

1 HOUSE BILL NO. 212

2 INTRODUCED BY K. WAGONER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE TYPES OF FISH AND GAME HARVEST
5 PROTECTED UNDER THE MONTANA CONSTITUTION; PROVIDING LEGISLATIVE INTENT; REVISING
6 DEFINITIONS; AND AMENDING SECTIONS 87-2-101 AND 87-6-101, MCA."

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

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10 **NEW SECTION.** **Section 1. Right to harvest -- legislative intent.** The legislature, mindful of its
11 constitutional obligations under Article II, section 3, of the Montana constitution protecting the inalienable rights
12 of a person to pursue life's basic necessities, enjoy the person's life and liberties, and pursue happiness in all
13 lawful ways, and Article IX, section 7, of the Montana constitution protecting the opportunity for a person to
14 harvest wild fish and wild game animals while not diminishing other private rights, has enacted the laws of this
15 title pertaining to the lawful means of hunting, fishing, and trapping, as defined in 87-2-101 and 87-6-101, as
16 adequate remedies for the preservation of the harvest heritage of the individual citizens of this state.

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

19 **"87-2-101. Definitions.** As used in Title 87, chapter 3, and this chapter, unless the context clearly
20 indicates otherwise, the following definitions apply:

21 (1) "Angling" or "fishing" means to take or harvest fish or the act of a person possessing any instrument,
22 article, or substance for the purpose of taking or harvesting fish in any location that a fish might inhabit.

23 (2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area
24 inhabited by wildlife for the purpose of attracting game animals or game birds.

25 (b) The term does not include:

26 (i) decoys, silhouettes, or other replicas of wildlife body forms;

27 (ii) scents used only to mask human odor; or

28 (iii) types of scents that are approved by the commission for attracting game animals or game birds.

29 (3) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine,
30 northern swift fox, and beaver.

1 (4) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat,
2 mountain lion, bear, and wild buffalo.

3 (5) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and
4 whitefish); all species of the genus Sander (sandpike or sauger and walleyed pike or yellowpike perch); all
5 species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus
6 (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all
7 species of the genus Lota (burbot or ling); the species *Perca flavescens* (yellow perch); all species of the genus
8 *Pomoxis* (crappie); and the species *Ictalurus punctatus* (channel catfish).

9 (6) "Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the act
10 of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of
11 shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this state
12 in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term
13 includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding,
14 killing, chasing, luring, possessing, or capturing.

15 (7) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes,
16 including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

17 (8) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or
18 other animal not otherwise legally classified by statute or regulation of this state.

19 (9) "Open season" means the time during which game birds, game fish, game animals, and fur-bearing
20 animals may be lawfully taken.

21 (10) "Person" means an individual, association, partnership, or corporation.

22 (11) "Predatory animals" means coyote, weasel, skunk, and civet cat.

23 (12) "Trap" means to take or harvest or participate in the taking or harvesting of any wildlife protected by
24 the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take
25 wildlife or to remove wildlife from any of these devices.

26 (13) "Upland game birds" means sharp-tailed grouse, blue grouse, spruce (Franklin) grouse, prairie
27 chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild
28 turkey, and chukar partridge.

29 (14) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."
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1 **Section 3.** Section 87-6-101, MCA, is amended to read:

2 **"87-6-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
3 apply:

4 (1) "Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk, moose,
5 antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or
6 any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be
7 regulated pursuant to Title 87, chapter 4, part 8.

8 (2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be
9 kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative
10 livestock, as authorized under Title 87, chapter 4, part 4.

11 (3) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area
12 inhabited by wildlife for the purpose of attracting game animals or game birds.

13 (b) The term does not include:

14 (i) decoys, silhouettes, or other replicas of wildlife body forms;

15 (ii) scents used only to mask human odor; or

16 (iii) types of scents that are approved by the commission for attracting game animals or game birds.

17 (4) "Closed season" means the time during which game birds, fish, game animals, and fur-bearing
18 animals may not be lawfully taken.

19 (5) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families
20 Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks,
21 domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

22 (6) "Conviction" means a judgment or sentence entered following a guilty plea, a nolo contendere plea,
23 a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized
24 to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person's appearance in
25 court that has not been vacated.

26 (7) "Field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game
27 birds.

28 (8) "Fishing" means to take or harvest fish or the act of a person possessing any instrument, article, or
29 substance for the purpose of taking or harvesting fish in any location that a fish might inhabit.

30 (9) (a) "Fur dealer" means a person engaging in, carrying on, or conducting wholly or in part the business

1 of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or
2 predatory animals.

3 (b) If a fur dealer resides in Montana or if the fur dealer's principal place of business is within the state
4 of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident
5 fur dealers.

6 (10) "Fur farm" means enclosed land upon which furbearers are kept for purposes of obtaining, rearing
7 in captivity, keeping, and selling furbearers or parts of furbearers.

8 (11) (a) "Fur-bearing animal" or "furbearer" means marten or sable, otter, muskrat, fisher, mink, bobcat,
9 lynx, wolverine, northern swift fox, and beaver.

10 (b) As used in Title 87, chapter 4, part 10, "furbearer" does not include fox or mink.

11 (12) "Game animal" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat,
12 mountain lion, bear, and wild buffalo.

13 (13) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and
14 whitefish); all species of the genus Stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all
15 species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus
16 (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all
17 species of the genus Lota (burbot or ling); the species *Perca flavescens* (yellow perch); all species of the genus
18 *Pomoxis* (crappie); and the species *Ictalurus punctatus* (channel catfish).

19 (14) "Hunt" means to pursue, shoot, wound, take, harvest, kill, chase, lure, possess, or capture or the
20 act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of
21 shooting, wounding, taking, harvesting, killing, possessing, or capturing wildlife protected by the laws of this state
22 in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term
23 includes an attempt to take or harvest by any means, including but not limited to pursuing, shooting, wounding,
24 killing, chasing, luring, possessing, or capturing.

25 (15) "Knowingly" has the meaning provided in 45-2-101.

26 (16) "Livestock" includes ostriches, rheas, and emus.

27 (17) "Migratory game bird" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes,
28 including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

29 (18) "Negligently" has the meaning provided in 45-2-101.

30 (19) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or

1 other animal not otherwise legally classified by statute or regulation of this state.

2 (20) "Open season" means the time during which game birds, fish, and game and fur-bearing animals
3 may be lawfully taken.

4 (21) "Participating state" means any state that enacts legislation to become a member of the Interstate
5 Wildlife Violator Compact.

6 (22) "Person" means an individual, association, partnership, and corporation.

7 (23) "Possession" has the meaning provided in 45-2-101.

8 (24) "Predatory animal" means coyote, weasel, skunk, and civet cat.

9 (25) "Purposely" has the meaning provided in 45-2-101.

10 (26) "Raptor" means all birds of the orders Falconiformes and Strigiformes, commonly called falcons,
11 hawks, eagles, ospreys, and owls.

12 (27) "Resident" has the meaning provided in 87-2-102.

13 (28) "Roadside menagerie" means any place where one or more wild animals are kept in captivity for the
14 evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition
15 of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of
16 Montana.

17 (29) "Sale" means a contract by which a person:

18 (a) transfers an interest in either game or fish for a price; or

19 (b) transfers, barter, or exchanges an interest either in game or fish for an article or thing of value.

20 (30) "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The
21 term does not include growing plants or plants harvested for the feeding of livestock.

22 (31) "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving,
23 or preparing all or part of the dead bodies of any wildlife.

24 (32) "Trap" means to take or harvest or participate in the taking or harvesting of any wildlife protected by
25 state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or
26 to remove wildlife from any of these devices.

27 (33) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie
28 chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild
29 turkey, and chukar partridge.

30 (34) "Wild animal" means an animal that is wild by nature as distinguished from common domestic

1 animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

2 (35) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars,
3 lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity
4 for use other than public exhibition.

5 (36) "Wild buffalo" means buffalo or bison that have not been reduced to captivity.

6 (37) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or any facility
7 participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting
8 wild animals for public viewing."

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10 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
11 integral part of Title 87, chapter 1, part 1, and the provisions of Title 87, chapter 1, part 1, apply to [section 1].

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