

1 HOUSE BILL NO. 124

2 INTRODUCED BY B. MITCHELL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PERSONS TO DISCHARGE FIREARMS WITHIN
5 CITY LIMITS TO DISPATCH INJURED GAME ANIMALS UNDER CERTAIN CONDITIONS; ESTABLISHING
6 LIABILITY PROVISIONS; REVISING THE DEFINITION OF "HUNT"; AND AMENDING SECTIONS 45-8-343,
7 45-8-351, 87-2-101, AND 87-6-101, MCA."

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

10
11 NEW SECTION. **Section 1. Dispatch of injured game animals within city limits.** (1) Subject to the
12 provisions of this section, a person may discharge a firearm within city limits to dispatch an injured game
13 animal, as defined in 87-6-101.

14 (2) Before discharging a firearm to dispatch an injured game animal, a person shall first notify the
15 municipal police department or, if one does not exist, the county sheriff's office about the injured game animal.
16 If a law enforcement officer does not respond in a reasonable amount of time, the person may dispatch the
17 animal after notifying other persons within a reasonable distance of the site that a firearm is about to be
18 discharged.

19 (3) After dispatching an injured game animal, the person shall remain at the site until a law enforcement
20 officer arrives. The law enforcement officer shall determine whether the animal had injuries that justified the
21 discharging of the firearm. If the law enforcement officer determines that discharging the firearm was justified,
22 the person may not be held criminally liable for doing so. The person is liable for any resulting property damage
23 or injury to a third party.

24 (4) The meat of game animals dispatched pursuant to this section must be donated directly to the
25 Montana food bank network or to public or charitable institutions to the extent reasonably feasible. Any meat
26 that the law enforcement agency is unable to donate must be sold pursuant to 87-1-511, with the proceeds to
27 be distributed as provided in 87-1-513(2).

1 **Section 2.** Section 45-8-343, MCA, is amended to read:

2 **"45-8-343. Firing firearms.** (1) Except as provided in [section 1] and subsections (2) and (3) of this
3 section, every a person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any
4 town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding
5 \$25 or such greater fine or a term of imprisonment, or both, as the town or city may impose.

6 (2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located
7 within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing
8 body.

9 (3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3,
10 part 1."

11
12 **Section 3.** Section 45-8-351, MCA, is amended to read:

13 **"45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in
14 subsection (2), a county, city, town, consolidated local government, or other local government unit may not
15 prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale,
16 or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon,
17 including a rifle, shotgun, handgun, or concealed handgun.

18 (2) (a) ~~For~~ Except as provided in [section 1], for public safety purposes, a city or town may regulate
19 the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other
20 local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to
21 a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms
22 by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

23 (b) Nothing contained in this section allows any government to prohibit the legitimate display of
24 firearms at shows or other public occasions by collectors and others or to prohibit the legitimate transportation
25 of firearms through any jurisdiction, whether in airports or otherwise.

26 (c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer
27 who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as
28 provided in 45-8-317."

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2 **Section 4.** Section 87-2-101, MCA, is amended to read:

3 **"87-2-101. Definitions.** As used in Title 87, chapter 3, and this chapter, unless the context clearly
4 indicates otherwise, the following definitions apply:

5 (1) "Angling" or "fishing" means to take or harvest fish or the act of a person possessing any
6 instrument, article, or substance for the purpose of taking or harvesting fish in any location that a fish might
7 inhabit.

8 (2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an
9 area inhabited by wildlife for the purpose of attracting game animals or game birds.

10 (b) The term does not include:

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

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

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

14 (3) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine,
15 northern swift fox, and beaver.

16 (4) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat,
17 mountain lion, bear, and wild buffalo.

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

24 (6) "Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the
25 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
26 shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this
27 state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term
28 includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding,

1 killing, chasing, luring, possessing, or capturing. The term does not include the dispatching of a game animal
2 pursuant to [section 1].

3 (7) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans;
4 cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning
5 doves.

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

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

10 (10) "Person" means an individual, association, partnership, or corporation.

11 (11) "Predatory animals" means coyote, weasel, skunk, and civet cat.

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

15 (13) "Upland game birds" means sharp-tailed grouse, blue grouse, spruce (Franklin) grouse, prairie
16 chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild
17 turkey, and chukar partridge.

18 (14) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."
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20 **Section 5.** Section 87-6-101, MCA, is amended to read:

21 **"87-6-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
22 apply:

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

27 (2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may
28 be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of

1 alternative livestock, as authorized under Title 87, chapter 4, part 4.

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

4 (b) The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

(13) "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) "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. The term does not include the dispatching of a game animal pursuant to [section 1].

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

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

(17) "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) "Negligently" has the meaning provided in 45-2-101.

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

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

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

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

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

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

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

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

(28) "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) "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) "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) "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) "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) "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) "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) "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) "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) "Wild buffalo" means buffalo or bison that have not been reduced to captivity.

(38) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or any facility participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting wild animals for public viewing."

NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 3, part 3, and the provisions of Title 87, chapter 3, part 3, apply to [section 1].

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