

HB

329



REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES
VICE-CHAIR RULES

Alaska State Legislature
House of Representatives

DURING SESSION:
STATE CAPITOL, ROOM 108
JUNEAU, ALASKA 99801-1182
1 (907) 465-4843

DURING INTERIM:
716 WEST 4th AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8168

SPONSOR STATEMENT

HB 329

“An Act providing for restitution to the state for the unlawful taking of game.”

Penalties for violating wildlife protection laws vary with the crime and state. The most common crime classification for wildlife violations in all states is the criminal misdemeanor. For misdemeanors, states generally give judges discretion in choosing the amount of fine, length of jail term, or both. In Alaska, persons convicted of wildlife violations are guilty of a misdemeanor. The penalty is jail for up to a year and a fine of up to \$5,000(AS 16.05.925 (a)).

In addition to criminal penalties, some states have civil liability provisions of some kind. About half the state legislatures have assessed the value of wild life for civil liability proposes and list damages which may be sought as part of a civil penalty. Some states require the violator to pay, as a condition of sentencing, restitution to the state for each animal taken. **Alaska is one of only 12 states which does not have restitution provisions for wildlife violations in statute. HB 329 provides a schedule of restitution for wildlife violators to repay as a condition of sentencing.**

Alaskans are losing valuable wildlife to poachers. Each piece of game that is illegally taken from our state is an economic loss that affects both our hunting and tourism industries. HB 329 will hold those illegal takers of game accountable for the value of their take. Poachers will now have to pay restitution, as well as, the penalties already in statute.

I urge your positive consideration of this legislation.



REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES
VICE-CHAIR RULES

Alaska State Legislature
House of Representatives

DURING SESSION:
STATE CAPITOL, ROOM 108
JUNEAU, ALASKA 99801-1182
1 (907) 465-4843

DURING INTERIM:
716 WEST 4th AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8168

MEMORANDUM

DATE: February 19, 1996
TO: Representative Joe Green
Co-Chair House Resources
FROM: Representative Con Bunde
Co-Chair House HESS
RE: HB 329

HB 329, "An Act providing for restitution to the state for the unlawful taking of game.", is in the House Resources Committee. This memo is a request for a committee hearing at your earliest possible convenience.

If you have any questions regarding this bill or the information in the attached packet please do not hesitate to call my office. Thank you for your cooperation with this matter.

Number of Citations, Averaged Fines, and Averaged Jail Time
for Sport Fish and Hunting Violations
as of: 4/6/95

Offense Codes	1993 1/1/93-12/31/93	1994 1/1/94-12/31/94	1995 1/1/95-3/31/95
---------------	-------------------------	-------------------------	------------------------

Sport Fish:

Closed Season 8410				
Citations	76	113	7	
Averaged Fines \$	110	126		
Averaged Jail Time	0	0		
No Disposition	25	45	7	
Closed Area 8411				
Citations	234	160	0	
Averaged Fines \$	100	98		
Averaged Jail Time	0	0		
No Disposition	71	72		

Sport Game:

Closed Season 8622-8626				
Citations	113	118	15	
Averaged Fines \$	471	464	900	
Averaged Jail Time	3	2	0	
No Disposition	39	40	8	
Closed Area 8620-8621				
Citations	48	38	3	
Averaged Fines \$	538	464		
Averaged Jail Time	1	0		
No Disposition	14	17	3	

Sport Fish Totals 8300-8495

Citations	1,558	1,614	66	
Averaged Fines \$	105	109	104	
Averaged Jail Time	0	0	0	
No Disposition	571	809	53	

Sport Game Totals 8600-8781

(Excludes guiding)

Citations	710	712	126	
Averaged Fines \$	321	340	416	
Averaged Jail Time	1	1	0	
No Disposition	236	332	86	

If an individual is given multiple citations, each citation/fine/jail time are included in above total.

SELECTED STATES' PENALTIES FOR WILDLIFE VIOLATIONS

STATE	CRIMES	ANIMALS INVOLVED	PENALTY
ARIZONA	<i>Illegal taking, wounding, killing, possessing</i>	<i>Civil actions may be brought in the name of the state to seek to recover the following minimum sums as damage:</i>	
		Buffalo, elk, bighorn sheep, eagle, endangered species	\$750
		Bear, mountain lion, antelope, deer	\$450
		Turkey, javalina	\$150
		Beaver	\$75
		Goose, raptor	\$40
		Duck, small game animal or bird	\$15
		Nongame bird or game fish	\$10
CALIFORNIA	<i>Taking and other violations</i>	Bighorn sheep, large cats, mammals and fish in game refuge, all furbearers, salmon, steelhead, striped bass, sturgeon, shad	\$2,000
	<i>Taking</i>	Endangered, threatened or protected birds of prey	\$5,000
	<i>Selling or purchasing</i>	Bear, sturgeon eggs	\$5,000
	<i>Violations of code (illegal size, illegal waters, etc.)</i>	Abalone	\$5,000
	<i>Using gill nets to take, with exceptions</i>	Salmon, steelhead, striped bass	\$5,000
COLORADO	<i>Illegal killing or possessing</i>	<i>Violators guilty of a misdemeanor shall be punished by a fine as follows:</i>	
		Eagles, endangered species, rocky mountain goat, moose, rocky mountain bighorn sheep, lynx	\$1,000
		Elk, threatened species	\$700
		Antelope, deer, black bear, mountain lion	\$500
		Raptors not otherwise covered, wild turkeys	\$200
		One illegal animal or bird	\$50
		Each additional illegal animal or bird	\$25
		One illegal fish	\$35
	Each additional illegal fish	\$10	

SELECTED STATES' PENALTIES FOR WILDLIFE VIOLATIONS

STATE	CRIMES	ANIMALS INVOLVED	PENALTY		
IDAHO	<i>Illegal taking, possessing, wasting</i>	<i>The minimum criminal fine per animal for the following animals:</i>			
		Bighorn sheep, mountain goat, moose	\$500		
		Elk	\$300		
		Deer, pronghorn antelope, wild turkey, swan, sturgeon	\$200		
		Chinook salmon	\$100		
	<i>Illegal killing, possessing, wasting</i>	<i>In addition to criminal penalties, violators shall reimburse the state as follows :</i>			
		Bighorn sheep, mountain goat, moose, caribou	\$1,000		
		Elk	\$500		
		Deer, pronghorn antelope, wild turkey, swan, sturgeon	\$200		
		Chinook salmon	\$100		
MONTANA	<i>Illegal killing or possessing</i>	<i>In addition to other penalties, a person convicted shall reimburse the state as follows:</i>			
		Bighorn sheep, grizzly bear, endangered species	\$2,000		
		Elk, mountain goat, caribou, bald eagle, moose	\$1,000		
		Mountain lion, black bear, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer, adult buck antelope	\$500		
		Other deer, antelope, fish, other raptors, swan, bobcat, white sturgeon	\$300		
		Paddlefish, grayling, fur-bearing animals not listed	\$100		
		Game birds (except swan)	\$25		
		Game fish	\$10		
		NEVADA	<i>Illegal killing or possessing</i>	<i>In addition to other penalties, persons are liable for civil penalties as follows:</i>	
				Big game mammal, bobcat, swan, eagle	\$250-\$5,000
Other fish or wildlife	\$25-\$1,000				
NEW MEXICO	<i>Illegal taking, killing, possessing</i>	<i>Violators guilty of a misdemeanor subject to fines for each animal as follows:</i>			
		Elk, bighorn sheep, oryx, ibex, barbary sheep	\$1,000		
		Deer, antelope, javalina, bear, cougar	\$400		
	<i>Illegal wounding, killing, possessing</i>	<i>Civil verdicts or judgments recovered by the state shall not be less than the following sums:</i>			
		Elk, mountain or barbary sheep, mountain goat	\$200		
		Cougar, bison, ibex, kudu, oryx	\$300		
		Antelope, black bear	\$100		
		Deer, javalina	\$50		
		Bird	\$10		
		Fish	\$1		

SELECTED STATES' PENALTIES FOR WILDLIFE VIOLATIONS

STATE	CRIMES	ANIMALS INVOLVED	PENALTY
UTAH	<i>Illegal taking, possessing or wanton destruction</i>	<i>Violators found guilty may be ordered to pay the suggested minimum restitution values for each animal as follows:</i>	
		Bison, bighorn sheep, rocky mountain goat, moose, bear, cougar, endangered species	\$1,000
		Elk, threatened species	\$750
		Golden eagle, river otter	\$500
		Pronghorn antelope, deer	\$400
		Bobcat	\$350
		Swan, sandhill crane, turkey, egret, pelican, loon, heron, raptors not endangered or threatened	\$100
		Furbearers except bobcat, river otter and threatened or endangered species	\$35
		Game birds except turkey, swan, sandhill crane	\$15
		Game fish	\$10
		Brine shrimp including eggs	\$8 per pound
Protected wildlife not listed	\$5		
WASHINGTON	<i>Illegal killing or possessing</i>	<i>The court shall order violators to pay reimbursement to the state in the following amounts for each animal:</i>	
		Moose, antelope, mountain sheep, mountain goat, all endangered wildlife	\$2,000
		Elk, deer, black bear, cougar	\$1,000
		Mountain caribou, grizzly bear	\$5,000
WISCONSIN	<i>Illegal killing, wounding, catching, trapping, possessing</i>	<i>If the court imposes a fine for game violations, the court may impose a wild animal protection assessment that equals the amount specified as follows:</i>	
		Endangered species	\$875
		Moose, elk, fisher, prairie chicken, sandhill crane	\$263
		Bear, wild turkey, wild swan	\$175
		Wildcat, fox, beaver, otter	\$88
		Deer, coyote, raccoon, mink	\$44
		Sharptail grouse, ruffed grouse, spruce hen, wild duck, coot, wild goose or brant	\$26
		Pheasant, Hungarian partridge, quail, rail, Wilson's snipe, woodcock, shore bird, protected song bird	\$18

SOURCES:

Center for Wildlife Law, University of New Mexico, "State Wildlife Law Handbook," 1993;
 California Senate Office of Research, "Issue Brief: Summary of California 'Poaching' Laws," no date; and
 Statutes from the states listed.

Table 8. Restitution, Spotlighting and Waste Statutes

Restitution

Civil Penalties and other forms of restitution are now required by most states for illegal taking of certain species of wildlife or big game animals. Several states, of which Colorado is a good example, provide for setting rules for replacement costs of fish and wildlife, costs of investigations, and setting schedules of replacement or restitution costs for court use, but usually do not prevent a court or jury from examining the reasonableness of the regulations or from assessing the special factors in a case which may make the true costs higher or lower than the amount stated in the rules. Colorado provides that "replacement costs" must be broadly construed to include habitat improvement or restoration where direct stocking is not feasible". There are many good examples of restitution provisions among the states, and schedules of specific animals and their "values" given (see Pennsylvania, Wisconsin, Louisiana, Minnesota and others for examples). Valuable restitution provisions should be mandatory and the amounts or values set for each species should be adequate to effect deterrence and to pay to restock the animal or otherwise compensate for its loss, and collection should be made for each animal, bird or fish as a separate offense. Most states do stipulate that restitution shall be required and collected. Colorado provides that the amounts collected for each animal "may not be for less than the sum stated by statute, but may be for such greater amount as the evidence may show the value of the wildlife to have been when living and uninjured". Wisconsin also provides that "no penalty prescribed in this chapter shall be diminished because the violation for which it is prescribed falls also within a more general prohibition," and that the burden is on the defendant to show that animals were commercially raised, taken for scientific purposes, or otherwise innocently and legally taken. Nearly all states provide that the civil or restitution penalties are in addition to any criminal penalties imposed. Pennsylvania, however, only assesses replacement costs for violations involving threatened or endangered species, or others designated by the Commission, but provides that additional compensatory and punitive damages for game or wildlife killed or habitat injured or destroyed may be sought by civil action, including costs of gathering evidence, expert testimony and other costs. Wisconsin, however, notes that a civil action shall be a bar to a criminal prosecution for the same offense and vice-versa. Amounts shall not be less than those stated in the statutes, and shall be for each protected animal, bird, fish or part taken. In Colorado, the division may bring a civil action against an owner whose dog inflicts death or injury to any big game other than bear or mountain lion, and to small game, birds and mammals according to established restitution values.

Spotlighting

Please refer to discussion in Chapter 3, "Wildlife Poaching in the U.S."

Waste

Please refer to discussion in Chapter 3. All states should have a "waste" provision and should clearly define what is "edible meat." Alaska and some other Western states are good examples; also Oklahoma and a few others include waste of aquatic resources, salmon or other wildlife, and more states should do so. Oklahoma is the only state to mention that "no person may capture, kill, mutilate or destroy wildlife protected by law and remove the head, claws, teeth, hide, antlers, horns or parts with intent to abandon the body, nor capture or mutilate a *living* wild animal protected by law by removing claws, teeth, hide, antlers or body parts, with such "waste" fines being up to \$1,000. It is disturbing to realize that live animals may be mutilated for valuable parts, but since some wildlife parts are worth more per ounce than cocaine, the lengths to which commercial poachers and others will go are not surprising.

Table 8. Restitution, Spotlighting and Waste Statutes

State	Restitution Statute Present	Spotlighting Statute Present	Waste Statute Present	State	Restitution Statute Present	Spotlighting Statute Present	Waste Statute Present
AK			♦	MT	♦	♦	♦
AL		♦		NC	♦	♦	
AR			♦	ND	♦	♦	
AZ	♦	♦	♦	NE	♦	♦	♦
CA	♦	♦	♦	NH	♦	♦	
CO	♦	♦	♦	NJ	♦	♦	
CT		♦		NM	♦	♦	♦
DE		♦		NV	♦	♦	♦
FL		♦		NY	♦	♦	
GA		♦	♦	OH	♦	♦	
HI				OK	♦	♦	♦
IA	♦	♦		OR	♦	♦	♦
ID	♦	♦	♦	PA	♦	♦	
IL	♦	♦	♦	RI		♦	
IN	♦	♦		SC	♦	♦	
KS	♦	♦		SD	♦	♦	♦
KY	♦	♦		TN	♦	♦	
LA	♦	♦		TX	♦	♦	♦
MA	♦	♦		UT	♦		♦
MD	♦	♦		VA	♦	♦	
ME		♦		VT	♦	♦	
MI	♦			WA	♦	♦	♦
MN	♦	♦	♦	WI	♦	♦	
MO				WV	♦	♦	
MS		♦		WY	♦	♦	♦

Table 14. States with Criminal Felony Provisions for Various Violations

Felony Provision Present				
Arizona	Idaho	Missouri	North Dakota	Texas
Arkansas	Illinois	Montana	Ohio	Utah
California	Indiana	Nebraska	Oklahoma	Virginia
Colorado	Kansas	New Hampshire	Oregon	Washington
Florida	Michigan	New York	South Dakota	West Virginia

Although only twenty-four states provide for felony provisions for various wildlife violations, virtually every state provides for misdemeanor violations. Examples of the types of violations that constitute felonies in various states are listed below.

Categories for profit or commercial gain include:

- knowingly capturing, killing, possessings, exporting, importing, or receiving an endangered species for profit or commercial enterprise;
- buying or selling game or protected animals for profit;
- game wardens accepting bribes;
- commercialization in general (aggregate value varies);
- combined sales greater than \$200 within a 90-day period by someone not possessing a commercial license;
- sale of fish with a value greater than \$250 caught with personal fishing gear; and
- wanton destruction of wildlife whose value is greater than \$500.

Examples of specific animals include:

- killing a raptor;
- releasing a live wolf;
- taking big game during closed seasons;
- destroying paddlefish or pallid sturgeon;
- killing a panther;
- using bull, bear, dog or other animal for fighting, baiting or as a target;
- killing an endangered species or destroying its nest or eggs; and
- illegally shipping a protected animal.

Examples of previous violations include:

- subsequent misdemeanor violations;
- subsequent violation of illegally taking fish or eggs;
- subsequent violations within 5 years involving big game or endangered species; and
- multiple convictions of using aircraft to harass wildlife.

Other examples include:

- resisting an enforcement officer;
- using an explosive substance to kill or catch a fish;
- abandoning, or not rendering assistance to someone hunter shot and/or not reporting it immediately;
- buying, selling, or using illegal devices for bear, deer or moose parts, bear traps, and spotlighting if not a natural person of that state; and
- having knowledge that fraud was committed in a tournament having a prize greater than \$10,000 and not notifying law enforcement.