

2013 SENATE NATURAL RESOURCES

SB 2365

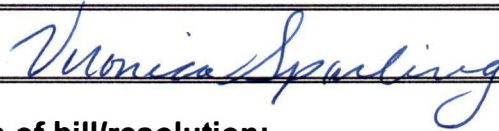
2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2365
February 8, 2013
18605

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to hunting big game on or over highways or roads

Minutes:

Testimony attached

Chairman Lyson opened the hearing for SB 2365.

Senator O'Connell, District 6, introduced the bill.

Representative Hunskor, District 6, explained the need for the bill. See attachment #1 for the laws of the states and provinces that border ND. (Ends at 7:20)

Senator Murphy asked about the statement Representative Hunskor had made that in 2002 80% of the hunters were opposed to.... Were they opposed to the proposed bill or were they opposed to doing the shooting over a roadway?

Representative Hunskor said 80% of the hunters that were there wanted to leave it as is. They did not want to make it illegal. That was in 2002 and we probably have more educated hunters now.

There was discussion about the wording "on the road" and the danger of shooting on or near roadways. (Ends at 10:30)

Leland Goodman lives in an area where shooting on or near roadways is a problem. See attachment #2. (Ends at 18:50)

There was discussion about how to enforce a law if a law were made. (Ends at 20:16)

Lynn Kongsli, a rancher from Towner, ND spoke in favor of the bill. He was in a tractor and almost got hit by a bullet from a deer hunter's gun. He feels people shouldn't have to live in fear during hunting season. (Ends at 22:15)

Opposition:

Kay LaCoe opposed the bill because it would restrict landowners ability to even hunt on their own land. See attachment #3. (22:40 to 26:00)

Neutral:

Mike Donahue with the ND Wildlife Federation stated he feels the bill is too broad but he would not oppose it because he understands why the bill was brought.

There was discussion about how to improve the bill. (Ends at 28:35)

Bob Timean, Chief Game Warden for ND Game & Fish Department summarized the current law that governs hunting near roads, etc. and there was more discussion about how to improve the bill. (Ends at 31:20)

Leland Goodman explained the regulations of some surrounding states.

Chairman Lyson closed the hearing for SB 2365.

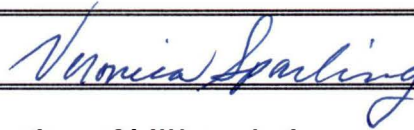
2013 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2365
February 14, 2013
18943

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to hunting big game on or over highways or roads

Minutes:

No attachments

Chairman Lyson opened the discussion for SB 2365.

Senator Hogue: Do Not Pass

Senator Murphy: Second

There was discussion about possibly making amendments to the bill rather than killing it because everyone acknowledged that shooting near roadways is a problem. It seems to be a matter of common sense, so that is hard to legislate. The discussion covered: what else will we have to write into the law, Hunter Safety is required, and law enforcement is the key. Under the present law a person who shoots near a roadway can be charged with reckless endangerment. Maybe we need to encourage our law enforcement personnel to charge people with reckless endangerment.

There was discussion about how to change the bill to make hunting safer without causing too much restriction for the hunters. In Hunter Safety they teach you to not take a shot if you don't know what is beyond.

Roll Call Vote: 7, 0, 0

Carrier: Senator Burckhard

Date: 2-14-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2365

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Hogue Seconded By Murphy

Senators	Yes	No	Senators	Yes	No
Senator Lyson	✓		Senator Triplett	✓	
Senator Burckhard	✓		Senator Murphy	✓	
Senator Hogue	✓				
Senator Laffen	✓				
Senator Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Burckhard

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2365: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2365 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SB 2365

#1

From: Timian, Robert G. [<mailto:rtimian@nd.gov>]

Sent: January-25-13 2:01 PM

To: Andy Alban; jim.konrad@dnr.state.mn.us; jkropp@mt.gov; Merritt, Colin (CON); dharvey@serm.gov.sk.ca

Subject: Shoot on or across roads.

Our legislature in session, it would be helpful if you could let me know what your current law is regarding shoot from a road and/or across a road. Also if prohibited what is the definition of a road?

Thanks

Robert Timian
Chief Game Warden
North Dakota Game & Fish Department
100 N. Bismarck Expressway
Bismarck, North Dakota 58501-5095

From: Merritt, Colin (CON) [Colin.Merritt@gov.mb.ca]
Sent: Friday, January 25, 2013 4:15 PM
To: Timian, Robert G.
Cc: 'Andy Alban'; 'jim.konrad@dnr.state.mn.us'; 'jkropp@mt.gov';
'dharvey@serm.gov.sk.ca'
Subject: RE: Shoot on or across roads.

Hi Robert

Manitoba has two different prohibitions depending on what type of road it is. Here is the legislation.

2(a) No person shall hunt from a provincial road or provincial trunk highway;

2(b) No person shall while hunting, discharge a bow or a firearm from a provincial road or provincial trunk highway or cause a projectile from a bow or firearm to pass along or across a provincial road or provincial trunk highway;

Our Provincial Roads and Provincial Trunk Highways are all numbered and laid out on Plan of Survey maps through our *Highways and Transportation Act*.

2(c) No person shall while hunting, discharge a rifle requiring a centrefire cartridge, muzzleloading firearm or a shotgun using a single projectile from a public road within a municipality or local government district or cause a projectile from such a firearm to pass along or across a public road located within a municipality or local government district.

Our legislation does not have an actual definition for "public road" so we just interpret it as any road in which the public has access to. It does cause us some problems as to what a road is! Discretion is used by our officers in some areas where the "road" in question may be is a turkey trail through the bush.

Hope this helps.

Colin Merritt
Enforcement Coordinator
Manitoba Conservation and Water Stewardship
Compliance a& Field Services
204-945-7462

From: Konrad, Jim (DNR) [jim.konrad@state.mn.us]
Sent: Friday, January 25, 2013 2:06 PM
To: Timian, Robert G.
Subject: RE: Shoot on or across roads.

2012 Minnesota Statutes

Resources

- About Minnesota Statutes
- 2012 Table of Chapters
- 2012 Statutes New, Amended or Repealed
- Chapter 97B Table of Sections
- Chapter 97B Text

Topics

- Aircraft
- Big Game
- Bounties
- Bows and Arrows
- Contests
- Deer
- Disabled Persons
- Firearms
- Fish and Fishing
- Highways
- Hunting
- Hunting Licenses
- Medical Evidence
- Migratory Waterfowl
- Motor Vehicles
- Natural Resources Department
- Physicians and Surgeons
- Snowmobiles

Recent History

- 2001 Subd. 2 Amended 2001 c 185 s 30
- 2000 Subd. 2 Amended 2000 c 428 s 2
- 1997 Subd. 2 Amended 1997 c 226 s 28
- 2011 Subd. 3 Amended 1Sp2011 c 2 art 5 s 42
- 2009 Subd. 3 Amended 2009 c 176 art 2 s 42
- 2000 Subd. 3 Amended 2000 c 265 s 2
- 1995 Subd. 3 Amended 1Sp1995 c 1 s 27

97B.055 DISCHARGING FIREARMS AND BOWS AND ARROWS.

Subdivision 1. Restrictions related to highways.

(a) A person may not discharge a firearm or an arrow from a bow on, over, or across an improved public highway at a big game animal. A person may not discharge a firearm or bow and arrow within the right-of-way of an improved public highway at a big game animal. The commissioner may by rule extend the application of this subdivision to the taking of migratory waterfowl in designated locations.

(b) A person may not discharge a firearm or an arrow from a bow on, over, across, or within the right-of-way of an improved public highway at a decoy of a big game animal that has been set out by a licensed peace officer.

Subd. 2. Restrictions related to motor vehicles.

A person may not take a wild animal with a firearm or by archery from a motor vehicle except as permitted in this section. Notwithstanding section 97B.091, a person may transport a bow uncased while in an electric motor-powered boat and may take rough fish while in the boat.

Subd. 3. Hunting from vehicle by disabled hunters.

(a) The commissioner may issue a special permit, without a fee, to discharge a firearm or bow and arrow from a stationary motor vehicle to a person who obtains the required licenses and who has a permanent physical disability that is more substantial than discomfort from walking. The permit recipient must be:

(1) unable to step from a vehicle without aid of a wheelchair, crutches, braces, or other mechanical support or prosthetic device; or

(2) unable to walk any distance because of a permanent lung, heart, or other internal disease that requires the person to use supplemental oxygen to assist breathing.

(b) The permanent physical disability must be established by medical evidence verified in writing by a licensed physician, chiropractor, or certified nurse practitioner or certified physician assistant acting under the direction of a licensed physician. The commissioner may request additional information from the physician or chiropractor if needed to verify the applicant's eligibility for the permit. Notwithstanding section 97A.418, the commissioner may, in consultation with appropriate advocacy groups, establish reasonable minimum standards for permits to be issued under this section. In addition to providing the medical evidence of a permanent disability, the applicant must possess a valid disability parking certificate authorized by section 169.345 or license plates issued under section 168.021.

(c) A person issued a special permit under this subdivision and hunting deer may take a deer of either sex, except in those antlerless permit areas and seasons where no antlerless permits are offered. This subdivision does not authorize another member of a party to take an antlerless deer under section 97B.301, subdivision 3.

(d) A permit issued under this subdivision is valid for five years.

(e) The commissioner may deny, modify, suspend, or revoke a permit issued under this section for cause, including a violation of the game and fish laws or rules.

(f) A person who knowingly makes a false application or assists another in making a false application for a permit under this section is guilty of a misdemeanor. A physician, certified nurse practitioner, certified physician assistant, or chiropractor who fraudulently certifies to the commissioner that a person is permanently disabled as described in this section is guilty of a misdemeanor.

(g) Notwithstanding paragraph (d), the commissioner may issue a permit valid for the entire life of the applicant if the commissioner determines that there is no chance that an applicant will become ineligible for a permit under this section and the applicant requests a lifetime permit.

Subd. 4. Taking bounty animals from airplanes and snowmobiles.

The commissioner may issue a special permit, without fee, to take animals that the state pays a bounty for, from an airplane or a snowmobile.

History:

1986 c 386 art 2 s 12; 1990 c 558 s 2; 1991 c 241 s 7; 1991 c 259 s 23; 1994 c 561 s 23; 1Sp1995 c 1 s 27; 1997 c 226 s 28; 2000 c 265 s 2; 2000 c 428 s 2; 2001 c 185 s 30; 2009 c 176 art 2 s 42; 1Sp2011 c 2 art 5 s 42

Bob, this just applies to big game and improved public roadways, not field roads, cartways or trails.

From: Timian, Robert G. [mailto:rtimian@nd.gov]

Sent: Friday, January 25, 2013 2:01 PM

To: Andy Alban; Konrad, Jim (DNR); jkropp@mt.gov; colin.merritt@gov.mb.ca; dharvey@serm.gov.sk.ca

Subject: Shoot on or across roads.

Our legislature in session, it would be helpful if you could let me know what your current law is regarding shoot from a road and/or across a road. Also if prohibited what is the definition of a road?

Thanks

Robert Timian
Chief Game Warden
North Dakota Game & Fish Department
100 N. Bismarck Expressway
Bismarck, North Dakota 58501-5095

From: Alban, Andy [Andy.Alban@state.sd.us]
Sent: Wednesday, January 30, 2013 8:37 AM
To: Timian, Robert G.
Subject: RE: Shoot on or across roads.

South Dakota law permits (small game & predator/varmints) and prohibits (big game w/exception) this activity. There is no specific prohibition for shooting a gun from/across a road, rather it is tied to hunting. Most of the statutes can be found by clicking the link below. Road hunting (41-9-1.1) and the prohibition for big game hunting from the road (41-9-1.2) are the most notable.

<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=41-9&Type=StatuteChapter>

From: Timian, Robert G. [mailto:rtimian@nd.gov]
Sent: Friday, January 25, 2013 2:01 PM
To: Alban, Andy; jim.konrad@dnr.state.mn.us; jkropp@mt.gov; colin.merritt@gov.mb.ca; dharvey@serm.gov.sk.ca
Subject: Shoot on or across roads.

Our legislature in session, it would be helpful if you could let me know what your current law is regarding shoot from a road and/or across a road. Also if prohibited what is the definition of a road?

Thanks

Robert Timian
Chief Game Warden
North Dakota Game & Fish Department
100 N. Bismarck Expressway
Bismarck, North Dakota 58501-5095

From: Kropp, Jim [jkropp@mt.gov]
Sent: Friday, January 25, 2013 3:34 PM
To: Timian, Robert G.; Andy Alban; jim.konrad@dnr.state.mn.us;
colin.merritt@gov.mb.ca; dharvey@serm.gov.sk.ca
Subject: Re: Shoot on or across roads.

Bob, in MT it is unlawful to shoot from, on, or across a public roadways. Im out of the Hq in the Leg myself. So don,t have the definition handy. Good luck next jk

Sent via DroidX2 on Verizon Wireless™

-----Original message-----

From: "Timian, Robert G." <rtimian@nd.gov>
To: Andy Alban <andy.alban@state.sd.us>, "jim.konrad@dnr.state.mn.us" <jim.konrad@dnr.state.mn.us>, "Kropp, Jim" <jkropp@mt.gov>, "colin.merritt@gov.mb.ca" <colin.merritt@gov.mb.ca>, "dharvey@serm.gov.sk.ca" <dharvey@serm.gov.sk.ca>
Sent: Fri, Jan 25, 2013 20:02:35 GMT+00:00
Subject: Shoot on or across roads.

Our legislature in session, it would be helpful if you could let me know what your current law is regarding shoot from a road and/or across a road. Also if prohibited what is the definition of a road?

Thanks

Robert Timian
Chief Game Warden
North Dakota Game & Fish Department
100 N. Bismarck Expressway
Bismarck, North Dakota 58501-5095

SB 2365

My statement is on behalf of passage of SB 2365. This bill is to promote the public safety of both hunting and non-hunting citizens. Even though most hunters are conscious of the rules and safety of others there is times when they see the big buck or deer crossing the road and all common sense goes out the window. They become fixated on the deer and forget the things going on around them. They may know where their hunting companion is but what about the cattle, rancher, farmer in the field, farmstead ½ mile or mile ahead or a car in the distance. All it takes is a moment when the hunter's lapse of judgment can put that farmer, rancher, traveler, or livestock in danger. I once asked a game warden about this and he said that a large number of hunters get in trouble making bad choices along a roadway. The high caliber rifles used for this season carries much more danger as the rounds fired from these guns can travel up to 3 miles. A stray round shot down a township road can travel ½ of that township and this is not something that is always thought about by the hunter when he fires down roadway. We are told that we have laws to prevent people from shooting to close to farmsteads and etc., but remember we are relatively a large open state with not enough wardens to be everywhere and when common sense goes out the window when that deer runs in front of the vehicle of the hunter they are going to take the shot. We all want to believe that everyone will use good judgment but I have been around for a long time and more times than not I have seen more people lose all common sense when it comes to seeing that Big Buck they just have to have it. I believe that any hunter who believes in safety in the field and understands the bigger picture of the risks involved when people lose focus during those moments of excitement would not object to this bill.

This new law would not infringe on hunters who wish to walk roadways for upland game, waterfowl, or furbearers. This law would apply only for harvesting big game animals.

Sometimes I think we fail to realize that the roadways in our rural townships and counties are the workplace of the farmers and ranchers. It is where our children travel to school and residents travel for goods and services. Do they not deserve to have the same safety concerns addressed as do the residents of communities? People road hunting don't always know where the next farmstead is or what is behind the next grove of trees and when we give them the right to shoot down or across roadways they unknowly can be shooting too close to a farmstead, or into someone's workplace at that moment. I do not believe that hunters intentionally mean to cause harm but when the only focus is on the deer right in front of him he does not realize the danger he could be putting someone in.

When my daughter was in high school coming home about 4:30 in the afternoon a doe and two fawn ran across the road 75 feet in front of her, she braked and stopped and a hunter standing on an approach 200 yards in front of her shot the doe on the shoulder of road in front of her car. We called it in but it was legal because he did not hit her or the car.

I have witnessed hunters shooting down these same roads with school bus light strobes ¼ to 1 mile in the distance. When confronted they all say the same thing, they were being careful, the deer were in the ditch. A shot misdirected by a slight margin could have been a tragedy.

I was on the road when a group shot a doe directly in front of me about 300 yards. When I stopped one of the hunters said sorry we didn't see you. They were not looking beyond the deer. I called the county law enforcement and he asked if I was hit and when I said no he said then there was nothing he could do. The law gives them the right to shoot down any township, county, or state road.

In my county ten miles east of Granville a hunter with a pocket full of doe tags was parked in the median harvesting does, shooting west into oncoming traffic. Some deer were shot in the center ditch, a warden was called but nothing was or could be done, he was asked to move on.

In the examples I gave these hunters were within the law. But was it in the best interest of safety for all the citizens traveling our roadways? No it isn't. I recognize that there are responsible and considerate hunters that do follow the rules but I also know as do many others that hunting big game in ND makes many hunters throw all common sense out the window. As the population and traffic in ND grows so does the risks. Do we have to wait until someone of prominence or a child gets injured or killed before we pass a law or do we act to now to protect all people traveling on our roadways from the possibility of being hit by a round from a large caliber rifle? I would ask this committee to recommend a do pass on this important bill to protect our ND residents and travelers.

Leland Goodman

802 77th St NE

Willow City ND 58384

701-366-4765

Senate Bill 2365 – DO NOT PASS – Kay LaCoe

Mr. Chairman, members of the committee, I am here today to urge a "DO NOT PASS" recommendation on Senate Bill 2365, a bill aimed at limiting the rights of property owners.

Those in favor of this bill will lead you to believe this is purely a safety and hunting issue – do not let their arguments lead you away from what is at the heart of this bill – infringement on landowner rights. This bill will tell landowners throughout the state that that 200 yard shot at a broadside doe standing perfectly legal on their land is now no longer legal to take if they're within 33 and third ~~yards~~ ^{feet} from the middle of the road, on their own property.

I cannot stand here and spew facts and figures about the number of acres of hunting land this bill will affect, but I can tell you how hard my family works to maintain the land that I am here to protect and I can tell you what I know from my experiences and that of many others I have shared my land with, hunted with and swapped hunting stories with over the past 20 years. I was raised in a hunting family, going out with my parents from the time I could walk and wouldn't annoy them too badly. I began carrying a gun at age 10 and continue to actively hunt into my 30s.

North Dakota has a long standing hunting heritage, a heritage that pales in comparison only to the heritage of land ownership. I am proud to say that I still own and hunt on more than 900 acres that has been in my family since my grandfather came over on the boats from Germany more than 100 years ago. That land will be passed on to my son who will also hunt that land.

Senate Bill 2365 aims to take away my right to do with my land what is my right. As the proposed bill stipulates, I would no longer have the legal right to ethically and humanely take big game on my property which falls within the right of way – land that I own and control for all intents and purposes.

North Dakota Century code has already demonstrated support of landowner rights when using a motor vehicle and prevents the use of a motor in the taking of big game as stated in Section 20.1-01-07 "...a person, other than the **landowner**, without the written permission of the landowner or a lessee who actively farms or ranches that land, while hunting big game or small game, other than waterfowl or cranes, statewide, may not use a motor-driven vehicle on any land other than an established road or trail, unless that person has reduced a big game animal to possession and cannot easily retrieve the big game animal....the motor-driven vehicle must be returned to the established road or trail..."

The North Dakota Deer proclamation also includes language stating, "it is illegal to shoot with bow and arrow or firearm while in or on a motor-driven vehicle." As well as, and probably the most compelling in respect to this bill number 16 in the 2012 ND Deer Proclamation states "Road Rights of Way - Do not hunt on road rights of way unless you are certain that they are open to public use. Most road rights of way are under the control of the adjacent landowner and are closed to hunting when the adjacent land is posted closed to hunting."