

SENATE BILL NO. 51

INTRODUCED BY T. FACEY

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

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO FISH POND LICENSES; AUTHORIZING TEMPORARY FISH POND LICENSES; REDEFINING "PRIVATE FISH POND"; REVISING REPORTING REQUIREMENTS; AND AMENDING SECTIONS 87-4-603, 87-4-606, AND 87-4-607, MCA."

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

Section 1. Section 87-4-603, MCA, is amended to read:

"87-4-603. Fish pond license for ~~artificial lake or pond~~ or private fish pond -- records. (1) A person who owns or lawfully controls ~~an artificial lake or pond~~ or a private fish pond may apply to the ~~director~~ department for a fish pond license. The ~~holder of a private fish pond license~~ licensee may stock the fish pond with fish procured from a lawful source. The department may designate the species of fish that may be released in the pond and otherwise condition the license if there is a possibility of fish escaping from the pond into adjacent streams or lakes. The ~~license holder~~ licensee may take fish from the ~~lake or pond~~ in any manner. Before a ~~license holder~~ licensee may sell fish, or eggs, or fry from the ~~lake or pond~~, the ~~license holder~~ licensee shall furnish a corporate surety bond to the state for \$500, conditioned to the effect that:

(a) the ~~license holder~~ licensee will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license; and also conditioned to the effect that

(b) the ~~license holder~~ licensee will submit an annual report on transactions to the ~~director~~ department pursuant to subsection (6).

(2) A person who owns or lawfully controls a fish pond that does not meet the requirements of subsection (3) but is determined by the department to not pose an unacceptable risk to game fish or fish species of concern in adjacent waters may apply to the department for a temporary fish pond license. The applicant shall abide by any condition of the license and the requirements governing private fish ponds in 87-4-606 and this section. A temporary license is valid for 1 year. An application for renewal must be made annually before the license expires.

(2)(3) (a) "Artificial lake or pond" or "private "Private fish pond", as used in 87-4-606 and this section, means a body of water that does not exceed 500 surface acres, is determined by the department to not pose an

1 unacceptable risk to game fish or fish species of concern in adjacent waters, and is:

2 (i) created by artificial means ~~or by a diversion of water that does not exceed 500 acres in surface area;~~

3 or

4 (ii) an instream pond ~~that does not exceed 500 acres~~ with a tributary spring or stream that does not
5 support game fish or fish species of special concern; ~~and~~

6 ~~—— (iii) not determined by the department to pose an unacceptable risk to game fish or fish species of special~~
7 ~~concern in adjacent waters.~~

8 (b) The term does not include all other natural ponds or bodies of water, including streams or rivers and
9 impoundments or reservoirs of or on a natural stream, river, lake, or pond.

10 ~~(3)(4)~~ An applicant for licensing of an instream private fish pond shall present to the department
11 verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream and
12 that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of special
13 concern in adjacent waters. Verification must be in the form of:

14 (a) a formal report from a department-approved professional fisheries consultant; or

15 (b) other reliable data and documentation.

16 ~~(4)(5)~~ The department may condition ~~the~~ a fish pond license to require the construction, implementation,
17 and maintenance of measures or devices to prevent fish in ~~an artificial lake or~~ a private fish pond from escaping
18 into adjacent waters.

19 ~~(5)(6)~~ ~~(a)~~ A licensee who sells fish or eggs shall:

20 (a) verify that a purchaser possesses a valid fish pond license for the species of fish or eggs being sold;

21 (b) keep accurate records of:

22 (i) the species and quantities of fish or eggs sold or purchased;

23 (ii) dates of sales or purchases;

24 (iii) names of purchasers or sellers; ~~and~~

25 (iv) a purchaser's private fish pond license number; and

26 ~~(iv)(v)~~ locations to or from which fish or eggs are transferred; and

27 ~~(b)(c)~~ ~~On or~~ on or before January 31 of each year, a licensee who sells fish or eggs shall file a report with
28 the department, on forms made available by the department, summarizing the records required under this
29 subsection ~~(5)(a)~~ (6).

30 ~~(6)(7)~~ A person who owns or controls ~~an artificial lake or~~ a private fish pond may request an inspection

by the department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department has reasonable cause to believe that a fish species in the ~~body of water~~ pond may have been illegally introduced or may have a disease that may affect fish in another body of water, the department shall notify the landowner or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice has been given to the landowner or agent or after every reasonable effort has been made to notify the landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions of this subsection for the purposes of inspecting the pond, ~~or the body of water~~, the species of fish in the pond, ~~or the body of water~~, the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the physical connection of ~~an artificial lake or a~~ pond to an adjacent natural lake, pond, or body of water, including a stream or river. The department is responsible for actual damages to any property.

~~(7)(8)~~ If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed private fish pond, ~~an artificial lake or pond~~, or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the introduction of fish with a disease, the department may replace the destroyed fish without charge to the private owner. A landowner or agent who has granted permission for the department to enter is not considered responsible for an illegal introduction of fish or disease unless proved otherwise."

Section 2. Section 87-4-606, MCA, is amended to read:

"87-4-606. Term of fish pond license -- fees -- site inspections -- license not transferable -- exception for transfer. (1) Except as provided in 87-4-603(2) and subsections (3) and (4) of this section, a ~~private~~ fish pond license issued under 87-4-603 is valid for 10 years.

(2) There is a \$10 application fee and a \$10 renewal fee for each ~~private~~ fish pond license.

(3) (a) Except as provided in subsections (3)(b), ~~(3)(c)~~, and (4), a ~~private~~ fish pond license expires on February 28 of the 10th year succeeding the year of issuance or renewal.

(b) A ~~private fish pond~~ licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license expires on February 28 of the year succeeding the year of issuance.

1 ~~(c) For a license that has been in effect for more than 10 years as of April 8, 2005, the license holder~~
2 ~~shall apply for renewal within 1 year of April 8, 2005.~~

3 ~~(d)(c)~~ An application for renewal must be made before a license expires. The department shall renew
4 the license if the licensee has not violated any condition upon which the license was granted and if the licensee
5 has met all of the requirements governing private fish ponds in 87-4-603 and this section.

6 (4) A new license is required when a licensee proposes to plant a new species or stock a pond not
7 designated in the original license.

8 (5) (a) Except as provided in subsection (5)(b), a ~~private~~ fish pond license granted under 87-4-603 is not
9 transferable.

10 (b) If ownership or control of the private fish pond changes, the new owner or operator shall apply to the
11 department for a license transfer. The transfer must be approved by the department before the new owner or
12 operator may continue operation of the private fish pond.

13 (c) A transferred license retains the remaining portion of the original license's term."
14

15 **Section 3.** Section 87-4-607, MCA, is amended to read:

16 **"87-4-607. Revocation of fish pond license.** (1) A fish pond license or a temporary fish pond license
17 issued under 87-4-603 may be revoked for failure to operate or use the pond according to the terms or conditions
18 of the license or ~~state statutes, rules, or orders~~ any statute, rule, or order covering importation, transportation,
19 or introduction of fish or eggs.

20 (2) If the department discovers a violation under this section, it may institute revocation proceedings after
21 providing reasonable notice and opportunity for a hearing to the licensee. After hearing and upon proof of the
22 violation, the department may revoke the fish pond license."
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