

CHAPTER NO. 44

HOUSE BILL NO. 8

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 4, 1979	Introduced and referred to Committee on Judiciary.
January 6, 1979	On motion, joint rule 6-6 suspended and sponsor's signature allowed to be added to Pre-Filed bill.
January 12, 1979	Committee recommend bill do pass. Report adopted.
January 13, 1979	On Motion rules suspended and bill placed on Second Reading this day. Second Reading, do pass. On motion rules suspended and bill placed on third reading this day. Third Reading, passed. Engrossed before transmitted. Transmitted to Second House.

IN THE SENATE

January 15, 1979	Introduced and referred to Committee on Fish and Game.
February 7, 1979	Committee recommend bill be concurred in. Report adopted.
February 9, 1979	Second Reading, concurred in.
February 12, 1979	Third Reading, concurred in.

IN THE HOUSE

February 13, 1979

Returned from Second House.
Concurred in.

Sent to enrolling.
Reported correctly enrolled.

1 House BILL NO. 8
 2 INTRODUCED BY _____
 3 BY REQUEST OF THE CODE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LAWS RELATING TO FISH AND GAME; AMENDING
 7 SECTIONS 87-1-105, 87-1-201, 87-1-205, 87-1-403, 87-1-703,
 8 87-2-101, 87-2-902, 87-2-904, AND 87-3-128, MCA."

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

11 Section 1. Section 87-1-105, MCA, is amended to read:
 12 "87-1-105. Duty of attorney general and county
 13 attorneys. The attorney general of the state is the legal
 14 adviser of the department and shall, together with the
 15 several county attorneys, enforce the provisions of this
 16 ~~act~~ title."

17 Section 2. Section 87-1-201, MCA, is amended to read:

18 "87-1-201. Powers and duties. (1) The department shall
 19 supervise all the wildlife, fish, game, game and nongame
 20 birds, waterfowl, and the game and fur-bearing animals of
 21 the state. It possesses all powers necessary to fulfill the
 22 duties prescribed by law and to bring actions in the proper
 23 courts of this state for the enforcement of the fish and
 24 game laws and the rules adopted by the department.

25 (2) It shall enforce all the laws of the state

1 respecting the protection, preservation, and propagation of
 2 fish, game, fur-bearing animals, and game and nongame birds
 3 within the state.

4 (3) It shall have the exclusive power to spend for the
 5 protection, preservation, and propagation of fish, game,
 6 fur-bearing animals, and game and nongame birds all state
 7 funds collected or acquired for that purpose, whether
 8 arising from state appropriation, licenses, fines, gifts, or
 9 otherwise. Money ~~Money~~ collected or received from the sale
 10 of hunting and fishing licenses or permits, from the sale of
 11 seized game or hides, from fines or damages collected for
 12 violations of the fish and game laws, ~~or~~ from
 13 appropriations, or received by the department from any other
 14 sources are appropriated to and under control of the
 15 department.

16 (4) It may discharge any appointee or employee of the
 17 department for cause at any time.

18 (5) It may dispose of all property owned by the state
 19 used for the protection, preservation, and propagation of
 20 fish, game, fur-bearing animals, and game and nongame birds
 21 which is of no further value or use to the state and shall
 22 turn over the proceeds from the sale to the state treasurer
 23 to be credited to the fish and game account in the earmarked
 24 revenue fund.

25 (6) It may not issue permits to--anyone to carry

1 firearms within this state ~~to anyone~~ except to regularly
2 appointed officers or wardens.

3 (7) The department is hereby authorized to make,
4 promulgate, and enforce such reasonable rules and
5 regulations not inconsistent with the provisions of ~~this~~
6 ~~[act]~~ chapter 2 as in its judgment will accomplish the
7 purpose of ~~this [act]~~ chapter 2.

8 (8) The department is authorized to promulgate rules
9 relative to tagging, possession, or transportation of bear
10 within or without the state."

11 Section 3. Section 87-1-205, MCA, is amended to read:

12 "87-1-205. Grievance procedure. ~~{}~~ An employee of the
13 department, aggrieved by a serious matter of his employment
14 based upon work conditions, supervision, or the result of an
15 administrative action, who has exhausted all administrative
16 remedies within the department, is entitled to a hearing
17 before the ~~employee--appeals--board--designated--by--the~~
18 ~~department--of--administration--under--the--provisions--of--a~~
19 ~~grievance--procedure--prescribed--by--the--board--for--the~~
20 ~~resolution--of--his--grievance~~ board of personnel appeals
21 provided for in 2-15-1705 and subject to the provisions of
22 2-18-1011 through 2-18-1013.

23 ~~{}~~ ~~Direct--or--indirect--interference--restraint,~~
24 ~~coercion--or--retaliation--by--an--employee's--supervisor--or--the~~
25 ~~department--against--an--aggrieved--employee--because--the~~

1 ~~employee has filed or attempted to file a grievance with the~~
2 ~~board--shall--also--be--the--basis--for--a--grievance--and--shall~~
3 ~~entitle--the--employee--to--a--hearing--before--the--board--for~~
4 ~~resolution.~~

5 ~~{}~~ ~~If--upon--the--preponderance--of--the--evidence--taken~~
6 ~~at--the--hearing--the--board--is--of--the--opinion--that--the~~
7 ~~employee--is--aggrieved--it--may--issue--an--order--to--the~~
8 ~~department--requiring--such--action--of--the--department--as--will~~
9 ~~resolve--the--employee's--grievance--The~~ Any ~~order of the board~~
10 ~~shall--be~~ is ~~binding upon the department."~~

11 Section 4. Section 87-1-403, MCA, is amended to read:

12 "87-1-403. Regulation of employees by director. ~~{}~~
13 The director may suspend without pay, reduce in rank, or
14 remove any employee at any time for cause, providing that
15 any person who has been continuously employed for 1 year or
16 more immediately preceding any suspension or discharge may
17 demand and receive a hearing before the department on ~~the~~
18 charges filed. The action of the department resulting from
19 such a hearing ~~shall--be--final~~ constitutes final
20 administrative action for purposes of filing a grievance
21 with the board of personnel appeals as provided in 87-1-205.

22 (2) The director shall rate all employees on the basis
23 of merit and efficiency in accordance with such rules as
24 adopted by the department ~~may--adopt~~ to secure a proper
25 rating of each person employed. The salaries of employees

1 shall be fixed by the department, and travel expenses, as
 2 provided for in 2-18-501 through 2-18-503, as amended, shall
 3 be allowed employees while upon official business away from
 4 designated headquarters."

5 Section 5. Section 87-1-703, MCA, is amended to read:

6 "87-1-703. Cooperative agreements on federally owned
 7 land. The department, in the name of the state and with the
 8 approval of the governor, shall have the power to enter into
 9 cooperative agreements on federally owned lands with the
 10 government of the United States or any department or bureau
 11 thereof or with an individual or individuals, private
 12 corporations, or partnerships for the purpose of carrying on
 13 any fish restoration projects created and established under
 14 the provisions of 87-1-701 through 87-1-703 and shall have
 15 the power to acquire by purchase, either by cash or upon
 16 installments, or lease or by gift or by devise or
 17 individually or in conjunction with the government of the
 18 United States or some department or bureau thereof, such
 19 lands or other property of an interest therein as may be
 20 necessary for the purpose of carrying on any fish
 21 restoration and management projects created and established
 22 under the provisions of said Dingell-Johnson bill of the
 23 congress of the United States, and the state of Montana does
 24 reserve to itself, acting through its legislature, the right
 25 to direct the department to abandon any fish restoration and

1 management projects created and established as the state of
 2 Montana may in its judgment think proper. The department
 3 shall have no power to exercise the right of eminent domain
 4 to condemn or acquire property under 87-1-701 through
 5 87-1-703."

6 Section 6. Section 87-2-101, MCA, is amended to read:

7 "87-2-101. Definitions. ~~For the purpose of this [act]~~
 8 ~~the following shall be construed, respectively, to mean~~ As
 9 used in this chapter and chapter 3, unless the context
 10 clearly indicates otherwise, the following definitions
 11 apply:

12 (1) angling "Angling" or "fishing"-- means the taking
 13 of or attempting to take fish by hook and single line or
 14 single rod, in hand or within immediate control.

15 (2) closed "closed season"-- means the time during
 16 which game birds, fish, and game and fur-bearing animals may
 17 not be lawfully taken.

18 (3) commission "Commission"-- means the state fish and
 19 game commission.

20 (4) fur-bearing "Fur-bearing animals"-- means marten
 21 or sable, otter, muskrat, fisher, mink, bobcat, and beaver.

22 (5) game "Game animals"-- means deer, elk, moose,
 23 antelope, caribou, mountain sheep, mountain goat, mountain
 24 lion, and bear.

25 (6) game "Game fish"-- means all species of the family

1 salmonidae (charrs, trout, salmon, grayling, and whitefish);
 2 all species of the genus stizostedion (sandpike or sauger
 3 and walleyed pike or yellowpike perch); all species of the
 4 genus esox (northern pike, pickerel, and muskellunge); all
 5 species of the genus micropterus (bass); all species of the
 6 genus polyodon (padulefish); all species of the family
 7 acipenseridae (sturgeon); all species of the genus Iota
 8 (burbot or ling); and the species ictalurus punctatus
 9 (channel catfish)†.

10 (7) migratory "Migratory game birds"-- means
 11 waterfowl, including wild ducks, wild geese, brant, and
 12 swans; cranes, including little brown, sandhill, and
 13 whooping cranes; rails, including coots, gallinules, sora,
 14 or other rails; shore birds, including avocets, curlew,
 15 dowitcher, godwits, knots, upland plover, killdeer,
 16 sandpipers, wilson's snipes or jacksnipes, snipes, stilts,
 17 plovers, willets, and yellowlagst.

18 (8) nongame "Nongame birds"-- means all wild birds not
 19 defined herein as upland game birds or migratory game
 20 birds†.

21 (9) nongame "Nongame wildlife"-- means any wild
 22 mammal, bird, amphibian, reptile, fish, mollusk, crustacean,
 23 or other wild animal not otherwise legally classified by
 24 statute or regulation of this state†.

25 (10) open "Open season"-- means the time during which

1 game birds, fish, and game and fur-bearing animals may be
 2 lawfully taken†.

3 (11) person--~~the plural or singular male or female of~~
 4 ~~the case demands, including~~ "Person" means individuals,
 5 associations, partnerships, and corporations--~~unless the~~
 6 ~~context requires otherwise~~†.

7 (12) predatory "Predatory animals"-- means coyote,
 8 weasel, skunk, and civet cat†.

9 (13) upland "Upland game birds"-- means sharptailed
 10 grouse, blue grouse, prairie chicken, sage hen or sage
 11 grouse, fool hen, ruffed grouse, commonly called native
 12 pheasant or native partridge, quail, Chinese pheasant and
 13 Mongolian pheasant, commonly called ring-necked pheasant,
 14 Hungarian partridge, ptarmigan, wild turkey, and chukar
 15 partridge†.

16 (14) wild "Wild buffalo"-- means buffalo or bison which
 17 have not been reduced to captivity."

18 Section 7. Section 87-2-902, MCA, is amended to read:
 19 "87-2-902. Bond of agent and preferred claim of state
 20 for license money. (1) An appointed license agent shall
 21 furnish a corporate surety bond of \$1,000 or in an amount
 22 equal to the value of the licenses, permits, and
 23 certificates received for distribution, the amount to be
 24 fixed at the discretion of the director. The bond shall
 25 secure the faithful performance of the duties imposed on the

1 license agent and the accounting for and payment to the
 2 state of all moneys ~~money~~ received from the sale of hunting
 3 and fishing licenses and any permits or certificates
 4 prescribed by the ~~commission~~ department. The license agent
 5 shall properly account for all unsold licenses, permits, and
 6 certificates annually on April 1 or at any other time at the
 7 request of the director.

8 (2) All money received for the sale of licenses,
 9 permits, and certificates at all times belongs to the state.
 10 In case of an assignment for the benefit of creditors,
 11 receivership, or bankruptcy, the state has a preferred claim
 12 against the assets and estate of a license agent for all
 13 moneys ~~money~~ owed the state."

14 Section 8. Section 87-2-904, MCA, is amended to read:
 15 "87-2-904. Nontransferability of appointments --
 16 revocation and oaths. Appointments of license agents shall
 17 be nontransferable, and each appointment shall be valid only
 18 at the single location of the business as stated on the
 19 certificate of appointment. Such appointments may be
 20 summarily revoked at any time by the director upon
 21 discontinuance of the business at the stated location or for
 22 noncompliance with the provisions of this part or other
 23 regulations. Duly appointed license agents are hereby
 24 authorized to administer oaths to applicants for hunting and
 25 fishing licenses and for other permits and certificates

1 prescribed by the ~~commission~~ department."

2 Section 9. Section 87-3-128, MCA, is amended to read:
 3 "87-3-128. Exceptions -- department personnel. The
 4 provisions of this ~~section~~ chapter relating to methods of
 5 herding, driving, capturing, taking, locating, or
 6 concentrating of fish, game animals, game birds, or
 7 fur-bearing animals do not apply to the department or to any
 8 employee thereof while acting within the scope and course of
 9 the powers and duties of the department."

10 Section 10. Severability. If a part of this act is
 11 invalid, all valid parts that are severable from the invalid
 12 part remain in effect. If a part of this act is invalid in
 13 one or more of its applications, the part remains in effect
 14 in all valid applications that are severable from the
 15 invalid applications.

-End-

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LC 0021

1979 Legislature
Code Commissioner Bill - Summary

House Bill No. 8

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO FISH AND GAME; AMENDING SECTIONS 87-1-105, 87-1-201, 87-1-205, 87-1-403, 87-1-703, 87-2-101, 87-2-902, 87-2-904, AND 87-3-128, MCA.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 87-1-105. "[act]" is changed to "title" to clarify the reference. The "act" referred to is Chapter 193, Laws of 1921, which is considerably narrower than the entire title. "Title" appears to be the better reference.

Section 2. 87-1-201. In subsection (7), "this [act]" is changed to "chapter 2" to provide a simple but reasonably accurate reference. "Act" referred to Chapter 267, Laws of 1955, and the intent would seem to be to include all materials dealing with licenses in the reference.

Sections 3 and 4. 87-1-205 and 87-1-403. Section 87-1-205 is extensively rewritten to mesh the employee grievance procedure with that of other state agencies. The deleted materials in subsections (2) and (3) are contained in the general laws relating to employee grievances. Section 87-1-403 is amended to mesh with the employee grievance procedure.

Section 5. 87-1-703. "Of" is changed to "or" to correct what appears to be a typographical error.

Section 6. 87-2-101. The introductory phrase is rewritten for uniformity and "[act]" is changed to "this chapter and chapter 3" to clarify the reference. In subsection (11), reference to "singular or plural" and "male or female" is deleted as redundant.

LC 0021

Sections 7 and 8. 87-2-902 and 87-2-904. "Commission" is changed to "department" to reflect the intent of Chapter 417, Laws of 1977, which changed "commission" to "department" throughout the fish and game laws. The references to commission in these sections were added in 1977 and hence were not included in Chapter 417.

Section 9. 87-3-128. "[section]" is changed to "chapter" to provide a simplified reference since the "section" referred to was extensively broken apart by recodification. The intent seems to be satisfied.

Approved by Committee
on Judiciary

HOUSE BILL NO. 8

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO FISH AND GAME; AMENDING SECTIONS 87-1-105, 87-1-201, 87-1-205, 87-1-403, 87-1-703, 87-2-101, 87-2-902, 87-2-904, AND 87-3-128, MCA."

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

Section 1. Section 87-1-105, MCA, is amended to read:

"87-1-105. Duty of attorney general and county attorneys. The attorney general of the state is the legal adviser of the department and shall, together with the several county attorneys, enforce the provisions of this [act] title."

Section 2. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) It shall enforce all the laws of the state

respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Moneys ~~Money~~ collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations, or received by the department from any other sources are appropriated to and under control of the department.

(4) It may discharge any appointee or employee of the department for cause at any time.

(5) It may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds which is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the earmarked revenue fund.

(6) It may not issue permits to--anyone to carry

On motion rules suspended,
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1 firearms within this state to anyone except to regularly
2 appointed officers or wardens.

3 (7) The department is hereby authorized to make,
4 promulgate, and enforce such reasonable rules and
5 regulations not inconsistent with the provisions of this
6 ~~act~~ chapter 2 as in its judgment will accomplish the
7 purpose of this ~~act~~ chapter 2.

8 (8) The department is authorized to promulgate rules
9 relative to tagging, possession, or transportation of bear
10 within or without the state."

11 Section 3. Section 87-1-205, MCA, is amended to read:

12 "87-1-205. Grievance procedure. ~~(1)~~ An employee of the
13 department, aggrieved by a serious matter of his employment
14 based upon work conditions, supervision, or the result of an
15 administrative action, who has exhausted all administrative
16 remedies within the department, is entitled to a hearing
17 before the ~~employee appeals board designated by the~~
18 ~~department of administration under the provisions of a~~
19 ~~grievance procedure prescribed by the board for the~~
20 ~~resolution of his grievance~~ board of personnel appeals
21 provided for in 2-15-1705 and subject to the provisions of
22 2-18-1011 through 2-18-1013.

23 ~~(2) Direct or indirect interference, restraint,~~
24 ~~coercion, or retaliation by an employee's supervisor or the~~
25 ~~department against an aggrieved employee because the~~

1 ~~employee has filed or attempted to file a grievance with the~~
2 ~~board shall also be the basis for a grievance and shall~~
3 ~~entitle the employee to a hearing before the board for~~
4 ~~resolution.~~

5 ~~(3) If upon the preponderance of the evidence taken~~
6 ~~at the hearing, the board is of the opinion that the~~
7 ~~employee is aggrieved, it may issue an order to the~~
8 ~~department requiring such action of the department as will~~
9 ~~resolve the employee's grievance. The any order of the board~~
10 ~~shall be is binding upon the department."~~

11 Section 4. Section 87-1-403, MCA, is amended to read:

12 "87-1-403. Regulation of employees by director. ~~(1)~~
13 The director may suspend without pay, reduce in rank, or
14 remove any employee at any time for cause, providing that
15 any person who has been continuously employed for 1 year or
16 more immediately preceding any suspension or discharge may
17 demand and receive a hearing before the department on ~~the~~
18 charges filed. The action of the department resulting from
19 such a hearing shall ~~be final~~ constitutes final
20 administrative action for purposes of filing a grievance
21 with the board of personnel appeals as provided in 87-1-205.

22 (2) The director shall rate all employees on the basis
23 of merit and efficiency in accordance with ~~such~~ rules as
24 adopted by the department ~~may adopt~~ to secure a proper
25 rating of each person employed. The salaries of employees

1 shall be fixed by the department, and travel expenses, as
 2 provided for in 2-18-501 through 2-18-503, as amended, shall
 3 be allowed employees while upon official business away from
 4 designated headquarters."

5 Section 5. Section 87-1-703, MCA, is amended to read:

6 "87-1-703. Cooperative agreements on federally owned
 7 land. The department, in the name of the state and with the
 8 approval of the governor, shall have the power to enter into
 9 cooperative agreements on federally owned lands with the
 10 government of the United States or any department or bureau
 11 thereof or with an individual or individuals, private
 12 corporations, or partnerships for the purpose of carrying on
 13 any fish restoration projects created and established under
 14 the provisions of 87-1-701 through 87-1-703 and shall have
 15 the power to acquire by purchase, either by cash or upon
 16 installments, or lease or by gift or by devise or
 17 individually or in conjunction with the government of the
 18 United States or some department or bureau thereof, such
 19 lands or other property of or interest therein as may be
 20 necessary for the purpose of carrying on any fish
 21 restoration and management projects created and established
 22 under the provisions of said Dingell-Johnson bill of the
 23 congress of the United States, and the state of Montana does
 24 reserve to itself, acting through its legislature, the right
 25 to direct the department to abandon any fish restoration and

1 management projects created and established as the state of
 2 Montana may in its judgment think proper. The department
 3 shall have no power to exercise the right of eminent domain
 4 to condemn or acquire property under 87-1-701 through
 5 87-1-703."

6 Section 6. Section 87-2-101, MCA, is amended to read:

7 "87-2-101. Definitions. ~~For the purpose of this [act]~~
 8 ~~the following shall be construed, respectively, to mean As~~
 9 ~~used in this chapter and chapter 3, unless the context~~
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 13 of or attempting to take fish by hook and single line or
 14 single rod, in hand or within immediate control.

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 16 which game birds, fish, and game and fur-bearing animals may
 17 not be lawfully taken.

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 19 game commission.

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 21 or sable, otter, muskrat, fisher, mink, bobcat, and beaver.

22 (5) game "Game animals"-- means deer, elk, moose,
 23 antelope, caribou, mountain sheep, mountain goat, mountain
 24 lion, and bear.

25 (6) game "Game fish"-- means all species of the family

1 salmonidae (chars, trout, salmon, grayling, and whitefish);
 2 all species of the genus stizostedion (sandpike or sauger
 3 and walleyed pike or yellowpike perch); all species of the
 4 genus esox (northern pike, pickerel, and muskellunge); all
 5 species of the genus micropterus (bass); all species of the
 6 genus polyodon (paddlefish); all species of the family
 7 acipenseridae (sturgeon); all species of the genus lota
 8 (burbot or ling); and the species ictalurus punctatus
 9 (channel catfish)†.

10 (7) migratory "Migratory game birds"-- means
 11 waterfowl, including wild ducks, wild geese, brant, and
 12 swans; cranes, including little brown, sandhill, and
 13 whooping cranes; rails, including coots, gallinules, sora,
 14 or other rails; shore birds, including avocets, curlew,
 15 dowitcher, godwits, knots, upland plover, killdeer,
 16 sandpipers, wilson's snipes or jacksnipes, snipes, stilts,
 17 plovers, willets, and yellowlegs†.

18 (8) nongame "Nongame birds"-- means all wild birds not
 19 defined herein as upland game birds or migratory game
 20 birds†.

21 (9) nongame "Nongame wildlife"-- means any wild
 22 mammal, bird, amphibian, reptile, fish, mollusk, crustacean,
 23 or other wild animal not otherwise legally classified by
 24 statute or regulation of this state†.

25 (10) open "Open season"-- means the time during which

1 game birds, fish, and game and fur-bearing animals may be
 2 lawfully taken.

3 (11) ~~person--the plural or singular, male or female, or~~
 4 ~~the case demands, including "Person" means~~ individuals,
 5 associations, partnerships, and corporations, ~~unless the~~
 6 ~~context requires otherwise~~†.

7 (12) predatory "Predatory animals"-- means coyote,
 8 weasel, skunk, and civet cat†.

9 (13) upland "Upland game birds"-- means sharptailed
 10 grouse, blue grouse, prairie chicken, sage hen or sage
 11 grouse, fool hen, ruffed grouse, commonly called native
 12 pheasant or native partridge, quail, Chinese pheasant and
 13 Mongolian pheasant, commonly called ring-necked pheasant,
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16 (14) wild "Wild buffalo"-- means buffalo or bison which
 17 have not been reduced to captivity."

18 Section 7. Section 87-2-902, MCA, is amended to read:

19 "87-2-902. Bond of agent and preferred claim of state
 20 for license money. (1) An appointed license agent shall
 21 furnish a corporate surety bond of \$1,000 or in an amount
 22 equal to the value of the licenses, permits, and
 23 certificates received for distribution; the amount to be
 24 fixed at the discretion of the director. The bond shall
 25 secure the faithful performance of the duties imposed on the

1 license agent and the accounting for and payment to the
 2 state of all moneys ~~money~~ received from the sale of hunting
 3 and fishing licenses and any permits or certificates
 4 prescribed by the ~~commission~~ department. The license agent
 5 shall properly account for all unsold licenses, permits, and
 6 certificates annually on April 1 or at any other time at the
 7 request of the director.

8 (2) All money received for the sale of licenses,
 9 permits, and certificates at all times belongs to the state.
 10 In case of an assignment for the benefit of creditors,
 11 receivership, or bankruptcy, the state has a preferred claim
 12 against the assets and estate of a license agent for all
 13 moneys ~~money~~ owed the state."

14 Section 8. Section 87-2-904, MCA, is amended to read:
 15 "87-2-904. Nontransferability of appointments --
 16 revocation and oaths. Appointments of license agents shall
 17 be nontransferable, and each appointment shall be valid only
 18 at the single location of the business as stated on the
 19 certificate of appointment. Such appointments may be
 20 summarily revoked at any time by the director upon
 21 discontinuance of the business at the stated location or for
 22 noncompliance with the provisions of this part or other
 23 regulations. Duly appointed license agents are hereby
 24 authorized to administer oaths to applicants for hunting and
 25 fishing licenses and for other permits and certificates

1 prescribed by the ~~commission~~ department."

2 Section 9. Section 87-3-128, MCA, is amended to read:
 3 "87-3-128. Exceptions -- department personnel. The
 4 provisions of this ~~[section]~~ chapter relating to methods of
 5 herding, driving, capturing, taking, locating, or
 6 concentrating of fish, game animals, game birds, or
 7 fur-bearing animals do not apply to the department or to any
 8 employee thereof while acting within the scope and course of
 9 the powers and duties of the department."

10 Section 10. Severability. If a part of this act is
 11 invalid, all valid parts that are severable from the invalid
 12 part remain in effect. If a part of this act is invalid in
 13 one or more of its applications, the part remains in effect
 14 in all valid applications that are severable from the
 15 invalid applications.

-End-

1 HOUSE BILL NO. 8
 2 INTRODUCED BY MARKS
 3 BY REQUEST OF THE CODE COMMISSIONER
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LAWS RELATING TO FISH AND GAME; AMENDING
 7 SECTIONS 87-1-105, 87-1-201, 87-1-205, 87-1-403, 87-1-703,
 8 87-2-101, 87-2-902, 87-2-904, AND 87-3-128, MCA."

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

11 Section 1. Section 87-1-105, MCA, is amended to read:
 12 "87-1-105. Duty of attorney general and county
 13 attorneys. The attorney general of the state is the legal
 14 adviser of the department and shall, together with the
 15 several county attorneys, enforce the provisions of this
 16 [act] title."

17 Section 2. Section 87-1-201, MCA, is amended to read:
 18 "87-1-201. Powers and duties. (1) The department shall
 19 supervise all the wildlife, fish, game, game and nongame
 20 birds, waterfowl, and the game and fur-bearing animals of
 21 the state. It possesses all powers necessary to fulfill the
 22 duties prescribed by law and to bring actions in the proper
 23 courts of this state for the enforcement of the fish and
 24 game laws and the rules adopted by the department.

25 (2) It shall enforce all the laws of the state

1 respecting the protection, preservation, and propagation of
 2 fish, game, fur-bearing animals, and game and nongame birds
 3 within the state.

4 (3) It shall have the exclusive power to spend for the
 5 protection, preservation, and propagation of fish, game,
 6 fur-bearing animals, and game and nongame birds all state
 7 funds collected or acquired for that purpose, whether
 8 arising from state appropriation, licenses, fines, gifts, or
 9 otherwise. Moneys ~~Money~~ collected or received from the sale
 10 of hunting and fishing licenses or permits, from the sale of
 11 seized game or hides, from fines or damages collected for
 12 violations of the fish and game laws, or from
 13 appropriations or received by the department from any other
 14 sources are appropriated to and under control of the
 15 department.

16 (4) It may discharge any appointee or employee of the
 17 department for cause at any time.

18 (5) It may dispose of all property owned by the state
 19 used for the protection, preservation, and propagation of
 20 fish, game, fur-bearing animals, and game and nongame birds
 21 which is of no further value or use to the state and shall
 22 turn over the proceeds from the sale to the state treasurer
 23 to be credited to the fish and game account in the earmarked
 24 revenue fund.

25 (6) It may not issue permits to--anyone to carry

1 firearms within this state ~~to anyone~~ except to regularly
2 appointed officers or wardens.

3 (7) The department is hereby authorized to make,
4 promulgate, and enforce such reasonable rules and
5 regulations not inconsistent with the provisions of this
6 ~~[act]~~ chapter 2 as in its judgment will accomplish the
7 purpose of this ~~[act]~~ chapter 2.

8 (8) The department is authorized to promulgate rules
9 relative to tagging, possession, or transportation of bear
10 within or without the state."

11 Section 3. Section 87-1-205, MCA, is amended to read:

12 "87-1-205. Grievance procedure. ~~(1)~~ An employee of the
13 department, aggrieved by a serious matter of his employment
14 based upon work conditions, supervision, or the result of an
15 administrative action, who has exhausted all administrative
16 remedies within the department, is entitled to a hearing
17 before the ~~employee appeals board designated by the~~
18 ~~department of administration under the provisions of a~~
19 ~~grievance procedure prescribed by the board for the~~
20 ~~resolution of his grievance~~ board of personnel appeals
21 provided for in 2-15-1705 and subject to the provisions of
22 2-18-1011 through 2-18-1013.

23 ~~(2) Direct or indirect interference, restraint,~~
24 ~~coercion, or retaliation by an employee's supervisor or the~~
25 ~~department against an aggrieved employee because the~~

1 ~~employee has filed or attempted to file a grievance with the~~
2 ~~board shall also be the basis for a grievance and shall~~
3 ~~entitle the employee to a hearing before the board for~~
4 ~~resolution.~~

5 ~~(3) If upon the preponderance of the evidence taken~~
6 ~~at the hearing, the board is of the opinion that the~~
7 ~~employee is aggrieved, it may issue an order to the~~
8 ~~department requiring such action of the department as will~~
9 ~~resolve the employee's grievance. The Any order of the board~~
10 ~~shall be is binding upon the department."~~

11 Section 4. Section 87-1-403, MCA, is amended to read:

12 "87-1-403. Regulation of employees by director. ~~(1)~~
13 The director may suspend without pay, reduce in rank, or
14 remove any employee at any time for cause, providing that
15 any person who has been continuously employed for 1 year or
16 more immediately preceding any suspension or discharge may
17 demand and receive a hearing before the department on the
18 charges filed. The action of the department resulting from
19 such a hearing shall be final constitutes final
20 administrative action for purposes of filing a grievance
21 with the board of personnel appeals as provided in 87-1-205.

22 ~~(2) The director shall rate all employees on the basis~~
23 ~~of merit and efficiency in accordance with such rules as~~
24 ~~adopted by the department may adopt to secure a proper~~
25 ~~rating of each person employed. The salaries of employees~~

1 shall be fixed by the department, and travel expenses, as
 2 provided for in 2-18-501 through 2-18-503, as amended, shall
 3 be allowed employees while upon official business away from
 4 designated headquarters."

5 Section 5. Section 87-1-703, MCA, is amended to read:

6 "87-1-703. Cooperative agreements on federally owned
 7 land. The department, in the name of the state and with the
 8 approval of the governor, shall have the power to enter into
 9 cooperative agreements on federally owned lands with the
 10 government of the United States or any department or bureau
 11 thereof or with an individual or individuals, private
 12 corporations, or partnerships for the purpose of carrying on
 13 any fish restoration projects created and established under
 14 the provisions of 87-1-701 through 87-1-703 and shall have
 15 the power to acquire by purchase, either by cash or upon
 16 installments, or lease or by gift or by devise or
 17 individually or in conjunction with the government of the
 18 United States or some department or bureau thereof, such
 19 lands or other property of or interest therein as may be
 20 necessary for the purpose of carrying on any fish
 21 restoration and management projects created and established
 22 under the provisions of said Dingell-Johnson bill of the
 23 congress of the United States, and the state of ~~Montana~~ does
 24 reserve to itself, acting through its legislature, the right
 25 to direct the department to abandon any fish restoration and

1 management projects created and established as the state of
 2 Montana may in its judgment think proper. The department
 3 shall have no power to exercise the right of eminent domain
 4 to condemn or acquire property under 87-1-701 through
 5 87-1-703."

6 Section 6. Section 87-2-101, MCA, is amended to read:

7 "~~87-2-101. Definitions. For the purpose of this [act]~~
 8 ~~the following shall be construed, respectively, to mean~~ As
 9 ~~used in this chapter and chapter 3, unless the context~~
 10 ~~clearly indicates otherwise, the following definitions~~
 11 apply:

12 (1) ~~angling~~ "Angling" or "fishing"-- means the taking
 13 of or attempting to take fish by hook and single line or
 14 single rod, in hand or within immediate control.

15 (2) ~~closed~~ "closed season"-- means the time during
 16 which game birds, fish, and game and fur-bearing animals may
 17 not be lawfully taken.

18 (3) ~~commission~~ "Commission"-- means the state fish and
 19 game commission.

20 (4) ~~fur-bearing~~ "Fur-bearing animals"-- means marten
 21 or sable, otter, muskrat, fisher, mink, bobcat, and beaver.

22 (5) ~~game~~ "Game animals"-- means deer, elk, moose,
 23 antelope, caribou, mountain sheep, mountain goat, mountain
 24 lion, and bear.

25 (6) ~~game~~ "Game fish"-- means all species of the family

1 salmonidae (charrs, trout, salmon, grayling, and whitefish);
 2 all species of the genus stizostedion (sandpike or sauger
 3 and walleyed pike or yellowpike perch); all species of the
 4 genus esox (northern pike, pickerel, and muskellunge); all
 5 species of the genus micropterus (bass); all species of the
 6 genus polyodon (paddlefish); all species of the family
 7 acipenseridae (sturgeon); all species of the genus iota
 8 (burbot or ling); and the species ictalurus punctatus
 9 (channel catfish);

10 (7) migratory "Migratory game birds"-- means
 11 waterfowl, including wild ducks, wild geese, brant, and
 12 swans; cranes, including little brown, sandhill, and
 13 whooping cranes; rails, including coots, gallinules, soras,
 14 or other rails; shore birds, including avocets, curlew,
 15 dowitcher, godwits, knots, upland plover, killdeer,
 16 sandpipers, wilson's snipes or jacksnipes, snipes, stilts,
 17 plovers, willets, and yellowlegs;

18 (8) nongame "Nongame birds"-- means all wild birds not
 19 defined herein as upland game birds or migratory game
 20 birds;

21 (9) nongame "Nongame wildlife"-- means any wild
 22 mammal, bird, amphibian, reptile, fish, mollusk, crustacean,
 23 or other wild animal not otherwise legally classified by
 24 statute or regulation of this state;

25 (10) open "Open season"-- means the time during which

1 game birds, fish, and game and fur-bearing animals may be
 2 lawfully taken;

3 (11) person--the-plural-or-singular--male-or-female--of
 4 the--case--demands--including "Person"--means individuals,
 5 associations, partnerships, and corporations--unless--the
 6 context--requires--otherwise;

7 (12) predatory "Predatory animals"-- means coyote,
 8 weasel, skunk, and civet cat;

9 (13) upland "Upland game birds"-- means sharptailed
 10 grouse, blue grouse, prairie chicken, sage hen or sage
 11 grouse, fool hen, ruffed grouse, commonly called native
 12 pheasant or native partridge, quail, Chinese pheasant and
 13 Mongolian pheasant, commonly called ring-necked pheasant,
 14 Hungarian partridge, ptarmigan, wild turkey, and chukar
 15 partridge;

16 (14) wild "Wild buffalo"-- means buffalo or bison which
 17 have not been reduced to captivity."

18 Section 7. Section 87-2-902, MCA, is amended to read:
 19 "87-2-902. Bond of agent and preferred claim of state
 20 for license money. (1) An appointed license agent shall
 21 furnish a corporate surety bond of \$1,000 or in an amount
 22 equal to the value of the licenses, permits, and
 23 certificates received for distribution, the amount to be
 24 fixed at the discretion of the director. The bond shall
 25 secure the faithful performance of the duties imposed on the

1 license agent and the accounting for and payment to the
 2 state of all moneys ~~money~~ received from the sale of hunting
 3 and fishing licenses and any permits or certificates
 4 prescribed by the ~~commission~~ department. The license agent
 5 shall properly account for all unsold licenses, permits, and
 6 certificates annually on April 1 or at any other time at the
 7 request of the director.

8 (2) All money received for the sale of licenses,
 9 permits, and certificates at all times belongs to the state.
 10 In case of an assignment for the benefit of creditors,
 11 receivership, or bankruptcy, the state has a preferred claim
 12 against the assets and estate of a license agent for all
 13 moneys ~~money~~ owed the state."

14 Section 8. Section 87-2-904, MCA, is amended to read:

15 "87-2-904. Nontransferability of appointments --
 16 revocation and oaths. Appointments of license agents shall
 17 be nontransferable, and each appointment shall be valid only
 18 at the single location of the business as stated on the
 19 certificate of appointment. Such appointments may be
 20 summarily revoked at any time by the director upon
 21 discontinuance of the business at the stated location or for
 22 noncompliance with the provisions of this part or other
 23 regulations. Only appointed license agents are hereby
 24 authorized to administer oaths to applicants for hunting and
 25 fishing licenses and for other permits and certificates

1 prescribed by the ~~commission~~ department."

2 Section 9. Section 87-3-128, MCA, is amended to read:

3 "87-3-128. Exceptions -- department personnel. The
 4 provisions of this ~~section~~ chapter relating to methods of
 5 herding, driving, capturing, taking, locating, or
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