

HOUSE BILL NO. 469

INTRODUCED BY D. MORTENSEN

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ABILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE ENFORCEMENT AUTHORITY OF GAME WARDENS; CLARIFYING GAME WARDENS ARE PEACE OFFICERS; REVISING SEARCH POWERS; AND AMENDING SECTIONS 7-23-102, 19-8-301, 23-1-106, 23-2-410, 23-2-506, 23-2-641, 23-2-806, 45-8-221, 87-1-404, 87-1-502, 87-1-504, AND 87-1-506, MCA."

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

**Section 1.** Section 7-23-102, MCA, is amended to read:

**"7-23-102. Seizure and impounding of dogs running at large without tag.** A dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant to the provisions of part 21, 7-23-4103, and this part may be seized and impounded by any sheriff, deputy sheriff, police officer, ~~game warden~~, county poundmaster, or other law enforcement officer."

**Section 2.** Section 19-8-301, MCA, is amended to read:

**"19-8-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, must become and shall remain active members for as long as they are employed as peace officers:

- (a) game wardens who are assigned to ~~law enforcement~~ as peace officers in the department of fish, wildlife, and parks;
- (b) motor carrier officers employed by the department of transportation;
- (c) campus security officers employed by the university system;
- (d) wardens and deputy wardens employed by the department of corrections;
- (e) corrections officers employed by the department of corrections;
- (f) probation and parole officers employed by the department of corrections;
- (g) stock inspectors and detectives employed by the department of livestock; and
- (h) drill instructors employed by the department of corrections.

1 (2) (a) An inactive member with at least 5 years of membership service is an inactive vested member  
2 and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this  
3 chapter.

4 (b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit,  
5 the lump-sum payment consists of only the member's accumulated contributions and not the employer's  
6 contributions.

7 (3) (a) An inactive member with less than 5 years of membership service is an inactive nonvested  
8 member and is not eligible for any benefits from the retirement system.

9 (b) An inactive nonvested member is eligible only for a refund of the member's accumulated  
10 contributions."  
11

12 **Section 3.** Section 23-1-106, MCA, is amended to read:

13 **"23-1-106. Rules -- penalties -- enforcement.** (1) The department and the board may make rules  
14 governing the use, occupancy, and protection of the property under their control.

15 (2) A person who violates subsection (3) or a rule established pursuant to this section is guilty of a  
16 misdemeanor and shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6  
17 months.

18 (3) A person may not refuse to exhibit for inspection any park permit, proof of age, or proof of residency  
19 upon request by a fish and game warden, park ranger, or peace officer.

20 (4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The  
21 director shall employ all necessary and qualified personnel for enforcement purposes.

22 (5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and  
23 support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of  
24 the department are granted peace officer status with the power:

25 (a) of search, seizure, and arrest related to violations under the jurisdiction of the department and the  
26 board;

27 (b) to investigate activities in this state regulated by this chapter and rules of the department and the  
28 board; and

29 (c) to report violations to the county attorney of the county in which they occur."  
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1           **Section 4.** Section 23-2-410, MCA, is amended to read:

2           **"23-2-410. Penalty -- enforcement.** (1) A person who violates a rule of the board adopted pursuant to  
3 this part is guilty of a misdemeanor punishable by a fine of not less than \$50 or more than \$500 or by  
4 imprisonment in a county jail for not more than 6 months, or both.

5           (2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and  
6 support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of  
7 the department are granted peace officer status with the power:

8           (a) of search, seizure, and arrest related to violations under the jurisdiction of the department, the board,  
9 and the commission;

10           (b) to investigate activities in this state regulated by this part and rules of the department, the board, and  
11 the commission; and

12           (c) to report violations to the county attorney of the county in which they occur."  
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14           **Section 5.** Section 23-2-506, MCA, is amended to read:

15           **"23-2-506. Enforcement.** (1) The department is a criminal justice agency for the purpose of obtaining  
16 the technical assistance and support services provided by the board of crime control under the provisions of  
17 44-7-101. Authorized officers of the department are granted peace officer status with the power:

18           (a) of search, seizure, and arrest related to violations under the jurisdiction of the department and the  
19 fish and wildlife commission;

20           (b) to investigate activities in this state regulated by this part and rules of the department and the fish  
21 and wildlife commission; and

22           (c) to report violations to the county attorney of the county in which they occur.

23           (2) All sheriffs and peace officers of the state of Montana and all United States coast guard law  
24 enforcement officers shall have authority to enforce provisions of this part, as amended."  
25

26           **Section 6.** Section 23-2-641, MCA, is amended to read:

27           **"23-2-641. Enforcement.** (1) With respect to the sale of any new snowmobile that is subject to the  
28 provisions of ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617, 23-2-621, 23-2-622, 23-2-631 through~~  
29 ~~23-2-635, and 23-2-641 through 23-2-644~~ this part, the attorney general shall, upon the request of the  
30 department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order

1 or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not  
2 satisfy the sound level limitations imposed by ~~23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-617,~~  
3 ~~23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644~~ 23-2-634.

4 (2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance  
5 and support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers  
6 of the department are granted peace officer status with the power:

7 (i) of search, seizure, and arrest related to violations under the jurisdiction of the department and the fish  
8 and wildlife commission;

9 (ii) to investigate activities in this state regulated by this part and rules of the department and the fish and  
10 wildlife commission; and

11 (iii) to report violations to the county attorney of the county in which they occur.

12 (b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol,  
13 authorized officers of the department, and the police of each municipality shall enforce the provisions of this part."  
14

15 **Section 7.** Section 23-2-806, MCA, is amended to read:

16 **"23-2-806. Enforcement.** (1) The department of fish, wildlife, and parks enforcement personnel, park  
17 rangers, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce  
18 the provisions of this part.

19 (2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and  
20 support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of  
21 the department are granted peace officer status with the power:

22 (a) of search, seizure, and arrest related to violations under the jurisdiction of the department and the  
23 fish and wildlife commission;

24 (b) to investigate activities in this state regulated by this part and rules of the department and the fish  
25 and wildlife commission; and

26 (c) to report violations to the county attorney of the county in which they occur.

27 (3) Park rangers may not carry firearms in the execution of their duties."  
28

29 **Section 8.** Section 45-8-221, MCA, is amended to read:

30 **"45-8-221. Predatory loitering by sexual offender.** (1) A person commits the offense of predatory

1 loitering if the person:

2 (a) was previously convicted of a predatory sexual offense or sexual abuse of children;

3 (b) purposely or knowingly loiters:

4 (i) in the vicinity of a residence, school, church, or place of work of the person's previous victim; or

5 (ii) in the vicinity of any school, park, playground, church, bicycle or multiuse path, or other place

6 frequented by minors of an age similar to the age of the victim of the previous sexual offense if the sexual offense  
7 concerned a minor; and

8 (c) has previously been requested by a person in authority to:

9 (i) leave the area in which the person loiters; or

10 (ii) leave any area in which the person has loitered.

11 (2) Proof of the offense of predatory loitering must also include proof that the person in authority has  
12 made a report of the request to the law enforcement agency with jurisdiction over the area, and the agency has  
13 documented the report.

14 (3) A person convicted of the offense of predatory loitering may be fined not more than \$500 or be  
15 imprisoned for not more than 6 months, or both. A person convicted of a second or subsequent offense of  
16 predatory loitering may be fined not more than \$1,000 or be imprisoned for not more than 1 year, or both.

17 (4) As used in this section, the following definitions apply:

18 (a) "Person in authority" includes a peace officer or:

19 (i) for the purposes of a school or playground, a principal, teacher, school staff member, parent or other  
20 adult relative of a child attending the school or playground, or other supervisor of minors;

21 (ii) for the purposes of a church, a minister, priest, rabbi, deacon, or other ecclesiastical official, a church  
22 staff member, or a parent or other adult relative of a child attending the church;

23 (iii) for the purposes of a park, playground, or bicycle or multiuse path, a person specified in subsection  
24 (3)(a)(i) or a park warden, guard; or host; or

25 (iv) for purposes of a place of work, a person employed at the place of work.

26 (b) "Predatory sexual offense" has the meaning provided in 46-23-502.

27 (c) "Sexual abuse of children" means commission of the offense provided in 45-5-625."

28

29 **Section 9.** Section 87-1-404, MCA, is amended to read:

30 **"87-1-404. Appointment of deputy director and wardens.** The director shall have the power to employ

1 and appoint a deputy director and a sufficient number of wardens for the proper enforcement of the fish and game  
2 laws of the state and the orders, rules, and regulations of the department ~~and for such other purposes as the~~  
3 ~~director may designate."~~

4

5 **Section 10.** Section 87-1-502, MCA, is amended to read:

6 **"87-1-502. Qualifications, powers, and duties.** (1) Wardens must be qualified by their experience,  
7 training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and  
8 game birds and interested in this work. They shall devote all of their time for which they are appointed to their  
9 official duties.

10 (2) They shall enforce the laws of this state and the rules of the department with reference to the  
11 protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

12 (3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish  
13 and that those persons who make recreational use of state lands, as defined in 77-1-101, for hunting and fishing,  
14 have the necessary licenses.

15 (4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals,  
16 and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing  
17 animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction  
18 of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and  
19 make a monthly report to the department correctly informing the department of their activities on each day of the  
20 preceding month with regard to the enforcement of the fish and game laws, showing where their duties called  
21 them and what they did. The reports must contain any pertinent recommendations the wardens may see fit to  
22 make.

23 (5) A warden may not compromise or settle violations of fish and game laws out of court.

24 (6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game  
25 animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling.  
26 Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game  
27 animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection.

28 (7) The department is a criminal justice agency for the purpose of obtaining the technical assistance and  
29 support services provided by the board of crime control under the provisions of 44-7-101. Authorized officers of  
30 the department are granted peace officer status with the power:

1 (a) of search, seizure, and arrest related to violations under the jurisdiction of the department and the  
 2 commission;

3 (b) to investigate activities in this state regulated by this title and rules of the department and the  
 4 commission; and

5 (c) to report violations to the county attorney of the county in which they occur."  
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7 **Section 11.** Section 87-1-504, MCA, is amended to read:

8 **"87-1-504. ~~Protection of private property~~ Use of state lands -- duty of wardens.** It is the duty of  
 9 wardens to enforce the provisions of ~~45-6-101, 45-6-203,~~ 75-10-212(2), 77-1-801, 77-1-806, and rules adopted  
 10 under 77-1-804 on ~~private and state lands being~~ used for hunting and fishing."  
 11

12 **Section 12.** Section 87-1-506, MCA, is amended to read:

13 **"87-1-506. Enforcement powers of wardens.** (1) A warden may:

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

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

19 ~~(c)(b) conduct a search, with a search warrant, any dwelling house or other building in accordance with~~  
 20 Title 46, chapter 5;

21 ~~(d)(c) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed~~  
 22 ~~in violation of the law or the rules of the department;~~

23 ~~(e)(d) seize and hold, subject to law or the orders of the department, devices that have been used to~~  
 24 ~~unlawfully take game, fish, birds, or fur-bearing animals;~~

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

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

29 ~~(h)(g) as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title~~  
 30 ~~37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides~~

1 in the state;

2 ~~(f)(h)~~ enforce the provisions of Title 80, chapter 7, part 10, and rules adopted under Title 80, chapter 7,  
3 part 10, for those invasive species that are under the department's jurisdiction; and

4 ~~(f)(i)~~ exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules  
5 of the department, and judgments obtained for violation of those laws or rules.

6 (2) The meat of game animals that are seized pursuant to subsection ~~(4)(d)~~ ~~(1)(c)~~ must be donated  
7 directly to the Montana food bank network or to public or charitable institutions to the extent reasonably feasible.

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

10 - END -