

## **MINUTES**

### **MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION**

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

**Call to Order:** By **CHAIRMAN KEN MESAROS**, on January 31, 1995, at 1:00 p.m.

#### **ROLL CALL**

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

Sen. Kenneth "Ken" Mesaros, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Bruce D. Crippen (R)  
Sen. William S. Crismore (R)  
Sen. John R. Hertel (R)  
Sen. Ken Miller (R)  
Sen. Mike Sprague (R)  
Sen. Gary Forrester (D)  
Sen. Judy H. Jacobson (D)  
Sen. Terry Klampe (D)  
Sen. Bob Pipinich (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Andrea Merrill, Legislative Council  
Serena Andrew, Committee Secretary

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

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

Hearing: SB 210  
Executive Action: None

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#### **HEARING ON SB 210**

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

**SENATOR AL BISHOP, SD #9, BILLINGS**, stated that he had introduced this bill at the request of the Department of Fish, Wildlife & Parks. SB 210 is a major piece of legislation dealing with fines and forfeitures, restitution, and clarification of residency requirements. He asked **Pat Graham, Department of Fish, Wildlife & Parks (DFWP)**, to explain components of the bill.

**Proponents' Testimony:**

**PAT GRAHAM, Director, DFWP,** distributed copies of his testimony as well as a document explaining the bill by sections (**EXHIBITS 1 AND 1A**). **Mr. Graham** urged passage of SB 210, saying it would be of major assistance to the department.

**DAVID BROWN, Montana Bowhunters Association,** also urged support of the bill, as it will promote ethical hunting and be of assistance to game wardens.

**JIM RICHARD, Montana Wildlife Federation,** spoke in support of the bill as an enhancement of hunting ethics and respect for wildlife.

**JANET ELLIS, Audubon,** said SB 210 would help the state manage wildlife populations and avoid listings under the Endangered Species Act.

**BILL HOLDORF, Skyline Sportsmen,** supported the bill but was concerned about the paragraph dealing with an exception in the residence criteria for students from Montana who are under 24 years of age. This age limit should be raised because people who have been in the service before going to college in another state could be older. The residence requirement should be tied to state income tax.

**TONY SCHOONEN, Skyline Sportsmen and Coalition for Appropriate Management of State Lands,** said he thought the bill would be a big step forward in strengthening game laws. DFWP region 3 (southwestern Montana) has 50 percent of the elk killed in the state; wildlife are numerous, but so are people.

**ROBIN CUNNINGHAM, Fishing Outfitters Association,** urged support of the bill and concurred with Audubon in the hope that it will allow enhancement of native fish.

**JEAN JOHNSON, Montana Outfitters & Guides Association,** also supported the bill.

**VICKI FRASER, Lewis & Clark Deputy County Attorney,** urged support of the bill, especially the residency section, because there are sizable loopholes in current law. These cases are extremely time consuming to investigate and prosecute. They are also costly because the evidence is in other states.

**BETH BAKER, Department of Justice,** said passage of this bill would result in a great improvement from the enforcement perspective. Fish and game calls mean a long process. She particularly approved of Section 11 on page 12 that clarifies the law on tagging someone else's animal. Section 21 on page 18 clarifies that a special permit can only be used in the proper district. She urged passage of the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

**SENATOR BOB PIPINICH, SD #29, MISSOULA,** asked the intent of Section 21. **Pat Graham,** replied with an example: An individual went to a hunting district carrying both A and B tags. The B tag was valid in another district but it was used on the animal taken. This person had a proper tag for the animal in his possession (the A tag) but he didn't use it - he used a tag that was valid in another district. The jury found him guilty of illegal taking. This section is meant to clarify use of tags.

**SENATOR PIPINICH** asked if he would be required to pay damages if, while walking through the woods, he thought he saw a deer and shot a hole in the motor that makes a decoy move its head. **Mr. Graham** responded that the department has a written policy that states decoys can only be used in certain situations; they are set out after dark to catch spotlighters or branch-antlered decoys are put into spikes-only districts.

**SENATOR BRUCE CRIPPEN, SD #10, BILLINGS,** asked if a tag must be placed on one of the portions of meat after it is boned and wrapped. **Bob Winfield, Enforcement Division, DFWP,** responded that it is all right to just put the tag in the freezer.

**SENATOR MIKE SPRAGUE, SD #6, BILLINGS,** asked what constituted a violation when a meat processor had more than three tags in his possession. **Mr. Winfield** said the department had found through undercover investigations that some meat processors were holding tags in their meat processing plants after the meat had been picked up so they could be used again. There is no problem for a meat processor who has tags only for the animals he is processing.

**SENATOR PIPINICH** asked if a written statement would be needed if he shot an elk and sent it home with someone else and that person were stopped in possession of the animal bearing **Senator Pipinich's** tag. **Mr. Graham** said a written statement would not be necessary unless it would be possible to prove that the person possessing the animal had not been in the field with **Senator Pipinich.** If an individual is able to get someone to say an animal was a gift and that animal is legally tagged, there is no problem.

**SENATOR GARY FORRESTER, SD #8, BILLINGS,** commented that he had a deer mounted three years ago and the taxidermist wanted the tag so he left the tag with the horns and had no tag for the meat in his freezer. **Mr. Winfield** said the law states tags remain with the major portion of the meat. On a taxidermist's reporting form there is a place for the owner's name, address and tag number and that is all the taxidermist needs.

**SENATOR FORRESTER** asked where fishing and hunting fines are credited. **Mr. Graham** said this is explained on the fiscal note (EXHIBIT 2). If SB 83 passes, however, that money will go to the General Fund.

**CHAIRMAN MESAROS** asked **Bob Winfield** to explain how a landowner will be affected if he finds a black bear in a flock of sheep. **Mr. Winfield** responded that there is a separate statute covering depredation and the bill under consideration does not affect that statute.

**CHAIRMAN MESAROS** asked **Mr. Winfield** to explain changes in the statutes that apply to the use of snares. **Mr. Winfield** replied that there have been two conflicting statutes. The general legal taking statute made it illegal to take game animals, game birds or any other animals with a snare. Then the snaring statute allowed use of a snare to take any animal or bird. That has been clarified by restricting snaring to furbearers and predators but not game animals or birds.

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**SENATOR WILLIAM CRISMORE, SD #41, LIBBY**, said Section 3 gives the department authority to designate retired game wardens as ex officio wardens. At a previous meeting, **Mr. Graham** asked for more wardens; **SENATOR CRISMORE** asked if this would be a better solution.

**Mr. Graham** said he had requested funds to contract with retired game wardens through the Natural Resource Subcommittee. SB 210 makes it possible to designate them as ex officio wardens who do not have to qualify as peace officers, resulting in a considerable savings for these officers. **SENATOR CRISMORE** asked how many were likely to volunteer. **Mr. Graham** commented that the need will exceed the supply. Retired game wardens who are willing to come back to work do not always live in the areas where they are needed. So far this year, the department has spent \$15,000 contracting with retired wardens.

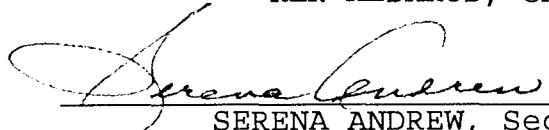
**Closing by Sponsor:**

**SENATOR BISHOP** said a great deal of information had been brought out through this hearing. SB 210 is a good piece of legislation. It is important because Montana's wildlife resource is valuable to people from all over the world.

ADJOURNMENT

**Adjournment:** The meeting adjourned at 2:15 p.m.

  
KEN MESAROS, Chairman

  
SERENA ANDREW, Secretary

KM/sa

MONTANA SENATE  
1995 LEGISLATURE  
FISH AND GAME COMMITTEE

ROLL CALL

DATE \_\_\_\_\_

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## Senate Bill No. 210

January 31, 1995

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

This bill amends various criminal statutes relating to hunting, fishing and trapping. In addition, section 4 both amends and adds definitions of the terms "hunting," "angling," "trapping," and "baiting" to clarify what actions are prohibited by law. These clarifications will help with the enforcement of statutes and the prosecution of violations.

Many of the amended sections are included in this bill only to incorporate the revised definitions within existing law. Those sections that simply incorporate the new definitions are listed in the summary we've passed out. (Sections numbered 7, 12, 13, 15-20, 22-24, 26, 29, 30, 33 and 34.)

I will explain the substantive changes to the criminal law which are also discussed in the section-by-section summary provided for your reference. Section 1 of the bill proposes to amend the penalty section (87-1-102). The addition of the term "negligently" to "purposely or knowingly" prevents use of the frequently attempted defense of "I can't be guilty because I didn't know." It places a reasonable requirement of responsibility on the sportsperson to know the laws before participating in hunting, fishing, or trapping.

Proposed changes to the fines category of the penalty section raise the minimum fines from \$50 to \$100 and some of the maximum fines from \$1,000 to \$2,000. This will provide a greater deterrent. The minimum fine has been \$50 since 1977. A court could impose a \$50 fine (plus \$15 in court costs) on a nonresident who failed to buy a \$40 fishing license. The small size of the fine and slight risk of getting caught does not deter violators. In addition, increasing the maximum fine will better enable the courts to address the more serious misdemeanor offenders. The court retains its discretion to set the fine at whatever dollar amount it considers appropriate within the minimum and maximum amounts set by the statute.

The bill also proposes to increase the fine for the illegal taking of black bears. We feel the deterrent effect of raising the fine from the \$300-\$1,000 range, to the \$500-\$2,000 level will help address growing illegal commercialization problems with black bears and the Asiatic market.

The changes dealing with loss of privileges do not affect the term of suspension, but merely clarify the relationship of the court and

the Department to assure a consistent statewide imposition of suspensions. Some courts now notify individuals of the loss of privileges while others believe the Department is responsible. This proposal will standardize the method by requiring the Department to notify the convicted violators and collect any licenses forfeited under this statute. As revocations are mandatory for some violations, everyone forfeiting bond or found guilty of a violation that mandates loss of privileges will in fact lose them and be so notified.

Section 2 amendments increase the restitution values of black bear, adult bull trout and river dwelling grayling. There is a very lucrative market for black bear parts including claws, teeth, paws and, most notably, gall bladders. Bull trout and river dwelling grayling are species of special concern to Montana. Deterring unlawful harvest or commercialization of these fish species is essential to the state's management of these populations. Both species are under consideration by the U.S. Fish and Wildlife Service for listing as threatened species.

We are proposing to raise black bear restitution from \$500 to \$1,000 per bear, enabling prosecutors to file a felony charge with two, rather than three, unlawful takings or sales of bears. Bull trout restitution is currently \$10 per fish and all grayling are \$100 per fish. We are requesting that restitution for bull trout over 18 inches long be raised to \$500 per fish. This is necessary to protect adult spawners. Similarly we feel it is necessary to protect river dwelling grayling by raising restitution to \$300 per fish. This change will not apply to lake dwelling grayling, as their populations are not in danger, and the restitution for them will be lowered to the standard \$10 per fish.

Section 3 allows the director to appoint retired game wardens as ex officio officers. Many of these individuals have let their Peace Officer certification lapse since retirement. We would like to continue to be able to contract with them as needed for help during the hunting season. Their Peace Officer status allowed them to enforce Fish, Wildlife and Parks laws and regulations, but without this status they need ex officio authority.

Section 4, as mentioned, contains the definitions for angling, baiting, hunting and trapping. The changes are discussed beginning at the bottom of page 2 of the handout. The major change is the addition of a definition for baiting which includes the use of foodstuffs or odors used to attract game animals.

Section 5 is a new section but the oldest law on fishing. The law became part of the definitions when in fact it should have been restricting fishing to the use of hook or single line, unless other means have been approved by the commission. Instead the definition limited what would be considered fishing. Other methods of obtaining fish were not specifically prohibited. This section will clarify lawful methods of fishing and simplify prosecutions.



Section 6 revises the residency statutes. As the desirability of hunting and fishing in Montana increases each year, our problems with persons purchasing resident licenses unlawfully also increase. County prosecutors have become frustrated with their increasing workload and the difficulties encountered prosecuting these cases. To remedy these problems we have more clearly defined the criteria needed to purchase resident hunting and fishing licenses in Montana. A person will have to physically live in Montana for 180 consecutive days and meet existing criteria before applying for a resident license. They must then physically live in Montana for 120 days per year to maintain that residency.

There is an exception for students from Montana under 24 years of age who are studying out of state. The residency status of persons in the armed forces is limited to persons stationed and on active duty in Montana with a possible exception for persons entering the military from Montana. Reassignment to another state ends their residency status.

These amendments to the statute will enable prosecutors to spend far less time preparing these cases and be able to prosecute based on objective requirements.

Section 8 changes the information required to apply for resident licenses by requiring the person's actual street address. We have problems with nonresidents obtaining a local post office box then applying for resident licenses. This makes it more difficult to identify these individuals as nonresidents for licensing purposes.

Section 9 amends the statute on carrying and exhibiting a license by clarifying that licenses must be carried when sportspersons are in the field. The amendment does, however, allow a person to be carrying the license of their spouse or any minor children when in the field.

Section 10 is a new section dealing with possessing or carrying licenses in the field. In many of our undercover investigations, unfilled licenses were left with the hunting camp or outfitter and were later filled by others or used to cover illegally taken animals to be transported. This has become a very serious problem and it is difficult for wardens to identify illegally taken animals. This section would prohibit the practice of having or controlling licenses of people other than spouse or minor children.

In addition, commercial offenders such as outfitters, guides, and meat processors could be charged with a felony if they control more than three licenses. Fewer than three licenses would be a misdemeanor offense. Examples of problems are found in the handout on pages 4 and 5.

Section 11 changes the tagging statute. Prosecutors have difficulty under the present language of the statute with cases in

which an actual, physical transfer of the license from person to person does not take place. For instance, when an animal is taken by one person but tagged by another, wardens have had problems using this statute as a lesser offense to illegal taking, a harsher penalty. Persons convicted of illegal taking lose their hunting privileges.

Section 21 requires that game animals must be tagged with tags valid in the specified district. It also clarifies that legal ownership of game does not change to the hunter unless the animal is lawfully taken and tagged. This avoids forfeiture problems with confiscating unlawfully taken game from violators.

Section 25 corrects the inconsistencies between sections 87-3-101 and 87-3-107. Section 87-3-101 restricts the manner in which game may be harvested and forbids taking game by the use of a snare. Section 87-3-107 provides that any animal or bird may be taken by a snare if certain conditions are followed. We propose to make these laws consistent. This amendment also makes baiting, as defined, illegal. The present law is unclear since there is no definition of "other device."

Section 27 clarifies the violation to be cited when charging an individual who has shot a wildlife decoy. It has been unclear if wardens should charge a violator using the unlawful taking statute that pertained to decoys even if the violation would have been a lesser charge if the violator had been shooting at an actual animal. For example, if the violator was shooting from a public road at the decoy, and this was the only violation that occurred, it is not appropriate to charge the individual with unlawful taking of the wildlife decoy. If the decoy had been a live animal, the only charge would have been shooting from the roadway.

This section also provides a restitution charge of \$50 per violation of the decoy statute. This money will be used to repair decoys shot by violators and is estimated by the Department based on the average amount needed to cover expenses.

Section 28 amends the felony section to include sale of lawfully taken game of over \$1,000 in value and includes meat, organs, tissue, or fluids. Under existing law an individual can sell huge quantities of meat or other animal parts and risk only a misdemeanor fine. This change does not prohibit already lawful sales of heads, antlers, hides or mounts.

We have added a poundage limit to address quantities of processed meat. Many of our investigations deal with game that has already been processed, making it difficult to determine the number of animals represented. A buck deer averages 40 pounds of meat, a bull elk averages 172 pounds of meat. The proposed 150 pounds of meat would be equal to four buck deer or just over one bull elk. A lesser quantity would continue to be a misdemeanor violation, and

EXHIBIT 1  
DATE 1-31-95  
SB 210

the county attorney always has the discretion to charge the violator with a misdemeanor rather than a felony.

Another problem we have encountered is a number of individuals transporting game animal parts which are unlawful to sell in Montana to another state where they can be legally sold. This totally eliminates the effectiveness of our statutes and puts our wildlife in jeopardy of increased commercialization. Both Idaho and Wyoming allows sales prohibited under Montana law. We propose to make it unlawful to transport wildlife valued at over \$1,000 out of state for the purpose of selling it.

Many of the serious violators we investigate commit violations over a long period of time. Under present law, it is unclear if the violations can be grouped together for felony prosecution. The proposed amendment will enable us to group violations that occurred over a 45-day time period cumulatively, allowing felonies to be charged if warranted.

Section 32 amends the closed season statute for furbearing animals (87-3-501). This statute inadvertently omitted bobcats, wolverines and northern swift fox from the closed season statute. This amendment refers to furbearing animals which are defined in 87-1-101 (section 4 of the bill).

## SENATE BILL 210

## ENFORCEMENT REVISION BILL

## SUMMARY OF CHANGES - BY SECTIONS

Section 1: Amends general penalty statute for fish and game violations.

- The addition of "negligently" was at the request of prosecutors. This addition places the reasonable responsibility of knowing the rules and regulations on the sportsmen and women, before they participate in their chosen activity. For the prosecutor, this negates the defense of "I can't be guilty, I didn't know."
- Raises minimum fines from \$50 to \$100. These values are more in line with today's penalties, as this category has not been changed since 1977. The increase is expected to work as a deterrent, especially where the cost of a license is similar to the fine for failing to have one.
- The maximum fine for flagrant violations would be increased from \$1000 to \$2000. Offenses would, for the most part, be filed in justice court, however justice and district court have concurrent jurisdiction for misdemeanors over \$1000. (3-10-303, MCA.)
- Elevates black bears to the higher category of fines under subsection (2)(a) (from fines of \$300 to \$1000 to fines of \$500 to \$2000). (Recommended because of the high commercial value of black bears and the increased poaching problem).
- Deletes subsection (d) of section (2). This section has been clarified and is contained the general penalty section. This allows the court discretion to suspend any or all license privileges.
- The other additions to the statute require the department to give notice of loss of privileges and to receive surrendered licenses. This clarifies the relationship of the court and the department with respect to forfeiture and notification of loss of privileges. This will assure notification of the violators if their license privileges are suspended, and for how long. Previously the department's only authority was in 87-1-108, MCA (under which it could suspend privileges for non compliance with a citation or sentence).

Privilege suspensions are mandatory for some violations, as are minimum lengths of suspension, when there is a conviction or forfeiture. This will insure a consistent method of application statewide, while retaining the court's discretion to impose loss of privileges.

With this system in place, we will avoid the situations where a violator was not notified of loss of privileges, purchased a license or licenses, then is required to return the licenses for a refund, as per the court's order. This may be a substantial inconvenience if plans and preparations for a hunting or fishing trip have been made.

The change proposed for this statute will improve the department's ability to comply with the responsibilities under the wildlife violator compact, if Montana becomes a member state through proposed legislation.

Section 2:        Makes changes in restitution amounts.

- Increases black bear restitution from \$500 to \$1000 per bear. The intent of this revision is to curb the illegal traffic in black bear parts. Increasing restitution values allows prosecutors to file felony rather than misdemeanor charges with two unlawful takings or sales, rather than the current three.
- Increases restitution on bull trout. Currently restitution for illegal bull trout is \$10 per fish. Bull trout are a species of special concern to Montana. To deter illegal harvest and commercialization of bull trout we propose restitution at \$500 per fish over 18 inches long. This provides the capability of felony prosecution if three fish over 18 inches long are taken.
- River dwelling grayling have also been proposed for an increase in restitution from \$500 to \$300 because of their status. The taking of four river dwelling grayling could lead to a felony charge. Lake grayling are not in need of special protection.

Section 3:        Adds retired game wardens to possible ex officio status

- Retired game wardens are being added to the list of persons the director may appoint as ex officio wardens. The department has the authority to contract with retired game wardens as needed. Not all retired game wardens are eligible to be ex officio under this statute. If their POST certification has lapsed, this change would still allow them to be appointed by the director and would clarify their authority.

Section 4:        Amends and adds definitions.

- Amends the definition of "angling" or "fishing" by omitting the "by hook and single line or single rod, in hand or within

immediate control." Fishermen use a variety of methods to take fish, including spears, gigs, nets, bows and arrows, set lines and snagging. This proposal will enable prosecutors to avoid the defense "how could my client have been fishing, he wasn't using a line, hook or rod?"

- The definition of baiting is necessary for the enforcement of 87-3-101 (section 25 of this bill). By adding "bait" to 87-3-101 and a definition of bait in the definition section, the law will more clearly prohibit the use of foodstuffs or odors to attract game animals. Present law prohibits salt licks and other devices. The argument can be made that food or odors are not a "device." This will help greatly to successfully prosecute unethical hunters and outfitters who place salt blocks, scents, food stuffs or other attractants near their stands to attract game animals. The proposed changes will not affect the use of unscented decoys or replicas of wildlife currently legally used.
- Hunt is defined. With an encompassing definition of hunting our statutes are streamlined and understandable, enabling the courts to determine if a violation has been committed. This definition may enable the game warden to act before an animal is unlawfully harvested, if he observes someone shooting at a game animal for example. The law still requires proof of intent to take the animal.
- Trapping is defined to make it possible to enforce individual quotas. Under current law, anyone can work a trapline, regardless if they have reached their personal quota. The traps must give a name and address, but several people can be listed on the trap, and anyone may work the trapline so long as the owner of the trap does not complain. In one case in Central Montana, seven people were regularly working a trapline. Only one had purchased a trapping license. The county attorney advised against citing the unlicensed persons under the current law.

Section 5: Adds a new section restricting fishing to by hook or single line or single rod unless other means have been approved by the commission. Under current law there is no clear prohibition since the method of fishing was only in the definition section.

Section 6: Revises residency requirements.

- The proposed changes will require a person to physically live in Montana for 180 days before applying for a license. Once residency has been established, the person must live in Montana at least 120 days per year to maintain the residency.

- A person's Montana home must be his or her principal place of residence, and all other existing criteria must be met.
- There is a student exception for students from Montana under 24 years old who are studying out-of-state.
- The military exception is clearly limited to military personnel stationed in Montana. Reassignment to another state ends their residency status.
- Prosecutors have had numerous problems prosecuting nonresidents, especially under the "fixed intention to return." It is difficult to prosecute because the defendant claims that he is a Montana resident and will return to Montana as soon as he can. He intends to live here permanently (has a "fixed intent to return"). There is no clear objective criteria under the present statute. Convictions depend on whether the jury believes or dislikes the defendant.

Section 7: The license requirement statute is simplified because of the new definitions. (This change was made by Legislative Council.)

Section 8: The section on application for a license is amended to require the actual address in addition to a post office box. We have problems with nonresidents obtaining a post office box and using it as a local address. The change would make it easier to determine a person's actual residence.

Section 9: Carrying a license - amended to conform with section 10 which permits a person to carry the license of a spouse or a minor. Also clarified to conform to the definitions and to be more easily understood.

Section 10: Unlawful possession of hunting licenses issued to another person

- Prohibits one person from possessing or having another person's hunting or fishing license, unless the license is their spouse's or minor child's. Although there are legitimate reasons for a person carrying their spouse's or a child's license while they are hunting or fishing together, there is generally no good reason to carry or control licenses belonging to others.
- Without the proposed change, the mere possession of licenses of another is not an offense. The game warden has to wait until the wildlife is killed or tagged illegally to cite them.

- Examples of abuses:
  - During undercover investigations, officers have found "extra" licenses which were used or intended to be used to cover illegally taken wildlife. One suspect had a coffee can full of licenses in his meat packing business which were used to cover untagged and illegally taken wildlife brought into his business.
  - Undercover investigators observed guides filling their neighbors' licenses and clients leaving their unfilled licenses with the outfitter for use by other clients. One suspect normally fills ten to twelve licenses for non-family members where he keeps the racks and capes and gives the license holders the meat. Another suspect offered his wife's license to an investigator under the proposal that the investigator bring them the meat but keep the rack.
  - In another case, an outfitter supplied illegally obtained resident licenses for out-of-state hunters. Another unlicensed outfitter purchased several doe licenses to supply to non-resident hunters. These were used to cover illegal taking of buck deer which had all evidence of sex removed.
  - In another case, an unlicensed outfitter promised his clients that he would supply licenses for all the wildlife they took. Seventeen hunters were prosecuted for hunting without licenses.
- Because of the significant potential for abuse of the licensing process, the department supports a felony penalty for possession of three or more non-family licenses by a commercial violator (outfitter, guide or meat processors). Fewer than three licenses not in the name of the violator would be a misdemeanor under the proposed bill.

Section 11: Attachment or transfer of a license.

- Under current law it is unlawful to transfer a license to another person. This amendment would make it unlawful to attach a license to an animal shot by someone else. The action of placing a tag on another animal could also be considered unlawful possession, but such a charge would result in a much harsher penalty which may be inappropriate in some cases. This change gives a game warden the option to charge a person with a lesser offense.

Sections 12 and 13: These amendments were made by Legislative Council due to definition changes.



Section 14: Wild Turkey Tags - These amendments were made by Legislative Council due to definition changes.

- Also "department" was changed to "commission" because the commission sets the seasons, not the department.

Sections 15 through 20: These amendments were made by Legislative Council due to definition changes.

Section 21: Tagging game animals

- This statute is amended at the request of prosecutors. This change clarifies the violation when a person attaches a tag valid in one district to an animal killed in another district. In a recent case, the defendant had an A-tag license. He also had a B-tag valid in a specific area. He shot a doe and attached the B-tag. He was cited for failure to have a valid license, but he had a valid license he chose not to use. The defense counsel raised this issue. The statute would be clarified by making it an express violation under the tagging requirements.
- The amendments also clarify that legal ownership of a game animal does not change from the public to a hunter if the hunter has taken the animal unlawfully. This change avoids legal problems with forfeitures. Confiscating an unlawfully taken game animal is thus not a forfeiture because the hunter never legally possessed the animal.

Sections 22 through 24: These amendments were made by Legislative Council due to definition changes.

Section 25: General restrictions

- This statute is being amended because it is inconsistent with 87-3-107. Section 87-3-101 prohibits the use of snares to take or kill game while section 87-3-107 makes the use of snares lawful under certain conditions. The two statutes do not refer to one another thus are confusing and unclear. The proposed amendment excepts game animals and game birds as provided in 87-3-101 from any lawful use of snares under 87-3-107(1).
- Also amends the statute by making baiting, as defined in section 4(2) of the bill, unlawful. The language "other device to entrap or entice game animals or game birds" was unclear and difficult to enforce. The statute now does not clearly show what is prohibited.

Section 26: 87-3-104 - These amendments were made by Legislative Council due to definition changes.

Section 27: Wildlife Decoy

- The change in subsection (2) clarifies that the same violation should be charged in a decoy violation as if the decoy were an animal. For example, it is not an "unlawful taking" if a person shoots at a decoy from a public road. The violation is "shooting from a public road." The use of "unlawful taking" was confusing and needs clarification.
- This section is also proposed to be amended to provide restitution of \$50 per violation. The money collected will be used to repair or replace decoys damaged or destroyed by violators. The department feels \$50 per violation is reasonable and will enable the department to repair and replace decoys that now cost approximately \$400 to \$1200 each, depending on the animal and the electronic equipment installed. Construction uses 15 to 33 hours of labor which is difficult for the wardens to provide, especially during the hunting season. Cost estimates from private taxidermists to provide decoys, ranged from \$855 to \$2205.

Section 28: Felony sale or possession

- Adds a potential felony offense of sale of wildlife or those wildlife parts prohibited from sale under current law and valued at over \$1000. This change does not affect any sale of parts allowed under 87-3-111 (heads, hides or mounts). Subsection (1) currently makes the sale of unlawfully taken wildlife a felony, regardless of its value. The new subsection (3) makes the sale of lawfully or unlawfully acquired wildlife meat, organs, tissue or fluids a felony if the value of the wildlife exceeds \$1000 or if the meat exceeds 150 pounds. The 150 pounds is based on the average amount of processed meat in deer and elk. A buck deer averages 40 pounds of meat (58 pounds with bone), and a bull elk averages 172 pounds (216 pounds with bone).
- Also makes the transportation of wildlife valued over \$1000 to another state for the purpose of selling a violation. Currently it is possible for a person to take animals lawfully killed in Montana to another state where the sale of such animals is not prohibited (such as Idaho and Wyoming). A person could have killed a bear lawfully and be "given" another bear by a friend and take the gall bladders and paws to Idaho for sale. They would then avoid Montana's prohibition against selling wildlife but increase abuse of wildlife.
- New subsection (4) would allow the department to add together the value of wildlife collected within a 45-day period. Under current law, a person may avoid a felony violation by transporting or possessing unlawfully killed wildlife one at

a time. It is not clear under present law whether like violations can be lumped. A person commercializing in wildlife generally does so over periods of time. This change would allow the department to charge serious violators by cumulating the violations within a 45-day period.

Sections 29 through 30: These amendments were made by Legislative Council due to definition changes.

Section 31: 87-3-402 - Substitutes "commission" for "department" because the commission sets seasons.

- Also makes changes due to definition changes.

Section 32: Season for fur-bearing animals

- The bill deletes the individual listing of protected species under 87-3-501 because the list omitted bobcats, wolverines and swift fox and substitutes "fur-bearing animals" which are defined in 87-2-101. The omissions appear to have been unintentional.
- The other changes are made as a result of the definition changes.

Sections 33 through 34: These amendments were made by Legislative Council due to definition changes.

## STATE OF MONTANA - FISCAL NOTE

SENATE FISH AND GAME

EXHIBIT NO. 2

Fiscal Note for SB0210, as introduced

DATE 1/31/95

BILL NO. SB 210


DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising and clarifying the law regarding violations of fish and game criminal statutes and residency requirements; revising definitions; revising penalties; allowing former game wardens to be appointed ad ex-officio wardens; creating the offense of unlawful possession of a hunting license or permit of another; and creating the felony offense of sale of wildlife or wildlife parts.

ASSUMPTIONS:

1. Based on a Wisconsin study, the Department of Fish, Wildlife and Parks (FWP) estimates that violations will decrease by 25% when penalties are increased.
2. Fines for misdemeanors increase from not less than \$50 or more than \$500 to not less than \$100 or more than \$1,000.
3. Approximately 265 individuals annually are fined the minimum by Justices of the Peace. A 25% reduction would result in approximately 200 violators paying the revised \$100 minimum fine. Fine revenue will increase from \$13,250 to \$20,000.
4. Approximately 60 individuals annually are fined the \$500 maximum. In theory, 25% of the 60 or 15 individuals will be deterred from committing a misdemeanor. Approximately half or 23 of the 45 violators will be fined the \$1,000 maximum and 22 will be fined \$500. Fine revenue will increase from \$30,000 to \$33,000.
5. In accordance with 3-10-601, MCA, fines, penalties, forfeitures, and fees collected by Justices of the Peace are distributed 50% to county general fund and 50% to state treasure. The state treasurer distributes the funds as follows:
  - 27.88% to the state general fund
  - 09.09% to the Department of Fish, Wildlife and Parks
  - 11.76% to the Department of Transportation
  - 33.86% to the Highway Traffic Safety Division, Department of Justice
  - 00.57% to the Department of Livestock
  - 15.90% to the Department of Justice, Crime Victims Unit
  - 00.94% to the Department of Family Services
5. Restitution for illegal killing or possession of certain wildlife will increase. Based on historic information, it will increase by \$1,500 per year. FWP receives 100% of the restitutions.

(continued on page 2)

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
AL BISHOP, PRIMARY SPONSOR      DATE

Fiscal Note for SB0210, as introduced

SB 210

FISCAL IMPACT:

|                                      | <u>FY96</u>       | <u>FY97</u>       |
|--------------------------------------|-------------------|-------------------|
|                                      | <u>Difference</u> | <u>Difference</u> |
| <u>Revenues:</u>                     |                   |                   |
| Fines:                               |                   |                   |
| County General Fund                  | 5,375             | 5,375             |
| State General Fund                   | 1,499             | 1,499             |
| Department of Transportation         | 632               | 632               |
| Highway Traffic Safety               | 1,820             | 1,820             |
| Department of Livestock              | 31                | 31                |
| Department of Family Services        | 50                | 50                |
| Department of Fish, Wildlife & Parks | 488               | 488               |
| Crime Victims                        | <u>855</u>        | <u>855</u>        |
| Total                                | 10,750            | 10,750            |
| Restitution:                         |                   |                   |
| Department of Fish, Wildlife & Parks | 1,500             | 1,500             |

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Increase of fine revenue to the counties.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Serve as a deterrent and help stem the unlawful abuse of wildlife in Montana.

DATE 1/31/95

SENATE COMMITTEE ON Fish & Game

BILLS BEING HEARD TODAY: SB 210

< ■ > PLEASE PRINT < ■ >

Check One

| Name                         | Representing                          | Bill No. | Support | Oppose |
|------------------------------|---------------------------------------|----------|---------|--------|
| ROBIN CUNNINGHAM             | FISHING OUTFITTERS ASSOCIATION OF MT. | 210      | X       |        |
| Beate Galda                  | FWP                                   | 210      | X       |        |
| Bob Winfield                 | FWP                                   | 210      | X       |        |
| David Brown                  | Montana Bowhunters <sup>Ass</sup>     | 210      | X       |        |
| Bill Holdorf                 | SKYLINE SPORTSMAN                     | 210      | ✓       |        |
| <del>Janet</del> Janet Ellis | MT Audubon                            | 210      | X       |        |
| Jean S. Johnson              | MT Dept. of Game                      | 210      | X       |        |
|                              |                                       |          |         |        |
|                              |                                       |          |         |        |
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|                              |                                       |          |         |        |
|                              |                                       |          |         |        |

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY