

SENATE BILL NO. 473

INTRODUCED BY B. PHALEN, D. LOGE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO WEATHER MODIFICATION; PROHIBITING WEATHER MODIFICATION THAT IS NOT FOR AGRICULTURAL PURPOSES; PROVIDING DEFINITIONS; ~~AND~~ PROVIDING AN EXCEPTION; AND AMENDING SECTIONS 85-3-101, 85-3-102, 85-3-103, 85-3-202, AND 85-3-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Prohibiting weather modification.** (1) Except as prescribed in 85-3-101 through 85-3-424, a person may not intentionally inject, release, or disperse chemicals, chemical compounds, substances, or apparatuses within the borders of Montana from an aircraft expressly for:

(a) engaging in weather modification and control;

(b) affecting temperature; or

(c) affecting the intensity of the sunlight.

(2) As used in this section:

(a) "aircraft" means any manned or unmanned aerial vehicle or devise that is used or intended to be used for flight in the air;

~~(a)(b)~~ "chemical compounds" means any combination of any number of chemicals;

~~(b)(c)~~ "chemicals" means industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin; and

~~(c)(d)~~ "weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

**Section 2.** Section 85-3-101, MCA, is amended to read:

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**"85-3-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area for agricultural purposes over one continuing time interval, not exceeding 1 year.

(3) "Research and development" means theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for ~~experimental and demonstration~~ agricultural purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(4) "Weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere."

**Section 3.** Section 85-3-102, MCA, is amended to read:

**"85-3-102. Standards for research in weather modification control.** The department may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it considers necessary or desirable to minimize danger to health, safety, welfare, or property. Research and development or projects in weather modification may address only agricultural purposes, including but not limited to minimizing drought conditions, increasing or decreasing precipitation, and preventing hail."

**Section 4.** Section 85-3-103, MCA, is amended to read:

**"85-3-103. Department powers.** In addition to any other acts authorized by law, the department may:

(1) acquire materials, equipment, and facilities as are necessary to perform its duties under this chapter;

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(2) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, expend the funds for the administration of this chapter;

(3) make such studies and investigations and obtain such information as the department may deem necessary in exercising its authority in the administration or enforcement of this chapter;

(4) cooperate with public or private agencies in the performance of the department's functions or duties and in furtherance of the purposes of this chapter;

(5) represent the state in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control;

(6) enter into cooperative agreements with the United States government or any of its agencies, with the various counties and cities of this state, or with any private or public agencies for conducting weather modification or cloud seeding operations for agricultural purposes;

(7) act for and represent the state and the counties, cities, and private or public agencies in contracting with private concerns for the performance of weather modifications or cloud seeding operations; and

(8) conduct and make arrangements, including contracts and agreements, for the conduct of research and development activities relating to:

(a) the identification and evaluation of meteorological, environmental, ecological, agricultural, economic, hydrological, and sociological impacts of weather modification in Montana;

(b) the theory and development of methods of weather modification and control, including processes, materials, and devices relating thereto;

(c) the utilization of weather modification and control for agricultural, ~~industrial, commercial, recreational, and other~~ purposes;

(d) the protection of life and property during research and operational activities."

**Section 5.** Section 85-3-202, MCA, is amended to read:

**"85-3-202. Department to review applications.** ~~(1)~~ The department shall review all applications for

weather modification activities. The department shall prepare a report and an environmental impact statement pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.

~~(2) — The department may provide by rule for exempting from the license and permit requirements of this chapter:~~

~~(a) — research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;~~

~~(b) — laboratory research and experiments;~~

~~(c) — activities of an emergency character for protection against fire, frost, sleet, or fog; and~~

~~(d) — activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."~~

**Section 6.** Section 85-3-206, MCA, is amended to read:

**"85-3-206. Permits -- requirements and hearing.** (1) The permits must be issued in accordance with procedures and subject to conditions that the department may by rule establish to effectuate this chapter.

(2) Within 30 days after completion of the report required under 85-3-202, the department shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or deny the application for a permit. The department may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention has been published;

(c) an applicant has furnished proof of financial responsibility in an amount to be determined by the department as required in 85-3-211;

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(d) the fee for the permit has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted have been determined by the department to be for ~~the general welfare and the public good~~ agricultural purposes. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, or provide economic benefits for the people of Montana, ~~or advance scientific knowledge;~~

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

(3) The department may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If a hearing is not held, the department may grant or conditionally grant a permit based on the information contained in the application and the department's report.

(4) Costs incurred by the department in holding a hearing under subsection (2) must be paid by the applicant."

NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to [section 1].

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