

HOUSE BILL NO. 7  
INTRODUCED BY PECK, NATHE

IN THE HOUSE

DECEMBER 30, 1988	INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.
JANUARY 2, 1989	FIRST READING.
JANUARY 4, 1989	ON MOTION BY CHIEF SPONSOR, REPRESENTATIVE NATHE ADDED AS SPONSOR.
JANUARY 6, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.  STATEMENT OF INTENT ADOPTED.
JANUARY 7, 1989	PRINTING REPORT.  ON MOTION, CONSIDERATION PASSED FOR THE DAY.
JANUARY 9, 1989	SECOND READING, DO PASS AS AMENDED.
JANUARY 10, 1989	ENGROSSING REPORT.
JANUARY 11, 1989	THIRD READING, PASSED. AYES, 89; NOES, 5.  TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.
JANUARY 26, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.  STATEMENT OF INTENT AMENDED.

JANUARY 28, 1989

PASS CONSIDERATION.

FEBRUARY 1, 1989

PASS CONSIDERATION.

FEBRUARY 2, 1989

SECOND READING, CONCURRED IN AS  
AMENDED.

FEBRUARY 4, 1989

THIRD READING, CONCURRED IN.  
AYES, 47; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

FEBRUARY 27, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

FEBRUARY 28, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1                   HOUSE       BILL NO. 7  
2   INTRODUCED BY       PECK  
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4   A BILL FOR AN ACT ENTITLED: "AN ACT PROMOTING THE SAFETY OF  
5   UNDERWATER DIVERS BY REGULATING THE OPERATION OF MOTORBOATS  
6   IN AREAS WHERE AN INTERNATIONAL "DIVER-DOWN" SYMBOL IS  
7   DISPLAYED; PROVIDING FOR A PENALTY AND RESTITUTION; AND  
8   AMENDING SECTIONS 23-2-507 AND 23-2-525, MCA."  
9  
10  BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11       **Section 1.** Section 23-2-525, MCA, is amended to read:  
12       "23-2-525. Restricted areas. (1) No person shall so  
13   anchor a vessel or other obstacle for fishing or pleasure  
14   purposes on any body of water over which the state has  
15   jurisdiction in such a position as to obstruct a passageway  
16   ordinarily used by other vessels.  
17       (2) No person shall operate a pleasure vessel within  
18   20 feet of the exterior boundary of a water area which is  
19   clearly marked by buoys or some other distinguishing device  
20   as a bathing or swimming area. Swimming areas shall be  
21   marked with white buoys having international orange markings  
22   in conformance with the uniform state waterway marking  
23   system by the owners of such areas.  
24       (3) No person shall, without permission, operate or  
25   knowingly permit any person to operate a vessel within 50

1   feet of a person engaged in fishing, unless unavoidable.  
2       (4) (a) No person shall operate a motorboat upon the  
3   waters of this state within 100 yards of a tow-float or buoy  
4   displaying the international "diver-down" symbol, red with a  
5   white slash, on a flag or other marker.  
6       (b) If necessary for the safety of the motorboat  
7   operator, the motorboat may enter the 100-yard safety zone  
8   by use of sail or oar. In an emergency, the operator may  
9   use power but may not exceed no-wake speed. The burden of  
10  proving that an emergency exists is on the operator."  
11       **Section 2.** Section 23-2-507, MCA, is amended to read:  
12       "23-2-507. Penalty. (1) Violations of any section of  
13   this part, except 23-2-526(3), unless otherwise specified  
14   shall be a misdemeanor and be punishable by fine of not less  
15   than \$15 or more than \$500 or by imprisonment up to 6 months  
16   or by both such fine and imprisonment. All fine and bond  
17   forfeitures, except those paid to a justice's court, shall  
18   be transmitted to the state treasurer, who shall deposit  
19   such fines and forfeitures in the motorboat account of an  
20   earmarked fund. The moneys shall be used only by the  
21   department for enforcement of this part, as amended.  
22       (2) The penalty for a violation of 23-2-525(4) must  
23   include restitution to the diver if damage to his property  
24   occurs."

-End-

-2-

INTRODUCED BILL  
HB 7

APPROVED BY COMM.  
ON FISH AND GAME

STATEMENT OF INTENT

HOUSE BILL 7

House Fish and Game Committee

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5 A statement of intent is required for this bill because  
6 23-2-525(4)(c) grants rulemaking authority to the fish and  
7 game commission. It is intended that the commission may,  
8 after a public hearing, establish areas where, because of  
9 diver safety or water traffic, underwater diving is not  
10 allowed.

SECOND READING

HB7

## HOUSE BILL NO. 7

INTRODUCED BY PECK, NATHE

A BILL FOR AN ACT ENTITLED: "AN ACT PROMOTING THE SAFETY OF UNDERWATER DIVERS BY REGULATING THE OPERATION OF MOTORBOATS IN AREAS WHERE AN INTERNATIONAL "DIVER-DOWN" SYMBOL IS DISPLAYED; GRANTING RULEMAKING AUTHORITY TO THE FISH AND GAME COMMISSION TO DETERMINE NONDIVING AREAS; PROVIDING FOR A PENALTY AND RESTITUTION; AND AMENDING SECTIONS 23-2-507 AND 23-2-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 23-2-525, MCA, is amended to read:

"23-2-525. Restricted areas. (1) No person shall so anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in such a position as to obstruct a passageway ordinarily used by other vessels.

(2) No person shall operate a pleasure vessel within 20 feet of the exterior boundary of a water area which is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas shall be marked with white buoys having international orange markings in conformance with the uniform state waterway marking

system by the owners of such areas.

(3) No person shall, without permission, operate or knowingly permit any person to operate a vessel within 50 feet of a person engaged in fishing, unless unavoidable.

(4) (a) No person shall operate a motorboat upon the waters of this state within 100 yards FEET of a tow-float or buoy displaying the international "diver-down" symbol, red with a white slash, on a flag or other marker.

(b) ~~if necessary for the safety of the motorboat operator, the~~ THE motorboat may enter the 100-yard 100-FOOT safety zone by use of sail or oar. In an emergency, the operator may use power but may not exceed no-wake speed. The burden of proving that an emergency exists is on the operator.

(C) THE FISH AND GAME COMMISSION MAY BY RULE DETERMINE AREAS WHERE ESTABLISHMENT OF A 100-FOOT SAFETY ZONE IS NOT ALLOWED IN ORDER TO PROVIDE FOR DIVER SAFETY OR THE REGULATION OF WATER TRAFFIC."

**Section 2.** Section 23-2-507, MCA, is amended to read:

"23-2-507. Penalty. (1) Violations of any section of this part, except 23-2-526(3), unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than \$15 or more than \$500 or by imprisonment up to 6 months or by both such fine and imprisonment. All fine and bond forfeitures, except those paid to a justice's court, shall

1 be transmitted to the state treasurer, who shall deposit  
2 such fines and forfeitures in the motorboat account of an  
3 earmarked fund. The moneys shall be used only by the  
4 department for enforcement of this part, as amended.

5 (2) The penalty for a violation of 23-2-525(4) must  
6 include restitution to the diver if damage to his property  
7 occurs."

8 NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT]  
9 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 7

3 House Fish and Game Committee

4

5 A statement of intent is required for this bill because  
6 23-2-525(4)(c) grants rulemaking authority to the fish and  
7 game commission. It is intended that the commission may,  
8 after a public hearing, establish areas where, because of  
9 diver safety or water traffic, underwater diving is not  
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A BILL FOR AN ACT ENTITLED: "AN ACT PROMOTING THE SAFETY OF UNDERWATER DIVERS BY REGULATING THE OPERATION OF MOTORBOATS IN AREAS WHERE AN INTERNATIONAL "DIVER-DOWN" SYMBOL IS DISPLAYED; GRANTING RULEMAKING AUTHORITY TO THE FISH AND GAME COMMISSION TO DETERMINE NONDIVING AREAS; PROVIDING FOR A PENALTY AND RESTITUTION UNDER SECTIONS 46-18-241 THROUGH 46-18-249, MCA; AND AMENDING SECTIONS 23-2-507 AND 23-2-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 23-2-525, MCA, is amended to read:

"23-2-525. Restricted areas. (1) No person shall so anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in such a position as to obstruct a passageway ordinarily used by other vessels.

(2) No person shall operate a pleasure vessel within 20 feet of the exterior boundary of a water area which is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas shall be marked with white buoys having international orange markings in conformance with the uniform state waterway marking

system by the owners of such areas.

(3) No person shall, without permission, operate or knowingly permit any person to operate a vessel within 50 feet of a person engaged in fishing, unless unavoidable.

(4) (a) No person shall PURPOSELY, KNOWINGLY, OR NEGLIGENTLY operate a motorboat upon the waters of this state within 100 yards FEET of a tow-float or buoy displaying the international "diver-down" symbol, red with a white slash, on a flag or other marker.

(b) ~~if necessary for the safety of the motorboat operator, the~~ THE motorboat may enter the 100-yard 100-FOOT safety zone by use of sail or oar. In an emergency OR IF THERE IS INSUFFICIENT WATER ON EITHER SIDE OF THE 100-FOOT SAFETY ZONE TO PASS BY AND STAY OUT OF THE ZONE, the operator may use power WITHIN THE ZONE but may not exceed no-wake speed. The burden of proving that an emergency exists OR THAT THERE IS INSUFFICIENT WATER is on the operator.

(C) THE FISH AND GAME COMMISSION MAY BY RULE DETERMINE AREAS WHERE ESTABLISHMENT OF A 100-FOOT SAFETY ZONE IS NOT ALLOWED IN ORDER TO PROVIDE FOR DIVER SAFETY OR THE REGULATION OF WATER TRAFFIC."

**Section 2.** Section 23-2-507, MCA, is amended to read:

"23-2-507. Penalty. (1) Violations of any section of this part, except 23-2-526(3), unless otherwise specified



1 shall be a misdemeanor and be punishable by fine of not less  
2 than \$15 or more than \$500 or by imprisonment up to 6 months  
3 or by both such fine and imprisonment. All fine and bond  
4 forfeitures, except those paid to a justice's court, shall  
5 be transmitted to the state treasurer, who shall deposit  
6 such fines and forfeitures in the motorboat account of an  
7 earmarked fund. The moneys shall be used only by the  
8 department for enforcement of this part, as amended.

9 ~~(2) The penalty for a violation of IF 23-2-525(4) must~~  
10 ~~include restitution to the diver if damage to his property~~  
11 ~~occurs: IS VIOLATED, 46-18-241 THROUGH 46-18-249 APPLY,~~  
12 ~~EXCEPT THAT THE SENTENCING COURT SHALL ORDER RESTITUTION AND~~  
13 ~~SHALL DO SO REGARDLESS OF THE COURT'S DISPOSITION OF THE~~  
14 ~~VIOLATOR."~~

15 NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT]  
16 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

SENATE STANDING COMMITTEE REPORT

January 25, 1989

MR. PRESIDENT:

We, your committee on Fish and Game, having had under consideration HB 7 (third reading copy -- blue), respectfully report that HB 7 be amended and as so amended be concurred in:

Sponsor: Peck (Nathe)

1. Statement of intent, line 7.

Following: "game commission."

Insert: "The department shall, when adopting rules, consult with law enforcement agencies, organizations representing diving interests, and search and rescue organizations within the state in order for these organizations and agencies to assist with adopting rules that will be appropriate for their activities and duties."

Move: Statement of intent to page 1, line 12.

2. Title, line 6.

Strike: "AN INTERNATIONAL"

Insert: "A"

3. Page 2, line 8.

Strike: "the international"

Insert: "a"

AND AS AMENDED BE CONCURRED IN

Signed:

  
Elmer D. Severson, Chairman

Statement of Intent attached.

SENATE

## HOUSE BILL NO. 7

INTRODUCED BY PECK, NATHE

A BILL FOR AN ACT ENTITLED: "AN ACT PROMOTING THE SAFETY OF UNDERWATER DIVERS BY REGULATING THE OPERATION OF MOTORBOATS IN AREAS WHERE ~~AN--INTERNATIONAL~~ A "DIVER-DOWN" SYMBOL IS DISPLAYED; GRANTING RULEMAKING AUTHORITY TO THE FISH AND GAME COMMISSION TO DETERMINE NONDIVING AREAS; PROVIDING FOR A PENALTY AND RESTITUTION UNDER SECTIONS 46-18-241 THROUGH 46-18-249, MCA; AND AMENDING SECTIONS 23-2-507 AND 23-2-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because 23-2-525(4)(c) grants rulemaking authority to the fish and game commission. THE DEPARTMENT SHALL, WHEN ADOPTING RULES, CONSULT WITH LAW ENFORCEMENT AGENCIES, ORGANIZATIONS REPRESENTING DIVING INTERESTS, AND SEARCH AND RESCUE ORGANIZATIONS WITHIN THE STATE IN ORDER FOR THESE ORGANIZATIONS AND AGENCIES TO ASSIST WITH ADOPTING RULES THAT WILL BE APPROPRIATE FOR THEIR ACTIVITIES AND DUTIES. It is intended that the commission may, after a public hearing, establish areas where, because of diver safety or water traffic, underwater diving is not allowed.

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

**Section 1.** Section 23-2-525, MCA, is amended to read:

"23-2-525. Restricted areas. (1) No person shall so anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in such a position as to obstruct a passageway ordinarily used by other vessels.

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(3) No person shall, without permission, operate or knowingly permit any person to operate a vessel within 50 feet of a person engaged in fishing, unless unavoidable.

(4) (a) No person shall PURPOSELY, KNOWINGLY, OR NEGLIGENTLY operate a motorboat upon the waters of this state within 100 yards FEET of a tow-float or buoy displaying the-international A "diver-down" symbol, red with a white slash, on a flag or-other-marker.

(b) If--necessary--for--the--safety--of--the--motorboat operator,--the THE motorboat may enter the 100-yard 100-FOOT safety zone by use of sail or oar. In an emergency OR IF

1 THERE IS INSUFFICIENT WATER ON EITHER SIDE OF THE 100-FOOT  
 2 SAFETY ZONE TO PASS BY AND STAY OUT OF THE ZONE, the  
 3 operator may use power WITHIN THE ZONE but may not exceed  
 4 no-wake speed. The burden of proving that an emergency  
 5 exists OR THAT THERE IS INSUFFICIENT WATER is on the  
 6 operator.

7 (C) THE FISH AND GAME COMMISSION MAY BY RULE DETERMINE  
 8 AREAS WHERE ESTABLISHMENT OF A 100-FOOT SAFETY ZONE IS NOT  
 9 ALLOWED IN ORDER TO PROVIDE FOR DIVER SAFETY OR THE  
 10 REGULATION OF WATER TRAFFIC."

11 **Section 2.** Section 23-2-507, MCA, is amended to read:

12 **"23-2-507. Penalty. (1)** Violations of any section of  
 13 this part, except 23-2-526(3), unless otherwise specified  
 14 shall be a misdemeanor and be punishable by fine of not less  
 15 than \$15 or more than \$500 or by imprisonment up to 6 months  
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22 (2) ~~The penalty for a violation of IF 23-2-525(4) must~~  
 23 ~~include--restitution--to-the-diver-if-damage-to-his-property~~  
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 25 EXCEPT THAT THE SENTENCING COURT SHALL ORDER RESTITUTION AND

1 SHALL DO SO REGARDLESS OF THE COURT'S DISPOSITION OF THE  
 2 VIOLATOR."

3 NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT]  
 4 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-