

1 ~~applicant shall abide by any condition of the license and the requirements governing private fish ponds in 87-4-~~
 2 ~~606 and this section. A temporary license is valid for 1 year. An application for renewal must be made annually~~
 3 ~~before the license expires.~~

4 (3) (a) "Private fish pond", as used in 87-4-606 and this section, means a body of water that does
 5 not exceed 500 surface acres, is determined by the department to not pose an unacceptable risk to game fish
 6 or fish species of concern in adjacent waters, including a risk from the introduction of a pathogen or an aquatic
 7 invasive species as defined in 80-7-1003, and is:

- 8 (i) created by artificial means with an associated water right as defined in 85-2-102; or
- 9 (ii) an instream pond with a tributary spring or stream that does not support game fish or fish
 10 species of special concern.

11 (b) The term does not include all other natural ponds or bodies of water, including streams or rivers
 12 and impoundments or reservoirs of or on a natural stream, river, lake, or pond.

13 (4) An applicant for licensing of an instream private fish pond shall present to the department
 14 verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream and
 15 that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of special
 16 concern in adjacent waters, including a risk from the introduction of a pathogen or an aquatic invasive species
 17 as defined in 80-7-1003. Verification must be in the form of:

- 18 (a) a formal report from a department-approved professional fisheries consultant; or
- 19 (b) other reliable department-approved data and documentation.

20 (5) The department may condition a fish pond license to require the construction, implementation,
 21 operation, and maintenance of measures or devices to prevent fish in a private fish pond from escaping into
 22 adjacent waters and posing a risk of introduction of a pathogen or aquatic invasive species as defined in 80-7-
 23 1003.

24 (6) A licensee selling fish, eggs, or fry from a private fish pond must meet these additional
 25 requirements:

26 (a) The license must be renewed annually pursuant to 87-4-606.

27 (b) Before selling fish, eggs, or fry from the pond, the licensee must provide a corporate surety
 28 bond to the state for \$2,500. This bond is conditioned on:

1 (i) maintaining compliance with the terms of the fish pond license issued to the person; and

2 (ii) not selling fish or spawn from any of the public waters of this state;

3 ~~(a)-(c)~~ A licensee who sells fish or eggs from a private fish pond shall keep accurate records of:

4 (i) the species and quantities of fish or eggs sold or purchased;

5 (ii) dates of sales or purchases;

6 (iii) names of purchasers or sellers;

7 (iv) fish health inspections or department certifications for the facility or pond, including dates and

8 results;

9 (v) a purchaser's private fish pond license number and verification that the license was valid for the
10 species of fish or eggs purchased; and

11 ~~(v)(vi)~~ locations or addresses to or from which fish or eggs are transferred.

12 ~~(b)(d)~~ On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with
13 the department, on forms made available by the department, summarizing the records required under
14 subsection ~~(6)(a)-(6)(c)~~.

15 (7) A person who owns or controls a private fish pond may request an inspection by the
16 department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the
17 department has reasonable cause to believe that a fish species in the pond may have been illegally introduced
18 or may have a disease that may affect fish in another body of water, the department shall notify the landowner
19 or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice
20 has been given to the landowner or agent or after every reasonable effort has been made to notify the
21 landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land
22 under the provisions of this subsection for the purposes of inspecting the pond, the species of fish in the pond,
23 the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the
24 physical connection of a pond to an adjacent natural lake, pond, or body of water, including a stream or river.
25 The department is responsible for actual damages to any property.

26 (8) If the department finds an illegal introduction of fish or the presence of disease in fish in a
27 licensed private fish pond or a natural lake, pond, or body of water, the department shall consult with the
28 landowner or the landowner's agent to determine the appropriate action unless an emergency exists. In an

1 emergency situation, the department may order or take appropriate action to address any threat to the state's
2 fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever
3 privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the
4 introduction of fish with a disease, the department may replace the destroyed fish without charge to the private
5 owner. A landowner or agent who has granted permission for the department to enter is not considered
6 responsible for an illegal introduction of fish or disease unless proved otherwise.

7 (9) The department may adopt rules necessary for the regulation of private fish pond as provided
8 in this section, including but not limited to department certification of health standards, frequency of department
9 certification, pond design and function, inspections, reporting requirements and other measure to prevent
10 damages to public fish and wildlife resources."

11
12 **Section 2.** Section 87-4-606, MCA, is amended to read:

13 **"87-4-606. Term of fish pond license -- fees -- site inspections -- license not transferable --**
14 **exception for transfer.** (1) Except as provided in subsections (3) and (4), a fish pond license issued pursuant
15 to 87-4-603 is valid for ~~40-5~~ years. An application must be on a form prescribed by the department and must
16 include the following to be considered correct and complete:

- 17 (a) physical information concerning the property owner and, if applicable, the property manager;
18 (b) an accurate and complete description of the pond location, including whether the pond is off- or
19 on-stream, physical information concerning the construction and design of an off-stream pond, and a detailed
20 plan of operation;
21 (c) documentation of lawful source of fish to be stocked;
22 (d) documentation of water right, as defined in 85-2-102.

23 (2) There is a ~~\$10~~\$600 application fee and a ~~\$10~~250 renewal fee for each fish pond license.

24 (3) (a) Except as provided in subsections (3)(b) and (4), a fish pond license expires on February 28
25 of the ~~40th-fifth~~ year succeeding the year of issuance or renewal.

26 (b) A licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license
27 expires on February 28 of the year succeeding the year of issuance.

28 (c) (i) An application for renewal must be made before a license expires. The renewal application

1 must be made on a form prescribed by the department.

2 (ii) The department ~~shall~~may renew the license if the licensee has not violated any condition upon
3 which the license was granted and if the licensee has met all of the requirements governing private fish ponds
4 in 87-4-603, administrative rules, and this section.

5 (iii) The department may only deny a renewal if the department receives document, substantive
6 new information since the issuance of the original permit about the threat or risk to game fish or fish species of
7 concern in adjacent waters.

8 (iv) If the department does not renew a license, the department shall:

9 (A) provide in writing to the applicant the reasons for not renewing;

10 (B) allow 30 days for a response from the applicant; and

11 (C) provide for a show cause hearing to address deficiencies and to craft a mitigation plan to the
12 newly identified threat or risk. The department may agree to the mitigation plan and subsequently renew the
13 license.

14 (4) A new license is required when a licensee proposes to plant a new species or stock a pond not
15 designated in the original license.

16 (5) (a) Except as provided in subsection (5)(b), a fish pond license granted under 87-4-603 is not
17 transferable.

18 (b) If ownership or control of the private fish pond changes, the new owner or operator shall apply
19 to the department for a license transfer on a form prescribed by the department. The transfer must be approved
20 by the department before the new owner or operator may continue operation of the private fish pond.

21 (c) A transferred license retains the remaining portion of the original license's term.

22 (d) There is a \$250 application fee to transfer the fish pond license.

23 (6) The department may adopt rules necessary to implement the provisions of this section,
24 including but not limited to the format and requirements of the application form, conditions for renewal licenses,
25 and eligibility requirements for the transfer of licenses."

26

27 **Section 3.** Section 87-4-607, MCA, is amended to read:

28 **"87-4-607. Revocation of fish pond license -- penalties and fines.** (1) A fish pond license or a

1 temporary fish pond license issued pursuant to 87-4-603 may be revoked for failure to operate or use the pond
2 according to the terms or conditions of the license or any statute, rule, or order covering importation,
3 transportation, or introduction of fish or eggs.

4 (2) If the department discovers a violation under this section, it may institute revocation
5 proceedings after providing reasonable notice and opportunity for a hearing to the licensee. After hearing and
6 upon proof of the violation, the department may revoke the fish pond license."

7

8 **Section 4.** Section 87-4-609, MCA, is amended to read:

9 **"87-4-609. Regulation of commercial taking of fish or aquatic organisms -- permit -- rulemaking**

10 **authority.** (1) The department shall regulate the taking, for sale or commercial distribution, of:

- 11 (a) crayfish for fishing bait;
12 (b) crayfish from private fish ponds regulated under 87-4-603;
13 (c) mysis shrimp;
14 (d) designated species of nongame fish in waters designated by the commission pursuant to 87-3-
15 204;
16 (e) whitefish as authorized by statute; and
17 (f) other aquatic organisms.

18 (2) In order to obtain a permit to take fish or aquatic organisms for sale or commercial distribution,
19 an applicant shall provide the department with sufficient details of the proposed operation to enable the
20 department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the
21 waters.

22 (3) The department may:

- 23 (a) deny a permit if it determines that there is substantial potential that the proposed operation may
24 harm a fishery or conflict with existing recreational uses of the waters;
25 (b) condition a permit to restrict the method of taking, the location of the taking, and the quality and
26 quantity of harvest to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or
27 (c) require a permittee to submit harvest data to the department.
28 (4) A permit may be revoked for a violation of the conditions of the permit.

1 (5) The department may adopt rules for the regulation of commercial taking of fish or aquatic
2 organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size
3 limitations, and reporting requirements, to prevent overharvest or conflict with fishing and recreational uses of
4 the waters."
5

6 NEW SECTION. ~~Section 5. Section 4.~~ {standard} Repealer. The following sections of the Montana
7 Code Annotated are repealed:

8 87-4-601. Sale of fish or spawn.
9

10 NEW SECTION. Section 6. {standard} **Effective date.** [This act] is effective on passage and
11 approval.
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