

CHAPTER 206

NATURAL RESOURCES

SENATE BILL 97-052

BY SENATOR Wattenberg;
also REPRESENTATIVES Entz and Paschall.

AN ACT

CONCERNING IMPLEMENTATION OF SECTION 13 OF ARTICLE XVIII OF THE STATE CONSTITUTION, AND, IN CONNECTION THEREWITH, RESTRICTING THE USE OF CERTAIN TYPES OF TRAPS, SNARES, AND POISONS TO TAKE WILDLIFE, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 6 of title 33, Colorado Revised Statutes, 1995 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

**PART 2
TRAPS, POISONS, AND SNARES**

33-6-201. Legislative declaration - scope and purpose of part. (1) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

(a) THE PURPOSE OF THIS PART 2 IS TO IMPLEMENT SECTION 13 OF ARTICLE XVIII OF THE STATE CONSTITUTION, ADOPTED BY THE PEOPLE AT THE 1996 GENERAL ELECTION.

(b) THE PROVISIONS OF THIS PART 2 ARE INTENDED TO HONOR THE EXPRESSED DESIRE OF THE PEOPLE OF COLORADO TO PROMOTE HUMANE METHODS OF ANIMAL CONTROL AND DISCOURAGE THE USE OF INHUMANE METHODS WHILE PRESERVING THE ABILITY TO PROTECT HUMAN LIFE, HEALTH, SAFETY, AND PROPERTY BY TAKING WILDLIFE WHEN THERE IS NO PRACTICAL ALTERNATIVE.

(c) WHENEVER POSSIBLE, THIS PART 2 SHOULD BE READ IN CONJUNCTION AND HARMONY WITH THE OTHER PROVISIONS OF THIS TITLE AND WITH SECTIONS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

35-40-101 AND 35-40-102, C.R.S.; EXCEPT THAT, IN CASE OF CONFLICT, THE PROVISIONS OF THIS PART 2 SHALL PREVAIL.

33-6-202. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DEPARTMENT OF HEALTH" MEANS A GOVERNMENTAL ENTITY WITH THE RESPONSIBILITY TO PREVENT OR ALLEVIATE DISEASES AND OTHER BIOLOGICAL OR ENVIRONMENTAL HAZARDS TO HUMAN HEALTH OR SAFETY. THE TERM SPECIFICALLY INCLUDES, WITHOUT LIMITATION, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, CREATED IN SECTION 25-1-102, C.R.S., AND EVERY DEPARTMENT OR AGENCY AT THE COUNTY OR LOCAL LEVEL THAT IS CHARGED WITH COMPARABLE POWERS AND DUTIES.

(2) "HUMAN HEALTH OR SAFETY" MEANS THE PHYSICAL HEALTH OR SAFETY OF INDIVIDUAL HUMAN BEINGS. THE TERM DOES NOT ENCOMPASS ECONOMIC, AESTHETIC, OR SOCIAL VALUES OR THE HEALTH OF ECOSYSTEMS.

33-6-203. General prohibition - penalties. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 2, IT IS UNLAWFUL TO TAKE WILDLIFE WITH ANY LEGHOLD TRAP, ANY INSTANT KILL BODY-GRIPPING DESIGN TRAP, OR BY POISON OR SNARE IN THE STATE OF COLORADO. PENALTIES SHALL BE AS PROVIDED IN SECTION 33-6-109 UNLESS A DIFFERENT PENALTY IS SPECIFICALLY PROVIDED IN THIS PART 2.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 2, ANY PERSON WHO ATTEMPTS TO TAKE WILDLIFE USING ANY LEGHOLD TRAP, INSTANT KILL BODY-GRIPPING DESIGN TRAP, POISON, OR SNARE COMMITS A CLASS 1 PETTY OFFENSE AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF FORTY DOLLARS AND AN ASSESSMENT OF FOUR LICENSE SUSPENSION POINTS.

(3) AN OWNER OR LESSEE OF PRIVATE PROPERTY OR AN EMPLOYEE OF SUCH OWNER OR LESSEE, AS SUCH TERMS ARE DEFINED AND USED IN SECTIONS 33-6-207 AND 33-6-208, WHO TAKES WILDLIFE USING ANY LEGHOLD TRAP, INSTANT KILL BODY-GRIPPING DESIGN TRAP, POISON, OR SNARE ON SUCH PRIVATE PROPERTY UNDER CIRCUMSTANCES THAT GIVE RISE TO THE EXEMPTION SET FORTH IN SECTION 33-6-207 (1) BUT WITHOUT COMPLYING WITH THE NOTICE AND CERTIFICATION REQUIREMENTS OF SECTION 33-6-208 (1) (c) COMMITS A CLASS 2 PETTY OFFENSE AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF TWENTY-FIVE DOLLARS; EXCEPT THAT, UPON CONVICTION OF A SECOND OR SUBSEQUENT OFFENSE, THE FINE SHALL BE FIFTY DOLLARS.

(4) ANY PERSON CONVICTED OF VIOLATING SUBSECTION (1) OR (2) OF THIS SECTION SHALL BE SUBJECT TO TWICE THE APPLICABLE PENALTY IF THE OFFENSE OCCURRED PURSUANT TO AN UNLAWFUL ENTRY ONTO THE PRIVATELY OWNED OR LEASED PROPERTY OF ANOTHER.

33-6-204. General exemptions - conduct "authorized by law". (1) SECTION 33-6-203 SHALL NOT APPLY TO:

(a) THE TAKING OF BIRDS OR OF RODENTS, OTHER THAN BEAVER OR MUSKRAT, AS AUTHORIZED BY LAW; OR

(b) THE TAKING OF FISH OR OTHER NONMAMMALIAN AQUATIC WILDLIFE BY THE DIVISION.

(2) NOTHING IN THIS PART 2 SHALL BE CONSTRUED TO PROHIBIT THE TAKING OF WILDLIFE WITH FIREARMS, FISHING EQUIPMENT, ARCHERY EQUIPMENT, OR OTHER IMPLEMENTS IN HAND AS AUTHORIZED BY LAW.

33-6-205. Exemption - departments of health. (1) SECTION 33-6-203 SHALL NOT APPLY TO THE TAKING OF WILDLIFE BY FEDERAL, STATE, COUNTY, OR MUNICIPAL DEPARTMENTS OF HEALTH FOR THE PURPOSE OF PROTECTING HUMAN HEALTH OR SAFETY.

(2) (a) TO ENSURE THAT THE TAKING OF WILDLIFE PURSUANT TO SUBSECTION (1) OF THIS SECTION IS ACCOMPLISHED IN AS COMPETENT, SAFE, EFFECTIVE, AND HUMANE A MANNER AS IS POSSIBLE, A DEPARTMENT OF HEALTH MAY CONTRACT WITH AN INDEPENDENT CONTRACTOR OR, BY APPROPRIATE INTERGOVERNMENTAL AGREEMENT, ENLIST THE AID OF QUALIFIED EMPLOYEES OR AGENTS OF THE DIVISION, THE UNITED STATES DEPARTMENT OF AGRICULTURE, THE STATE DEPARTMENT OF AGRICULTURE, OR A LOCAL POLICE DEPARTMENT OR ANIMAL CONTROL AGENCY FOR THE TAKING OF WILDLIFE.

(b) THE COMMISSION IS AUTHORIZED TO ADOPT AND ENFORCE REASONABLE RULES FOR THE LICENSING AND SUPERVISION OF PERSONS DESIRING TO ACT AS INDEPENDENT CONTRACTORS UNDER THIS SECTION. THIS PARAGRAPH (b) SHALL NOT SUPERSEDE THE LICENSURE REQUIREMENTS OF THE "PESTICIDE APPLICATORS' ACT", ARTICLE 10 OF TITLE 35, C.R.S.

33-6-206. Exemptions - nonlethal methods. (1) NOTWITHSTANDING SECTION 33-6-203, BUT SUBJECT TO REGULATION BY THE COMMISSION, AUTHORIZED PERSONS MAY USE NONLETHAL SNARES, TRAPS SPECIFICALLY DESIGNED NOT TO KILL, OR NETS TO TAKE WILDLIFE FOR PURPOSES OF:

- (a) BONA FIDE SCIENTIFIC RESEARCH;
- (b) FALCONRY;
- (c) RELOCATION PERMITTED IN ACCORDANCE WITH RULES OF THE DIVISION; OR
- (d) MEDICAL TREATMENT OF THE ANIMAL BEING CAPTURED.

33-6-207. Exemption - landowners' protection of crops and livestock - definitions - authority of division and of department of agriculture. (1) SECTION 33-6-203 SHALL NOT APPLY TO THE OWNER OR LESSEE OF A PARCEL OF PRIVATE PROPERTY, NOR TO THE EMPLOYEES OF SUCH OWNER OR LESSEE, SO LONG AS ALL OF THE FOLLOWING CONDITIONS ARE MET:

(a) THE PROPERTY IS PRIMARILY USED FOR COMMERCIAL LIVESTOCK OR CROP PRODUCTION;

(b) THE USE OF THE METHODS OTHERWISE PROHIBITED BY SECTION 33-6-203 OCCURS ONLY ON THE PROPERTY;

(c) SUCH USE DOES NOT EXCEED ONE THIRTY-DAY PERIOD PER YEAR FOR EACH PARCEL OF PRIVATE PROPERTY; AND

(d) THE OWNER OR LESSEE CAN PRESENT ON-SITE EVIDENCE TO THE DIVISION THAT ONGOING DAMAGE TO LIVESTOCK OR CROPS HAS NOT BEEN ALLEVIATED BY THE USE OF METHODS OTHER THAN THOSE PROHIBITED BY SECTION 33-6-203.

(2) AS USED IN THIS SECTION AND IN SECTION 33-6-208:

(a) "CROPS" INCLUDES ALL PLANTS RAISED FOR PROFIT.

(b) "EMPLOYEE" MEANS A PERSON HIRED OR RETAINED BY, OR UNDER A WRITTEN OR ORAL CONTRACT OR COOPERATIVE AGREEMENT WITH, AN OWNER OR LESSEE TO PERFORM SERVICES OF ANY KIND.

(c) "LESSEE" MEANS A PERSON, OTHER THAN THE OWNER, WHO HAS A PRESENT POSSESSORY INTEREST IN REAL PROPERTY. IF THE POSSESSORY INTEREST IS HELD BY A CORPORATION, PARTNERSHIP, ASSOCIATION, OR OTHER ENTITY, "LESSEE" INCLUDES THE INDIVIDUAL SHAREHOLDERS, PRINCIPALS, PARTNERS, OR MEMBERS OF SUCH ENTITY. IF THE POSSESSORY INTEREST IS HELD IN TRUST, "LESSEE" INCLUDES A BENEFICIARY OF SUCH TRUST.

(d) "LIVESTOCK" INCLUDES ALL ANIMALS RAISED FOR PROFIT.

(e) "ONGOING DAMAGE" MEANS MEASURABLE PHYSICAL HARM TO LIVESTOCK OR CROPS THAT HAS RESULTED OR WILL RESULT IN ECONOMIC LOSS TO AN OWNER OR LESSEE AND APPEARS LIKELY TO CONTINUE OR RECUR IN THE NEAR FUTURE.

(f) (I) "ON-SITE EVIDENCE" MEANS PHYSICAL EVIDENCE OR DOCUMENTED OBSERVATIONS GATHERED FROM THE PROPERTY ON WHICH TRAPPING, SNARING, OR POISONING ACTIVITY IS PROPOSED UNDER SUBSECTION (1) OF THIS SECTION. SUCH EVIDENCE INCLUDES, BUT IS NOT LIMITED TO:

(A) CARCASSES OR PARTS THEREOF;

(B) PHYSICAL INJURIES TO LIVESTOCK;

(C) IDENTIFYING TRACKS, TOOTH MARKS, FUR, OR OTHER EVIDENCE OF THE PRESENCE AND HARMFUL ACTIVITY OF A DEPREDATING SPECIES;

(D) PHOTOGRAPHS;

(E) RECORD ENTRIES.

(II) WHERE DIRECT EVIDENCE HAS NOT BEEN PRESERVED, CURRENT OR RECENT LOSSES MAY BE CONSIDERED AS "ON-SITE EVIDENCE" SO LONG AS SUCH LOSSES ARE DOCUMENTED.

(g) "OWNER" MEANS THE HOLDER OF RECORD TITLE TO REAL PROPERTY. IF THE TITLE TO REAL PROPERTY IS HELD BY A CORPORATION, PARTNERSHIP, ASSOCIATION, OR OTHER ENTITY, "OWNER" INCLUDES THE INDIVIDUAL SHAREHOLDERS, PRINCIPALS,

PARTNERS, OR MEMBERS OF SUCH ENTITY. IF THE TITLE TO REAL PROPERTY IS HELD IN TRUST, "OWNER" INCLUDES A BENEFICIARY OF SUCH TRUST.

(h) "PARCEL OF PRIVATE PROPERTY" MEANS EITHER OF THE FOLLOWING, AT THE OPTION OF THE OWNER OR LESSEE THEREOF:

(I) A PARCEL OF PRIVATE PROPERTY THAT HAS BEEN INDIVIDUALLY RECORDED IN THE OFFICE OF THE COUNTY CLERK IN THE COUNTY IN WHICH THE PARCEL IS LOCATED; OR

(II) A SINGLE, CONTIGUOUS PARCEL OF PRIVATE PROPERTY UNDER ONE OWNERSHIP OR LEASE.

(i) "PRIMARILY USED FOR COMMERCIAL LIVESTOCK OR CROP PRODUCTION" MEANS USED TO PRODUCE AGRICULTURAL PRODUCTS THAT ORIGINATE FROM THE LAND'S PRODUCTIVITY FOR THE PRIMARY PURPOSE OF OBTAINING A MONETARY PROFIT.

(j) "PRIVATE PROPERTY" MEANS REAL PROPERTY WHOSE RECORD TITLE IS NOT HELD, WHOLLY OR IN PART, BY ANY STATE, LOCAL, OR FEDERAL GOVERNMENT OR AGENCY THEREOF.

(3) THE DIVISION AND, IN THE CASE OF DEPREDATING ANIMALS AS DEFINED IN SECTION 35-40-100.2 (4), C.R.S., THE DEPARTMENT OF AGRICULTURE SHALL HAVE THE AUTHORITY TO ADOPT AND ENFORCE REASONABLE RULES GOVERNING TRAPPING, SNARING, AND POISONING ACTIVITY UNDER SUBSECTION (1) OF THIS SECTION. SUCH RULES MAY INCLUDE, WITHOUT LIMITATION, REASONABLE RESTRICTIONS ON THE DEVICES AND, TO THE EXTENT PERMISSIBLE UNDER SECTION 33-6-209, THE POISONS TO BE USED AND THE MANNER OF THEIR USE, INCLUDING A REQUIREMENT FOR SERIAL NUMBERING OR OTHER IDENTIFICATION OF DEVICES IF SUCH IS DEEMED NECESSARY OR DESIRABLE. THE GENERAL ASSEMBLY SPECIFICALLY ENDORSES THE IMPLEMENTATION OF A COORDINATED TRADE-IN OR POOLING PROGRAM TO ENCOURAGE THE PHASING OUT OF OLDER, LESS HUMANE DEVICES AND THE USE, IN THEIR PLACE, OF NEWER, MORE HUMANE ONES.

33-6-208. Thirty-day period - administration - conditions precedent to use of exemption. (1) FOR PURPOSES OF THE EXEMPTION SPECIFIED IN SECTION 33-6-207:

(a) WHERE AN OWNER OR LESSEE RAISES LIVESTOCK OR CROPS ON TWO OR MORE SEPARATE PARCELS OF PRIVATE PROPERTY, THE EXEMPTION STATED IN SECTION 33-6-207 SHALL APPLY SEPARATELY TO EACH PARCEL.

(b) THE DIVISION SHALL VERIFY THAT THE OWNER OR LESSEE HAS MADE REASONABLE EFFORTS TO ALLEVIATE ONGOING DAMAGE TO LIVESTOCK OR CROPS THROUGH REASONABLE EFFORTS USING METHODS OTHER THAN THOSE PROHIBITED BY SECTION 33-6-203. THE USE OF AT LEAST TWO OF THE FOLLOWING METHODS SHALL BE PRESUMED TO REPRESENT REASONABLE EFFORTS:

(I) ROUTINE GATHERING OF LIVESTOCK IN AREAS WHERE PREDATORS ARE KNOWN TO BE PRESENT;

(II) THE USE OF GUARD ANIMALS;

(III) THE USE OF FLASHING LIGHTS, BOOM GUNS, OR OTHER SCARE TACTICS;

(IV) THE PRESENCE OF HUMAN HERDERS OR GUARDS;

(V) ANY OTHER INDUSTRY-ACCEPTED METHOD THAT IS EFFECTIVE IN REDUCING LOSSES AND WHOSE USE IS APPROVED BY THE AGRICULTURE COMMISSION AND THE WILDLIFE COMMISSION FOR THAT PURPOSE.

(c) (I) AN OWNER OR LESSEE SEEKING TO USE THE EXEMPTION STATED IN SECTION 33-6-207 SHALL NOTIFY THE DIVISION BY TELEPHONE, TELEFACSIMILE, OR FIRST-CLASS MAIL BEFORE THE BEGINNING OF EACH PERIOD DURING WHICH TRAPPING, SNARING, OR POISONING ACTIVITY IS TO TAKE PLACE. WITHIN TEN DAYS AFTER GIVING SUCH NOTICE, THE OWNER OR LESSEE SHALL PROVIDE THE DIVISION WITH A WRITTEN CERTIFICATION THAT THERE EXISTS ON-SITE EVIDENCE OF ONGOING DAMAGE TO LIVESTOCK OR CROPS AND THAT THE OWNER OR LESSEE HAS MADE REASONABLE EFFORTS TO ALLEVIATE SUCH DAMAGE BY THE USE OF ALTERNATIVE METHODS.

(II) THE OWNER OR LESSEE NEED NOT PRESENT ON-SITE EVIDENCE OF DAMAGE OR OF REASONABLE EFFORTS USING ALTERNATIVE METHODS BEFORE COMMENCING TRAPPING, SNARING, OR POISONING ACTIVITY, BUT THE OWNER OR LESSEE SHALL BE PREPARED TO DO SO UPON REQUEST OF THE DIVISION AT ANY TIME WITHIN THE THIRTY-DAY PERIOD. THE DIVISION MAY, AT ITS OPTION, SEND AN EMPLOYEE OR AGENT TO VISIT THE SITE AND VERIFY COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION AND OF SECTION 33-6-207.

33-6-209. Poisons - labeling - definition. (1) NEITHER THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR ANY OTHER STATE OR LOCAL AGENCY SHALL IMPOSE OR CONTINUE IN EFFECT A LABELING REQUIREMENT FOR POISONS THAT DIFFERS FROM THE REQUIREMENTS IMPOSED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OR BY THE "PESTICIDE ACT", ARTICLE 9 OF TITLE 35, C.R.S.

(2) FOR PURPOSES OF THIS SECTION, "POISON" MEANS ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR DESTROYING WILDLIFE, WHICH SUBSTANCE OR MIXTURE OF SUBSTANCES IS REGISTERED OR REQUIRED TO BE REGISTERED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OR BY THE "PESTICIDE ACT", ARTICLE 9 OF TITLE 35, C.R.S.

SECTION 2. Appropriations. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the wildlife cash fund, to the department of natural resources for allocation to the division of wildlife, for the fiscal year beginning July 1, 1997, the sum of forty-six thousand four hundred dollars (\$46,400) and 1.1 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of agriculture, for the fiscal year beginning July 1, 1997, the sum of sixty-five thousand nine hundred seventy-three dollars (\$65,973), or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 1997, the sum of two thousand three hundred seventy-three dollars (\$2,373), or so much thereof as may be necessary, for the provision of legal services to the department of agriculture for the purposes of this act. Such sum shall be from general funds received by the department of agriculture out of the appropriation made in subsection (2) of this section.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 27, 1997