

Office of Policy and Legal Analysis

Date: March 6, 2021
To: Joint Standing Committee on Inland Fisheries and Wildlife
From: Rachel Olson, Legislative Analyst
Re: LD 199, "An Act To Amend Certain Fish and Wildlife Laws and Related Provisions" (Dill)

Summary

This bill defines "upland game species." It provides for the Commissioner of Inland Fisheries and Wildlife to set a daily bag limit and possession limit for upland game species and makes violating these limits a Class E crime for which a fine of not less than \$200 plus \$50 for each animal taken in violation may be adjudged.

It allows the department to enforce the law prohibiting the abuse of another person's property against persons who abuse another person's property but who may not be involved in an activity such as hunting, fishing or trapping, as in current law. It allows a person found to have violated that law to be ordered to pay restitution to the landowner for damages.

It provides for the revocation of a hunting license of a person convicted of night hunting and found to have been in the possession of a thermal imaging device at the time of the offense.

It provides for the revocation of any license, permit or registration issued by the department, not just hunting and fishing licenses, of a person who is convicted of destroying, tearing down, defacing or otherwise damaging a property posting sign.

It prohibits domestic violence offenders and certain nonviolent juvenile offenders from obtaining or possessing any license or permit issued by the department that authorizes a person to hunt with a firearm.

It allows a person who has lawfully killed or trapped and registered a bear to sell, without a hide dealer's license, the fat not attached to the meat of that animal.

It clarifies that a person may not take or possess reptiles or amphibians from the wild for export, sale or commercial purposes.

It specifies that a person may not keep bear, deer, moose or wild turkey without registering the animal for more than 18 hours after the animal was harvested.

It requires all the edible meat of a bear, deer or moose to be presented for registration along with evidence of the animal's sex. It also allows those animals to be dismembered for ease of transportation and allows the hunter to leave parts that are not of use away from public view.

It requires a hide dealer to keep a true and complete record of those buying and selling bear fat.

It allows a special hide dealer's license holder to commercially sell or barter the heads and untanned hides of bear that are butchered in the license holder's place of business.

It makes a special hide dealer's license valid for a full year, commencing January 1st, rather than a partial year, commencing August 1st.

It amends the definition of "owner," for the purpose of registration of a snowmobile, watercraft or ATV, to include a person having equitable interest in the snowmobile, watercraft or ATV, which entitles the person to possession of the vehicle.

Testimony

Proponents: Senator Dill, sponsor; Colonel Scott, Warden Service; Don Kleiner, MPGA; John Simoneau, BHA;

- Brings simplification, adds consistency and alignment with current practices related to fish and wildlife enforcement
- Supports the changes, but recommends two minor changes: allowing all bones other than the head to remain in the forest and clarifying what constitutes proof of sex
- A lot of time went into cleaning up and clarifying current statute

Opponents: Robert Likins, PIJAC;

- Creates a requirement that all Maine consumers wishing to purchase legally collected reptiles or amphibians would have to obtain collectors permit

Neither for nor against: Eliza Donoghue, Maine Audubon; John Glowa, Sr.;

- Propose removing spruce grouse from the list of upland game species. There is no hunting season for spruce grouse, every other species on list has an open hunting season
- Would like to avoid any confusion about a possible hunting season for a species that is already in decline
- Consider requiring hunters to take out and dispose of gut piles, which could save some eagles and other birds who consume discarded parts

Possible Amendments

- Proposed amendment to strike out spruce grouse from the list of upland game species
- Proposed amendment to §12304-B, sub-§4 that would required disposal of parts where they can not be consumed by wildlife.
- Proposed amendments to allow all bones other than the head to remain in the forest and to clarify what constitutes proof of sex.

Notes/Possible Issues

- (Sec. 1) "Upland game" was previously defined, for the purpose of the section on the start of open season on upland game (§10954), as "snowshoe hare, gray squirrel, ruffed grouse and bobwhite quail." The new definition in §10001 also includes porcupine, woodchuck, ring-necked pheasant, and spruce grouse.
 - Porcupine and woodchuck both have no closed season.
 - Spruce grouse has no open season.
 - In current statute, pheasant is considered a game bird, and is regulated under "game bird hunting." If including pheasant in the definition of "upland game," one may want to

- consider moving other sections related to pheasants to the new subchapter on “upland game species hunting,” or removing pheasant from the list of “upland game.”
- The term “ring-necked pheasant” is not used anywhere else in Title 12, instead current statutes just use the term “pheasant.”
- (Sec. 2) There was a question about whether “leave open any gate or bars on another person’s land” could be misconstrued to mean a fence or walkway gate in the city/suburbs.
 - Could consider clarifying “gate or bars” by providing more of an explanation of the type of gate or bars.

Fiscal Impact

- Fiscal Status: Not Yet Determined

Links

- [LD 199](#) (original bill)
- [Testimony](#)
- [12 MRSA §10902. Suspension or revocation of or refusal to issue license or permit](#)
- [12 MRSA §11217. Buying and selling wild animals and wild birds](#)
- [12 MRSA §12159. Taking reptiles and amphibians from the wild](#)
- [12 MRSA §12303-A. Time limits for registering bear, deer, moose or wild turkey](#)
- [12 MRSA §12304-A. Condition of animal presented for registration](#)
- [12 MRSA §12954. Hide dealer’s license](#)
- [12 MRSA §12955. Special hide dealer’s license](#)
- [15 MRSA §393. Possession of firearms prohibited for certain persons](#)

Repealed sections

§11857. Unlawful possession of ruffed grouse

1. Daily bag limit. A person may not take more than the daily bag limit of ruffed grouse during any open season on ruffed grouse as established by the commissioner.

2. Possession limit. A person may not possess more than the possession limit of ruffed grouse taken during any open season on ruffed grouse as established by the commissioner.

3. Duty to label ruffed grouse.

4. Penalty. A person who violates this section commits a Class E crime for which a fine of not less than \$100 plus \$25 for each ruffed grouse taken in violation may be adjudged.

§12303-A. Condition of animal presented for registration

1. Prohibition. Except as provided in subsection 2, a person must present the following wild animals for registration in their entirety:

- A. Bear;
- B. Deer;
- C. Moose; or
- D. Wild turkey.

2. Exceptions. A person may present a bear, deer, moose or wild turkey for registration as follows:

A. The viscera and rib cage of the animal may be removed in a manner that permits determination of the sex of the animal; and

B. A moose may be dismembered for ease of transportation, and the lower legs, head and hide of a moose may be removed. If the head is not brought to the registration station, a canine tooth or the lower jaw also must be presented at the time of registration.

3. Disposal of moose parts not presented for registration. A person may not place the parts of a moose not presented for registration where they are visible to a person traveling on a public or private way.

4. Penalty. A person who violates this section commits a Class E crime.

Statutes for reference

§12159. Taking reptiles and amphibians from the wild

1. Prohibition; penalties. Except as provided in this section, a person may not take and possess reptiles or amphibians from the wild for export, sale or commercial purposes.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

B. A person who violates this subsection after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

2. Commercial amphibian permit. Persons harvesting amphibians for purposes of sale are required to obtain a permit from the commissioner. The fee for a permit issued under this subsection is \$27. The permit expires one year from the date of issuance.

3. Rules. The commissioner shall adopt rules pertaining to harvest methods, confinement and disposal of amphibians. The commissioner may by rule:

A. Require reporting of harvest activities;

B. Establish a season, including daily and season possession limits; and

C. Establish requirements for humane harvest, confinement and disposal methods.

D. [PL 2017, c. 205, §23 (RP).]

Rules adopted pursuant to this subsection are routine technical rules as defined in [Title 5, chapter 375, subchapter 2-A](#).

§393. Possession of firearms prohibited for certain persons

1. Possession prohibited. A person may not own, possess or have under that person's control a firearm, unless that person has obtained a permit under this section, if that person:

A. [PL 2001, c. 549, §2 (RP).]

A-1. Has been convicted of committing or found not criminally responsible by reason of insanity of committing:

- (1) A crime in this State that is punishable by imprisonment for a term of one year or more;
- (2) A crime under the laws of the United States that is punishable by imprisonment for a term exceeding one year;
- (3) A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, is punishable by a term of imprisonment exceeding one year. This subparagraph does not include a crime under the laws of another state that is classified by the laws of that state as a misdemeanor and is punishable by a term of imprisonment of 2 years or less;
- (4) A crime under the laws of any other state that, in accordance with the laws of that jurisdiction, does not come within [subparagraph \(3\)](#) but is elementally substantially similar to a crime in this State that is punishable by a term of imprisonment for one year or more; or
- (5) A crime under the laws of the United States, this State or any other state or the Passamaquoddy Tribe or Penobscot Nation in a proceeding in which the prosecuting authority was required to plead and prove that the person committed the crime with the use of:
 - (a) A firearm against a person; or
 - (b) Any other dangerous weapon.

Violation of this paragraph is a Class C crime;

B. [PL 2001, c. 549, §2 (RP).]

C. Has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction:

- (1) Under paragraph A-1, subparagraphs (1) to (4) and bodily injury to another person was threatened or resulted; or
- (3) Under paragraph A-1, subparagraph (5).

Violation of this paragraph is a Class C crime;

D. Is subject to an order of a court of the United States or a state, territory, commonwealth or tribe that restrains that person from harassing, stalking or threatening an intimate partner, as defined in 18 United States Code, Section 921(a), of that person or a child of the intimate partner of that person, or from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or the child, except that this paragraph applies only to a court order that was issued after a hearing for which that person received actual notice and at which that person had the opportunity to participate and that:

- (1) Includes a finding that the person represents a credible threat to the physical safety of an intimate partner or a child; or
- (2) By its terms, explicitly prohibits the use, attempted use or threatened use of physical force against an intimate partner or a child that would reasonably be expected to cause bodily injury.

Violation of this paragraph is a Class D crime;

E. Has been:

- (1) Committed involuntarily to a hospital pursuant to an order of the District Court under [Title 34-B, section 3864](#) because the person was found to present a likelihood of serious harm, as defined under [Title 34-B, section 3801, subsection 4-A](#), paragraphs A to C;
- (2) Found not criminally responsible by reason of insanity with respect to a criminal charge; or
- (3) Found not competent to stand trial with respect to a criminal charge.

Violation of this paragraph is a Class D crime;

E-1. Is currently a restricted person under [Title 34-B, section 3862-A, subsection 2](#) or subsection 6, paragraph D except that the prohibition applies to possession and control, and not ownership. Violation of this paragraph is a Class D crime;

E-2. Has been ordered to participate in a progressive treatment program pursuant to [Title 34-B, section 3873-A](#) and, as part of that order, directed not to possess a dangerous weapon pursuant to [Title 34-B, section 3873-A](#), subsection 7-A for the duration of the treatment program, except that the prohibition applies to possession and control, and not ownership. Violation of this paragraph is a Class D crime;

F. Is a fugitive from justice. For the purposes of this paragraph, "fugitive from justice" has the same meaning as in section 201, subsection 4. Violation of this paragraph is a Class D crime;

G. Is an unlawful user of or is addicted to any controlled substance and as a result is prohibited from possession of a firearm under 18 United States Code, Section 922(g)(3). Violation of this paragraph is a Class D crime;

H. Is an alien who is illegally or unlawfully in the United States or who was admitted under a nonimmigrant visa and who is prohibited from possession of a firearm under 18 United States Code, Section 922(g)(5). Violation of this paragraph is a Class D crime;

I. Has been discharged from the United States Armed Forces under dishonorable conditions. Violation of this paragraph is a Class D crime; or

J. Has, having been a citizen of the United States, renounced that person's citizenship. Violation of this paragraph is a Class D crime.

For the purposes of this subsection, a person is deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

In the case of a deferred disposition, a person is deemed to have been convicted when the court imposes the sentence. In the case of a deferred disposition for a person alleged to have committed one or more of the offenses listed in [section 1023, subsection 4, paragraph B-1](#), that person may not possess a firearm during the deferred disposition period. Violation of this paragraph is a Class C crime.

For the purposes of this subsection, a person is deemed to have been found not criminally responsible by reason of insanity upon the acceptance of a plea of not criminally responsible by reason of insanity or a verdict or finding of not criminally responsible by reason of insanity, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

1-A. Limited prohibition for nonviolent juvenile offenses. A person who has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction under subsection 1, paragraph A-1 or subsection 1-B, paragraph A but is not an adjudication under subsection 1, paragraph C or an adjudication under subsection 1-B, paragraph B in which bodily injury to another person was threatened or resulted may not own or have in that person's possession or control a firearm for a period of 3 years following completion of any disposition imposed or until that person reaches 18 years of age, whichever is later. Violation of this subsection by a person at least 18 years of age is a Class C crime.

1-B. Prohibition for domestic violence offenses. A person may not own, possess or have under that person's control a firearm if that person:

A. Has been convicted of committing or found not criminally responsible by reason of insanity of committing:

- (1) A Class D crime in this State in violation of [Title 17-A, section 207-A](#), 209-A, 210-B, 210-C or 211-A;
- or

(2) A crime under the laws of the United States or any other state that in accordance with the laws of that jurisdiction is elementally substantially similar to a crime in [subparagraph \(1\)](#).

Violation of this paragraph is a Class C crime; or

B. Has been adjudicated in this State or under the laws of the United States or any other state to have engaged in conduct as a juvenile that, if committed by an adult, would have been a disqualifying conviction under this subsection. Violation of this paragraph is a Class C crime.

Except as provided in subsection 1-A, the prohibition created by this subsection for a conviction or adjudication of an offense listed in paragraph A or B expires 5 years from the date the person is finally discharged from the sentence imposed as a result of the conviction or adjudication if that person has no subsequent criminal convictions during that 5-year period. If a person is convicted of a subsequent crime within the 5-year period, the 5-year period starts anew from the date of the subsequent conviction. In the case of a deferred disposition, the 5-year period begins at the start of the deferred disposition period. If, at the conclusion of the deferred disposition period, the court grants the State's motion to allow a person to withdraw the plea and the State dismisses the charge that gave rise to the prohibition with prejudice, the 5-year period terminates.

For the purposes of this subsection, a person is deemed to have been convicted or adjudicated upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

For the purposes of this subsection, a person is deemed to have been found not criminally responsible by reason of insanity upon the acceptance of a plea of not criminally responsible by reason of insanity or a verdict or finding of not criminally responsible by reason of insanity, or of the equivalent in a juvenile case, by a court of competent jurisdiction.

The provisions of this subsection apply only to a person convicted, adjudicated or placed on deferred disposition on or after October 15, 2015.
