

HOUSE BILL NO. 375

INTRODUCED BY N. BALLANCE

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE ELK, DEER, AND ANTELOPE DAMAGE REIMBURSEMENT PROGRAM; ESTABLISHING ELIGIBILITY REQUIREMENTS AND ADMINISTRATIVE PROCESS FOR THE PROGRAM; PROVIDING DUTIES FOR DEPARTMENT OF FISH, WILDLIFE, AND PARKS; PROVIDING DUTIES FOR THE FISH, WILDLIFE, AND PARKS COMMISSION; PROVIDING PROGRAM FUNDING; AND AMENDING SECTIONS 87-1-201, 87-1-301, 87-1-303, 87-1-304, AND 87-1-324, MCA."

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

NEW SECTION. Section 1. Elk, deer, and antelope damage reimbursement program. (1) The

commission shall establish and administer a program to reimburse agricultural producers for crop losses or damages caused by elk, deer, and antelope.

(2) (a) The commission shall establish eligibility requirements for reimbursement.

(b) Crop losses and damages must be reimbursed at an amount not to exceed fair market value as determined by the commission.

(c) Other losses may be reimbursed at rates determined by the commission.

(d) A claims process must be established to be used when an agricultural producer suffers a crop loss for which elk, deer, or antelope may be responsible. The claims process must provide a clear and concise method for documenting and processing claims for reimbursement for crop losses.

(3) In administering the elk, deer, and antelope damage reimbursement program, the commission shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete; and

(c) provide payments authorized by the commission for confirmed losses, along with a written explanation for each payment.

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

"87-1-201. Powers and duties. (1) Except as provided in subsection (11), the department shall

1 supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals
2 of the state and may implement voluntary programs that encourage hunting access on private lands and that
3 promote harmonious relations between landowners and the hunting public. The department possesses all powers
4 necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the
5 enforcement of the fish and game laws and the rules adopted by the department.

6 (2) Except as provided in subsection (11), the department shall enforce all the laws of the state
7 regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and
8 game and nongame birds within the state.

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

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

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

21 (6) The department may not issue permits to carry firearms within this state to anyone except regularly
22 appointed officers or wardens.

23 (7) Except as provided in subsection (11), the department is authorized to make, promulgate, and
24 enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its
25 judgment will accomplish the purpose of chapter 2.

26 (8) The department is authorized to promulgate rules relative to tagging, possession, or transportation
27 of bear within or outside of the state.

28 (9) (a) The department shall implement programs that:

29 (i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under
30 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

1 (ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under
2 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the
3 maintenance or recovery of those species;

4 (iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in
5 87-1-322, and maintain elk, deer, and antelope population numbers at or below population estimates as provided
6 in 87-1-323, and consider the impact of elk, deer, and antelope on surrounding agriculture as provided in [section
7 1]. In implementing ~~an elk management plan~~ plans for elk, deer, and antelope, the department shall, as necessary
8 to achieve harvest and population objectives, request that land management agencies open public lands and
9 public roads to public access during the big game hunting season.

10 (iv) in accordance with the forest management plan required by 87-1-622, address fire mitigation, pine
11 beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous
12 acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

13 (b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential
14 candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery
15 of those species with the social and economic impacts of species maintenance or recovery.

16 (c) Any management plan developed by the department pursuant to this subsection (9) is subject to the
17 requirements of Title 75, chapter 1, part 1.

18 (d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a
19 privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

20 (10) The department shall publish an annual game count, estimating to the department's best ability the
21 numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative
22 regions of the state. In preparing the publication, the department may incorporate field observations, hunter
23 reporting statistics, or any other suitable method of determining game numbers. The publication must include an
24 explanation of the basis used in determining the game count.

25 (11) The department may not regulate the use or possession of firearms, firearm accessories, or
26 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

27 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
28 establishment of special archery seasons;

29 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including
30 bows and arrows, traditional handguns, and muzzleloading rifles;

- 1 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);
 2 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or
 3 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h)."

4
 5 **Section 3.** Section 87-1-301, MCA, is amended to read:

6 **"87-1-301. Powers of commission.** (1) Except as provided in subsection ~~(7)~~ (8), the commission:

7 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,
 8 fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment
 9 of all other responsibilities of the department as provided by law;

10 (b) shall establish the hunting, fishing, and trapping rules of the department;

11 (c) except as provided in 87-1-303(3), shall establish the rules of the department governing the use of
 12 lands owned or controlled by the department and waters under the jurisdiction of the department;

13 (d) must have the power within the department to establish wildlife refuges and bird and game preserves;

14 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as
 15 provided in 87-1-209(4);

16 (f) shall review and approve the budget of the department prior to its transmittal to the budget office;

17 (g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but
 18 less than \$5,000; and

19 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided
 20 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as
 21 provided in 87-1-323. In developing or implementing ~~an elk management plan~~ plans for elk, deer, and antelope,
 22 the commission shall consider landowner tolerance and the impact to surrounding agriculture when deciding
 23 whether to restrict elk, deer, or antelope hunting on surrounding public land in a particular hunting district.
 24 Pursuant to [section 1], the commission may reimburse agricultural producers for crop losses or damage caused
 25 by elk, deer, or antelope. As used in this subsection (1)(h), "landowner tolerance" means the written or
 26 documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within
 27 the particular hunting district where a restriction on elk hunting on public property is proposed.

28 (2) The commission may adopt rules regarding the use and type of archery equipment that may be
 29 employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in
 30 archery equipment change.

1 (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons,
2 conditions, programs, or other provisions that the commission considers appropriate to promote or enhance
3 hunting by Montana's youth and persons with disabilities.

4 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

5 (i) separate deer licenses from nonresident elk combination licenses;

6 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the
7 deer tag;

8 (iii) condition the use of the deer licenses; and

9 (iv) limit the number of licenses sold.

10 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and
11 appropriate to regulate the harvest by nonresident big game combination license holders:

12 (i) for the biologically sound management of big game populations of elk, deer, and antelope;

13 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

14 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321
15 through 87-1-325.

16 (5) (a) Subject to the provisions of 87-2-115, the commission may adopt rules establishing license
17 preference systems to distribute hunting licenses and permits:

18 (i) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant
19 who has been unsuccessful for a shorter period of time; and

20 (ii) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(a), "qualifying
21 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by
22 the commission.

23 (b) The commission shall square the number of points purchased by an applicant per species when
24 conducting drawings for licenses and permits.

25 (6) (a) The commission may adopt rules to:

26 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

27 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting
28 districts.

29 (b) The commission shall consider, but is not limited to consideration of, the following factors:

30 (i) harvest of lions by resident and nonresident hunters;

- 1 (ii) history of quota overruns;
- 2 (iii) composition, including age and sex, of the lion harvest;
- 3 (iv) historical outfitter use;
- 4 (v) conflicts among hunter groups;
- 5 (vi) availability of public and private lands; and
- 6 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

7 (7) The commission may adopt rules regarding the elk, deer, and antelope damage reimbursement
 8 program pursuant to [section 1].

9 ~~(7)(8)~~ The commission may not regulate the use or possession of firearms, firearm accessories, or
 10 ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

11 (a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the
 12 establishment of special archery seasons;

13 (b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including
 14 bows and arrows, traditional handguns, and muzzleloading rifles;

15 (c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-6-401(1)(f);

16 (d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

17 (e) the restriction of the use of rifles for bird hunting pursuant to 87-6-401(1)(g) or (1)(h)."

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19 **Section 4.** Section 87-1-303, MCA, is amended to read:

20 "**87-1-303. Rules for use of lands and waters.** (1) Except as provided in ~~87-1-301(7)~~ 87-1-301(8) and
 21 subsection (3) of this section, the commission may adopt and enforce rules governing uses of lands that are
 22 acquired or held under easement by the commission or lands that it operates under agreement with or in
 23 conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public
 24 health, public safety, and protection of property in regulating the use of these lands. All lease and easement
 25 agreements must itemize uses as listed in 87-1-209.

26 (2) Except as provided in ~~87-1-301(7)~~ 87-1-301(8), the commission may adopt and enforce rules
 27 governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally
 28 accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with
 29 a federal or state agency or private owner. These rules must be adopted in the interest of public health, public
 30 safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing,

1 trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the
2 operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats,
3 waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers,
4 and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated
5 pursuant to the authority contained in this section must be areas that are legally accessible to the public. These
6 rules are subject to review and approval by the department of public health and human services with regard to
7 issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

8 (3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity
9 or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land
10 owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through
11 3.

12 (b) The commission may authorize domestic livestock trailing across land owned or controlled by the
13 department that is designated as a wildlife management area. The commission may adopt rules governing the
14 timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are
15 necessary both to enable the trailing of domestic livestock across the designated wildlife management area and
16 to protect and enhance state lands. The rules may not:

17 (i) require a fee for domestic livestock trailing or related activities; or

18 (ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

19 (4) For the purposes of this section, the following definitions apply:

20 (a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not
21 limited to horses, cattle, sheep, goats, and dogs.

22 (b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use
23 of the lands for forage by domestic livestock for a maximum of 96 consecutive hours."
24

25 **Section 5.** Section 87-1-304, MCA, is amended to read:

26 **"87-1-304. Fixing of seasons and bag and possession limits.** (1) Subject to the provisions of
27 87-5-302, the commission may:

28 (a) fix seasons, bag limits, possession limits, and season limits;

29 (b) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing
30 animal as defined by 87-2-101;

1 (c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear,
2 wild buffalo or bison, and wolf by persons holding an archery stamp and the required license, permit, or tag and
3 designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat,
4 mountain lion, bear, wild buffalo or bison, and wolf in those areas;

5 (d) subject to the provisions of ~~87-1-301(7)~~ 87-1-301(8), restrict areas and species to hunting with only
6 specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting
7 opportunities and experiences; and

8 (e) declare areas open to special license holders only and issue special licenses in a limited number
9 when the commission determines, after proper investigation, that a special season is necessary to ensure the
10 maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may
11 declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are
12 causing damage to private property or when a written complaint of damage has been filed with the commission
13 by the owner of that property. In determining to whom special licenses must be issued, the commission may,
14 when more applications are received than the number of animals to be killed, award permits to those chosen
15 under a drawing system. The procedures used for awarding the permits from the drawing system must be
16 determined by the commission.

17 (2) The commission may adopt rules governing the use of livestock and vehicles by archers during
18 special archery seasons.

19 (3) Subject to the provisions of 87-5-302, the commission may divide the state into fish and game
20 districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare
21 a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to
22 hunting, fishing, or trapping.

23 (4) The commission may declare a closed season on any species of game, fish, game birds, or
24 fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or
25 district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited
26 periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking
27 waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds,
28 and nongame birds. The commission may open the area or district upon consent of a majority of the property
29 owners affected.

30 (5) The commission may authorize the director to open or close any special season upon 12 hours'

1 notice to the public.

2 (6) The commission may declare certain fishing waters closed to fishing except by persons under 15
3 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and
4 enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers
5 advisable and consistent with its policies relating to fishing."

6

7 **Section 6.** Section 87-1-324, MCA, is amended to read:

8 **"87-1-324. Sustainable elk, deer, and antelope populations program -- funding.** The department
9 shall use money from the fish and game fund, as described in 87-1-601(3), to implement [section 1] and 87-1-321
10 through 87-1-325."

11

12 NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an
13 integral part of Title 87, chapter 1, part 3, and the provisions of Title 87, chapter 1, part 3, apply to [section 1].

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- END -