fined an amount of not less than \$5,000 or more than \$10,000, be imprisoned in the county jail for
30 not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all

current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.

(8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.

(9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.

(10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

(11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

(12) For the purposes of this section, the terms "knowingly", "~~negligently~~", and "purposely" have the same meanings provided in 45-2-101."

Section 4. Section 87-1-125, MCA, is amended to read:

"87-1-125. Violation of orders or rules -- penalties. (1) A person who purposely, or knowingly, ~~or~~ ~~negligently~~ violates an order or rules of the commission or department is guilty of a misdemeanor and shall be fined an amount not less than \$50 or more than \$500. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of the person's license and privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(2) If the court imposes forfeiture of the person's license and privilege to hunt, fish, trap, or use state lands, the department shall notify the person of the loss of privilege as imposed by the court.

(3) The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked."

Section 5. Section 87-1-207, MCA, is amended to read:

"87-1-207. Establishment of checking stations. (1) The department is authorized to establish checking stations when considered necessary to inspect licenses of hunters and anglers and to inspect any game animals, fish, or fur-bearing animals in the possession of hunters and anglers.

1 (2) The conduct of department personnel and procedures used by department personnel at checking
2 stations pertaining to roadblocks and searches of persons and property must conform to the restrictions
3 established by law and the courts on law enforcement personnel generally."

4
5 **Section 6.** Section 87-1-506, MCA, is amended to read:

6 **"87-1-506. Enforcement powers of wardens -- restrictions.** (1) A warden may:

7 (a) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

8 (b) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket,
9 creel, crate, game bag, or package, or their contents upon probable cause to believe that any fish and game law
10 or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has
11 been violated;

12 (c) search, only with a search warrant and only when accompanied by a county sheriff or deputy sheriff,
13 any dwelling house or other building;

14 (d) upon adjudication of a court of competent jurisdiction that a game animal, fish, game bird, or
15 fur-bearing animal was taken or killed illegally, seize game, fish, game birds, and fur-bearing animals and any
16 parts of them taken or possessed in violation of the law or the rules of the department; However, except for
17 indispensable parts of an animal that constitute minimally essential evidentiary materials, a warden may not seize
18 animals or their parts until there is a finding, as provided in 87-1-112, by a court of competent jurisdiction that the
19 animal was taken or killed illegally.

20 (e) upon adjudication of a court of competent jurisdiction that a game animal, fish, game bird, or
21 fur-bearing animal was taken or killed illegally, seize and hold, subject to law or the orders of the department,
22 devices that have been used to unlawfully take game, fish, birds, or fur-bearing animals;

23 (f) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the
24 department, violation of which is a misdemeanor;

25 (g) enforce the disorderly conduct and public nuisance laws, 45-8-101 and 45-8-111, as they apply to
26 the operation of motorboats on all waters of the state;

27 (h) as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title 37,
28 chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides
29 in the state;

30 (i) enforce the provisions of Title 80, chapter 7, part 10, and rules adopted under Title 80, chapter 7, part

10, for those invasive species that are under the department's jurisdiction; and

(j) 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 as otherwise provided in this section, 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.

(3) A warden may not:

(a) violate fish and game laws or rules of the department; or

(b) use misrepresentation to obtain evidence of alleged criminal activity. Any evidence obtained through misrepresentation is inadmissible in court. This subsection (3)(b) does not apply to the use of simulated wildlife pursuant to 87-3-109.

~~(2)~~(4) 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 7. Section 87-3-117, MCA, is amended to read:

"87-3-117. Definitions of lawfully killed, captured, or taken and unlawfully killed, captured, or taken. As used in 87-3-111, 87-3-118, and this section, the following definitions apply:

(1) "Lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title.

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

Section 8. Section 87-3-124, MCA, is amended to read:

"87-3-124. Dogs -- restrictions on hunting -- penalty for chasing hooved game animals. (1) (a) Except as provided in 87-3-127 and subsections (2) and (3) of this section, a person may not chase with a dog any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog. Any person

1 or association organized for the protection of game may run field trials at any time upon obtaining written
2 permission from the director.

3 (c) Except as provided in subsection (2), any peace officer, game warden, or other person authorized
4 to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing
5 hooved game animals may destroy that dog, on public land or on private land at the request of the landowner,
6 without criminal or civil liability.

7 (d) Except as provided in subsection (2), a person who purposely, ~~or knowingly, or negligently~~ permits
8 a dog to chase, stalk, pursue, attack, or kill hooved game animals is guilty of a misdemeanor and is subject to
9 the penalty in 87-1-102(1). If the dog is not under the control of an adult at the time of the violation, the owner of
10 the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not
11 allowable, unless it is shown that at the time of the violation, the dog was running at large without the consent of
12 the owner and that the owner took reasonable precautions to prevent the dog from running at large.

13 (2) A person may use trained or controlled dogs to chase or herd away game animals or fur-bearing
14 animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored
15 hay and grain. The dog may not be destroyed pursuant to subsection (1)(c).

16 (3) (a) A person may hunt mountain lions during the winter open season, as established by the
17 commission, with the aid of a dog or dogs.

18 (b) A person may hunt bobcats during the trapping season, as established by the commission, with the
19 aid of a dog or dogs.

20 (c) A resident who possesses a Class D-3 resident hound training license may pursue mountain lions
21 and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following
22 year."
23

24 **Section 9.** Section 87-3-130, MCA, is amended to read:

25 **"87-3-130. Taking of wildlife to protect persons or livestock.** (1) This chapter may not be construed
26 to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this title if the wildlife
27 is attacking, killing, or threatening to kill a person or livestock, except that, for purposes of protecting livestock,
28 a person may not kill or attempt to kill a grizzly bear unless the grizzly bear is in the act of attacking or killing
29 livestock. In addition, a person may kill or attempt to kill a wolf or mountain lion that is in the act of attacking or
30 killing a domestic dog. A person who, under this subsection, takes wildlife protected by this title shall, within 72

1 hours, notify the department and surrender or arrange to surrender the wildlife to the department.

2 (2) A person may not provide supplemental feed attractants to game animals by:

3 (a) purposely or knowingly attracting any ungulates, bears, or mountain lions with supplemental feed
4 attractants;

5 (b) after having received a previous warning, ~~negligently~~ purposely or knowingly failing to properly store
6 supplemental feed attractants and allowing any ungulates, bears, or mountain lions access to the supplemental
7 feed attractants; or

8 (c) purposely or knowingly providing supplemental feed attractants in a manner that results in an artificial
9 concentration of game animals that may potentially contribute to the transmission of disease or that constitutes
10 a threat to public safety.

11 (3) A person who is engaged in the normal feeding of livestock, in a normal agricultural practice, in
12 cultivation of a lawn or garden, or in the commercial processing of garbage is not subject to civil or criminal liability
13 under this section.

14 (4) A person who is engaged in the recreational feeding of birds is not subject to civil or criminal liability
15 under this section unless, after having received a previous warning by the department, the person continues to
16 feed birds in a manner that attracts ungulates or bears and that may contribute to the transmission of disease
17 or constitute a threat to public safety.

18 (5) A person who violates subsection (2) is guilty of a misdemeanor and is subject to the penalty provided
19 in 87-1-102(1). This section does not apply to supplemental feeding activities conducted by the department for
20 disease control purposes.

21 (6) As used in this section:

22 (a) "livestock" includes ostriches, rheas, and emus; and

23 (b) "supplemental feed attractant" means any food, garbage, or other attractant for game animals. The
24 term does not include growing plants or plants harvested for the feeding of livestock."
25

26 **Section 10.** Section 87-4-407, MCA, is amended to read:

27 **"87-4-407. License required -- moratorium -- penalty -- seizure of illegally possessed animals. (1)**

28 A person may not operate an alternative livestock ranch in this state without having first obtained an alternative
29 livestock ranch license from the department prior to November 7, 2000. A person may not apply for or be granted
30 a license after that date.

(2) A person who operates an alternative livestock ranch without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is guilty of a misdemeanor and is subject to the penalties provided in ~~87-4-427(4)~~ 87-4-427(3).

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to disposal by the department. Costs of seizure may be charged to the person in possession of the animal."

Section 11. Section 87-4-427, MCA, is amended to read:

"87-4-427. Revocation of license -- criteria -- penalties. (1) The department may revoke any alternative livestock ranch license or impose any of the penalties or conditions specified in subsection ~~(3)~~ (2) if the licensee or the principal manager has committed or is responsible for any of the following acts or omissions:

(a) failure to operate an alternative livestock ranch according to the provisions of this part, rules adopted under this part, or stipulations of the alternative livestock ranch license;

(b) making a materially false statement in the license application;

(c) having pleaded guilty to or been convicted of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(d) two convictions or bond forfeitures of \$100 or more for violations of the fish and game laws or applicable regulations of any state or the United States within the preceding 5 years;

(e) ~~negligent~~ or willful misconduct of the alternative livestock ranch operation, including but not limited to the unauthorized egress and ingress of game animal species or alternative livestock that:

(i) threatens public safety;

(ii) endangers native game animal populations or habitat through the establishment of feral populations, genetic pollution, or competition for forage or habitat; or

(iii) increases the risk of transmission of disease to native wildlife and the alternative livestock of others;

(f) a material and willful falsification of any required alternative livestock ranch records or reports;

(g) the purposeful capture of wild animals within the perimeter fence of an alternative livestock ranch;

(h) repeated failure to maintain or repair required fences or facilities; or

(i) any other willful conduct or omission that creates a substantial threat to other alternative livestock and operators or to native wildlife or habitat.

~~(2) If misconduct under subsection (1)(e) is negligent, the licensee must be given notice and 30 days~~

1 to correct the misconduct and any adverse impacts of the misconduct. Negligent misconduct may be grounds
2 for license revocation only if the misconduct is not corrected after the initial notice or if the misconduct is repeated.

3 ~~(3)~~(2) If the department finds, after opportunity for a hearing required under 87-4-428, that an alternative
4 livestock ranch licensee or the principal manager is responsible for any act or omission set out in subsection (1),
5 the department may in its discretion impose any one or more of the following penalties upon the licensee:

6 (a) revocation of the alternative livestock ranch license for up to 5 years;

7 (b) imposition of a civil penalty not to exceed \$5,000, restoration of any damage to native wildlife, or both;

8 (c) deferral of the revocation of a license subject to the completion of or adherence to specified
9 conditions; or

10 (d) reprimand of a licensee.

11 ~~(4)~~(3) In addition to the revocation of a license or other penalties allowed by this section, a person who
12 purposely or knowingly violates this part or a rule adopted pursuant to this part is subject to criminal prosecution
13 and a fine of not more than \$1,000, imprisonment in the county jail for not more than 1 year, or both. Any violation
14 of 87-3-118 is subject to prosecution and penalties under that section."

15
16 NEW SECTION. **Section 12. Codification instruction.** [Sections 1 and 2] are intended to be codified
17 as an integral part of Title 87, chapter 1, part 1, and the provisions of Title 87, chapter 1, part 1, apply to [sections
18 1 and 2].

19 - END -