

1 House BILL NO. 166
2 INTRODUCED BY Keller William Selby Stephen Sobel

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE
5 PROVISIONS OF THE SPOTLIGHTING WHILE HUNTING STATUTE TO THE
6 DECISION OF THE MONTANA SUPREME COURT IN STATE V. AUSTIN,
7 217 MONT. 265, 704 P.2D 55 (1985), BY INSERTING A
8 REQUIREMENT THAT THE VIOLATION BE COMMITTED PURPOSELY OR
9 KNOWINGLY AND BY LIMITING THE LANDOWNER'S EXEMPTION TO
10 NONHUNTING ACTIVITIES; AND AMENDING SECTION 87-3-122, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 87-3-122, MCA, is amended to read:

14 "87-3-122. Spotlighting unlawful. (1) It is unlawful
15 for any person or one or more of a group of persons together
16 to purposely or knowingly, as defined in 45-2-101, throw or
17 cast the rays of a spotlight having a luminance of greater
18 than .75 candlepower attached to or cast from a motorized
19 vehicle into any field, pasture, woodland, forest, or
20 prairie wherein wildlife or domestic livestock may be or may
21 be reasonably expected to be while having in his possession
22 or their possession or under control a firearm or other
23 implement whereby any wildlife or domestic animal could be
24 killed by aid of an artificial light.

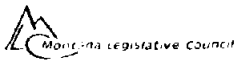
25 (2) (a) All officers authorized to enforce the game and

1 livestock laws of the state of Montana and all landowners,
2 lessees, or their agents, while on their own lands in
3 connection with their legitimate nonhunting activities, and
4 employees of such landowners, lessees, and agents are exempt
5 from the provisions of this section.

6 (b) The provisions of this section do not apply where
7 the headlights of a motor vehicle, operating and proceeding
8 in a normal manner on any highway or roadway, cast a light
9 upon such animal on or adjacent to the highway or roadway
10 and there is no intent or attempt to locate that animal.

11 (3) A person convicted of violating subsection (1) of
12 this section shall be fined not to exceed \$500 or be
13 imprisoned in the county jail for any term not to exceed 6
14 months, or both."

-End-



-2- INTRODUCED BILL
HB 166

APPROVED BY COMM.
ON FISH AND GAME

HOUSE BILL NO. 166

INTRODUCED BY KELLER, ELLISON, SCHYE, STEPLER, COBB

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM--THE PROVISIONS--OF--THE--SPOTLIGHTING--WHILE--HUNTING--STATUTE TO ADDRESS THE DECISION OF THE MONTANA SUPREME COURT IN STATE V. AUSTIN, 217 MONT. 265, 704 P.2D 55 (1985), BY INSERTING-A REQUIREMENT--THAT--THE--VIOLATION--BE--COMMITTED--PURPOSELY--OR KNOWINGLY--AND--BY--LIMITING--THE--LANDOWNER'S--EXEMPTION--TO NONHUNTING---ACTIVITIES;---AND--AMENDING REPEALING SECTION 87-3-122, MCA."

WHEREAS, THE MONTANA SUPREME COURT IN STATE V. AUSTIN, 217 MONT. 265, 704 P.2D 55 (1985), HELD THAT SECTION 87-3-122, MCA, VIOLATED EQUAL PROTECTION BY INCLUDING WILDLIFE IN ITS PURVIEW AND EXEMPTING LANDOWNERS, LESSEES, AND OTHERS ON THEIR OWN LAND SINCE THE STATUTE WAS NOT RATIONALLY RELATED TO THE STATE'S INTEREST IN PROTECTING ITS WILDLIFE; AND

WHEREAS, SUBSEQUENT ATTEMPTS TO AMEND SECTION 87-3-122, MCA, TO CONFORM TO THE COURT'S DECISION HAVE NOT BEEN SUCCESSFUL; AND

WHEREAS, THE LEGISLATURE CONSIDERS IT APPROPRIATE TO REMOVE THE STATUTE FROM THE LAW WHILE AT THE SAME TIME ENCOURAGING THE DEPARTMENTS OF LIVESTOCK AND FISH, WILDLIFE,

AND PARKS TO WORK TOGETHER TO DEVELOP FOR FUTURE LEGISLATIVE CONSIDERATION A VIABLE SPOTLIGHTING LAW THAT WILL ADDRESS THE CONCERNS OF THE COURT AND MONTANA LANDOWNERS.

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

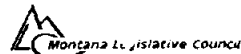
Section-1;--Section-87-3-122;--MCA;--is-amended-to-read:

"87-3-122;--Spotlighting-unlawful;--(1)--It-is-unlawful for-any-person-or-one-or-more-of-a-group-of-persons-together to purposely-or-knowingly, as-defined-in-45-2-101, throw-or cast-the-rays-of-a-spotlight-having-a-luminance--of--greater than--.75--candlepower--attached-to-or-cast-from-a-motorized vehicle--into--any--field,--pasture,--woodland,--forest,--or prairie-wherein-wildlife-or-domestic-livestock-may-be-or-may be-reasonably-expected-to-be-while-having-in-his--possession or--their--possession--or--under--control-a-firearm-or-other implement-whereby-any-wildlife-or-domestic-animal--could-be killed-by-aid-of-an-artificial-light;

(2)--(a)--All-officers-authorized-to-enforce-the-game-and livestock-laws--of-the-state-of-Montana-and-all-landowners, lessees, or-their-agents, while--on--their--own--lands--in connection--with-their-legitimate nonhunting-activities, and employees-of-such-landowners, lessees, and-agents-are-exempt from-the-provisions-of-this-section.

(b)--The-provisions-of-this-section-do-not--apply--where the--headlights-of-a-motor-vehicle, operating-and-proceeding

SECOND READING



HB 0166/02

1 ~~in-a-normal-manner-on-any-highway-or-roadway,-cast-a-light~~
2 ~~upon-such-animal-on-or-adjacent-to-the-highway-or-roadway~~
3 ~~and-there-is-no-intent-or-attempt-to-locate-that-animal.~~
4 ~~{3}-A-person-convicted-of-violating-subsection-(1)-of~~
5 ~~this-section-shall-be-fined-not-to-exceed-\$500-or-be~~
6 ~~imprisoned-in-the-county-jail-for-any-term-not-to-exceed-6~~
7 ~~months,-or-both."~~

8 NEW SECTION. SECTION 1. REPEALER. SECTION 87-3-122,
9 MCA, IS REPEALED.

-End-

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Section 1. Section 87-3-122, MCA, is amended to read:
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(2) (a) All officers authorized to enforce the game and livestock laws of the state of Montana and all landowners, lessees, or their agents, while on their own lands in connection with their legitimate nonhunting activities, and employees of such landowners, lessees, and agents are exempt from the provisions of this section.

(b) The provisions of this section do not apply where the headlights of a motor vehicle, operating and proceeding

THIRD READING

HB 0166/02

1 ~~in a normal manner on any highway or roadway, cast a light~~
2 ~~upon such animal on or adjacent to the highway or roadway~~
3 ~~and there is no intent or attempt to locate that animal.~~
4 ~~{3}--A person convicted of violating subsection {1} of~~
5 ~~this section shall be fined not to exceed \$500 or be~~
6 ~~imprisoned in the county jail for any term not to exceed 6~~
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25 the headlights of a motor vehicle, operating and proceeding

REFERENCE BILL

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3 and-there-is-no-intent-or-attempt-to-locate-that-animal.
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5 this--section--shall--be--fined--not--to--exceed--\$500--or--be
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