

HOUSE BILL NO. 176

INTRODUCED BY F. MANDEVILLE

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE USE OF CROSSBOWS WHILE HUNTING DURING ANY ARCHERY SEASON; AMENDING SECTIONS 87-1-201, 87-1-301, 87-1-304, 87-2-708, 87-2-730, AND 87-6-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) Except as provided in subsection (11), the department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) Except as provided in subsection (11), the department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited

1 to the fish and game account in the state special revenue fund.

2 (6) The department may not issue permits to carry firearms within this state to anyone except regularly
3 appointed officers or wardens.

4 (7) Except as provided in subsection (11), the department is authorized to make, promulgate, and
5 enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its
6 judgment will accomplish the purpose of chapter 2.

7 (8) The department is authorized to promulgate rules relative to tagging, possession, or transportation
8 of bear within or outside of the state.

9 (9) (a) The department shall implement programs that:

10 (i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under
11 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

12 (ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under
13 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the
14 maintenance or recovery of those species;

15 (iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in
16 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided
17 in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest
18 and population objectives, request that land management agencies open public lands and public roads to public
19 access during the big game hunting season.

20 (iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine
21 beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous
22 acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

23 (b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential
24 candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery
25 of those species with the social and economic impacts of species maintenance or recovery.

26 (c) Any management plan developed by the department pursuant to this subsection (9) is subject to the
27 requirements of Title 75, chapter 1, part 1.

28 (d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a
29 privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

30 (10) The department shall publish an annual game count, estimating to the department's best ability the

1 numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative
2 regions of the state. In preparing the publication, the department may incorporate field observations, hunter
3 reporting statistics, or any other suitable method of determining game numbers. The publication must include an
4 explanation of the basis used in determining the game count.

5 (11) The department may not regulate the use or possession of firearms, firearm accessories, or
6 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

7 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
8 establishment of special archery seasons;

9 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including
10 bows and arrows, crossbows, traditional handguns, and muzzleloading rifles;

11 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

12 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

13 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h)."
14

15 **Section 2.** Section 87-1-301, MCA, is amended to read:

16 **"87-1-301. Powers of commission.** (1) Except as provided in subsections (2), (7), and (8), the
17 commission:

18 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,
19 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment
20 of all other responsibilities of the department related to fish and wildlife as provided by law;

21 (b) shall establish the hunting, fishing, and trapping rules of the department;

22 (c) except as provided in 23-1-111 and 87-1-303(3), shall establish the rules of the department governing
23 the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

24 (d) must have the power within the department to establish wildlife refuges and bird and game preserves;

25 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as
26 provided in 23-1-111 and 87-1-209(2) and (4);

27 (f) except as provided in 23-1-111, shall review and approve the budget of the department prior to its
28 transmittal to the office of budget and program planning;

29 (g) except as provided in 23-1-111, shall review and approve construction projects that have an
30 estimated cost of more than \$1,000 but less than \$5,000;

1 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided
2 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as
3 provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider
4 landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular
5 hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal
6 opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting
7 district where a restriction on elk hunting on public property is proposed.

8 (i) shall set the policies for the salvage of antelope, deer, elk, or moose pursuant to 87-3-145; and

9 (j) shall comply with, adopt policies that comply with, and ensure the department implements in each
10 region the provisions of state wildlife management plans adopted following an environmental review conducted
11 pursuant to Title 75, chapter 1, parts 1 through 3.

12 (2) (a) The Except as provided in subsection (2)(b), the commission may adopt rules regarding the use
13 and type of archery equipment that may be employed for hunting and fishing purposes, taking into account
14 applicable standards as technical innovations in archery equipment change.

15 (b) The commission may not prohibit the use of a crossbow for hunting during any season or in any area
16 in which archery equipment may be used.

17 (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons,
18 conditions, programs, or other provisions that the commission considers appropriate to promote or enhance
19 hunting by Montana's youth and persons with disabilities.

20 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

21 (i) separate deer licenses from nonresident elk combination licenses;

22 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the
23 deer tag;

24 (iii) condition the use of the deer licenses; and

25 (iv) limit the number of licenses sold.

26 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and
27 appropriate to regulate the harvest by nonresident big game combination license holders:

28 (i) for the biologically sound management of big game populations of elk, deer, and antelope;

29 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

30 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321

1 through 87-1-325.

2 (5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license
3 preference systems to distribute hunting licenses and permits:

4 (i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant
5 who has been unsuccessful for a shorter period of time; and

6 (ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying
7 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by
8 the commission.

9 (b) The commission shall square the number of points purchased by an applicant per species when
10 conducting drawings for licenses and permits.

11 (6) (a) The commission may adopt rules to:

12 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

13 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting
14 districts.

15 (b) The commission shall consider, but is not limited to consideration of, the following factors:

16 (i) harvest of lions by resident and nonresident hunters;

17 (ii) history of quota overruns;

18 (iii) composition, including age and sex, of the lion harvest;

19 (iv) historical outfitter use;

20 (v) conflicts among hunter groups;

21 (vi) availability of public and private lands; and

22 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

23 (7) The commission may not regulate the use or possession of firearms, firearm accessories, or
24 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

25 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
26 establishment of special archery seasons;

27 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including
28 bows and arrows, crossbows, traditional handguns, and muzzleloading rifles;

29 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

30 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

1 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h).

2 (8) Pursuant to 23-1-111, the commission does not oversee department activities related to the
3 administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic
4 sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant
5 to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9."

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7 **Section 3.** Section 87-1-304, MCA, is amended to read:

8 **"87-1-304. Fixing of seasons and bag and possession limits.** (1) Subject to the provisions of
9 87-5-302 and subsection (7) of this section, the commission may:

10 (a) fix seasons, bag limits, possession limits, and season limits;

11 (b) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing
12 animal as defined by 87-2-101;

13 (c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear,
14 wild buffalo or bison, and wolf by persons holding an archery stamp and the required license, permit, or tag and
15 designate times when only bows and arrows and crossbows may be used to hunt deer, antelope, elk, moose,
16 sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf in those areas;

17 (d) subject to the provisions of 87-1-301(7), restrict areas and species to hunting with only specified
18 hunting arms, including a bow and arrow and crossbow, for the reasons of safety or of providing diverse hunting
19 opportunities and experiences; and

20 (e) declare areas open to special license holders only and issue special licenses in a limited number
21 when the commission determines, after proper investigation, that a special season is necessary to ensure the
22 maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may
23 declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are
24 causing damage to private property or when a written complaint of damage has been filed with the commission
25 by the owner of that property. In determining to whom special licenses must be issued, the commission may,
26 when more applications are received than the number of animals to be killed, award permits to those chosen
27 under a drawing system. The procedures used for awarding the permits from the drawing system must be
28 determined by the commission.

29 (2) The commission may adopt rules governing the use of livestock and vehicles by archers during
30 special archery seasons.

1 (3) Subject to the provisions of 87-5-302 and subsection (7) of this section, the commission may divide
2 the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state.
3 The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later
4 may open those districts to hunting, fishing, or trapping.

5 (4) The commission may declare a closed season on any species of game, fish, game birds, or
6 fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or
7 district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited
8 periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking
9 waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds,
10 and nongame birds. The commission may open the area or district upon consent of a majority of the property
11 owners affected.

12 (5) The commission may authorize the director to open or close any special season upon 12 hours'
13 notice to the public.

14 (6) The commission may declare certain fishing waters closed to fishing except by persons under 15
15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and
16 enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers
17 advisable and consistent with its policies relating to fishing.

18 (7) In an area immediately adjacent to a national park, the commission may not:

19 (a) prohibit the hunting or trapping of wolves; or

20 (b) close the area to wolf hunting or trapping unless a wolf harvest quota established by the commission
21 for that area has been met."

22

23 **Section 4.** Section 87-2-708, MCA, is amended to read:

24 **"87-2-708. Class A-2--special bow and arrow license.** A holder of a valid hunting license for which
25 a special archery season is set by the department may receive, upon payment of an additional fee of \$10, a Class
26 A-2 license that authorizes the holder to hunt with a bow and arrow or crossbow the game animals authorized
27 by the licenses held and to possess the carcass of the game animals during seasons and in areas designated
28 by the department."

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30 **Section 5.** Section 87-2-730, MCA, is amended to read:

1 **"87-2-730. Special wild buffalo license -- regulation.** (1) The public hunting of wild buffalo or bison
2 that have been designated as a species in need of disease control under 81-2-120 is permitted only when
3 authorized by the department of livestock under the provisions set forth in 81-2-120.

4 (2) The department may issue special licenses to hunt wild buffalo or bison designated as a species in
5 need of disease control when authorized by the department of livestock.

6 (3) The department shall adopt rules in cooperation with the department of livestock. The rules must
7 provide for:

8 (a) license drawing procedures;

9 (b) application fees consistent with 87-2-113;

10 (c) notification of license recipients as to when and where they may hunt;

11 (d) fair chase hunting of wild buffalo or bison, including requirements that hunting be conducted on foot
12 and away from public roads and that there be no designation of specific wild buffalo or bison to be hunted;

13 (e) means of taking and handling of carcasses in the field, which must include provisions for public safety
14 because of the potential for the spread of infectious disease;

15 (f) the use of bows and arrows, crossbows, and other hunting arms;

16 (g) tagging requirements for carcasses, skulls, and hides;

17 (h) possession limits;

18 (i) requirements for transportation and exportation; and

19 (j) requirements and criteria for authorization by the state veterinarian and the department of livestock
20 of any public hunting."

21

22 **Section 6.** Section 87-6-414, MCA, is amended to read:

23 **"87-6-414. Failure to wear hunter orange while big game hunting.** (1) Except as provided in
24 subsection (3), a person may not hunt any big game animals in this state or accompany any hunter as an outfitter
25 or guide under any of the provisions of the laws of this state without wearing as exterior garments above the waist
26 a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

27 (2) As used in this section, "hunter orange" means a daylight fluorescent orange color.

28 (3) This section does not apply to a person hunting:

29 (a) with a bow and arrow or crossbow during the special archery season; or

30 (b) wolves outside the general deer and elk season as authorized by commission rules.

1 (4) The department shall make rules to implement this section.

2 (5) A person convicted of a violation of this section shall be punished by a fine of not less than \$10 or
3 more than \$20."

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5 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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