



**House
Legislative
Analysis
Section**

Washington Square Building Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

GAME LAW AMENDMENTS

House Bill 4047 with committee amendments
First Analysis (3-10-87) Floor Copy

Sponsor: Rep. Alvin Hoekman
Committee: Conservation & Environment

RECEIVED

APR 08 1987

Mich. State Law Library

H.B. 4047 (3-10-87)

THE APPARENT PROBLEM:

Many penalties for poaching have not been increased since at least 1974, and some haven't been increased since 1929. In 1929 many fines were between \$25 and \$100, which was sufficient to be quite a deterrent for poaching. Today the fines that are levied are no longer realistic deterrents as evidenced by the increase in complaints received by state representatives about poaching. Thus, the Game Law should be updated in order to alleviate the poaching problem.

THE CONTENT OF THE BILL:

The Game Law makes poaching a misdemeanor and establishes minimum and maximum fines and prison terms for illegal hunting activities. The bill would:

- 1) establish a minimum fine of \$250 and raise the maximum fine from \$500 to \$750 for illegal hunting activities;
- 2) raise the minimum fine from \$250 to \$500, the maximum fine from \$1,000 to \$2,000, and include the costs of prosecution for persons convicted of illegal killing or possession of elk or timberwolf;
- 3) establish imprisonment coupled with fines as a possible punishment for a person guilty of illegal killing or possession of a moose, and prohibit the person from securing a license as provided in the Hunting and Fishing License Act;
- 4) raise the minimum fine from \$200 to \$500, the maximum fine from \$1,000 to \$1,500, and the minimum term of imprisonment from five days to fifteen days for a person convicted of the illegal killing, possession, purchase or sale of a deer, bear, timberwolf or wild turkey;
- 5) raise the minimum fine from \$50 to \$250, the maximum fine from \$300 to \$500, and the minimum prison term from five days to fifteen days for a person convicted of using an artificial light in hunting deer or bear;
- 6) establish a minimum fine of \$250, a maximum fine of \$1,000 and a minimum term of imprisonment of 90 days for a person who sold or received anything of value in exchange for a whole or a part of an animal protected by the act, and include costs of prosecution for the first offense;

In addition, the bill would require that a person convicted of a violation of the act to reimburse the state for the value of parts of animals as determined by the Game Law, and raise the minimum fine from \$250 to \$500, the maximum fine from \$500 to \$1,000, and the minimum term of imprisonment from ten days to fifteen days for a person who had been convicted three times within a five year period of a violation of the Game Law (MCL 315.50).

FISCAL IMPLICATIONS:

The House Fiscal Agency does not know how much money the bill would generate in additional fine revenues because of the unprecedented move to enforce stringent restitution costs. However, last year the revenue generated from fines was between \$75,000 and \$90,000, and was credited to the State Library Fund as required by the state constitution. Furthermore, although the House Fiscal Agency does not know how much money would be collected from the restitution requirements imposed under the bill, the agency suggests that there may be fewer violations than there have been in the past because of the stiff penalties involved. In addition, all of the revenues collected from restitution would be credited to the Game and Fish Protection Fund (3-6-87).

SUGGESTED AMENDMENTS:

The Department of Natural Resources (DNR) suggests amending the bill:

- 1) to delete the committee amendments that make maximum fines for violations concerning the timberwolf inconsistent, and to establish penalties for the illegal sale of the timberwolf and elk in addition to illegal possession and killing; 2) to establish a maximum term of up to 90 days imprisonment for a person who sold or received anything of value in exchange for a whole or a part of an animal protected by the bill.

ARGUMENTS:

For:

Increased penalties will cost more to the poacher in terms of time spent in prison and money paid for fines than the present ineffective penalties. Thus, they will serve as more of a deterrent to poaching.

For:

In years past, despite being on both the federal and state endangered species list, the timberwolf has had a negative reputation among the people of Michigan. It has been shot and trapped in alarming numbers. By revising poaching penalties and including the timberwolf in these revisions, the citizens of this state would become more aware of how significant the timberwolf is to the environment.

Against:

Currently, peace officers may only issue appearance tickets (the tickets that inform people that they must appear in court) for minor violations stipulating imprisonment of less than 90 days or fines of up to \$500. In the bill, many of the maximum fines for violations are over \$500, and

some of the prison terms are for more than 90 days. Without an amendment to correct this ambiguity, the bill would require the officers to take each violator into custody, or the officers would have to get an arrest warrant and then reapproach the violators to tell them when to appear in court. This would be cumbersome for DNR officers, prosecutors, and the public.

Response: Although there is a discrepancy in the amount of fines levied and the length of prison terms imposed, an amendment to the bill would not correct the situation. The Code of Criminal Procedure states that peace officers can issue appearance tickets for penalties of violations involving less than \$500 and prison terms of 90 days or less. Thus, the Code of Criminal Procedure would also have to be amended to provide for modification of peace officer's enforcement powers, or the code would have to be amended to exempt the Game Law from its provisions.

Rebuttal: The Code of Criminal Procedure states that appearance tickets have to be in a form determined by the attorney general, the state court administrator and the director of state police. Further, with the approval of these state officials appearance tickets may be appropriately modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Thus, "modification of the content" as used in this context could be understood to mean modification of the tickets to include penalties for violations involving prison terms of more than 90 days or fines of more than \$500.

Against:

As reported out of committee, the bill contains two maximum fines as penalties for violations involving the timberwolf. In section 5 (2), the maximum fine for illegal killing or possession of the timberwolf is \$2,000, while in section 5 (3) of the bill the maximum fine for illegal killing, possession, purchase or sale of the timberwolf is \$1,500. This discrepancy in the bill would cause enforcement problems for courts that tried to levy either maximum fine.

Against:

Often when laws specify very strict fines for even minor violations, the courts refuse to impose the fines. The bill approaches the threshold where the courts will balk at imposing fines with the provision for a minimum fine of \$250 for illegal hunting activities. This minimum fine takes away sentencing discretion for lesser offenses. Therefore, the fines might not be imposed, which would make the bill ineffective in the fight against poaching.

POSITIONS:

The National Trappers Association supports the bill (3-9-87).

The Northern Michigan Sportsmen's Association supports the bill (3-9-87).

The Department of Natural Resources supports the bill with its suggested amendments (3-5-87).

The Michigan Deer Hunter's Association supports the bill with the exception of section 5 (1), which imposes a minimum fine of \$250 for illegal hunting activities (3-9-87)