

1 SENATE BILL NO. 84

2 INTRODUCED BY B. BROWN

3 BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS FOR AIRCRAFT USE IN RELATION TO
6 WILDLIFE AND NATIONAL FOREST LANDS; DEFINING AN "AIRCRAFT" TO INCLUDE UNMANNED
7 AERIAL VEHICLES AND OTHER AIRBORNE DEVICES FOR THE PURPOSES OF HUNTING, HAZING,
8 HARASSING, AND OTHERWISE INTERACTING WITH WILDLIFE; REMOVING THE OBLIGATION FOR THE
9 DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PERMIT AIRCRAFT ACTIVITY ON NATIONAL
10 FOREST LAND; AMENDING SECTIONS 87-6-101, 87-6-107, AND 87-6-208, MCA; AND PROVIDING AN
11 IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 87-6-101, MCA, is amended to read:

16 **"87-6-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
17 apply:

18 (1) "Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk,
19 moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned
20 reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion
21 must be regulated pursuant to Title 87, chapter 4, part 8.

22 (2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock
23 may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of
24 alternative livestock, as authorized under Title 87, chapter 4, part 4.

25 (3) "Aircraft" means any manned or unmanned aerial vehicle or device that is used or intended to
26 be used for flight in the air.

27 ~~(3)(4)~~ (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an
28 area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

~~(4)~~(5) "Closed season" means the time during which game birds, fish, game animals, and fur-bearing animals may not be lawfully taken.

~~(5)~~(6) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

~~(6)~~(7) "Conviction" means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated.

~~(7)~~(8) "Field trial" has the meaning provided in 87-3-601.

~~(8)~~(9) "Fishing" means to take or harvest fish or the act of a person possessing any instrument, article, or substance for the purpose of taking or harvesting fish in any location that a fish might inhabit.

~~(9)~~(10) (a) "Fur dealer" means a person engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or predatory animals.

(b) If a fur dealer resides in Montana or if the fur dealer's principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

~~(10)~~(11) "Fur farm" means enclosed land on which furbearers are kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers.

~~(11)~~(12) (a) "Fur-bearing animal" or "furbearer" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(b) As used in Title 87, chapter 4, part 10, "furbearer" does not include fox or mink.

~~(12)~~(13) "Game animal" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(13)~~(14) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species *Perca flavescens* (yellow perch); all species of the genus *Pomoxis* (crappie); and the species *Ictalurus punctatus* (channel catfish).

~~(14)~~(15) "Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(15)~~(16) "Knowingly" has the meaning provided in 45-2-101.

~~(16)~~(17) "Livestock" includes ostriches, rheas, and emus.

~~(17)~~(18) "Migratory game bird" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

~~(18)~~(19) "Negligently" has the meaning provided in 45-2-101.

~~(19)~~(20) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(20)~~(21) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

~~(21)~~(22) "Participating state" means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact.

~~(22)~~(23) "Person" means an individual, association, partnership, and corporation.

~~(23)~~(24) "Possession" has the meaning provided in 45-2-101.

~~(24)~~(25) "Predatory animal" means coyote, weasel, skunk, and civet cat.

~~(25)~~(26) "Purposely" has the meaning provided in 45-2-101.

~~(26)~~(27) "Raptor" means all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

~~(27)~~(28) "Resident" has the meaning provided in 87-2-102.

~~(28)~~(29) "Roadside menagerie" means any place where one or more wild animals are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

~~(29)~~(30) "Sale" means a contract by which a person:

(a) transfers an interest in either game or fish for a price; or

(b) transfers, barter, or exchanges an interest either in game or fish for an article or thing of value.

~~(30)~~(31) "Site of the kill" means the location where a game animal or game bird expires and the person responsible for the death takes physical possession of the carcass.

~~(31)~~(32) "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock.

~~(32)~~(33) "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

~~(33)~~(34) "Trap" means to take or harvest or participate in the taking or harvesting of any wildlife protected by state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(34)~~(35) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(35)~~(36) "Wild animal" means an animal that is wild by nature as distinguished from common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

~~(36)~~(37) "Wild animal menagerie" means any place where one or more bears or large cats, including

cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity for use other than public exhibition.

~~(37)~~(38) "Wild buffalo or bison" or "wild buffalo" means a bison that:

(a) has not been reduced to captivity;

(b) has never been subject to the per capita fee under 15-24-921;

(c) has never been owned by a person; and

(d) is not the offspring of a bison that has been subject to the per capita fee under 15-24-921.

~~(38)~~(39) "Wildlife sanctuary" means a facility organized as a Montana nonprofit corporation pursuant to Title 35, chapter 2, or in good standing with and accredited by the American sanctuary association or the global federation of animal sanctuaries for the purpose of providing homes for nonreleasable wild animals.

Accreditation and good standing must be proven with a copy of an accreditation report completed as required by the accrediting organization.

~~(39)~~(40) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or in good standing with and accredited by the association of zoos and aquariums or the zoological association of America for the purpose of exhibiting wild animals for public viewing. Accreditation and good standing must be proven with a copy of an accreditation report completed as required by the accrediting organization."

Section 2. Section 87-6-107, MCA, is amended to read:

"87-6-107. Unlawful harassment of game animals and game birds with vehicle or device. (1) A person may not concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of or attempt to concentrate, drive, rally, stir up, run, molest, flush, herd, chase, harass, or impede the movement of a game animal or game bird from or with the use or aid of a self-propelled, motor-driven, or drawn vehicle or device, including aircraft. This section does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(2) The following penalties apply for a violation of this section:

(a) A person convicted of or who forfeits bond or bail after being charged with a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting,

1 fishing, or trapping license issued by this state and the privilege to hunt, fish, and trap in this state or to use
2 state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

3 (b) A person convicted of or who forfeits bond or bail after being charged with a second or
4 subsequent violation of this section within 5 years shall be fined not less than \$500 or more than \$1,000 or be
5 imprisoned for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing,
6 or trapping license issued by this state and the privilege to hunt, fish, and trap in this state for 24 months from
7 the date of conviction or forfeiture of bond or bail unless the court imposes a longer period."

8
9 **Section 3.** Section 87-6-208, MCA, is amended to read:

10 **"87-6-208. Unlawful use of aircraft.** (1) Except as provided in 87-3-126, a person may not:

11 (a) kill, take, or shoot at any game bird, game animal, or fur-bearing animal from an aircraft,
12 ~~including a helicopter;~~

13 (b) use an aircraft, ~~including a helicopter:~~

14 (i) to locate any game animal for the purpose of hunting that animal during the same hunting day
15 after the person has been airborne using an aircraft within the same area; or

16 (ii) for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game bird,
17 migratory bird, game animal, or fur-bearing animal; or

18 (c) if in or using an aircraft, ~~including a helicopter~~, spot or locate any game animal or fur-bearing
19 animal and communicate the location of the game animal or fur-bearing animal to any person:

20 (i) on the ground by means of any air-to-ground communication signal or other device as an aid to
21 hunting or pursuing wildlife; or

22 (ii) within the same hunting day after being airborne in the same area.

23 (2) ~~Unless permitted by the department, a person may not use an aircraft, including a helicopter,~~
24 ~~for hunting purposes within the boundaries of a national forest except when cargo or persons are loaded and~~
25 ~~unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports that have been~~
26 ~~established on private property or that have been established by any federal, state, county, or municipal~~
27 ~~governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment~~
28 ~~and supplies. The provisions of this subsection do not apply:~~

(a) during emergency situations;

(b) when search and rescue operations are being conducted; or

(c) for predator control as permitted by the department of livestock.

(3) The following penalties apply for a violation of this section:

(a) Unless otherwise provided in this subsection (3), a person convicted of a violation of this section shall be fined not less than \$300 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the 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.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful use of an aircraft to kill or take a deer, elk, antelope, mountain lion, mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than \$500 or more than \$2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful use of an aircraft to kill or take a fur-bearing animal, the person shall be fined not less than \$100 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(4) As used in this section, "aircraft" has the meaning provided in 87-6-101.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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