

SENATE BILL 216

Introduced by Van Valkenburg, et al.

1/20	Introduced
1/20	Referred to Fish & Game
1/20	First Reading
2/11	Hearing
2/16	Tabled in Committee

1 *Senate* BILL NO. *214*  
 2 INTRODUCED BY *Van Valkenburg* *Ream*  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 5 SEIZURE AND FORFEITURE OF HUNTING, FISHING, AND TRAPPING  
 6 DEVICES AND CERTAIN OTHER PROPERTY USED OR INTENDED FOR USE  
 7 IN THE SALE OR POSSESSION OF UNLAWFULLY TAKEN WILDLIFE;  
 8 PROVIDING FOR THE DISPOSITION OF FORFEITED PROPERTY; AND  
 9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
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 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 NEW SECTION. Section 1. Definitions. As used in  
 13 [sections 1 through 8], the following definitions apply:  
 14 (1) "Authorized agent" means a person empowered to  
 15 perform law enforcement activities under 87-1-503.  
 16 (2) "Fishing device" means a hook and line, rod and  
 17 reel, net, trap, bow and arrow, seine, gig, or other device  
 18 used to take or kill aquatic life.  
 19 (3) "Hunting device" means a gun, rifle, pistol,  
 20 crossbow, bow and arrow, shotgun, blowgun, slingshot, or  
 21 other device used to take or kill wildlife.  
 22 (4) "Possession" means to hold or control.  
 23 (5) "Sale" means to sell, barter, or otherwise offer  
 24 goods to another for consideration.  
 25 (6) "Trapping device" means a trap, snare, cage, or

1 other device used to take or kill wildlife.  
 2 (7) "Wildlife" means any wild mammal, bird, reptile,  
 3 amphibian, fish, mollusk, crustacean, or other wild animal  
 4 or any part, product, egg, or offspring or the dead body or  
 5 parts thereof.  
 6 NEW SECTION. Section 2. Property subject to  
 7 forfeiture. (1) The following property is subject to  
 8 forfeiture:  
 9 (a) any hunting, fishing, or trapping device, vehicle,  
 10 or conveyance used or operated illegally or attempted to be  
 11 used or operated illegally by a person in taking,  
 12 transporting, or conveying wildlife unlawfully taken in  
 13 violation of 87-3-118;  
 14 (b) money, raw materials, products, and equipment used  
 15 or intended for use in the preparation, possession,  
 16 processing, or delivery of wildlife unlawfully taken in  
 17 violation of 87-3-118; and  
 18 (c) money, negotiable instruments, or anything of value  
 19 furnished or intended to be furnished in exchange for  
 20 wildlife unlawfully taken in violation of 87-3-118.  
 21 (2) Forfeiture of a vehicle or conveyance that is  
 22 encumbered by a bona fide security interest is subject to:  
 23 (a) the interest of the secured party if the secured  
 24 party did not have knowledge of or give consent to a  
 25 violation of 87-3-118; and

(b) the provisions of [sections 7 and 8].

**NEW SECTION. Section 3. When property may be seized.**

(1) A warden or authorized agent shall seize any vehicle or conveyance used or intended to be used to keep, hold, conceal, or transport unlawfully taken wildlife if the warden or authorized agent has probable cause to:

(a) make an arrest for a violation of 87-3-118; or

(b) believe that a vehicle or conveyance has been used or is intended to be used to keep, hold, conceal, or transport unlawfully taken wildlife.

(2) A seized vehicle or conveyance must be delivered immediately to the nearest department regional headquarters and be held as evidence until forfeiture is declared or release ordered.

(3) (a) Property subject to forfeiture under [section 2] may be seized by a warden or authorized agent under a search warrant issued by a district court having jurisdiction over the property.

(b) Property subject to forfeiture under [section 2] may be seized by a warden or authorized agent without a warrant if:

(i) seizure is incident to an arrest or search under a warrant lawfully issued for another purpose or an inspection related to an issued license or an activity required by law to be licensed; or

(ii) the warden or authorized agent has probable cause to believe that the property was used or is intended to be used in violation of 87-3-118.

**NEW SECTION. Section 4. Forfeiture proceedings -- petition -- summons -- service.** A warden or authorized agent who seizes property under the provisions of [section 3] shall, within 30 days of the seizure, file a petition to institute forfeiture proceedings with the clerk of the district court of the county where the seizure occurred. The clerk shall issue a summons at the request of the petitioner and cause the summons to be served upon all owners or claimants of the seized property by one of the following methods:

(1) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure; or

(2) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by:

(a) publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no newspaper of general circulation in that county, by publication in one issue of a newspaper of general circulation in an adjoining county; and

(b) mailing a copy of the petition and summons to the

1 most recent address of the owner or claimant, as shown in  
2 the records of the department of justice.

3 NEW SECTION. Section 5. Limitation on answer to  
4 petition. Within 20 days after service of the petition and  
5 summons or publication of the summons, as provided in  
6 [section 4], the owner or claimant of seized property shall  
7 file a verified answer to the allegations concerning the use  
8 of the property that are contained in the petition. An  
9 extension of the time for filing the answer may not be  
10 granted. Failure to answer within the 20-day period bars the  
11 owner or claimant from presenting evidence at any subsequent  
12 evidentiary hearing unless extraordinary circumstances  
13 exist.

14 NEW SECTION. Section 6. Procedure following answer or  
15 failure to answer -- rebuttable presumption. (1) There is a  
16 rebuttable presumption of forfeiture of property listed in  
17 [section 2(1)] and used in violation of 87-3-118.

18 (2) If a verified answer to a petition is filed within  
19 the 20-day period as provided in [section 5], forfeiture  
20 proceedings must be set for hearing without a jury not less  
21 than 60 days after the answer is filed. Notice of the  
22 hearing must be given in the manner provided in [section 4]  
23 for service of the petition and summons.

24 (3) If a verified answer is not filed within the 20-day  
25 period as provided in [section 5], the district court upon

1 motion shall order the property forfeited to the department.

2 NEW SECTION. Section 7. Proof allowed as rebuttal of  
3 presumption of forfeiture. (1) In order to rebut the  
4 presumption of forfeiture established in [section 6(1)], an  
5 owner or claimant of seized property who has a verified  
6 answer on file shall prove by a preponderance of the  
7 evidence that the property was not used for the purpose  
8 charged or that use of the property occurred without the  
9 owner's or claimant's consent.

10 (2) In order for the claimant of a security interest in  
11 the seized property to rebut the presumption of forfeiture,  
12 the claimant must have a verified answer on file and shall  
13 prove that the security interest is bona fide and that it  
14 was created after a reasonable investigation of the  
15 character and reputation of the purchaser and without  
16 knowledge that the property was used or intended to be used  
17 for the purpose charged.

18 NEW SECTION. Section 8. Disposition of property  
19 following court findings. (1) If the court finds that the  
20 seized property was not used or intended to be used for the  
21 purpose charged or that the property was used or intended to  
22 be used without the knowledge or consent of the owner or  
23 claimant, the court shall order the property released to the  
24 owner or claimant of record as of the date of seizure.

25 (2) If the court finds that the seized property was

1 used or intended to be used for the purpose charged and that  
2 the property was used or intended to be used with the  
3 knowledge or consent of the owner or claimant, the property  
4 must be forfeited to the department for its use or sale.

5 (3) If a claimant with a proven security interest  
6 exists, the department may nevertheless retain the property  
7 for its use or sale if it compensates the holder of the  
8 security interest in the amount of the security interest  
9 outstanding at the time the property is seized.

10 NEW SECTION. **Section 9. Severability.** If a part of  
11 [this act] is invalid, all valid parts that are severable  
12 from the invalid part remain in effect. If a part of [this  
13 act] is invalid in one or more of its applications, the part  
14 remains in effect in all valid applications that are  
15 severable from the invalid applications.

16 NEW SECTION. **Section 10. Codification instruction.**  
17 [Sections 1 through 8] are intended to be codified as an  
18 integral part of Title 87, chapter 1, part 1, and the  
19 provisions of Title 87, chapter 1, part 1, apply to  
20 [sections 1 through 8].

21 NEW SECTION. **Section 11. Effective date.** [This act] is  
22 effective on passage and approval.

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