

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FISH & GAME**

**Call to Order:** By Bob Pipinich, Chair, on February 11, 1993, at 1:00 p.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Bob Pipinich, Chair (D)  
Sen. Gary Forrester, Vice Chair (D)  
Sen. Tom Beck (R)  
Sen. Don Bianchi (D)  
Sen. Chris Christiaens (D)  
Sen. Bruce Crippen (R)  
Sen. Gerry Devlin (R)  
Sen. Judy Jacobson (D)  
Sen. Terry Klampe (D)  
Sen. Kenneth Mesaros (R)  
Sen. Dennis Nathe (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Andrea Merrill, Legislative Council  
Kathy Collins, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing: SB 216, SB 220  
Executive Action: SJR 2, SB 200

#### **HEARING ON SB 216**

##### **Opening Statement by Sponsor:**

Senator Fred Van Valkenburg, Senate District 30, Missoula, stated SB 216 was being introduced at the request of the Department of Fish, Wildlife & Parks (DFWP) Law Enforcement Division. Senator Van Valkenburg stated SB 216 deals with the same forfeiture provisions that exist with respect to drug violations, only with respect to felony fish and game violations. Senator Van Valkenburg stated the Montana Bankers Association has determined there is a risk to secured interest with respect to vehicles in particular, and they are going to offer some amendments which he

has no objection to. Senator Van Valkenburg stated SB 216 would be another important element in terms of the ability to ensure that the fish and game resources of the state are protected so that legitimate hunters and fishermen and women are able to enjoy some of the benefits of living in Montana.

**Proponents' Testimony:**

Pat Graham, Director, DFWP, spoke from prepared testimony in favor of SB 216 (Exhibit #1).

George Bennett, Montana Bankers Association, spoke from prepared testimony in favor of SB 216 (Exhibit #2).

Jock Anderson, representing the Montana League of Savings Institutions, stated he supports SB 216, and the amendments suggested by Mr. Bennett satisfy the concerns of the lenders.

Roger Tippy, representing the Independent Bankers Association, stated he is in favor of SB 216 and submitted written testimony (Exhibit #3).

Robin Cunningham, representing the Fishing Outfitters Association of Montana, stated he supports SB 216.

Mark Daspit, representing the Montana Audubon Legislative Fund, spoke from prepared testimony in favor of SB 216 (Exhibit #4).

**Opponents' Testimony:**

Bill Holdorf, representing himself, stated there are parts of SB 216 he did not support. Referring to page 3, Section 3, Mr. Holdorf wondered how the warden knows if a vehicle is intended to be used in a felony. Mr. Holdorf stated the language is not clear and intent is difficult to determine.

Tony Schoonen, representing the Anaconda Sportsman's Club, stated he opposed SB 216 for the reasons stated by Mr. Holdorf.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Christiaens asked Senator Van Valkenburg if an owner, who loans a vehicle to someone else who commits a felony, can have his or her vehicle confiscated. Senator Van Valkenburg stated if the owner loans the vehicle knowing that the person is going to use it in a crime, the vehicle can be forfeited. Senator Van Valkenburg said the state will have to be in a position of proving that the owner knew what the vehicle was going to be used for. The kinds of violations being talked about here are generally proven after there is a considerable amount of

undercover, law enforcement investigation. After two or three months of this type of investigation, it is fairly easy to establish intent.

Senator Christiaens asked Senator Van Valkenburg if confiscation of a vehicle would be commiserate with the fine for the violation. Senator Van Valkenburg stated the maximum fine for a felony violation is \$50,000.

Senator Crippen asked Senator Van Valkenburg if Section 7 of SB 216 would cover an innocent third party. Senator Van Valkenburg stated Section 7 provides the opportunity for a person to prove they did not know what the intended use of the item would be.

Senator Nathe asked Bob Lane, attorney for the DFWP, if game wardens had always been able to seize game rifles. Mr. Lane stated the Department has not been able to do that for some time. Senator Nathe, referring to page 2, lines 4-5, asked Pat Graham if "the dead body or parts thereof" would apply to antlers. Mr. Graham stated that antlers are a part of the definition of "wildlife." In the definition of "forfeiture," a felony must be committed. Senator Nathe asked Mr. Graham if he has land posted, and someone goes on his land to hunt, if that person would be in violation of a felony or a misdemeanor. Mr. Graham stated that would be a misdemeanor.

Senator Forrester commented that in the law, an elk is worth \$1000 and that would constitute a felony. Mr. Graham stated in order to be in violation of a felony, the amount must be over \$1000. Bob Lane stated a felony can be constituted in two ways: taking wildlife worth over \$1000 or taking wildlife for the purpose of selling that wildlife for a profit.

Senator Bianchi asked if there was a section in SB 216 stating in order for a forfeiture to take place, a felony must be committed. Andrea Merrill directed Senator Bianchi's attention to page 2, line 13. Bob Lane stated "used in violation of 87-3-118" on page 5, line 17, is the key to the forfeiture issue.

Senator Beck asked Bob Lane if a person would be in violation of a felony if he or she shot at an elk, and not realizing the elk was mortally wounded, shot and killed another elk. Mr. Lane stated the person would not be in violation of a felony because he or she did not knowingly kill two elk. If a mistake is made, intent to commit a felony could not be proven.

Senator Klampe asked Bob Lane who tries and convicts a person out in the field. Mr. Lane stated this is a two-step process. Most of the violations being discussed are part of an investigation over a period of time. First the vehicle is seized, but not forfeited, then there is a process by which the violation of a felony must be proven. Property may be seized in the field, but this does not necessarily constitute forfeiture.

Senator Klampe asked Bob Lane if there could be a case involving forfeiture that is not part of an undercover investigation. Mr. Lane said it was possible but not very likely.

Senator Beck asked Bob Lane if only the property used in the commitment of the crime is forfeited. Mr. Lane said "yes."

Senator Nathe, referring to page 2, line 14, asked Bob Lane if the "money, raw materials, products, and equipment" has to be on the person at the time of the violation. Mr. Lane stated whatever is seized must be used facilitate the commission of the crime.

**Closing by Sponsor:**

Senator Van Valkenburg stated there are a lot of people making money off their ability to poach and to traffic in illegal fish and game resources. Senator Van Valkenburg said if there were some forfeiture provisions in place, it would serve as a deterrent for this type of activity.

**HEARING ON SB 220**

**Opening Statement by Sponsor:**

Senator Larry Tveit, Senate District 11, Fairview, stated SB 220 was of concern to individuals in regards to obtaining permits and licenses as disabled persons. SB 220 addresses those individuals on ambulatory oxygen. Senator Tveit stated that apparently DFWP does not treat ambulatory oxygen as a disability.

**Proponents' Testimony:**

Craig Turk, representing himself and Northern Montana Hospital of Havre, spoke from prepared testimony in favor of SB 220 (Exhibit #5) and submitted a copy of a letter from R.V. Bockstadter (Exhibit #6).

Jim Ahrens, representing the Montana Hospital Association, stated persons on ambulatory oxygen should be considered disabled and should qualify for a disabled license.

Pat Graham, Director, DFWP, spoke from prepared testimony in favor of SB 220 (Exhibit #7).

**Opponents' Testimony:**

None.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Crippen asked Craig Turk where Mr. Bockstadter applied for the disabled hunting permit. Mr. Turk showed Senator Crippen a copy of the application that Mr. Bockstadter submitted and stated Mr. Bockstadter applied for the disabled permit through the DFWP.

Senator Crippen asked Pat Graham what would be in the form that would cause the Department to deny Mr. Bockstadter a disabled permit. Mr. Graham stated the appropriate boxes had been checked by Mr. Bockstadter's doctor, and without talking to the individual who denied Mr. Bockstadter's application, he could not see any basis for the denial.

Senator Crippen asked Mr. Turk if Mr. Bockstadter had been denied both times by the same regional office. Mr. Turk stated he did not know.

Senator Mesaros asked Pat Graham how much discretion DFWP staff has with regard to authorizing these types of applications. Mr. Graham stated, typically, the person who makes the assessment is the receptionist at the front desk. Mr. Graham stated the Department relies on the certification of a physician so their staff is not put in the position of making these types of decisions.

Senator Beck asked Senator Tveit if he felt SB 220 was necessary, or if he would take the Department's word that Mr. Bockstadter's case was an oversight of some sort. Senator Tveit stated he was not so sure he could do that.

Senator Christiaens asked Pat Graham if there was an appeal process for persons who have had applications of this sort denied. Mr. Graham stated there was no formal appeal process, but a request can be made of the regional supervisor to review the case. The next level of appeal would be the Directors office in Helena. Senator Christiaens stated it appeared to him that if a person had a doctor's certification, there should not be a question of denying the application. Mr. Graham stated there are different kinds of disability licenses. For instance, there is a disabled fishing and hunting license, and there is a license to shoot from a vehicle.

Senator Jacobson asked Pat Graham if the people who have been denied an application are informed that they can go to the regional supervisor of the Director's office for a review of their case. Mr. Graham stated he was not sure.

Mr. Graham, looked at Mr. Bockstadter's application once again and stated the box checked was for a permit to shoot from a vehicle. Mr. Graham stated there are different criteria for this type of permit, and this may be where the confusion was coming from.

Senator Beck asked Pat Graham what section of SB 220 would address shooting from a vehicle. Mr. Graham stated Section 1, subsection 3 deals with this particular issue.

Andrea Merrill stated if Mr. Bockstadter's request was to shoot from a vehicle, subsection 3 of Section 1 should have been referred to, rather than subsection 6.

Senator Bianchi stated it seemed to him that persons requiring ambulatory oxygen should be able to shoot from a vehicle. Senator Bianchi asked Andrea Merrill if SB 220 could be amended to include persons on ambulatory oxygen in subsection 3. Ms. Merrill said "yes."

Pat Graham stated he would like to defend the actions of those who denied Mr. Bockstadter's application for a permit to shoot from a vehicle. They were totally within the law, as it is now written, to deny the application. Mr. Graham stated if the Committee wanted to amend "nonambulatory" to include this provision, that would be a different story.

**Closing by Sponsor:**

Senator Tveit stated there seems to be a problem with SB 220 that can be taken care of with amendments. Senator Tveit stated he is waiting for more information concerning SB 220 and requested that the Committee wait until next week to take executive action.

**EXECUTIVE ACTION ON SB 220**

**Discussion:**

Senator Pipinich stated that Andrea Merrill had the amendment ready that would include persons on ambulatory oxygen to Section 1, subsection 3.

**Motion/Vote:**

Senator Beck moved the amendments to SB 220. The motion CARRIED with Senator Klampe voting NO.

**Motion:**

Senator Bianchi moved SB 220 DO PASS AS AMENDED.

**Discussion:**

Senator Klampe stated he would like to delay further executive action in order to give the Committee time to think about it.

Senator Bianchi WITHDREW HIS MOTION, stating he also thought the Committee should wait.

Senator Christiaens stated he did not feel SB 220 was needed. The Department has what it needs to clear up any problem with existing laws.

### EXECUTIVE ACTION ON SJR 2

#### Discussion:

Senator Pipinich directed the Committee's attention to the fiscal note from the Department (Exhibit #8). Andrea Merrill stated the amendments would take out lines 8 and 9 of the title.

Senator Crippen asked where the \$72,000 would come from. Mr. Graham stated one-half the money would come from the Board of Outfitters, and the other half would come from general licensing fees. Senator Crippen stated there seems to be a real problem between sportspersons and outfitters, and as long as the money is not coming from the general fund, SJR 2 is a good idea.

Senator Pipinich asked Pat Graham if there was a study being conducted now for the outfitters through the Department. Mr. Graham stated he was not aware of any such study.

Senator Jacobson asked Pat Graham if the Department prepared the fiscal note. Mr. Graham stated the fiscal note was prepared with the Department of Commerce. Senator Jacobson stated the figure seemed high and the scope of the study seemed more than what Senator Kennedy had in mind. Mr. Graham stated the first part of the process, the scoping, is to make sure the problems are properly identified throughout the state. The second part of the study is to generate a computer data base to "provide information on the leasing of lands and public access opportunities and attitudes survey." The industry has some specific things they would like to accomplish, and a private contract will be used to analyze the outfitting industry.

Senator Jacobson stated that the scoping and survey process should be included in the contract to develop the computer data base.

#### Motion:

Senator Nathe moved SJR 2 DO NOT PASS.

#### Discussion:

Senator Bianchi stated that accessing how much private land is being leased by outfitters and trying to determine strategies to stop that particular thing from happening, is worth evaluating. Senator Bianchi stated SJR 2 is well worth the effort.

Senator Klampe stated he did not disagree with the intent of SJR 2, but he did disagree with one special interest group paying for

part of it. Senator Klampe stated if the study is to be done, it should be paid for by the state and not by the people who stand to gain from the study.

Senator Mesaros stated he supports the concept of the study, and the sportspersons do have a legitimate concern over the amount of land being leased by outfitters.

**Motion/Vote:**

Senator Beck made a substitute motion to MOVE THE AMENDMENTS to SJR 2. Motion CARRIED with Senators Klampe and Nathe voting NO.

**Motion:**

Senator Christiaens moved SJR 2 DO PASS AS AMENDED.

**Discussion:**

Senator Jacobson asked Pat Graham if a less comprehensive study would be helpful. Mr. Graham stated no more money would be spent than necessary, and the fiscal note was the best estimate of what the study would cost over the two-year period. The cost would be split between the outfitters and the sportspersons.

Senator Klampe asked Mr. Graham how many members are on the Board of Outfitters and what their occupations are. Mr. Graham stated there are seven members on the Board: one member is from the Department, five members are outfitters, one member is a sportsman at large. Senator Klampe stated he felt the Committee is rushing into this.

Senator Beck stated in the long run, the study is worthwhile.

**Vote:**

The DO PASS AS AMENDED motion CARRIED with Senators Klampe and Nathe voting NO.

**EXECUTIVE ACTION ON SB 200**

Andrea Merrill explained the amendments to SB 200 (Exhibit #9).

**Motion/Vote:**

Senator Christiaens moved the AMENDMENTS to SB 200. The motion CARRIED UNANIMOUSLY with Senator Devlin being excused at the time of the vote.



SENATE FISH & GAME COMMITTEE

February 11, 1993


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Motion/Vote:

Senator Beck moved SB 200 DO PASS AS AMENDED. Motion CARRIED UNANIMOUSLY with Senator Devlin being excused at the time of the vote.

ADJOURNMENT

Adjournment: 3:00 p.m.

  
SENATOR BOB PIPINICH, Chair

  
KATHY COLLINS, Secretary

BP/kc

# ROLL CALL

SENATE COMMITTEE Fish & Game DATE 2-11-93

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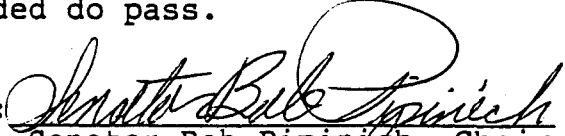
SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
February 12, 1993

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration Senate Joint Resolution No. 2 (first reading copy - white), respectfully report that Senate Joint Resolution No. 2 be amended as follows and as so amended do pass.

Signed:

  
Senator Bob Pipinich, Chair

That such amendments read:

1. Title, lines 8 and 9.

Following: "COMMERCE;" on line 8

Strike: remainder of line 8 through "STUDY;" on line 9

2. Page 1, lines 16 and 17.

Strike: lines 16 and 17 in their entirety

3. Page 1, line 19.

Strike: "game"

Insert: "wildlife"

Following: "populations"

Insert: ", "

4. Page 1, lines 19 and 20.

Following: "and" on line 19

Strike: remainder of line 19 through "while" on line 20

5. Page 1, line 23 through page 2, line 1.

Strike: page 1, lines 23 through page 2, line 1 in their entirety

6. Page 2, lines 13 through 19

Strike: lines 13 through 19 in their entirety

Insert: "(a) determining, and to the extent practical, quantifying the conflicts between outfitted and nonoutfitted hunters;

(b) assessing the trends and the amount of private lands leased to outfitters and the impacts on access by nonoutfitted hunters and on game management;

(c) developing strategies that minimize loss of nonoutfitted hunting on public and private lands while maintaining a viable outfitting industry; and

(d) assessing factors affecting the hunting outfitting business and developing strategies to reduce the negative impacts of the industry;"

7. Page 2, lines 20 and 21.

Following: "shall" on line 20

Strike: remainder of line 20 through "study" on line 21

Insert: "provide the public the opportunity to comment on the  
results of the study and on any recommendations that result  
from the study"

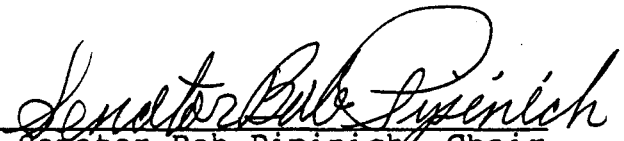
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 12, 1993

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration Senate Bill No. 200 (first reading copy -- white), respectfully report that Senate Bill No. 200 be amended as follows and as so amended do pass.

Signed:   
Senator Bob Pipinich, Chair

That such amendments read:

1. Title, line 4.  
Strike: "ALLOWING"  
Insert: "REQUIRING"
2. Title, lines 5 and 6.  
Following: "MANAGEMENT" on line 5  
Strike: remainder of line 5 through "BASIS" on line 6
3. Title, line 7.  
Strike: "DISTRICTS,"
4. Title, lines 9 and 10.  
Following: "PROVIDING" on line 9  
Strike: remainder of line 9 through "IMMEDIATE" on line 10  
Insert: "A DELAYED"
5. Page 2, line 11.  
Strike: "should"  
Insert: "must"
6. Page 2, lines 20 through 23.  
Following: "~~disease,~~"  
Strike: remainder of line 20 through "[section 2]" on line 23
7. Page 4, line 1.  
Strike: "districts and"
8. Page 6, line 23.  
Strike: "on passage and approval"  
Insert: "April 1, 1995"

-END-

SB 216  
February 11, 1993

**Testimony presented by Pat Graham, Dept. of Fish, Wildlife & Parks  
before the Senate Fish & Game Committee**

SB 216 provides for the seizure and forfeiture of hunting, fishing, and trapping devices, equipment, money, and vehicles used in the commission of felony wildlife crimes involving sale or possession of unlawfully taken wildlife.

SB 216 is intended to provide an additional enforcement tool and act as a deterrent to commission of felony wildlife violations. It is important to remember that this act is not directed against the sportsman or woman who ignores a regulation or makes a mistake. It specifically targets only felony fish and game violations by those who are purposefully damaging the resource, often for financial gain.

Montana has had vehicle and equipment seizure and forfeiture in its drug enforcement statutes since 1979. In addition, our state has forfeiture statutes when livestock are stolen. HB 104, currently before this legislature, would expand that livestock forfeiture provision to include money and equipment.

I would also like to note that the Federal Lacey Act dealing with illegal taking of plants, fish, and wildlife also has comprehensive seizure and forfeiture authority. In addition, there are federal seizure and forfeiture provisions which apply to drug and customs

contraband.

Our neighboring states of South Dakota, Colorado, North Dakota, Utah, Washington and California all have similar laws providing for the forfeiture of conveyances and equipment used in the illegal taking of wildlife.

I have handed out a chart which represents the drug forfeiture statutes of our neighboring states and the federal government. This chart also lists SB 216 and HB 104.

We presently have 6-8 felony prosecutions a year in Montana against which this forfeiture statute would apply. The department would develop specific operating procedures in application of this law.

I would like the committee to know that the department plans to use the proceeds from forfeiture actions in the following three areas: (1) the department's TIP-MONT program, (2) reimbursement of local and other law enforcement agencies that assist with a case resulting in forfeiture, (3) enforcement officer training.

The department proposes three amendments, two of which are technical.

The first two amendments clarify language regarding property subject to forfeiture. As drafted in the bill, the equipment,

vehicle or conveyance would have to be operated illegally rather than used in taking, transporting, or conveying wildlife illegally. What we are after is not illegal operation, but use in an illegal activity.

The final amendment deals with the standard to be applied to holders of a security interest (such as a credit union, bank, or other lender) when they present evidence to rebut the presumption of forfeiture in order to maintain their interest. Rather than requiring an investigation of the character and reputation of the borrower, we propose that the holder of the security interest must have had notice or reasonable cause to believe the borrower would use the property for illegal purposes.

In closing, I want to emphasize that this statute aims only at felonies of individuals taking animals for profit.



Department of Fish, Wildlife and Parks  
Suggested Amendments  
SB 216

1. P.2, line 10  
Following: "operated"  
Strike: "illegally"
2. P.2, line 11  
Following: "operated"  
Strike: "illegally"
3. P. 6, lines 14-16  
Following: "was created"  
Strike: "after a reasonable investigation of the character  
and reputation of the purchaser and without knowledge"  
Insert: "without the leinor having any notice or reasonable  
cause to believe"

WITNESS STATEMENT

SENATE FISH AND GAME  
EXHIBIT NO. 2  
DATE 2-11-93  
BILL NO. SB 216

NAME GEORGE T. BENNETT BILL NO. SB 216

ADDRESS 111 N. Main, Arcade 3-I, Helena 59601 DATE 2/11/93

WHOM DO YOU REPRESENT? MONTANA BANKERS ASSOCIATION

SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND XX

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: PLEASE SEE ATTACHED TESTIMONY

## SENATE BILL 216

### Testimony of Montana Bankers Association In Support of Amendments

Senate Bill 216 provides for the forfeiture of property of persons guilty of violation of Section 87-3-118 MCA dealing with the sale or possession of unlawfully taken wildlife.

It is clearly the intent of the bill to protect the interests of secured parties having a security interest in the forfeited property. New Section 2, page 2 of the bill at lines 21-25 states that the forfeiture is subject to the "interest of the secured party if the secured party did not have knowledge of or give consent to a violation of 87-3-118;"

The Montana Bankers Association has a membership of state and national banks that lend money, secured, as to motor vehicles, by security interests filed with the Registrar of Motor Vehicles (Registrar's Bureau, Motor Vehicle Division, Department of Justice), and as to other personal property, under security interests filed with the Secretary of State. Many other lenders are in the same situation, such as Savings and Loans, Savings Banks, Credit Unions, Retail Dealers, and others.

To forfeit property in such a way as to extinguish the security interests of innocent secured parties comes close to being a denial of due process and a taking of property.

As an aside, under Montana's Bill (Declaration) of Rights, Article II, Section 31, the state cannot forfeit the property of relatives of a person guilty of treason, a felony or suicide.

Thus we are sure it is the intent of this bill to protect the rights of innocent secured parties.

However, New Section 4, page 4 of the bill does not require service on secured parties. This section covers the forfeiture proceedings. On lines 9-13, page 4, the summons is to be served upon all "owners or claimants."

A secured party is neither an "owner" or "claimant" but has a lien only, which creates no ownership under Montana law, but only a right to foreclose the lien in accordance with the appropriate lien foreclosure procedures.

SB 216, continuing testimony of Montana Bankers Association

Thus we would request the following amendment:

Page 4, Section 4, line 11, after the word "owners" insert ",secured parties" ;and on line 14, same page, after the word "owner" insert ",secured parties."

In fact, since security interests are on file with the Secretary of State and, as to motor vehicles, with the Department of Justice, Registrar of Motor Vehicles, and such filings give the secured parties address, service could be accomplished by certified mail to that address, if the committee feels that is a less costly procedure.

We would also respectfully request a second amendment and that has to do with the proof a secured party has to offer in the forfeiture proceedings.

The second amendment is as to the language of Section 7, page 6, lines 10-17. Under subsection (2) of Section 7, page 6, lines 10-17 a secured party must appear by filed answer,, must show a security interest that is "bona fide" and then must prove:

"...that it (security interest) was created after a reasonable investigation of the character and reputation of the purchaser and without knowledge that the property was used or intended to be used for the purpose charged."

First this language is in conflict with Section 2, page 2, lines 23-25, which reads...the secured party did not have knowledge of or give consent to a violation of 87-3-118..."

Secondly, we do not believe a lender should have a responsibility to investigate "character and reputation" to determine if a person is or might be a poacher. We submit it is sufficient if the security interest is lost if the secured party had "knowledge of or (gave) consent to a violation." (The language of Section 2, lines 23-25.

SB 216 - testimony of Montana Bankers Association,  
continuing

Thus we ask that Section 7, page 6, be amended by striking all the language after the words "bona fide and" appearing in line 13 and to and including line 17; and by inserting in lieu thereof the language of Section 2, which reads..."the secured party did not have knowledge of or give consent to a violation of 87-3-118."

The amendments are intended to allow a secured party to receive notice of a forfeiture proceeding and to appear and preserve the lien if the secured party had no knowledge of or gave consent to the violation.

As stated there are other bills before the legislature dealing with forfeiture, for example see SB 55, attached, and especially Section 4, page 7, setting out the forfeiture procedure.

As a suggestion, a uniform procedure for forfeiture should be adopted for all law enforcement statutes employing the same.

SENATE FISH AND GAME

EXHIBIT NO. 3

DATE 2-11-93

BILL NO. SB 216

To: MIB

From: Roger Tippy

Re: Senate Bill 216 -- forfeiture of vehicles, other personal property used in unlawful hunting or transportation of game unlawfully taken.

The Department of Fish, Wildlife & Parks has had this bill introduced by Senator Van Valkenburg. As proposed, it would cancel a perfected security interest unless the interest holder came into the district court's forfeiture hearing and proved that the security interest

was bona fide and that it was created after a reasonable investigation of the character and reputation of the purchaser and without knowledge that the property was used or intended to be used for the purpose charged.

Having told the Department that this language would be totally unacceptable to any lender, the DFWP attorney has come back with this proposed revision; that the secured party must come into court and prove that the interest

was bona fide and that it was created without the lienor having any notice or reasonable cause to believe that the property was used or intended to be used for the purpose charged.

I submit that this is an improvement in terms of what the lender must show to protect the lien, but that the burden of having to go to court and testify to this effect is still unnecessary. It should be sufficient to mail in a verified answer to this effect without having to testify. In other words, if this bill emerges it should be amended as follows:

(2) In order for the claimant of a security interest in the seized property to rebut the presumption of forfeiture, the claimant must ~~have a state by verified answer on file and shall prove~~ that the security interest is bona fide and that it was created ~~after a reasonable investigation of the character and reputation of the purchaser and without knowledge~~ without the lender having any notice or reasonable cause to believe that the property was used or intended to be used for the purpose charged.

Hearing this afternoon at 1:30. Please call at soonest opportunity.

SENATE FISH AND GAME  
EXHIBIT NO. 4  
DATE 2-11-93  
BILL NO. SB 216

NAME Mark Daggit

ADDRESS Box 595 Helena, MT 59624

HOME PHONE 447-4984 WORK PHONE 443-3949

REPRESENTING MT. Audubon Leg. Fund

APPEARING ON WHICH PROPOSAL? SB 216

DO YOU: SUPPORT X OPPOSE        AMEND       

### COMMENTS:

We stand in full support behind Senate Bill 216. Under  
Montana Code 87-3-118, a felony would occur if the  
value of the illegally possessed wildlife exceeds \$1,000.  
Subsequently, senate Bill 216 would make it lawful for  
an authorized agent to permanently and legally  
confiscate property relating to the crime.

As you are probably aware, Audubon attempts to hold  
an active role in legislation that helps eradicate  
poaching. We feel that Senate Bill 216 is another  
step in the direction of eradicating the problem of  
poaching.

We urge you to pass Senate Bill 216

### WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE FISH & GAME COMMITTEE HEARING

February 11, 1993  
Room 402 1:00p.m.  
Senate Bill 220 - Proponent

SENATE FISH AND GAME  
EXHIBIT NO. 5  
DATE 2-11-92  
BILL NO. SB 220

Mr. Chairman, Members of the Committee, my name is Craig Turk. I'm here on my own behalf and as a representative of Northern Montana Hospital of Havre, as a proponent of Senate Bill 220.

I'm a Respiratory Care Practitioner, and a large part of my job entails Home Oxygen Care and Pulmonary Rehabilitation. Approximately three years ago I began home oxygen therapy for Mr. Robert Bockstadter. During his course of care we shared ideas regarding his mental health needs.

Mr. Bockstadter told me that he had enjoyed hunting and fishing prior to his disease requiring him to be dependant on an ambulatory supplemental oxygen source. Mr. Bockstadter then told me he had been denied a handicap license because he didn't require an ambulatory aid as described in section 87-2-83, Montana Code Annotated.

I am submitting Mr. Bockstadter's testimony to you at this time:

His reference to special licensure refusal in 1990 and 1991 are the two years I am aware of while caring for him. Mr. Bockstadter was issued special licensure only after his doctor prescribed use of a cane for his stability with ambulation.

I felt it was my duty to encourage changing and clarifying the licensure requirements, being that a large part of my therapy is teaching patients to be active and increase exercise activity for their personal health benefits and betterment of their everyday quality of life. Without special licensure, ambulatory oxygen patients are unable to achieve the daily goals necessary to improve their quality of life.

As a Respiratory Care Practitioner, and as representative of Northern Montana Hospital, I encourage passage of Senate Bill 220 for the purpose of improving the limited lifestyle of all ambulatory oxygen patients. Thank You for your consideration.



SENATE FISH AND GAME

EXHIBIT NO. 6

DATE 2-11-93

BILL NO. SB220

January 25, 1993

To Whom It May Concern:

Hunting and fishing have always been an important thing in my life.

Having terminal C.O.P.D and consequently on 24 hour oxygen, plus acute arthritic (pain) problems in my knees, walking on ~~an~~ any other than a smooth surface with or without a cane, crutches or similar devices, for me is literally impossible.

I was refused a disabled hunting license several years (2) until my doctor issued the use of a walking cane.

I sincerely believe this law needs some law to be changed.

PR Cabotatto

P.O. Box 425 - Chinook, MT 59515

357-2059

SB 220  
February 11, 1993

SENATE FISH AND GAME  
EXHIBIT NO. 7  
DATE 2-11-93  
BILL NO. SB 220

Testimony presented by Pat Graham, Dept. of Fish, Wildlife & Parks  
before the Senate Fish and Game Committee

I appear today in support of the intent of SB 220. We, however, believe that intent is satisfied by existing statutes and department rule.

Section 87-2-803 of the Montana Codes Annotated provides reduced hunting and fishing license fees for individuals certified as disabled as prescribed by Department (of Fish, Wildlife and Parks) rule.

In Section 12.3-106, of the Administrative Rules of Montana, which was prepared and adopted under our rulemaking authority, disabled persons are defined as: persons suffering from a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability. Conditions listed specifically include: heart disease, respiratory or pulmonary dysfunction. In our opinion, that would cover individuals reliant upon ambulatory oxygen.

The department provides application forms for disabled persons to submit to their Montana licensed physicians for certification of disability. Upon receipt of a completed application, the department issues a certification.

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

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

DESCRIPTION OF PROPOSED LEGISLATION:

Department of commerce and Fish, Wildlife and Parks will study the outfitting and guiding business.

ASSUMPTIONS:

1. Scoping sessions and/or surveys will be used to gather information on the issues of conflict. It will require 20 days of contracted services for meeting facilitation at \$600/day.
2. A computer data base will be generated that will be used to provide information on the leasing of lands and public access opportunities and attitudes survey. It will require contracting (\$35,000) for survey and data input.
3. A private contract (\$20,000) will be used to analyze the outfitter industry and determine factors which affect the hunting industry.
4. There will be eight public meetings held to discuss the results of the study and any recommendations resulting from the study. The meetings will be sponsors by either department or both with travel, printing and meeting costs estimated at \$5,000.
5. The Department of Fish, Wildlife and Parks will commit 0.50 FTE (Grade 16 - \$18,000) by internal redirection to supervise and coordinate the study.

FISCAL IMPACT:

Expenditures:

Operations

Contracted Services

1. Scoping meetings (20 days x \$600/day) \$12,000
2. Leasing and public access data base \$35,000
3. Industry analysis \$20,000
4. Public meetings - Travel, printing, etc \$ 5,000

Total

\$72,000

SENATE FISH AND GAME

EXHIBIT NO. 8

FY 94-95

DATE 2-11-93

BILL NO. SJR 2

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

TECHNICAL NOTES:

SENATE FISH AND GAME

HOUSE NO. 9

DATE 2-11-93

BILL NO. SB 200

LC 0401/01

53rd Legislature

LC 0401/01

*Hollyn Requiring*

SENATE BILL NO. 200

INTRODUCED BY *Sen. Dan Claitor*  
SENATOR *Sen. Dan Claitor*  
AN ACT FOR AN ACT ENTITLED: "AN ACT ALLOWING THE HUNTING OF BISON  
WILD BUFFALO TO PROVIDE FOR SPECIES MANAGEMENT ON A SPECIAL WILDLIFE  
SUSTAINED ANNUAL YIELD BASIS; PROVIDING FOR A SPECIAL WILDLIFE  
BUFFALO LICENSE, THE ESTABLISHMENT OF HUNTING DISTRICTS;  
SEASONS, LICENSE DRAWINGS, AND LICENSE FEES; AMENDING  
SECTIONS 87-1-215 AND 87-2-701, MCA; AND PROVIDING AN EFFECTIVE DATE."  
A COMMITTEE REPORT  
IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-1-215, MCA, is amended to read:

"87-1-215. Wild buffalo as a species in need of management -- policy to include hunting -- department duties. (1) The legislature finds that the management through hunting of wild buffalo or bison is not appropriate but that significant potential exists for the spread of contagious disease to persons or livestock in Montana and damage to persons and property by wild buffalo or bison and <sup>MUST</sup> ~~shall~~ be used whenever possible. Therefore, it is the purpose of this section to designate wild buffalo or bison which have not been reduced to captivity, as a species in need of management and to set out specific departmental duties for management of the species.

(2) The department:

(a) is responsible for and shall develop rules to implement the management of wild buffalo or bison in this state that threaten persons or property other than through the transmission of contagious disease; including the establishment of hunting districts that will provide for the hunting of wild buffalo on a sustained annual yield basis, as provided in section 17.

(b) shall develop rules to manage and reduce the number of wild buffalo or bison that leave Yellowstone National

STATEMENT OF INTENT

A statement of intent is required for this bill because 87-1-215(2) and (section 2) require the department of fish, wildlife, and parks to develop and implement rules regarding a special wild buffalo license. The proliferation of wild buffalo in Montana necessitates establishment of the license and appropriate rules in order to manage the species according to sound game management practices. It is intended that the rules address hunting of wild buffalo on a sustained annual yield basis that will provide for the continued maintenance and health of native herds, in a manner similar to the department's management of other big game species. However, the legislature finds that department-guided hunting of wild buffalo is inappropriate.

MONTANA LEGISLATURE COUNCIL

INTRODUCED BILL  
SB 200

1 park:

2 (3) The department of livestock shall, within its  
3 statutory authority, regulate wild buffalo or bison in this  
4 state that pose a threat to persons or livestock in Montana  
5 through the transmission of contagious disease.

6 (4) The department of fish, wildlife, and parks and the  
7 department of livestock are strongly urged to enter into an  
8 agreement with the national park service for the long-term  
9 management of the Yellowstone national park herd. If the  
10 national park service does not proceed in good faith in a  
11 timely manner to enter a long-term management agreement that  
12 in the determination of the department of fish, wildlife  
13 and parks and the department of livestock responds  
14 adequately to the needs of Montana, the departments are  
15 strongly urged to take appropriate court action. The  
16 department of fish, wildlife, and parks and the department  
17 of livestock shall prepare a joint report to the 53rd  
18 legislature regarding the present state of bison management  
19 in Montana and any progress on an agreement for the  
20 long-term management of the Yellowstone national park herd.

21 NEW SECTION. Section 2. Regulation of wild buffalo --  
22 use of fees. (1) The department shall adopt rules regulating  
23 the management of wild buffalo as provided in 87-1-215. The  
24 rules must provide for:

25 (a) license drawing procedures based on appropriate

17 hunting ~~discretion~~ and seasons to maintain a sustained annual  
2 yield;

3 (b) a \$5 entry fee for the drawing of a license;

4 (c) notification of license recipients as to when and  
5 where they may hunt;

6 (d) means of taking wild buffalo, which may not include  
7 department-guided hunts;

8 (e) tagging requirements for carcasses, skulls, and  
9 hides; and

10 (f) possession limits.

11 (2) Money collected from drawing and license fees must  
12 be placed in the special revenue fund provided for in  
13 87-1-60(1) to the credit of the department.

14 Section 3. Section 87-2-701, MCA, is amended to read:

15 "87-2-701. (Temporary) Special licenses. (1) Any  
16 applicant who will be 12 years of age or older prior to  
17 September 15 of the season for which the license is issued  
18 and is the holder of a resident wildlife conservation  
19 license or a nonresident wildlife conservation license may  
20 apply for a special license which, in the judgment of the  
21 department, is to be issued and shall pay the following fees  
22 therefor:

23 (a) moose--resident, \$60 beginning March 1, 1992, and  
24 \$75 beginning March 1, 1994; nonresident, \$450 beginning  
25 March 1, 1992, and \$475 beginning March 1, 1994;

## EXHIBIT

9  
DATE 2-11-93

SB 200

LC 0401/01

LC 0401/01

1 (b) mountain goat--resident, \$60 beginning March 1,  
 2 1992, and \$75 beginning March 1, 1994; nonresident, \$450  
 3 beginning March 1, 1992, and \$475 beginning March 1, 1994;  
 4 (c) mountain sheep--resident, \$60 beginning March 1,  
 5 1992, and \$75 beginning March 1, 1994; nonresident, \$450  
 6 beginning March 1, 1992, and \$475 beginning March 1, 1994;  
 7 (d) antelope--resident, \$9 beginning March 1, 1992, and  
 8 \$11 beginning March 1, 1994; nonresident, \$145 beginning  
 9 March 1, 1992, and \$150 beginning March 1, 1994;  
 10 (e) grizzly bear--resident, \$50; nonresident, \$300;  
 11 (f) black or brown bear--nonresident, \$120;  
 12 (g) wild buffalo--resident, \$100; nonresident, \$500.  
 13 (2) In the event a holder of a valid special grizzly  
 14 bear license kills a grizzly bear, he the licensee shall  
 15 purchase a trophy license for a fee of \$25 within 10 days  
 16 after date of kill. The trophy license authorizes the holder  
 17 to possess and transport the trophy.  
 18 (3) Special licenses must be issued in a manner  
 19 prescribed by the department. (Terminates March 1,  
 20 1996--sec. 3, Ch. 319, L. 1991.)  
 21 87-2-701. (Effective March 1, 1996) Special licenses.  
 22 (1) Any applicant who will be 12 years of age or older prior  
 23 to September 15 of the season for which the license is  
 24 issued and is the holder of a resident wildlife conservation  
 25 license or a nonresident wildlife conservation license may

1 apply for a special license which, in the judgment of the  
 2 department, is to be issued and shall pay the following fees  
 3 therefor:  
 4 (a) moose--resident, \$75; nonresident, \$455;  
 5 (b) mountain goat--resident, \$75; nonresident, \$455;  
 6 (c) mountain sheep--resident, \$75; nonresident, \$455;  
 7 (d) antelope--resident, \$11; nonresident, \$130;  
 8 (e) grizzly bear--resident, \$50; nonresident, \$300;  
 9 (f) black or brown bear--nonresident, \$100;  
 10 (g) wild buffalo--resident, \$100; nonresident, \$500.  
 11 (2) In the event a holder of a valid special grizzly  
 12 bear license kills a grizzly bear, he the licensee shall  
 13 purchase a trophy license for a fee of \$25 within 10 days  
 14 after date of kill. The trophy license authorizes the holder  
 15 to possess and transport the trophy.  
 16 (3) Special licenses must be issued in a manner  
 17 prescribed by the department."  
 18 NEW SECTION. Section 4. Codification instruction.  
 19 [Section 2] is intended to be codified as an integral part  
 20 of Title 87, chapter 2, part 7, and the provisions of Title  
 21 87, chapter 2, part 7, apply to [section 2].

22 NEW SECTION. Section 5. Effective date. [This act] is  
 23 effective on passage and approval. April 1, 1995

-End-

DATE 2-11-93

SENATE COMMITTEE ON Fish & Game

BILLS BEING HEARD TODAY: SB <sup>216</sup>~~217~~ - SB <sup>220</sup>~~221~~

Name	Representing	Bill No.	Check One Support Oppose	
Mark Daspi	Montana Audubon Legislative Fund	216	✓	
CRAIG TURK	SELF NORTHERN MONTANA HOSPITAL	SB 220	✓	
GEO. BENNETT	MONT. BANKERS ASSN	SB 216	✓	
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASS'N. OF MONTANA	SB 216	✓	
M. L. Long	Vigitor	SB 216	-	
Bill Holdorf	Skyline Sportsman	SB 216		✓
Jock Anderson	Mt. League of Springs Inst.	SB 216		
Tony Schoonen	Anzcon Sportsman	SB 216		✓

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY