SENATE BILL NO. 31

INTRODUCED BY G. LAMMERS

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING LAWS CONCERNING SHORT-BARRELED RIFLES, SHOTGUNS, FIREARMS, AND SILENCERS; REMOVING THE PROHIBITION AGAINST HUNTING WITH A SILENCER OR MUFFLING DEVICE; ALIGNING REFERENCES TO REGISTRATION OF SILENCERS UNDER FEDERAL LAW WITH CURRENT BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS ENFORCEMENT GUIDANCE REGARDING SILENCERS; REMOVING THE PENALTY FOR POSSESSION OF A SAWED-OFF FIREARM; AMENDING SECTIONS 45-8-337, 45-8-405, 87-1-201, 87-1-301, 87-1-304, AND 87-6-401, MCA; REPEALING SECTION 45-8-340, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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

Section 1. Section 45-8-337, MCA, is amended to read:

"**45-8-337. Possession of unregistered ~~silencer or of~~ bomb or similar device prima facie evidence of unlawful purpose.** Possession ~~of a silencer that is not registered under federal law or~~ of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense."

Section 2. Section 45-8-405, MCA, is amended to read:

"**45-8-405. Pattern of criminal street gang activity.** (1) For purposes of this part, "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, or attempt, the adjudication as a delinquent youth for the commission, attempt, or solicitation, or the conviction of two or more of the offenses listed in subsection (2) within a 3-year period, which offenses were committed on separate occasions.

(2) The offenses that form a pattern of criminal street gang activity include:

(a) deliberate homicide, as defined in 45-5-102;

(b) assault with a weapon, as defined in 45-5-213;

(c) intimidation, as defined in 45-5-203;

(d) kidnapping, as defined in 45-5-302;

(e) aggravated kidnapping, as defined in 45-5-303;

(f) robbery, as defined in 45-5-401;

(g) sexual intercourse without consent, as defined in 45-5-503;

(h) aggravated sex trafficking, as defined in 45-5-706;

(i) child sex trafficking, as defined in 45-5-711;

(j) criminal mischief, as defined in 45-6-101;

(k) arson, as defined in 45-6-103;

(l) burglary, as defined in 45-6-204;

(m) theft, as defined in 45-6-301;

(n) forgery, as defined in 45-6-325;

(o) tampering with witnesses and informants, as defined in 45-7-206;

(p) bringing armed individuals into the state, as defined in 45-8-106;

(q) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;

(r) carrying a concealed weapon, as defined in 45-8-316;

(s) possession of a deadly weapon by a prisoner, as defined in 45-8-318;

(t) possession of a destructive device, as defined in 45-8-334;

(u) possession of explosives, as defined in 45-8-335;

~~(v) possession of a sawed-off firearm, as defined in 45-8-340;~~

~~(w)~~ (v) possession of a stolen firearm, as defined in 45-8-346;

~~(x)~~ (w) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture, or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;

~~(y)~~ (x) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership provided in 45-8-403."

Section 3. Section 87-1-201, MCA, is amended to read:

"**87-1-201. Powers and duties.** (1) Except as provided in subsection (13), the department shall

supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department 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) Except as provided in subsection (13), the department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, 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. 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 is under the control of the department and is available for appropriation to the department.

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

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that 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 state special revenue fund.

(6) (a) The department may not issue firearms within this state to anyone except:

(i) wardens; and

(ii) other qualified employees identified, trained, and certified by the department where necessary to perform assigned duties pursuant to subsection (7).

(b) Wardens, as authorized officers under 87-1-502, are the only department employees with the authority to enforce provisions of state law or administrative rule.

(7) (a) Department employees may be issued a firearm as allowed in subsection (6)(a)(ii) only after

submitting a form of final approval as determined and approved by the department.

(b) Department-issued firearms may be carried by an employee other than a warden only when the employee is engaged in work that requires the carrying of a firearm, as determined by the department.

(c) When a department-issued firearm is no longer necessary to perform an employee's required duties, the employee shall return the issued firearm to secure storage in the regional office to which the employee is attached.

(8) Except as provided in subsection (13), the department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

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

(10) (a) The department shall implement programs that:

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

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

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

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

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or

recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (10) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (10) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

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

(12) The department shall report current sage grouse population numbers, including the number of leks, to the Montana sage grouse oversight team, established in 2-15-243, and the environmental quality council in accordance with 5-11-210 on an annual basis. The report must include seasonal and historic population data available from the department or any other source.

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

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons and the special muzzleloader heritage hunting season established in 87-1-304;

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

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

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

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

(14) The department shall publish an annual public report that shows the number of licenses sold to nonresidents in the previous license year for each species in which the purchase of a license or permit is

required. The report must also show how many licenses were issued through opportunities or programs for nonresidents, such as those for the following:

(a) youths;

(b) college students;

(c) nonresidents who were former residents;

(d) nonresident licenses purchased by utilizing an outfitter preference point;

(e) sponsorships by a landowner, family member, or current Montana resident; or

(f) any other license opportunity or program for nonresidents.

(15) The department shall publish an annual public report that shows the data on each hunting district for elk, deer, and antelope by both resident and nonresident hunters. The report must be created using currently available data and must include:

(a) the estimated number of resident hunters, nonresident hunters, and total hunters who hunted in the district;

(b) the estimated number of days the district was hunted by resident hunters, nonresident hunters, and total hunters;

(c) the estimated average number of days that resident hunters, nonresident hunters, and total hunters used the district per hunter; and

(d) the species being hunted in the district."

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

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

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

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

(c) except as provided in 23-1-111 and 87-1-303(3), shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the

department;

(d) shall adopt the rules of the individual landowners governing the public use of each landowner's private property managed by the department under active public access agreements with private landowners;

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

(f) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 23-1-111 and 87-1-209(2) and (4);

(g) except as provided in 23-1-111, shall review and approve the budget of the department prior to its transmittal to the office of budget and program planning;

(h) except as provided in 23-1-111, shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000;

(i) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(i), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(j) shall set the policies for the salvage of antelope, deer, elk, or moose pursuant to 87-3-145;

(k) shall comply with, adopt policies that comply with, and ensure the department implements in each region the provisions of state wildlife management plans adopted following an environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3; and

(l) shall review and approve the issuance of an either-sex or antlerless elk license, permit, or combination thereof to a landowner or a landowner's designee pursuant to 87-2-513.

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

(3) The commission may adopt rules regarding the establishment of special licenses or permits,

seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

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

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

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

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

(iv) limit the number of licenses sold.

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

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

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

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

(5) (a) Subject to the provisions of subsection (5)(b), the commission may adopt rules to:

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

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

(b) The commission shall adopt rules for the use of and set quotas for the sale of Class D-4 nonresident hound licenses by hunting district, portions of a hunting district, group of districts, or administrative regions.

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

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

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

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

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons and the special muzzleloader heritage hunting season established in 87-1-304;

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

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

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

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

(7) Pursuant to 23-1-111, the commission does not oversee department activities related to the administration of state parks, primitive parks, state recreational areas, public camping grounds, state historic sites, state monuments, and other heritage and recreational resources, land, and water administered pursuant to Title 23, chapter 1, and Title 23, chapter 2, parts 1, 4, and 9."

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

"**87-1-304. Fixing of seasons and bag and possession limits.** (1) Subject to the provisions of 87-5-302 and subsections (7) through (10) of this section, the commission may:

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

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

(c) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf by persons holding an archery stamp and the required license, permit, or

tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, wild buffalo or bison, and wolf in those areas;

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

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

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

(3) Subject to the provisions of 87-5-302 and subsection (7) of this section, the commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

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

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

notice to the public.

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

(7) In an area immediately adjacent to a national park, the commission may not:

(a) prohibit the hunting or trapping of wolves; or

(b) close the area to wolf hunting or trapping unless a wolf harvest quota established by the commission for that area has been met.

(8) The commission may authorize a wolf trapping season that opens the first Monday after Thanksgiving and closes March 15 of the following calendar year, except that the commission may adjust the dates for specific wolf management units based on regional recommendations.

(9) There is established a special muzzleloader heritage hunting season that begins on the second Saturday after the end of the regular season and lasts 9 days. During this season, subject to the provisions of ~~87-6-401(1)(i)~~ 87-6-401(h) and rules adopted by the commission, a person may take a deer or elk with a valid license or permit using plain lead projectiles and a muzzleloading rifle that is charged with loose black powder, loose pyrodex, or an equivalent loose black powder substitute and ignited by a flintlock, wheel lock, matchlock, or percussion mechanism using a percussion or musket cap. The muzzleloading rifle must be a minimum of 45 caliber and may not have more than two barrels."

(10) (a) Except on privately owned lands that are not a part of a hunting access program pursuant to 87-1-246 through 87-1-249 and 87-1-265, the commission shall allow residents as defined in 87-2-102 to begin hunting 10 days prior to nonresidents for all upland game birds, including ring-necked pheasant, but excluding mountain grouse.

(b) For the purposes of this subsection (10), "mountain grouse" means blue grouse, spruce (Franklin) grouse, and ruffed grouse.

(11) For the purpose of shed hunting as defined in 87-2-101 in a wildlife management area, the commission shall allow a resident as defined in 87-2-102 access to the area 7 days in advance of a nonresident. A nonresident who violates this subsection (11) is subject to the penalties provided for in 87-2-

530."

Section 6. Section 87-6-401, MCA, is amended to read:

"**87-6-401. Unlawful use of equipment while hunting.** (1) A person may not:

(a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare, except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

(b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to hunt wildlife except for predatory animals, wolves, and those birds not protected by state or federal law;

~~(c) while hunting, use any device or mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated from or attached to any firearm. This subsection (1)(c) does not prohibit the use of a device or mechanism registered with the bureau of alcohol, tobacco, firearms and explosives to silence, muffle, or minimize the report of a firearm when hunting wildlife.~~

~~(d)~~ (c) while hunting, use any electronic motion-tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection ~~(1)(d)~~ (1)(c).

~~(e)~~ (d) while hunting, use archery equipment that has been prohibited by rule of the commission;

~~(f)~~ (e) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the department;

~~(g)~~ (f) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder.

~~(h)~~ (g) use a rifle to hunt or shoot wild turkey during the spring wild turkey season; or

~~(i)~~ (h) during the special muzzleloader heritage hunting season established in 87-1-304, use a muzzleloading rifle that requires insertion of a cap or primer into the open breech of the barrel, is capable of being loaded from the breech, or is mounted with an optical magnification device. Use of preprepared paper or

metallic cartridges, sabots, gas checks, or other similar power and range-enhancing manufactured loads that enclose the projectile from the rifling or bore of the firearm is also prohibited.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a) may be subject to the additional penalties provided in 87-6-901 through 87-6-903.

(4) A violation of this section may also result in an order to pay restitution pursuant to 87-6-905 through 87-6-907."

NEW SECTION. **Section 7. Repealer.** The following section of the Montana Code Annotated is repealed:

45-8-340. Sawed-off firearm -- penalty.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

- END -