

1 HOUSE BILL NO. 242

2 INTRODUCED BY C. HINKLE, B. BROWN, J. HINKLE, B. LER, R. MARSHALL, J. READ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A MUZZLELOADER HERITAGE HUNT FOR
5 DEER AND ELK; RESTRICTING USE OF CERTAIN EQUIPMENT; REVISING RULEMAKING AUTHORITY;
6 PROVIDING PENALTIES; AND AMENDING SECTIONS 87-1-201, 87-1-301, 87-1-304, AND 87-6-401, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 87-1-201, MCA, is amended to read:

11 **"87-1-201. Powers and duties.** (1) Except as provided in subsection (12), the department shall
12 supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing
13 animals of the state and may implement voluntary programs that encourage hunting access on private lands
14 and that promote harmonious relations between landowners and the hunting public. The department possesses
15 all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state
16 for the enforcement of the fish and game laws and the rules adopted by the department.

17 (2) Except as provided in subsection (12), the department shall enforce all the laws of the state
18 regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and
19 game and nongame birds within the state.

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

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

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

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

7 (7) Except as provided in subsection (12), the department is authorized to make, promulgate, and
8 enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its
9 judgment will accomplish the purpose of chapter 2.

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

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

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

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

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

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

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

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

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

5 (10) The department shall publish an annual game count, estimating to the department's best ability
6 the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative
7 regions of the state. In preparing the publication, the department may incorporate field observations, hunter
8 reporting statistics, or any other suitable method of determining game numbers. The publication must include
9 an explanation of the basis used in determining the game count.

10 (11) The department shall report current sage grouse population numbers, including the number of
11 leks, to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality
12 council, established in 5-16-101, on an annual basis. The report must include seasonal and historic population
13 data available from the department or any other source.

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

16 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
17 establishment of special archery seasons and the special muzzleloader heritage hunting season established in
18 87-1-304;

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

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

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

23 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h)."
24

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

26 "**87-1-301. Powers of commission.** (1) Except as provided in subsections (6) and (7), the
27 commission:

28 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,

1 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment
2 of all other responsibilities of the department related to fish and wildlife as provided by law;

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

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

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

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

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

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

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

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

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

26 (2) The commission may adopt rules regarding the use and type of archery equipment that may be
27 employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in
28 archery equipment change.

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

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

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

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

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

9 (iv) limit the number of licenses sold.

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

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

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

14 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-
15 321 through 87-1-325.

16 (5) (a) Subject to the provisions of subsection (5)(b), the commission may adopt rules to:

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

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

20 (b) The commission shall adopt rules for the use of and set quotas for the sale of Class D-4
21 nonresident hound handler licenses by hunting district, portions of a hunting district, group of districts, or
22 administrative regions. However, no more than two Class D-4 licenses may be issued in any one hunting
23 district per license year.

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

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

26 (ii) history of quota overruns;

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

28 (iv) historical outfitter use;

- 1 (v) conflicts among hunter groups;
- 2 (vi) availability of public and private lands; and
- 3 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.
- 4 (6) The commission may not regulate the use or possession of firearms, firearm accessories, or
- 5 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:
- 6 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
- 7 establishment of special archery seasons and the special muzzleloader heritage hunting season established in
- 8 87-1-304;
- 9 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms,
- 10 including bows and arrows, 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 (7) Pursuant to 23-1-111, the commission does not oversee department activities related to the
- 15 administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic
- 16 sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant
- 17 to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9."

18

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

20 **"87-1-304. Fixing of seasons and bag and possession limits.** (1) Subject to the provisions of 87-5-

21 302 and ~~subsection~~ subsections (7) and (8) of this section, the commission may:

- 22 (a) fix seasons, bag limits, possession limits, and season limits;
- 23 (b) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing
- 24 animal as defined by 87-2-101;
- 25 (c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear,
- 26 wild buffalo or bison, and wolf by persons holding an archery stamp and the required license, permit, or tag and
- 27 designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat,
- 28 mountain lion, bear, wild buffalo or bison, and wolf in those areas;

1 (d) subject to the provisions of 87-1-301(6), restrict areas and species to hunting with only specified
2 hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities
3 and experiences; and

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

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

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

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

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

28 (6) The commission may declare certain fishing waters closed to fishing except by persons under 15

1 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and
 2 enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers
 3 advisable and consistent with its policies relating to fishing.

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

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

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

8 (8) There is established a special muzzleloader heritage hunting season that begins on the second
 9 Saturday after the end of the regular season and lasts 9 days. During this season, and subject to the provisions
 10 of 87-6-401(1)(i) AND RULES ADOPTED BY THE COMMISSION, a person may take a deer or elk with a valid license or
 11 permit using plain lead projectiles and a muzzleloading rifle that is charged with LOOSE black powder, LOOSE
 12 pyrodex, or an equivalent LOOSE BLACK POWDER SUBSTITUTE, and ignited by a flintlock, wheel lock, matchlock, or
 13 percussion mechanism USING A PERCUSSION OR MUSKET CAP. The muzzleloading rifle must be a minimum of .45
 14 caliber and may not have more than two barrels."

15

16 **Section 4.** Section 87-6-401, MCA, is amended to read:

17 **"87-6-401. Unlawful use of equipment while hunting.** (1) A person may not:

18 (a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare,
 19 except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

20 (b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically
 21 amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of
 22 wildlife except for predatory animals, wolves, and those birds not protected by state or federal law;

23 (c) while hunting, take into a field or forest or have in the person's possession any device or
 24 mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism
 25 is operated from or attached to any firearm. This subsection (1)(c) does not prohibit the use of a device or
 26 mechanism registered with the bureau of alcohol, tobacco, firearms and explosives to silence, muffle, or
 27 minimize the report of a firearm when hunting wildlife.

28 (d) while hunting, possess any electronic motion-tracking device or mechanism, as defined by

1 commission rule, that is designed to track the motion of a game animal and relay information on the animal's
2 movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful
3 hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection
4 (1)(d).

5 (e) while hunting, use archery equipment that has been prohibited by rule of the commission;

6 (f) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the
7 department;

8 (g) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the
9 department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only,
10 not larger than a number 10 gauge, fired from the shoulder.

11 (h) use a rifle to hunt or shoot wild turkey during the spring wild turkey season;

12 (i) during the special muzzleloader heritage hunting season established in 87-1-304, use a
13 muzzleloading rifle that requires insertion of a cap or primer into the open breech of the barrel, is capable of
14 being loaded from the breech, or is mounted with an optical magnification device. Use of prepared paper or
15 metallic cartridges, or sabots, GAS CHECKS, or other similar power and range-enhancing manufactured loads that
16 enclose the projectile from the rifling or bore of the firearm is also prohibited.

17 (2) A person convicted of a violation of this section shall be fined not less than \$50 or more than
18 \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the
19 person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing,
20 or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands,
21 as defined in 77-1-101, for recreational purposes for a period of time set by the court.

22 (3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a)
23 may be subject to the additional penalties provided in 87-6-901 through 87-6-903.

24 (4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905
25 through 87-6-907."

26 - END -