

SENATE BILL NO. 239

INTRODUCED BY VAN VALKENBURG, STRIZICH  
BY REQUEST OF THE DEPARTMENT OF  
FISH, WILDLIFE, AND PARKS

IN THE SENATE

JANUARY 31, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON FISH & GAME.

                                      FIRST READING.

FEBRUARY 15, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 16, 1991                   PRINTING REPORT.

                                      SECOND READING, DO PASS.

FEBRUARY 18, 1991                   ENGROSSING REPORT.

                                      THIRD READING, PASSED.  
AYES, 48; NOES, 0.

                                      TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON FISH & GAME.

                                      FIRST READING.

MARCH 15, 1991                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 18, 1991                   SECOND READING, CONCURRED IN.

MARCH 19, 1991                   THIRD READING, CONCURRED IN.  
AYES, 89; NOES, 10.

                                      RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 23, 1991                   RECEIVED FROM HOUSE.

                                      SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 25, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 SENATE BILL NO. 239  
 2 INTRODUCED BY Va. Valkenburg  
 3 BY REQUEST OF THE DEPARTMENT OF  
 4 FISH, WILDLIFE, AND PARKS

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AS  
 7 FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE  
 8 POSSESSION OF UNLAWFULLY TAKEN WILDLIFE HAVING A VALUE OF  
 9 MORE THAN \$1,000; REVISING THE RESTITUTION PENALTIES FOR THE  
 10 ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING  
 11 "LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE";  
 12 AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING  
 13 AN EFFECTIVE DATE."  
 14

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

16 NEW SECTION. Section 1. Definitions of lawfully taken  
 17 wildlife and unlawfully taken wildlife. As used in [section  
 18 2] and this section, the following definitions apply:

19 (1) "Lawfully taken wildlife" means wildlife, as  
 20 defined in 87-5-102, that is taken or possessed by hunting,  
 21 fishing, or trapping in conformance with this title and the  
 22 regulations adopted by the commission and the department  
 23 under authority of this title.

24 (2) "Unlawfully taken wildlife" means wildlife that is  
 25 not lawfully taken wildlife.

1 NEW SECTION. Section 2. Sale or possession of  
 2 unlawfully taken wildlife -- penalty. (1) A person commits  
 3 the offense of sale of unlawfully taken wildlife if he  
 4 purposely or knowingly sells, barter, purchases, or  
 5 exchanges for anything of value or if he offers to sell,  
 6 barter, purchase, or exchange for anything of value,  
 7 unlawfully taken wildlife.

8 (2) A person commits the offense of possession of  
 9 unlawfully taken wildlife having a value of more than \$1,000  
 10 if he purposely or knowingly has actual or constructive  
 11 possession of or transports or causes to be transported  
 12 unlawfully taken wildlife having a value of more than  
 13 \$1,000. The value of the unlawfully taken wildlife must be  
 14 determined from the schedule of restitution values set out  
 15 in 87-1-111.

16 (3) A person who violates this section is guilty of a  
 17 felony and upon conviction shall be fined not more than  
 18 \$50,000 or be imprisoned in the state prison for a term not  
 19 to exceed 5 years, or both. In addition, a person convicted  
 20 under this section or who pleads guilty to a violation of  
 21 this section shall lose all hunting, fishing, and trapping  
 22 permits and license privileges for a minimum of 3 years or  
 23 up to a maximum of a lifetime revocation from the date of  
 24 conviction.

25 Section 3. Section 87-3-111, MCA, is amended to read:

**INTRODUCED BILL**  
**SB 239**



1       "87-3-111. (Temporary) Unlawful to buy, sell, possess,  
 2 or transport fish or game -- exceptions -- penalties. (1) It  
 3 is unlawful for any person to purchase, sell, offer to sell,  
 4 possess, ship, or transport any game fish, game bird,  
 5 migratory game bird, game animal, or fur-bearing animal or  
 6 part thereof protected by the laws of this state, whether  
 7 belonging to the same or different species from that native  
 8 to the state of Montana, except as specifically permitted by  
 9 the laws of this state.

10       (2) The provisions of this section do not prohibit:

11       (a) the possession or transportation within the state  
 12 of any legally taken fish, game bird, migratory game bird,  
 13 game animal, or fur-bearing animal or part thereof;

14       (b) the sale, purchase, or transportation of hides,  
 15 heads, or mounts of lawfully killed game birds, game fish,  
 16 fur-bearing animals, or game animals, except that the sale  
 17 or purchase of a hide, head, or mount of a grizzly bear is  
 18 prohibited, except as provided in 87-3-110; or

19       (c) the donation and sale of paddlefish roe as caviar  
 20 under the provisions of 87-4-601.

21       (3) ~~Except as provided in subsection (4),~~ any Any  
 22 person violating any of the provisions of this section is  
 23 guilty of a misdemeanor and upon conviction shall be  
 24 punished as provided by law in 87-1-102.

25       ~~(4) Any person engaging in the activities prohibited in~~

1       ~~subsection (1) in furtherance of a scheme to traffic in the~~  
 2 ~~body parts of unlawfully taken species is guilty of a felony~~  
 3 ~~and shall be punished by a fine of \$10,000 or imprisonment~~  
 4 ~~in the state prison for a term of 1 year, or both;~~  
 5 (Terminates June 30, 1993--sec. 5, Ch. 409, L. 1989.)

6       87-3-111. (Effective July 1, 1993) Unlawful to buy,  
 7 sell, possess, or transport fish or game -- exceptions --  
 8 penalties. (1) It is hereby made unlawful for any person to  
 9 purchase, sell, offer to sell, possess, ship, or transport  
 10 any game fish, game bird, migratory game bird, game animal,  
 11 or fur-bearing animal or part thereof protected by the laws  
 12 of this state, whether belonging to the same or different  
 13 species from that native to the state of Montana, except as  
 14 specifically permitted by the laws of this state.

15       (2) The provisions of this section shall not prohibit:

16       (a) the possession or transportation within the state  
 17 of any legally taken fish, game bird, migratory game bird,  
 18 game animal, or fur-bearing animal or part thereof; or

19       (b) the sale, purchase, or transportation of hides,  
 20 heads, or mounts of lawfully killed game birds, game fish,  
 21 fur-bearing animals, or game animals, except that the sale  
 22 or purchase of a hide, head, or mount of a grizzly bear is  
 23 prohibited, except as provided in 87-3-110.

24       (3) ~~Except as provided in subsection (4),~~ any Any  
 25 person violating any of the provisions of this section is

1 guilty of a misdemeanor and upon conviction thereof shall be  
2 punished as provided by law in 87-1-102.

3 ~~(4)--Any person engaging in the activities prohibited in~~  
4 ~~subsection (1) in furtherance of a scheme to traffic in the~~  
5 ~~body parts of unlawfully taken species is guilty of a felony~~  
6 ~~and shall be punished by a fine of \$10,000 or imprisonment~~  
7 ~~in the state prison for a term of 1 year, or both."~~

8 **Section 4.** Section 87-1-111, MCA, is amended to read:

9 **"87-1-111. (Temporary) Restitution for illegal killing**  
10 **or possession of certain wildlife. (1) In addition to other**  
11 **penalties provided by law, a person convicted or forfeiting**  
12 **bond or bail upon a charge of the illegal killing or**  
13 **possession of a wild bird, mammal, or fish listed in this**  
14 **section shall reimburse the state for each such bird,**  
15 **mammal, or fish according to the following schedule:**

16 (a) bighorn sheep, mountain--goat,--caribou,--buffalo,  
17 grizzly bear, moose, and endangered species, \$17,000 \$2,000;

18 (b) elk, mountain goat, caribou, and moose, \$1,000;

19 (b)(c) elk, mountain lion, black bear, lynx, and  
20 wolverine, buffalo, golden eagle, osprey, falcon, antlered  
21 deer as defined by commission regulation, and adult buck  
22 antelope as defined by commission regulation, \$500;

23 (e)(d) deer not included in subsection (1)(c), antelope  
24 not included in subsection (1)(c), fisher, raptor not  
25 included in subsection (1)(c), swan, bobcat, pallid and

1 white sturgeon, and paddlefish, \$300;

2 (d)(e) grayling and furbearers fur-bearing animals, as  
3 defined in 87-2-101, and not listed in subsection (1)(a),  
4 (1)(b), or (1)(c) or (1)(d), \$100;

5 (e)(f) game bird (except swan), \$25;

6 (f)(g) game fish, \$10.

7 (2) When a court enters an order declaring bond or bail  
8 to be forfeited, the court may also order that some or all  
9 of the forfeited bond or bail be paid as restitution to the  
10 state according to the schedule in subsection (1). A hearing  
11 to determine the amount of restitution, as required under  
12 46-9-504, is not required for an order of restitution under  
13 this section. (Terminates June 30, 1993--sec. 5, Ch. 409, L.  
14 1989.)

15 **87-1-111. (Effective July 1, 1993) Restitution for**  
16 **illegal killing or possession of certain wildlife. (1) In**  
17 **addition to other penalties provided by law, a person**  
18 **convicted or forfeiting bond or bail upon a charge of the**  
19 **illegal killing or possession of a wild bird, mammal, or**  
20 **fish listed in this section shall reimburse the state for**  
21 **each such bird, mammal, or fish according to the following**  
22 **schedule:**

23 (a) bighorn sheep, mountain--goat,--caribou,--buffalo,  
24 grizzly bear, moose, and endangered species, \$17,000 \$2,000;

25 (b) elk, mountain goat, caribou, and moose, \$1,000;

1       **{b}{c}** elk, mountain lion, black bear, lynx, and  
 2       wolverine, buffalo, golden eagle, osprey, falcon, antlered  
 3       deer as defined by commission regulation, and adult buck  
 4       antelope as defined by commission regulation, \$500;

5       **{e}{d}** deer not included in subsection (1)(c), antelope  
 6       not included in subsection (1)(c), fisher, raptor not  
 7       included in subsection (1)(c), swan, bobcat, and pallid and  
 8       white sturgeon, \$300;

9       **{d}{e}** paddlefish, grayling, and furbearers fur-bearing  
 10       animals, as defined in 87-2-101, and not listed in  
 11       subsection {1}{a}, {1}{b}, or (1)(c) or (1)(d), \$100;

12       **{e}{f}** game bird (except swan), \$25;

13       **{f}{g}** game fish, \$10.

14       (2) When a court enters an order declaring bond or bail  
 15       to be forfeited, the court may also order that some or all  
 16       of the forfeited bond or bail be paid as restitution to the  
 17       state according to the schedule in subsection (1). A hearing  
 18       to determine the amount of restitution, as required under  
 19       46-9-504, is not required for an order of restitution under  
 20       this section."

21       NEW SECTION. Section 5. Codification instruction.  
 22       [Sections 1 and 2] are intended to be codified as an  
 23       integral part of Title 87, chapter 3, part 1, and the  
 24       provisions of Title 87, chapter 3, part 1, apply to  
 25       [sections 1 and 2].

1       NEW SECTION. Section 5. Effective date. [This act] is  
 2       effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0239, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) establishes as felonies the sale of unlawfully taken wildlife and the possession of unlawfully taken wildlife having a value of more than \$1,000; 2) revises the restitution penalties for the illegal killing or possession of certain wildlife; and 3) defines "lawfully taken wildlife" and "unlawfully taken wildlife".

ASSUMPTIONS:

Department of Fish, Wildlife and Parks

1. The Department of Fish, Wildlife, and Parks has collected \$72,424 in restitution since the fall of 1987 (an average of \$18,105 per year). If the proposed civil restitution amounts had been used the department would have received \$105,053 (an average of \$26,282 per year). This represents an average increase of \$8,157 per year.
2. The department will not receive any significant increase in revenue from fines assessed by the Justices of the Peace.


Department of Institutions:

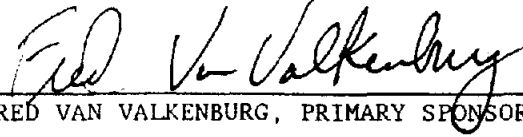
3. The prison will experience an additional two admissions per year.
4. There will be 2 new prisoners to house in FY92 and 3 in FY93.

FISCAL IMPACT:

Department of Institutions:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Costs	0	3,620	3,620	0	6,077	6,077
<u>Funding:</u>						
General Fund	0	3,620	3,620	0	6,077	6,077
<u>Revenue:</u>						
<u>Department of Fish, Wildlife and Parks:</u>						
General License Acct. (02)	18,105	26,262	8,157	18,105	26,262	8,157

  
 ROD SUNDSTED, BUDGET DIRECTOR      2-12-91  
 Office of Budget and Program Planning      DATE

  
 FRED VAN VALKENBURG, PRIMARY SPONSOR      2-12-91  
 Fiscal Note for SB0239, as introduced      DATE      **SB 239**

APPROVED BY COMM.  
ON FISH AND GAME

SENATE BILL NO. 239

INTRODUCED BY VAN VALKENBURG, STRIZICH

BY REQUEST OF THE DEPARTMENT OF

FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AS FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE POSSESSION OF UNLAWFULLY TAKEN WILDLIFE HAVING A VALUE OF MORE THAN \$1,000; REVISING THE RESTITUTION PENALTIES FOR THE ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING "LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE"; AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1.** Definitions of lawfully taken wildlife and unlawfully taken wildlife. As used in [section 2] and this section, the following definitions apply:

(1) "Lawfully taken wildlife" means wildlife, as defined in 87-5-102, that is taken or possessed by hunting, fishing, or trapping in conformance with this title and the regulations adopted by the commission and the department under authority of this title.

(2) "Unlawfully taken wildlife" means wildlife that is not lawfully taken wildlife.

NEW SECTION. **Section 2.** Sale or possession of

unlawfully taken wildlife -- penalty. (1) A person commits the offense of sale of unlawfully taken wildlife if he purposely or knowingly sells, barter, purchases, or exchanges for anything of value or if he offers to sell, barter, purchase, or exchange for anything of value, unlawfully taken wildlife.

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than \$1,000 if he purposely or knowingly has actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife having a value of more than \$1,000. The value of the unlawfully taken wildlife must be determined from the schedule of restitution values set out in 87-1-111.

(3) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction.

**Section 3.** Section 87-3-111, MCA, is amended to read:

**SECOND READING**



1       "87-3-111. (Temporary) Unlawful to buy, sell, possess,  
2 or transport fish or game -- exceptions -- penalties. (1) It  
3 is unlawful for any person to purchase, sell, offer to sell,  
4 possess, ship, or transport any game fish, game bird,  
5 migratory game bird, game animal, or fur-bearing animal or  
6 part thereof protected by the laws of this state, whether  
7 belonging to the same or different species from that native  
8 to the state of Montana, except as specifically permitted by  
9 the laws of this state.

10       (2) The provisions of this section do not prohibit:

11       (a) the possession or transportation within the state  
12 of any legally taken fish, game bird, migratory game bird,  
13 game animal, or fur-bearing animal or part thereof;

14       (b) the sale, purchase, or transportation of hides,  
15 heads, or mounts of lawfully killed game birds, game fish,  
16 fur-bearing animals, or game animals, except that the sale  
17 or purchase of a hide, head, or mount of a grizzly bear is  
18 prohibited, except as provided in 87-3-110; or

19       (c) the donation and sale of paddlefish roe as caviar  
20 under the provisions of 87-4-601.

21       ~~(3) Except as provided in subsection (4), any~~ Any  
22 person violating any of the provisions of this section is  
23 guilty of a misdemeanor and upon conviction shall be  
24 punished as provided by law in 87-1-102.

25       ~~(4) Any person engaging in the activities prohibited in~~

1       ~~subsection (1) in furtherance of a scheme to traffic in the~~  
2       ~~body parts of unlawfully taken species is guilty of a felony~~  
3       ~~and shall be punished by a fine of \$10,000 or imprisonment~~  
4       ~~in the state prison for a term of 1 year, or both~~  
5       ~~(Terminates June 30, 1993--sec. 5, Ch. 409, L. 1989.)~~

6       87-3-111. (Effective July 1, 1993) Unlawful to buy,  
7 sell, possess, or transport fish or game -- exceptions --  
8 penalties. (1) It is hereby made unlawful for any person to  
9 purchase, sell, offer to sell, possess, ship, or transport  
10 any game fish, game bird, migratory game bird, game animal,  
11 or fur-bearing animal or part thereof protected by the laws  
12 of this state, whether belonging to the same or different  
13 species from that native to the state of Montana, except as  
14 specifically permitted by the laws of this state.

15       (2) The provisions of this section shall not prohibit:

16       (a) the possession or transportation within the state  
17 of any legally taken fish, game bird, migratory game bird,  
18 game animal, or fur-bearing animal or part thereof; or

19       (b) the sale, purchase, or transportation of hides,  
20 heads, or mounts of lawfully killed game birds, game fish,  
21 fur-bearing animals, or game animals, except that the sale  
22 or purchase of a hide, head, or mount of a grizzly bear is  
23 prohibited, except as provided in 87-3-110.

24       ~~(3) Except as provided in subsection (4), any~~ Any  
25 person violating any of the provisions of this section is

1 guilty of a misdemeanor and upon conviction thereof shall be  
2 punished as provided by law in 87-1-102.

3 ~~(4)--Any person engaging in the activities prohibited in~~  
4 ~~subsection (1) in furtherance of a scheme to traffic in the~~  
5 ~~body parts of unlawfully taken species is guilty of a felony~~  
6 ~~and shall be punished by a fine of \$10,000 or imprisonment~~  
7 ~~in the state prison for a term of 1 year, or both."~~

8 **Section 4.** Section 87-1-111, MCA, is amended to read:

9 "87-1-111. (Temporary) Restitution for illegal killing  
10 or possession of certain wildlife. (1) In addition to other  
11 penalties provided by law, a person convicted or forfeiting  
12 bond or bail upon a charge of the illegal killing or  
13 possession of a wild bird, mammal, or fish listed in this  
14 section shall reimburse the state for each such bird,  
15 mammal, or fish according to the following schedule:

16 (a) bighorn sheep, mountain--goat, caribou, buffalo,  
17 grizzly bear, moose, and endangered species, \$1,000 \$2,000;

18 (b) elk, mountain goat, caribou, BALD EAGLE, and moose,  
19 \$1,000;

20 ~~(b)(c)~~ elk, mountain lion, black bear, lynx, and  
21 wolverine, buffalo, golden eagle, osprey, falcon, antlered  
22 deer as defined by commission regulation, and adult buck  
23 antelope as defined by commission regulation, \$500;

24 ~~(c)(d)~~ deer not included in subsection (1)(c), antelope  
25 not included in subsection (1)(c), fisher, raptor not

1 included in subsection (1)(c), swan, bobcat, pallid and  
2 white sturgeon, and paddlefish, \$300;

3 ~~(d)(e)~~ grayling and furbearers fur-bearing animals, as  
4 defined in 87-2-101, and not listed in subsection ~~(1)(e)~~  
5 ~~(1)(b)~~, or (1)(c) or (1)(d), \$100;

6 ~~(e)(f)~~ game bird (except swan), \$25;

7 ~~(f)(g)~~ game fish, \$10.

8 (2) When a court enters an order declaring bond or bail  
9 to be forfeited, the court may also order that some or all  
10 of the forfeited bond or bail be paid as restitution to the  
11 state according to the schedule in subsection (1). A hearing  
12 to determine the amount of restitution, as required under  
13 46-9-504, is not required for an order of restitution under  
14 this section. (Terminates June 30, 1993--sec. 5, Ch. 409, L.  
15 1989.)

16 87-1-111. (Effective July 1, 1993) Restitution for  
17 illegal killing or possession of certain wildlife. (1) In  
18 addition to other penalties provided by law, a person  
19 convicted or forfeiting bond or bail upon a charge of the  
20 illegal killing or possession of a wild bird, mammal, or  
21 fish listed in this section shall reimburse the state for  
22 each such bird, mammal, or fish according to the following  
23 schedule:

24 (a) bighorn sheep, mountain--goat, caribou, buffalo,  
25 grizzly bear, moose, and endangered species, \$1,000 \$2,000;

1 (b) elk, mountain goat, caribou, BALD EAGLE, and moose,  
 2 \$1,000;

3 (b)(c) elk, mountain lion, black bear, lynx, and  
 4 wolverine, buffalo, golden eagle, osprey, falcon, antlered  
 5 deer as defined by commission regulation, and adult buck  
 6 antelope as defined by commission regulation, \$500;

7 (c)(d) deer not included in subsection (1)(c), antelope  
 8 not included in subsection (1)(c), fisher, raptor not  
 9 included in subsection (1)(c), swan, bobcat, and pallid and  
 10 white sturgeon, \$300;

11 (d)(e) paddlefish, grayling, and furbearers fur-bearing  
 12 animals, as defined in 87-2-101, and not listed in  
 13 subsection (1)(a)-(1)(b) or (1)(c) or (1)(d), \$100;

14 (e)(f) game bird (except swan), \$25;

15 (f)(g) game fish, \$10.

16 (2) When a court enters an order declaring bond or bail  
 17 to be forfeited, the court may also order that some or all  
 18 of the forfeited bond or bail be paid as restitution to the  
 19 state according to the schedule in subsection (1). A hearing  
 20 to determine the amount of restitution, as required under  
 21 46-9-504, is not required for an order of restitution under  
 22 this section."

23 **NEW SECTION. Section 5. Codification instruction.**  
 24 [Sections 1 and 2] are intended to be codified as an  
 25 integral part of Title 87, chapter 3, part 1, and the

1 provisions of Title 87, chapter 3, part 1, apply to  
 2 [sections 1 and 2].

3 **NEW SECTION. Section 6. Effective date.** [This act] is  
 4 effective July 1, 1991.

-End-

1                   SENATE BILL NO. 239  
 2                   INTRODUCED BY VAN VALKENBURG, STRIZICH  
 3                   BY REQUEST OF THE DEPARTMENT OF  
 4                   FISH, WILDLIFE, AND PARKS  
 5  
 6                   A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AS  
 7                   FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE  
 8                   POSSESSION OF UNLAWFULLY TAKEN WILDLIFE HAVING A VALUE OF  
 9                   MORE THAN \$1,000; REVISING THE RESTITUTION PENALTIES FOR THE  
 10                  ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING  
 11                  "LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE";  
 12                  AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING  
 13                  AN EFFECTIVE DATE."

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

16                  NEW SECTION.   **Section 1.** Definitions of lawfully taken  
 17                  wildlife and unlawfully taken wildlife. As used in [section  
 18                  2] and this section, the following definitions apply:

19                  (1) "Lawfully taken wildlife" means wildlife, as  
 20                  defined in 87-5-102, that is taken or possessed by hunting,  
 21                  fishing, or trapping in conformance with this title and the  
 22                  regulations adopted by the commission and the department  
 23                  under authority of this title.

24                  (2) "Unlawfully taken wildlife" means wildlife that is  
 25                  not lawfully taken wildlife.

1                  NEW SECTION.   **Section 2.** Sale or possession of  
 2                  unlawfully taken wildlife -- penalty. (1) A person commits  
 3                  the offense of sale of unlawfully taken wildlife if he  
 4                  purposely or knowingly sells, barter, purchases, or  
 5                  exchanges for anything of value or if he offers to sell,  
 6                  barter, purchase, or exchange for anything of value,  
 7                  unlawfully taken wildlife.

8                  (2) A person commits the offense of possession of  
 9                  unlawfully taken wildlife having a value of more than \$1,000  
 10                  if he purposely or knowingly has actual or constructive  
 11                  possession of or transports or causes to be transported  
 12                  unlawfully taken wildlife having a value of more than  
 13                  \$1,000. The value of the unlawfully taken wildlife must be  
 14                  determined from the schedule of restitution values set out  
 15                  in 87-1-111.

16                  (3) A person who violates this section is guilty of a  
 17                  felony and upon conviction shall be fined not more than  
 18                  \$50,000 or be imprisoned in the state prison for a term not  
 19                  to exceed 5 years, or both. In addition, a person convicted  
 20                  under this section or who pleads guilty to a violation of  
 21                  this section shall lose all hunting, fishing, and trapping  
 22                  permits and license privileges for a minimum of 3 years or  
 23                  up to a maximum of a lifetime revocation from the date of  
 24                  conviction.

25                  **Section 3.** Section 87-3-111, MCA, is amended to read:

**THIRD READING**

1       \*87-3-111. (Temporary) Unlawful to buy, sell, possess,  
2 or transport fish or game -- exceptions -- penalties. (1) It  
3 is unlawful for any person to purchase, sell, offer to sell,  
4 possess, ship, or transport any game fish, game bird,  
5 migratory game bird, game animal, or fur-bearing animal or  
6 part thereof protected by the laws of this state, whether  
7 belonging to the same or different species from that native  
8 to the state of Montana, except as specifically permitted by  
9 the laws of this state.

10       (2) The provisions of this section do not prohibit:

11       (a) the possession or transportation within the state  
12 of any legally taken fish, game bird, migratory game bird,  
13 game animal, or fur-bearing animal or part thereof;

14       (b) the sale, purchase, or transportation of hides,  
15 heads, or mounts of lawfully killed game birds, game fish,  
16 fur-bearing animals, or game animals, except that the sale  
17 or purchase of a hide, head, or mount of a grizzly bear is  
18 prohibited, except as provided in 87-3-110; or

19       (c) the donation and sale of paddlefish roe as caviar  
20 under the provisions of 87-4-601.

21       (3) ~~Except as provided in subsection (4),~~ any Any  
22 person violating any of the provisions of this section is  
23 guilty of a misdemeanor and upon conviction shall be  
24 punished as provided by law in 87-1-102.

25       ~~(4) Any person engaging in the activities prohibited in~~

1       ~~subsection (1) in furtherance of a scheme to traffic in the~~  
2       ~~body parts of unlawfully taken species is guilty of a felony~~  
3       ~~and shall be punished by a fine of \$10,000 or imprisonment~~  
4       ~~in the state prison for a term of 1 year, or both~~  
5       ~~(Terminates June 30, 1993--sec. 5, Ch. 409, L. 1989.)~~

6       87-3-111. (Effective July 1, 1993) Unlawful to buy,  
7 sell, possess, or transport fish or game -- exceptions --  
8 penalties. (1) It is hereby made unlawful for any person to  
9 purchase, sell, offer to sell, possess, ship, or transport  
10 any game fish, game bird, migratory game bird, game animal,  
11 or fur-bearing animal or part thereof protected by the laws  
12 of this state, whether belonging to the same or different  
13 species from that native to the state of Montana, except as  
14 specifically permitted by the laws of this state.

15       (2) The provisions of this section shall not prohibit:

16       (a) the possession or transportation within the state  
17 of any legally taken fish, game bird, migratory game bird,  
18 game animal, or fur-bearing animal or part thereof; or

19       (b) the sale, purchase, or transportation of hides,  
20 heads, or mounts of lawfully killed game birds, game fish,  
21 fur-bearing animals, or game animals, except that the sale  
22 or purchase of a hide, head, or mount of a grizzly bear is  
23 prohibited, except as provided in 87-3-110.

24       (3) ~~Except as provided in subsection (4),~~ any Any  
25 person violating any of the provisions of this section is

1 guilty of a misdemeanor and upon conviction thereof shall be  
2 punished as provided by law in 87-1-102.

3 ~~{4}~~--Any person engaging in the activities prohibited in  
4 subsection--~~{1}~~ in furtherance of a scheme to traffic in the  
5 body parts of unlawfully taken species is guilty of a felony  
6 and shall be punished by a fine of \$10,000--or--imprisonment  
7 in the state prison for a term of 1 year, or both."

8 **Section 4.** Section 87-1-111, MCA, is amended to read:

9 "87-1-111. (Temporary) Restitution for illegal killing  
10 or possession of certain wildlife. (1) In addition to other  
11 penalties provided by law, a person convicted or forfeiting  
12 bond or bail upon a charge of the illegal killing or  
13 possession of a wild bird, mammal, or fish listed in this  
14 section shall reimburse the state for each such bird,  
15 mammal, or fish according to the following schedule:

16 (a) bighorn sheep, mountain--goat,--caribou,--buffalo,  
17 grizzly bear, moose, and endangered species, \$1,000 \$2,000;

18 (b) elk, mountain goat, caribou, BALD EAGLE, and moose,  
19 \$1,000;

20 ~~{b}~~{c} elk, mountain lion, black bear, lynx, and  
21 wolverine, buffalo, golden eagle, osprey, falcon, antlered  
22 deer as defined by commission regulation, and adult buck  
23 antelope as defined by commission regulation, \$500;

24 ~~{e}~~{d} deer not included in subsection (1)(c), antelope  
25 not included in subsection (1)(c), fisher, raptor not

1 included in subsection (1)(c), swan, bobcat, pallid and  
2 white sturgeon, and paddlefish, \$300;

3 ~~{d}~~{e} grayling and furbearers fur-bearing animals, as  
4 defined in 87-2-101, and not listed in subsection {1}{a},  
5 {1}{b} or (1)(c) or (1)(d), \$100;

6 ~~{e}~~{f} game bird (except swan), \$25;

7 ~~{f}~~{g} game fish, \$10.

8 (2) When a court enters an order declaring bond or bail  
9 to be forfeited, the court may also order that some or all  
10 of the forfeited bond or bail be paid as restitution to the  
11 state according to the schedule in subsection (1). A hearing  
12 to determine the amount of restitution, as required under  
13 46-9-504, is not required for an order of restitution under  
14 this section. (Terminates June 30, 1993--sec. 5, Ch. 409, L.  
15 1989.)

16 87-1-111. (Effective July 1, 1993) Restitution for  
17 illegal killing or possession of certain wildlife. (1) In  
18 addition to other penalties provided by law, a person  
19 convicted or forfeiting bond or bail upon a charge of the  
20 illegal killing or possession of a wild bird, mammal, or  
21 fish listed in this section shall reimburse the state for  
22 each such bird, mammal, or fish according to the following  
23 schedule:

24 (a) bighorn sheep, mountain--goat,--caribou,--buffalo,  
25 grizzly bear, moose, and endangered species, \$1,000 \$2,000;

1 (b) elk, mountain goat, caribou, BALD EAGLE, and moose,  
2 \$1,000;

3 (b)(c) elk, mountain lion, black bear, lynx, and  
4 wolverine, buffalo, golden eagle, osprey, falcon, antlered  
5 deer as defined by commission regulation, and adult buck  
6 antelope as defined by commission regulation, \$500;

7 (c)(d) deer not included in subsection (1)(c), antelope  
8 not included in subsection (1)(c), fisher, raptor not  
9 included in subsection (1)(c), swan, bobcat, and pallid and  
10 white sturgeon, \$300;

11 (d)(e) paddlefish, grayling, and furbearers fur-bearing  
12 animals, as defined in 87-2-101, and not listed in  
13 subsection (1)(a)-(1)(b), or (1)(c) or (1)(d), \$100;

14 (e)(f) game bird (except swan), \$25;

15 (f)(g) game fish, \$10.

16 (2) When a court enters an order declaring bond or bail  
17 to be forfeited, the court may also order that some or all  
18 of the forfeited bond or bail be paid as restitution to the  
19 state according to the schedule in subsection (1). A hearing  
20 to determine the amount of restitution, as required under  
21 46-9-504, is not required for an order of restitution under  
22 this section."

23 NEW SECTION. Section 5. Codification instruction.  
24 [Sections 1 and 2] are intended to be codified as an  
25 integral part of Title 87, chapter 3, part 1, and the

1 provisions of Title 87, chapter 3, part 1, apply to  
2 [sections 1 and 2].

3 NEW SECTION. Section 6. Effective date. [This act] is  
4 effective July 1, 1991.

-End-

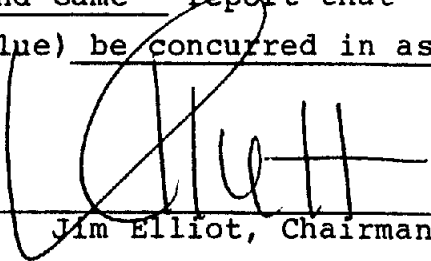
HOUSE STANDING COMMITTEE REPORT

March 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that Senate Bill 239 (third reading copy -- blue) be concurred in as amended .

Signed: \_\_\_\_\_

  
Jim Elliot, Chairman

And, that such amendments read:

1. Page 6, line 1.  
Strike: "pallid and"

2. Page 7, line 9.  
Strike: "pallid and"

Carried by: STRIZICH

HOUSE

SB 239

550906SC.Hpd



1                   SENATE BILL NO. 239  
 2                   INTRODUCED BY VAN VALKENBURG, STRIZICH  
 3                   BY REQUEST OF THE DEPARTMENT OF  
 4                   FISH, WILDLIFE, AND PARKS  
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AS  
 7 FELONIES THE SALE OF UNLAWFULLY TAKEN WILDLIFE AND THE  
 8 POSSESSION OF UNLAWFULLY TAKEN WILDLIFE HAVING A VALUE OF  
 9 MORE THAN \$1,000; REVISING THE RESTITUTION PENALTIES FOR THE  
 10 ILLEGAL KILLING OR POSSESSION OF CERTAIN WILDLIFE; DEFINING  
 11 "LAWFULLY TAKEN WILDLIFE" AND "UNLAWFULLY TAKEN WILDLIFE";  
 12 AMENDING SECTIONS 87-1-111 AND 87-3-111, MCA; AND PROVIDING  
 13 AN EFFECTIVE DATE."  
 14

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

16       NEW SECTION. **Section 1.** Definitions of lawfully taken  
 17 wildlife and unlawfully taken wildlife. As used in [section  
 18 2] and this section, the following definitions apply:

19       (1) "Lawfully taken wildlife" means wildlife, as  
 20 defined in 87-5-102, that is taken or possessed by hunting,  
 21 fishing, or trapping in conformance with this title and the  
 22 regulations adopted by the commission and the department  
 23 under authority of this title.

24       (2) "Unlawfully taken wildlife" means wildlife that is  
 25 not lawfully taken wildlife.

1       NEW SECTION. **Section 2.** Sale or possession of  
 2 unlawfully taken wildlife -- penalty. (1) A person commits  
 3 the offense of sale of unlawfully taken wildlife if he  
 4 purposely or knowingly sells, barter, purchases, or  
 5 exchanges for anything of value or if he offers to sell,  
 6 barter, purchase, or exchange for anything of value,  
 7 unlawfully taken wildlife.

8       (2) A person commits the offense of possession of  
 9 unlawfully taken wildlife having a value of more than \$1,000  
 10 if he purposely or knowingly has actual or constructive  
 11 possession of or transports or causes to be transported  
 12 unlawfully taken wildlife having a value of more than  
 13 \$1,000. The value of the unlawfully taken wildlife must be  
 14 determined from the schedule of restitution values set out  
 15 in 87-1-111.

16       (3) A person who violates this section is guilty of a  
 17 felony and upon conviction shall be fined not more than  
 18 \$50,000 or be imprisoned in the state prison for a term not  
 19 to exceed 5 years, or both. In addition, a person convicted  
 20 under this section or who pleads guilty to a violation of  
 21 this section shall lose all hunting, fishing, and trapping  
 22 permits and license privileges for a minimum of 3 years or  
 23 up to a maximum of a lifetime revocation from the date of  
 24 conviction.

25       **Section 3.** Section 87-3-111, MCA, is amended to read:

1       "87-3-111. (Temporary) Unlawful to buy, sell, possess,  
2 or transport fish or game -- exceptions -- penalties. (1) It  
3 is unlawful for any person to purchase, sell, offer to sell,  
4 possess, ship, or transport any game fish, game bird,  
5 migratory game bird, game animal, or fur-bearing animal or  
6 part thereof protected by the laws of this state, whether  
7 belonging to the same or different species from that native  
8 to the state of Montana, except as specifically permitted by  
9 the laws of this state.

10       (2) The provisions of this section do not prohibit:

11       (a) the possession or transportation within the state  
12 of any legally taken fish, game bird, migratory game bird,  
13 game animal, or fur-bearing animal or part thereof;

14       (b) the sale, purchase, or transportation of hides,  
15 heads, or mounts of lawfully killed game birds, game fish,  
16 fur-bearing animals, or game animals, except that the sale  
17 or purchase of a hide, head, or mount of a grizzly bear is  
18 prohibited, except as provided in 87-3-110; or

19       (c) the donation and sale of paddlefish roe as caviar  
20 under the provisions of 87-4-601.

21       (3) ~~Except as provided in subsection (4),~~ any Any  
22 person violating any of the provisions of this section is  
23 guilty of a misdemeanor and upon conviction shall be  
24 punished as provided by law in 87-1-102.

25       ~~(4) Any person engaging in the activities prohibited in~~

1       ~~subsection (1) in furtherance of a scheme to traffic in the~~  
2       ~~body parts of unlawfully taken species is guilty of a felony~~  
3       ~~and shall be punished by a fine of \$10,000 or imprisonment~~  
4       ~~in the state prison for a term of 1 year, or both.~~  
5       (Terminates June 30, 1993--sec. 5, Ch. 409, L. 1989.)

6       87-3-111. (Effective July 1, 1993) Unlawful to buy,  
7 sell, possess, or transport fish or game -- exceptions --  
8 penalties. (1) It is hereby made unlawful for any person to  
9 purchase, sell, offer to sell, possess, ship, or transport  
10 any game fish, game bird, migratory game bird, game animal,  
11 or fur-bearing animal or part thereof protected by the laws  
12 of this state, whether belonging to the same or different  
13 species from that native to the state of Montana, except as  
14 specifically permitted by the laws of this state.

15       (2) The provisions of this section shall not prohibit:

16       (a) the possession or transportation within the state  
17 of any legally taken fish, game bird, migratory game bird,  
18 game animal, or fur-bearing animal or part thereof; or

19       (b) the sale, purchase, or transportation of hides,  
20 heads, or mounts of lawfully killed game birds, game fish,  
21 fur-bearing animals, or game animals, except that the sale  
22 or purchase of a hide, head, or mount of a grizzly bear is  
23 prohibited, except as provided in 87-3-110.

24       (3) ~~Except as provided in subsection (4),~~ any Any  
25 person violating any of the provisions of this section is

1 guilty of a misdemeanor and upon conviction thereof shall be  
2 punished as provided by law in 87-1-102.

3 ~~{4}~~--Any person engaging in the activities prohibited in  
4 subsection ~~--{1}~~ in furtherance of a scheme to traffic in the  
5 body parts of unlawfully taken species is guilty of a felony  
6 and shall be punished by a fine of \$10,000--or--imprisonment  
7 in the state prison for a term of 1 year, or both."

8 **Section 4.** Section 87-1-111, MCA, is amended to read:

9 **"87-1-111. (Temporary) Restitution for illegal killing**  
10 **or possession of certain wildlife.** (1) In addition to other  
11 penalties provided by law, a person convicted or forfeiting  
12 bond or bail upon a charge of the illegal killing or  
13 possession of a wild bird, mammal, or fish listed in this  
14 section shall reimburse the state for each such bird,  
15 mammal, or fish according to the following schedule:

16 (a) bighorn sheep, mountain--goat,--caribou,--buffalo,  
17 grizzly bear, moose, and endangered species, \$17,000 \$2,000;

18 (b) elk, mountain goat, caribou, BALD EAGLE, and moose,  
19 \$1,000;

20 ~~{b}~~(c) elk, mountain lion, black bear, lynx, and  
21 wolverine, buffalo, golden eagle, osprey, falcon, antlered  
22 deer as defined by commission regulation, and adult buck  
23 antelope as defined by commission regulation, \$500;

24 ~~{c}~~(d) deer not included in subsection (1)(c), antelope  
25 not included in subsection (1)(c), fisher, raptor not

1 included in subsection (1)(c), swan, bobcat, pallid-and  
2 white sturgeon, and paddlefish, \$300;

3 ~~{d}~~(e) grayling and furbearers fur-bearing animals, as  
4 defined in 87-2-101, and not listed in subsection {1}{a},  
5 {1}{b}, or (1)(c) or (1)(d), \$100;

6 ~~{e}~~(f) game bird (except swan), \$25;

7 ~~{f}~~(g) game fish, \$10.

8 (2) When a court enters an order declaring bond or bail  
9 to be forfeited, the court may also order that some or all  
10 of the forfeited bond or bail be paid as restitution to the  
11 state according to the schedule in subsection (1). A hearing  
12 to determine the amount of restitution, as required under  
13 46-9-504, is not required for an order of restitution under  
14 this section. (Terminates June 30, 1993--sec. 5, Ch. 409, L.  
15 1989.)

16 **87-1-111. (Effective July 1, 1993) Restitution for**  
17 **illegal killing or possession of certain wildlife.** (1) In  
18 addition to other penalties provided by law, a person  
19 convicted or forfeiting bond or bail upon a charge of the  
20 illegal killing or possession of a wild bird, mammal, or  
21 fish listed in this section shall reimburse the state for  
22 each such bird, mammal, or fish according to the following  
23 schedule:

24 (a) bighorn sheep, mountain--goat,--caribou,--buffalo,  
25 grizzly bear, moose, and endangered species, \$17,000 \$2,000;

1 (b) elk, mountain goat, caribou, BALD EAGLE, and moose,  
 2 \$1,000;

3 (b)(c) elk, mountain lion, black bear, lynx, and  
 4 wolverine, buffalo, golden eagle, osprey, falcon, antlered  
 5 deer as defined by commission regulation, and adult buck  
 6 antelope as defined by commission regulation, \$500;

7 (c)(d) deer not included in subsection (1)(c), antelope  
 8 not included in subsection (1)(c), fisher, raptor not  
 9 included in subsection (1)(c), swan, bobcat, and ~~pallid--and~~  
 10 white sturgeon, \$300;

11 (c)(e) paddlefish, grayling, and ~~furbearers~~ fur-bearing  
 12 animals, as defined in 87-2-101, and not listed in  
 13 subsection (1)(a), (1)(b) or (1)(c) or (1)(d), \$100;

14 (c)(f) game bird (except swan), \$25;

15 (c)(g) game fish, \$10.

16 (2) When a court enters an order declaring bond or bail  
 17 to be forfeited, the court may also order that some or all  
 18 of the forfeited bond or bail be paid as restitution to the  
 19 state according to the schedule in subsection (1). A hearing  
 20 to determine the amount of restitution, as required under  
 21 46-9-504, is not required for an order of restitution under  
 22 this section."

23 NEW SECTION. Section 5. Codification instruction.  
 24 [Sections 1 and 2] are intended to be codified as an  
 25 integral part of Title 87, chapter 3, part 1, and the

1 provisions of Title 87, chapter 3, part 1, apply to  
 2 [sections 1 and 2].

3 NEW SECTION. Section 6. Effective date. [This act] is  
 4 effective July 1, 1991.

-End-