

UNLAWFUL HUNTING PENALTIES; DEFINITION OF CROSSBOW

House Bill 5710 as enrolled
Public Act 347 of 2000
Second Analysis (12-20-00)

Sponsor: Rep. Larry DeVuyst
House Committee: Conservation and
Outdoor Recreation
Senate Committee: Natural Resources and
Environmental Affairs

THE APPARENT PROBLEM:

Under Public Act 377 of 1996--and since the approval by the voters of Proposal 'G' in the November 1996 general election--the Natural Resources Commission, appointed by the governor, has had the exclusive authority to regulate the taking of game in the state. The commission publishes the rules in what are called "orders" or "interim orders", and the policy that is established by the written orders is enforced by the Department of Natural Resources. Customarily, "orders" set the specific details of a policy, and they are developed within a broader overarching regulatory framework that is described in a statute. This policy making approach allows the department to employ sound scientific practices to manage the state's wildlife resources.

Sometimes the wildlife policies or rules are set in both statute and "orders". For example, among the rules set in statute are the minimum and maximum penalties for the unlawful taking of game, which are found in the Natural Resources and Environmental Protection Act. (See *BACKGROUND INFORMATION*, below.)

Despite the commission's exclusive regulatory authority, there has been some confusion as to whether the penalties that apply to violations of the statute can be enforced when they are written as violations of orders, or interim orders. This confusion has arisen despite the fact that the penalties are identical in both the statutory provisions and in the department's orders. Some have suggested that legislation should be enacted to clarify that the penalties apply to violations of both the statute and of orders written under the statute.

In addition, during debate on the Senate floor, it was noted that a definition for "crossbow" was needed in the wildlife conservation portion of Chapter 2 of the Natural Resources and Environmental Protection Act,

which concerns the management of renewable resources. Although this portion of the act includes a definition for "bow", it does not have a definition for "crossbow". Consequently, an amendment to the bill was proposed.

THE CONTENT OF THE BILL:

House Bill 5710 would amend the Natural Resources and Environmental Protection Act to clarify that penalties that are set for violations of specific provisions in the statute also would apply to violations of orders issued under the statute. In addition, the bill would insert in section 40102 a definition for "crossbow".

Specifically, in several subsections, the bill would amend language that refers to a violation of the statute or "a department order . . . or an interim order of the department" [of Natural Resources], so that instead the act would refer to a violation of the statute "or an order or interim order issued under" the statute. The effect of this change would be to expand the applicability of the provisions so that the penalties would also apply to violations of orders issued by the Natural Resources Commission, which, under Public Act 377 of 1996 (and approved by the people as Proposal 'G' in the November, 1996 general election), has exclusive authority to regulate the taking of game in the state.

Further, "crossbow" would be defined to mean a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire an arrow, bolt, or quarrel by the release of a bow string which is controlled by a mechanical or electric trigger and has a working safety and a draw weight of 100 pounds or greater.

BACKGROUND INFORMATION:

The Natural Resources and Environmental Protection Act specifies the minimum and maximum penalty provisions in the part of the act concerning the unlawful possession or taking of game. Among the penalties for violations of statutory provisions are the penalties noted below. Under the bill, these penalties also would apply to violations of orders or interim orders, so that the penalties for both would be identical, as follows.

- A violation of the statute or order or interim order regarding the possession or taking of any game *except* deer, bear, wild turkey, moose, or elk is a misdemeanor, punishable by imprisonment for up to 90 days, a fine of from \$100 to \$1,000, or both, and the costs of prosecution.
- A violation of the statute or a departmental order or interim order regarding the possession or taking of deer, bear, or wild turkey is a misdemeanor, punishable by imprisonment of from 5 days up to 90 days, and a fine of at least \$200 up to \$1,000, and the costs of prosecution.
- A violation of statute or an order regarding the possession or taking of moose is also a misdemeanor, punishable by imprisonment for 90 days to one year, and a fine of from \$1,000 to \$5,000, and the costs of prosecution.
- A violation of the statute or an order regarding the possession or taking of elk is a misdemeanor, punishable by imprisonment for 30 to 180 days, a fine of from \$500 to \$2,000, or both, and the costs of prosecution.
- A violation of a provision that prohibits “shining” (use of a spotlight, headlight, or other artificial light while taking game) is a misdemeanor, punishable by imprisonment for 5 to 90 days, a fine of from \$100 to \$500, or both, and the costs of prosecution.
- A violation of a statute or an order regarding the taking or possession of an animal that has been designated by the department to be a protected animal is punishable by up to 90 days imprisonment, a fine of not less than \$100, or more than \$1,000, or both, and the costs of prosecution.
- Finally, the statute specifies that any other violation of this part of the act (and an order or interim order

issued under it) is a misdemeanor, punishable by imprisonment for up to 90 days, a fine of from \$50 to \$500, or both, and the costs of prosecution.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency notes that House Bill 5710 would have no fiscal impact on the state or local units of government. Further, the agency notes that there are no data available to indicate how many people take game in violation of the various sections of this act. To the extent that the misdemeanor penalties for violations would not be changed, the costs of incarceration incurred and the fine revenues received by local units of government would remain constant. (11-20-00)

ARGUMENTS:

For:

In order for the Natural Resources Commission and the Department of Natural Resources to adopt sound scientific practices to manage the state’s wildlife resources, it is necessary that the commission’s orders have the same force and effect as statutory provisions. That is especially true with regard to the minimum and maximum penalties that are set for the unlawful taking of game. This legislation clarifies that violations can be enforced when the penalties are specified in statute or order, and that in both cases the penalties would apply.

For:

This legislation would add a definition of ‘crossbow’ in the wildlife conservation portion of Chapter 2 of the Natural Resources and Environmental Protection Act. This part of the act concerns the management of renewable resources in the state, and although there is a definition for ‘bow’ and also for ‘firearm’, a definition for ‘crossbow’ is conspicuously absent. A definition of ‘crossbow’ is needed to allow the Department of Natural Resources to regulate the taking of game.

Analyst: J. Hunault

#This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.