

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

HALE LANE

ATTORNEYS AT LAW

100 West Liberty Street | Tenth Floor | Reno, Nevada 89501
Telephone (775) 327-3000 | Facsimile (775) 786-6179
Website: <http://www.halelane.com>

THOMAS R.C. WILSON, III

twilson@halelane.com

Position Paper for Senate Bill 135

Index

Proposed Law (outlines changes made in SB 135).....	2
As Drafted by LCB (summary of the bill as drafted).....	3
Summaries (of both the current law and the proposed law).....	4
Problems and Solutions.....	6
Letters of Support.....	8

HALE LANE PEEK DENNISON AND HOWARD

LAS VEGAS OFFICE: 2300 West Sahara Avenue | Eighth Floor | Box 8 | Las Vegas, Nevada 89102 | Phone (702) 222-2500 | Fax (702) 365-6940
CARSON CITY OFFICE: 777 East William Street | Suite 200 | Carson City, Nevada 89701 | Phone (775) 684-6000 | Fax (775) 684-6001

ASSEMBLY NATURAL RES., AGRICULTURE & MINING
DATE: 5/5/03 ROOM: 3161 EXHIBIT E 1-8
SUBMITTED BY: Tom Wilson

Proposed Law

NRS 501.376 Penalty for killing or possessing certain animals without a valid tag; tag not considered valid under certain circumstances[; aggravating factors].

1. Any person who *[willfully and]* unlawfully kills ~~or possesses~~ *[or aides and abets another in the killing of]* a bighorn sheep, mountain goat, elk, deer, pronghorn antelope, mountain lion or black bear ~~without a valid tag~~ is guilty of a ~~gross misdemeanor~~. *[category E felony and shall be punished as provided in NRS 193.130.]* This section does not prohibit the killing of such an animal if necessary to protect the life or property of any person in imminent danger of being attacked by such an animal.

~~1.~~ *[2.] Any person who willfully possesses a bighorn sheep, mountain goat, elk, deer, pronghorn antelope, mountain lion or black bear that was killed in violation of section 1 is guilty of a gross misdemeanor.*

~~2.~~ *[3.] Unlawfully, as used in section 1, means the killing of an animal:*

- (a) out of the proscribed season set by the Division for the lawful hunting of that animal;*
- (b) by other than the method proscribed on the hunter's tag;*
- (c) in a manner or during a time otherwise prohibited by statute; or*
- (d) without a valid tag issued by the Division of Wildlife. A tag issued for the hunting of any big game animal is not valid if knowingly used by a person:*
 - (1) other than the person specified on the tag;*
 - (2) outside of the management area or other area specified on the tag; or*
 - (3) If the tag was obtained by a false or fraudulent representation.*

[4.] If a defendant unlawfully kills more than one big game animal in violation of section one, the court shall consider that fact as an aggravating factor in determining the sentence of the defendant.

As drafted by the LCB

501.376

1. A person shall not willfully kill or aid and abet another person in the killing of a bighorn sheep, mountain goat, elk, deer, pronghorn antelope, mountain lion or black bear:

- (a) Outside the prescribed season set by the Commission for the lawful hunting of that animal;
- (b) By other than the method prescribed on the tag issued by the Division for hunting that animal;
- (c) In a manner, during a time or in a place otherwise prohibited by a specific statute or a regulation adopted by the Commission; or
- (d) Without a valid tag issued by the Division for hunting that animal. A tag issued for hunting any animal specified in this subsection is not valid if knowingly used by a person:

- (1) Other than the person specified on the tag;
- (2) Outside the management area or other area specified on the tag; or
- (3) If the tag was obtained by false or fraudulent representation.

This subsection does not prohibit the killing of such an animal if necessary to protect the life or property of any person in imminent danger of being attacked by such an animal.

2. A person who violates the provisions of subsection 1 is guilty of a category E felony and shall be punished as provided in NRS 193.130.

3. If a person kills more than one animal in violation of subsection 1, the court shall consider that fact as an aggravating factor in determining his sentence.

4. A person shall not willfully possess any animal specified in subsection 1 if the person knows the animal was killed in violation of subsection 1 or the circumstances should have caused a reasonable person to know that the animal was killed in violation of subsection 1.

5. A person who violates the provisions of subsection 4 is guilty of a gross misdemeanor.

Summary of Current Law

1. Any person who unlawfully kills or possesses a big game animal without a valid tag is guilty of a gross misdemeanor.
 - a. Punishment
 - i. Up to twelve (12) months in the county jail and/or a fine of up to \$2,000. [NRS 193.140].
2. Definition of an invalid tag

Summary of Proposed Law

1. Any person who *willfully* and unlawfully kills a big game animal is guilty of a category E felony.
 - a. Punishment
 - i. 1-4 years in prison, *mandatory* probation [NRS 193.130(e)].
2. Any person who willfully and knowingly possesses a big game animal that was killed in violation of subsection 1 is guilty of a gross misdemeanor.
 - a. Punishment
 - i. Up to twelve (12) months in the county jail and/or a fine of up to \$2,000. [NRS 193.140]
3. Definition of unlawful
4. Aggravating factors

Problems of Current Law and Solutions by Proposed law

1. The Current Law Is Poorly Written And Risks Inconsistent Interpretation

a. Current Law

- i. Under the current law, "any person who unlawfully kills [a big game animal] without a valid tag is guilty..."
- ii. This begs the question: What makes the killing unlawful?
 1. If interpreted to mean that the absence of a valid tag makes the killing unlawful:
 - a. If a hunter (who has a lawful buck-only tag) shoots at a buck and misses, but kills a doe, the hunter would be guilty of a gross misdemeanor, under this interpretation of the statute, as he killed a doe without a valid doe tag.
 - b. This is a very likely interpretation as it is a straight reading of the statute.
 2. If unlawful is interpreted to mean a killing without a tag under circumstances in which a tag would otherwise be required:
 - a. Then the hunter described above would not be breaking the law as his shot at the buck was lawful.
 - b. This interpretation requires the judge to "read between the lines" and insert specific language to obtain a fair meaning of the statute.
- iii. The "intent" element is unclear under the current statute. As such, the statute may be interpreted as a strict liability crime.
 1. An unambiguous statute is necessary for the protection of law-abiding sportsman.

b. Proposed Law

- i. Under the proposed law, the term *willful* has been added to the statute.
 1. The term willful, in criminal law, creates a general intent crime. There will be no risk of interpretation of the statute as creating a strict liability crime.
- ii. Under the proposed law, all references to a valid tag have been placed under the definition of unlawful.
 1. The lack of a valid tag is only one of the ways a killing may be unlawful.
 2. There is no risk of misinterpretation as the killing must first be deemed to be willful, before one looks to whether the hunter had a valid tag.

2. The Current Law Treats "Killing" And "Possessing" Equally

a. Current law

- i. Under the current law, "any person who...kills or possesses...is guilty."
- ii. Public policy mandates proportionality. The person who illegally pulls the trigger on a bull elk should be more criminally liable than the person who owns the garage where the elk is stored.

b. Proposed Law

- i. Under the proposed law, the unlawful "killer" is treated differently from the unlawful "possessor."
- ii. While the unlawful possessor may still be punished for committing a gross misdemeanor, the unlawful killer may be punished for committing a category E felony.

3. The Current Law Frustrates Prosecution

a. Current Law

- i. Under the current law, poaching is only a gross misdemeanor. As such, the State of Nevada cannot, without a "Governor's Warrant," extradite the suspect from another jurisdiction.
- ii. As a result, only Nevada residents and law abiding foreign citizens are being prosecuted for violating the law.

b. Proposed Law

- i. The proposed law makes the unlawful killing of a big game animal a category E felony. As such, the State of Nevada will be able to extradite suspects from other jurisdictions to answer to the charges in Nevada.

1. Punishment for a category E felony. NRS 193.130(e)

- a. 1-4 years in prison, *mandatory* probation.



KENNY C. GUINN
Governor

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WILDLIFE

1100 Valley Road
Reno, Nevada 89512
(775) 688-1500 • Fax (775) 688-1595

R. MICHAEL TURNIPSEED, P.E.
Director
Department of Conservation
and Natural Resources

TERRY R. CRAWFORTH
Administrator

March 28, 2003

72nd Session, Nevada State Legislature
Carson City, NV 89701

Re: Senate Bill No. 135

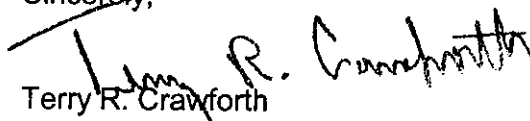
Members of the 2003 Legislature:

I would like to take this opportunity both as the Administrator of the Nevada Division of Wildlife and the Secretary of the Nevada Board of Wildlife Commissioners to voice support for Senate Bill No. 135.

Senate Bill No. 135 is important legislation. Not only does it clarify Nevada's poaching law to protect law abiding sportsmen, but it also assists in the successful prosecution of cases by making poaching an extraditable crime. Most importantly, this bill sends a strong message that Nevadans place a high value on their wildlife resources and the illegal poaching of those resources is a serious crime.

The Nevada Division of Wildlife and the Nevada Board of Wildlife Commissioners are charged with the responsibility for conservation of Nevada's vast wildlife resources. The Wildlife Commission and I are confident the provisions of Senate Bill No. 135 will assist in that responsibility. We encourage your support.

Sincerely,


Terry R. Crawford
Administrator
Secretary to the Commission

GW:TRC:ss

cc: R. Michael Turnipseed, P.E., Director
John T. Moran, Jr., Chairman

E 7/8



*Celebrate Its Magnificence—
Protect Its Future*

Mule Deer Foundation

*The mission of the Mule Deer Foundation is
to ensure the conservation of mule and
blacktail deer and their habitats.*

March 17, 2003

Thomas R.C. Wilson
Hale Lane Peek Dennison and Howard
100 West Liberty, 10th floor
Reno, NV 89501

Dear Tom,

The Mule Deer Foundation (MDF) is in strong support of actions that will enhance and protect our country's precious wildlife resources for current and future generations. America is unique in that the wildlife of each state is owned by all residents of that state. The management and protection of these natural resources here in Nevada fall under the jurisdiction of the Nevada Division of Wildlife (NDOW). NDOW needs good and enforceable statutes to accomplish their mandated goals. The illegal taking of wildlife, known commonly as poaching, is a crime against all of the people of the state of Nevada and should be treated as it is - a theft of state property. With these thoughts in mind, MDF supports NDOW and the passage of SB135 so as to protect Nevada's precious wildlife resources for generations to come.

Yours in Conservation,

Terry Wayne Cloutier
President/CEO

E 8/8