

# Committee Report

**REGULAR CALENDAR**

**February 15, 2018**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on Fish and Game and Marine Resources to which was referred HB 1527,**

**AN ACT relative to the authority of fish and game officers regarding arrest and search and seizure.**

**Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. Jonathan Manley**

**FOR THE MAJORITY OF THE COMMITTEE**

**MAJORITY  
COMMITTEE REPORT**

Committee:	Fish and Game and Marine Resources
Bill Number:	HB 1527
Title:	relative to the authority of fish and game officers regarding arrest and search and seizure.
Date:	February 15, 2018
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

**STATEMENT OF INTENT**

This bill seeks to repeal some authorities held by certain law enforcement officers, in particular conservation officers of the Fish and Game Department. Current authority has worked well by providing the department the ability to enforce the law, thereby helping to protect the public. Without this authority, officers would be restricted in doing their jobs.

Vote 15-4.

Rep. Jonathan Manley  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Fish and Game and Marine Resources

**HB 1527**, relative to the authority of fish and game officers regarding arrest and search and seizure. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Jonathan Manley for the **Majority** of Fish and Game and Marine Resources. This bill seeks to repeal some authorities held by certain law enforcement officers, in particular conservation officers of the Fish and Game Department. Current authority has worked well by providing the department the ability to enforce the law, thereby helping to protect the public. Without this authority, officers would be restricted in doing their jobs. **Vote 15-4.**

Original: House Clerk

Cc: Committee Bill File

# COMMITTEE REPORT

COMMITTEE: Fish and Game

BILL NUMBER: HB 1527

TITLE: Relative to the authority of F & Game Officers  
Regarding arrest and search and seizure

DATE: 2/13/18 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.  
\_\_\_\_\_

**STATEMENT OF INTENT:**

THIS BILL SEEMS TO REPEAL  
AUTHORITY HELD BY LAW ENFORCEMENT  
+ IN PARTICULAR THE FISH + GAME OFFICER.  
SAID AUTHORITY HAS WORKED WELL AND PROTECTS  
BOTH THE PUBLIC AND FISH + GAMES  
ABILITY TO ENFORCE LAW. WITHOUT THIS  
AUTHORITY OFFICERS WOULD BE RESTRICTED  
IN DOING THEIR JOB.

John Cunn

COMMITTEE VOTE: 15/4 ITL

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Jonathan G. Manly  
For the Committee

**REGULAR CALENDAR**

**February 15, 2018**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Fish and Game and Marine Resources to which was referred HB 1527,**

**AN ACT relative to the authority of fish and game officers regarding arrest and search and seizure.**

**Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.**

**Rep. Ed Comeau**

**FOR THE MINORITY OF THE COMMITTEE**

**MINORITY  
COMMITTEE REPORT**

Committee:	Fish and Game and Marine Resources
Bill Number:	HB 1527
Title:	relative to the authority of fish and game officers regarding arrest and search and seizure.
Date:	February 15, 2018
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

**STATEMENT OF INTENT**

This legislation seeks to limit the authority of conservation officers to arrest, search, and seize only when enforcing fish and game laws. This ensures compliance with the constitutional protections of the Fourth Amendment of the Bill of Rights which clearly states that any arrest, search, and seizure only be conducted through issuance of a warrant provided through a judge. It is the opinion of the minority that our Fourth Amendment rights shall at all times be weighted to protect the individual.

Rep. Ed Comeau  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Fish and Game and Marine Resources

**HB 1527**, relative to the authority of fish and game officers regarding arrest and search and seizure. **OUGHT TO PASS.**

Rep. Ed Comeau for the **Minority** of Fish and Game and Marine Resources. This legislation seeks to limit the authority of conservation officers to arrest, search, and seize only when enforcing fish and game laws. This ensures compliance with the constitutional protections of the Fourth Amendment of the Bill of Rights which clearly states that any arrest, search, and seizure only be conducted through issuance of a warrant provided through a judge. It is the opinion of the minority that our Fourth Amendment rights shall at all times be weighted to protect the individual.

Original: House Clerk

Cc: Committee Bill File



# MINORITY REPORT

COMMITTEE: Fish and Game

BILL NUMBER: HR 1527

TITLE: Relative to the authority of Fish and Game officers regarding arrest and search and seizure

DATE: 2/13/18 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.  
\_\_\_\_\_

**STATEMENT OF INTENT:**

<sup>seeks</sup>  
THIS LEGISLATION LIMITS THE AUTHORITY OF CONSERVATION OFFICERS TO ARREST, SEARCH AND SIEZE ONLY WHEN ENFORCING FISH AND GAME RULES. - AND ENSURES COMPLIANCE WITH THE CONSTITUTIONAL PROTECTIONS OF THE FOURTH AMENDMENT OF THE BILL OF RIGHTS WHICH CLEARLY STATES THAT ANY ARREST, SEARCH AND SIEZURE ONLY BE CONDUCTED THROUGH ISSUANCE OF A WARRANT PROVIDED THROUGH A JUDGE. IT IS THE OPINION OF THE MINORITY THAT OUR FOURTH AMENDMENT RIGHTS SHALL "AT ALL TIMES" BE WIEGHTED TO PROTECT THE INDIVIDUAL AND NOT "STATE ACTORS"

*Same with*  
15-4

COMMITTEE VOTE: 15-4

RESPECTFULLY SUBMITTED,

• Copy to Committee Bill File

Rep. ED COMEAU  
For the Minority

# Voting Sheets

HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

EXECUTIVE SESSION on HB 1527

**BILL TITLE:** relative to the authority of fish and game officers regarding arrest and search and seizure.

**DATE:** February 13, 2018

**LOB ROOM:** 307

**MOTIONS:** INEXPEDIENT TO LEGISLATE

Moved by Rep. Manley

Seconded by Rep. Laflamme

Vote: 15-4

CONSENT CALENDAR: NO

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Duane Brown, Acting Clerk

HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

EXECUTIVE SESSION on HB 1527

BILL TITLE: relative to the authority of fish and game officers regarding arrest and search and seizure.

DATE: 2/13/18

LOB ROOM: 307

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. MANLEY Seconded by Rep. LAFLAMME Vote: 15-4

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

CONSENT CALENDAR: \_\_\_\_\_ YES  NO

Minority Report?  Yes \_\_\_\_\_ No If yes, author, Rep: COMEAU Motion \_\_\_\_\_

Respectfully submitted: REP. BROWN   
Rep Douglas Long, Clerk



STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK

1/5/2018 10:29:42 AM  
Roll Call Committee Registers  
Report

2018 SESSION

*Regarding arrest  
and search  
and seizure*

F&G&MR

Bill #: HB 1527 Title: Relative to the authority of P&G officers

PH Date: 2/6/2018 Exec Session Date: 2/13/18

Motion: PTL Amendment #: -

MEMBER	YEAS	NAYS
Webb, James C. Chariman	✓	
L'Heureux, Robert J. Vice Chairman	✓	
Klose, John F.	✓	
Long, Douglas B. Clerk		
Spillane, James A.		✓
Tilton, Rio H.	✓	
Brown, Duane R.	✓	
Comeau, Ed		✓
Howard, Raymond		✓
Binford, David W.		✓
Carr, John Joseph <i>Mc CARTHY</i>	✓	
Nasser, Jim <i>SPAHN:ST</i>	✓	
Manley, Jonathan F.	✓	
McNamara, Richard D.	✓	
Martineau, Jesse J.	✓	
Dontonville, Roger W.	✓	
Harvey, Cathryn A.	✓	
King, Mark	✓	
Laflamme, Larry L.	✓	
Read, Ellen		
Connors, Erika F.	✓	
TOTAL VOTE:	<u>15</u>	<u>4</u>

# Hearing Minutes

HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

PUBLIC HEARING ON HB 1527

**BILL TITLE:** relative to the authority of fish and game officers regarding arrest and search and seizure.

**DATE:** February 6, 2018

**LOB ROOM:** 307                      **Time Public Hearing Called to Order:** 10:00 a. m.

**Time Adjourned:**

**Committee Members:** Reps. Webb, L'Heureux, D. Long, Klose, Spillane, Brown, Comeau, Howard, Manley, McNamara, Dontonville, C. Harvey, King, Laflamme, Read and Connors

**Bill Sponsors:**

Rep. Hoell

Rep. Itse

Rep. Wallace

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

(1.) Rep. Hoell - Sponsor - Support

- Explanation of bill.
- This requires a warrant to be served before preceding.
- Standard should be the same for other Law Enforcement Agencies.

Q: Rep. Read - Questions on current laws. Would you amend this?

A: Rep. Hoell - Explanation of current law, as he knows it. Yes, would submit an amendment. Should be kept at core mission.

Q: Rep. Spillane - Probable cause question - Can Fish and Game enter your home without a warrant?

A: Rep. Hoell - We could ask, not sure.

Q: Rep. Spillane - A general issue?

A: Rep. Hoell - Not sure

Q: Rep. Harvey - Who asked you to submit this bill?

A: Rep. Hoell - I sit on other Boards, this has come up.

- Blood on tailgate
- Drivers say -"No Search".
- What happens next?

(2.) Rep. Itse - Support

- Constitutional explanation
- Probable Cause is not in our Constitution.
- You can not be forced to incriminate yourself

(3.) \*Colonel Kevin Jordan, Chief of Law Enforcement - NH Fish and Game - Oppose

- Written testimony
- Suspicion probable cause - difference, articulable suspicion explanation there has to be a

**(3.) Colonel Kevin Jordan, Chief of Law Enforcement - NH Fish and Game  
Continued from Page One**

- reason to stop and search, arrest for violations happen now, case law shows this, through Title 18 #.

Q: Rep. Webb - Taken to scene of issue?

A: Col. Jordan - You don't really have to suspect does not have to comply.

Q: Rep. Long - Explanation of stop.

A: Col. Jordan - Well explained.

Q: Rep. Spillane - Is this about looking its house or vehicle?

A: Col. Jordan - Can't go into house without warrant. Explanation of power of F & G or Police.

Q: Rep. Spillane - Read Section 6# - stop and search without a 20626 warrant?

A: Col. Jordan - This law has been reviewed - support

Q: Rep. Spillane - Should we remove Section 6# ?

A: Col. Jordan - NO

Q: Rep. Webb - How long can a person be detained?

A: Col. Jordan - This is not a standard

Q: Rep. Manley - How has current policing worked?

A: Col. Jordan - Worked well, limited bases, worked across state since 2012.

Q: Rep. Haney - What constitutes a "stop"?

A: Col. Jordan - Explanation.

Q: Rep. L'Heureux - Do you have to show license any time?

A: Col. Jordan - Yes

Q: Rep. Laflamme - Officers, motor vehicle, probable cause ie DWI would this remove that from current law, would this hurt law enforcement?

A: Col. Jordan - Yes

Q: Rep. Webb - How many non Fish and Game offenses?

A: Col. Jordan - Non specific answer

Q: Rep. King - If these powers were illegal wouldn't court review this?

A: Col. Jordan - Courts have upheld these powers



HB 1527 - Page Three

(4.) Major Russ Conte - Department of Safety - Oppose

- Both State Police and Fish and Game work together for Public Safety. New Hampshire is the safest state in the United States.

Q: Rep. Spillane - Do State Police and Fish and Game have same powers?

A: Major Conte - Yes, Jurisdiction explanation.

(5.) Eric Anderson - N.H. Commercial Fisherman Association - Oppose

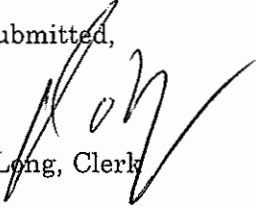
(6.) David Poole - Oppose

(7.) Jason Stock - NH Timberland Owners Association - Oppose

Much discussion on constitution/search and seizure.

Respectfully submitted,

Rep. Douglas Long, Clerk



HOUSE COMMITTEE ON FISH AND GAME AND MARINE RESOURCES

PUBLIC HEARING ON HB 1527

BILL TITLE: relative to the authority of fish and game officers regarding arrest and search and seizure.

DATE: 2/6/18

ROOM: 307

Time Public Hearing Called to Order: 10:00

Time Adjourned: \_\_\_\_\_

(please circle if present)

Committee Members: Reps. Webb, L'Heureux, Klose, Spillane, R. Tilton, Brown, Comeau, Howard, Binford, Carr, Nasser, Manley, McNamara, Martineau, D'ontonville, C. Harvey, King, Laflamme, Read, Connors and D. Long

16#

Bill Sponsors:

Rep. Hoell

Rep. Itse

Rep. Wallace

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

1. Rep Hoell, <sup>Support</sup> Explanation of Bill, this requires a warrant to be served before proceeding, standard should be the same from other law enforcement agencies. Rep. Read questions on current laws, would you amend this? Rep Hoell, Explanation of current law, as he knows it. Yes would submit an amendment, should be kept at core mission. Rep Spillane, probable cause question, can Pt 6 Enter your home without a warrant.

Rep. Hoell, we could ask, not sure

Rep. Webb, line 10<sup>th</sup> Question, what is probable cause?

Rep Spillane, A General Issues?

Hoell, not sure

Rep. Harvey, who asked you to submit this Bill

Hoell, I sit on other boards, this has come up



P. 7<sup>th</sup>

2<sup>th</sup>

Rep. Itse, support, constitutional Explanation,  
probable cause is not in our constitution  
you can NOT be forced to incriminate yourself

3<sup>th</sup> Col. Jordan, oppose, written testimony, suspicion -  
probable cause. - difference, articulated suspicion Explanation  
there has to be a reason to stop & search, arrest for  
violations happens now, case law shows this, through title 18<sup>th</sup>  
Rep. Webb, taken to scene of issue?

Col. Jordan, answer - you don't really have to  
suspect close net have to comply

Rep. Long, Explanation of steps.

Col. Jordan, well explained

Rep. Spillane, - Is this about looking in the car  
vehicle,?

Col. Jordan, can't go into House without warrant.  
Explanation of powers of F&B CR Police

Rep. Spillane, 20626 - read section 6<sup>th</sup> - stop & search  
without a ~~warrant~~, warrant.

Col. Jordan, this law has been revised - support

Rep. Spillane, should we remove section 6<sup>th</sup>

Col. Jordan, NO

Rep. Webb, How long can a person be detained?

Col. Jordan, There is not a standard

Rep. Manley, How has current policies worked?

Col. Jordan, worked well, limited bases, worked across state  
since 2012



3<sup>rd</sup>

Rep Harvey, what constitutes a "stop"

Col. Jorden, Explanation,

Rep Heuxoux, do you have to show license any time

Col Jorden, yes

Rep. LaFlamme, C officers, motor vehicle, probable cause I.E. DWI. would this remove that from current law, would this hurt law enforcement

Col Jorden, yes

Rep Webb, How many non P&G offenses

Col Jorden, non specific answer

Rep King, If these powers were illegal would it court review this

Col. Jorden, courts <sup>have</sup> upheld these powers

~~Rep. Read~~, Spillane

4<sup>th</sup> Majon. Conte Dept of Safety oppose

Both state police & P&G work together for public safety, NH is the safest state in the US

~~Rep. Read,~~

Rep. Spillane, Do state police & P&G have same powers?

Majon Conte, yes, jurisdiction Explanation,

5<sup>th</sup> Eric Anderson, oppose NH Commercial Fisherman Assoc.

~~6<sup>th</sup>~~

6<sup>th</sup> David Poole, oppose

7<sup>th</sup> Jason Steck oppose NH Timberland Owners Association

~~8<sup>th</sup>~~

much discussion on CONSTITUTION / SEARCH AND SEIZURE



# Testimony



# New Hampshire Fish and Game Department

**HEADQUARTERS:** 11 Hazen Drive, Concord, NH 03301-6500  
(603) 271-3421  
FAX (603) 271-5829

**wildnh.com**  
e-mail: [info@wildlife.nh.gov](mailto:info@wildlife.nh.gov)  
TDD Access: Relay NH 1-800-735-2964

## **New Hampshire Fish and Game Department Testimony in Opposition of House Bill 1527**

### **An Act Relative to the Law Enforcement Authority of Fish and Game Conservation Officers Regarding Arrest and Search and Seizure**

#### **Fish and Game and Marine Resource Committee February 6, 2018**

Chairman Webb and members of the Fish and Game and Marine Resources Committee. For the record my name is Kevin Jordan and I am the Chief of Law Enforcement for the Fish and Game Department. The New Hampshire Fish and Game Department and the Fish and Game Commission voted to **Oppose House Bill 1527.**

It is in the state's interest in protecting and preserving the wildlife of this state for the benefit of current and future generations of New Hampshire residents and visitors who choose to visit this state. There are administrative regulations required to serve this interest. These would include rules or laws regulating limits on the number, size and species of fish and game that may be taken at different times and in different locations across the state throughout the year. These rules or laws would be impossible to adequately enforce if a Conservation Officer could not stop and inspect all fish or game that have been caught by only those anglers and hunters who the officer has articulable suspicion to believe may have violated the fish and game laws. Violations of these types of regulations are not readily apparent from an angler's or hunter's outward appearance or conduct and realistically can only be detected if a Conservation Officer is able to stop and demand the required disclosure of any person who the officer reasonably believes is or has recently been fishing or hunting. These stops are very limited in nature and searches can only be conducted briefly and are strictly limited in scope. A search into locked containers, homes, curtilidge areas or other areas where people have a greater expectation of privacy must only be conducted after probable cause has been developed and a Search Warrant issued.

We believe that both sportsmen and commercial fishermen, the people subject to these inspections, expect that we remain able to do this in an effort to protect fish and wildlife for their enjoyment and livelihoods. The challenge of effectively balancing sensitive wildlife populations against severe weather, available habitat and limits on seasons and taking methods requires strict and effective law enforcement practices to maintain a healthy population of a wide variety of species. This change in law would significantly hamper or eliminate our ability to meet these challenges.

#### **REGION 1**

629B Main Street  
Lancaster, NH 03584-3612  
(603) 788-3164  
FAX (603) 788-4823  
email: [reg1@wildlife.nh.gov](mailto:reg1@wildlife.nh.gov)

#### **REGION 2**

PO Box 417  
New Hampton, NH 03256  
(603) 744-5470  
FAX (603) 744-6302  
email: [reg2@wildlife.nh.gov](mailto:reg2@wildlife.nh.gov)

#### **REGION 3**

225 Main Street  
Durham, NH 03824-4732  
(603) 868-1095  
FAX (603) 868-3305  
email: [reg3@wildlife.nh.gov](mailto:reg3@wildlife.nh.gov)

#### **REGION 4**

15 Ash Brook Court  
Keene, NH 03431  
(603) 352-9669  
FAX (603) 352-8798  
email: [reg4@wildlife.nh.gov](mailto:reg4@wildlife.nh.gov)

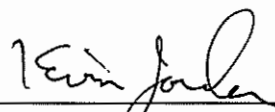
The requirement to reach probable cause, apply for a search warrant, review the warrant with a District Court Judge seeking approval and then to execute that search warrant would be far more intrusive to our sportsmen and commercial fishermen as they are held waiting for this process to be completed every time we conducted an administrative search to check for compliance.

Over the past twenty years, this law as it is currently written has only been challenged on two occasions and the State prevailed in both of these matters. This would indicate there is a clear understanding of how and when to properly conduct these searches based upon reasonable suspicion by New Hampshire Conservation Officers. People voluntarily choose to partake in the privilege of hunting and fishing and expect to be checked while in the field. Those people who are of the opinion that this is a violation of their constitutional rights can simply decide not to participate in these outdoor activities.

This change in the law also limits officers to only take enforcement authority over individuals who have committed a criminal offense. A violation level offense under NH Criminal Code RSA 625:9 is not a criminal offense. According to current statute Misdemeanors and Felonies are listed as criminal offenses. This Bill would only allow for Conservation Officers to enforce criminal offenses. It takes away the ability of officers to enforce violation level offenses or violations of any administrative rules. The vast majority of Title XVIII Fish and Game Laws are violation level offenses. The Administrative Rules are considered violation level offenses and those rules regulate seasons, opening and closing dates, methods and manner of take, bag limits and many other rules to address management of wildlife species and safety. Under this change we would no longer have the authority to arrest and bring before a court persons who have committed violation level offenses.

And finally, this law has existed in this state for the past eighty years now. If a law is deemed to have violated the constitutional rights of our citizens I would submit those laws have been addressed quickly and decisively based upon past history relating to our Supreme Court decisions. This law has never been reversed by our Courts. This fact alone convinces us that when appropriately applied RSA 206:26 does not violate the rights of our citizens.

Chairman Webb I would like to thank you for allowing me to testify before the Committee today regarding HB1527 and I would respectfully urge the Committee members to vote in **OPPOSITION of HB 1527.**



---

Colonel Kevin Jordan  
Chief of Law Enforcement  
NH Fish and Game



No. 11-527

Title: Bouhn Maikhio, Petitioner

v.

California

Docketed: October 27, 2011

Lower Ct: Supreme Court of California

Case Nos.: (S180289)

Decision Date: June 20, 2011

~~~Date~~~ ~~~~~Proceedings and Orders~~~~~

Oct 19 2011 Petition for a writ of certiorari filed. (Response due November 28, 2011)

Nov 23 2011 Motion for leave to file amici brief filed by National Rifle Association of America, Inc., et al.

Dec 14 2011 DISTRIBUTED for Conference of January 6, 2012.

Dec 29 2011 Response Requested . (Due January 30, 2012)

Jan 30 2012 Brief of respondent California in opposition filed.

Feb 10 2012 Reply of petitioner Bouhn Maikhio filed.

Feb 15 2012 DISTRIBUTED for Conference of March 2, 2012.

Mar 5 2012 Motion for leave to file amici brief filed by National Rifle Association of America, Inc., et al. GRANTED.

Mar 5 2012 Petition DENIED.

~~~Name~~~~~

~~~~~Address~~~~~

~~~Phone~~~

Attorneys for Petitioner:

Peter S. Will  
Counsel of Record

Office of Primary Defender  
450 B Street, Suite 900  
San Diego, CA 92101  
peter.will@sdcounty.ca.gov

(619) 338-4705

Party name: Bouhn Maikhio

Stewart Karr Dadmun                      Office of the Primary Public Defender                      (619)-338-4700  
450 B Street Suite 900  
San Diego, CA 92101  
stewart.dadmun@sdcounty.ca.gov

Party name: Bouhn Maikhio

Attorneys for Respondent:

Jonathan Lapin                      Deputy City Attorney                      (619) 533-5500  
Counsel of Record                      Office of the San Diego City Attorney  
Appellate Division  
1200 Third Avenue, Suite 700  
San Diego, CA 92101

Party name: California

Other:

Ed R. Haden                      Balch & Bingham LLP                      (205) 226-8795  
P.O. Box 306  
Birmingham, AL 35203-4642  
ehaden@balch.com

Party name: National Rifle Association of America, Inc., et al.

- [CASES & CODES](#)
- [PRACTICE MANAGEMENT](#)
- [JOBS & CAREERS](#)
- [NEWSLETTERS](#)
- [BLOGS](#)
- [LAW TECHNOLOGY](#)
- [Forms](#)
- [Lawyer Marketing](#)
- [Corporate Counsel](#)
- [Law Students](#)
- [JusticeMail](#)
- [Reference](#)

[FindLaw](#) [Caselaw](#) [California](#) [CA Ct. App.](#) [PEOPLE v. MAIKHIO](#)

## PEOPLE v. MAIKHIO

[Print](#)

Font size: [A](#) [A](#) [Reset](#)

### **The PEOPLE, Plaintiff and Appellant, v. Bouhn MAIKHIO, Defendant and Respondent.**

**No. D055068.**

**Decided: January 05, 2010**

Jan I. Goldsmith, City Attorney, David P. Greenberg, Assistant City Attorney, and Monica A. Tiana, Deputy City Attorney, for Plaintiff and Appellant. Edmund G. Brown Jr., Attorney General, Mary E. Hackenbracht, Senior Assistant Attorney General, Carol A Squire and Deborah Fletcher, Deputy Attorneys General, for California Department of Fish and Game as Amicus Curiae on behalf of Plaintiff and Appellant. Steven J. Carroll, Public Defender, Randy Mize, Chief Deputy Public Defender, Gary R. Nichols and Matthew Braner, Deputy Public Defenders, for Defendant and Respondent.

On transfer to this court from the Appellate Division of the San Diego County Superior Court, the People of the State of California appeal an order of the trial court granting defendant Bounh Maikhio's Penal Code section 1538.5 motion to suppress evidence in its case against him for two misdemeanor fishing offenses. On appeal, the People contend the trial court erred by granting the motion to suppress because: (1) Fish and Game Code 1 sections 1006 and 2012 authorized the State of California Department of Fish and Game (DFG) warden to stop Maikhio's vehicle to conduct an inspection and that stop was reasonable under the Fourth Amendment to the United States Constitution even if he had no reasonable suspicion Maikhio was involved in criminal activity; and, alternatively, (2) the warden had reasonable suspicion under the Fourth Amendment that Maikhio was involved in criminal activity and therefore could lawfully stop Maikhio's vehicle. We conclude the DFG warden did not have either the statutory or constitutional authority to stop Maikhio's vehicle in the circumstances of this case.

#### FACTUAL AND PROCEDURAL BACKGROUND

At about 11:10 p.m. on August 19, 2007, DFG warden Erik Fleet issued a citation to Maikhio for possession of a

F  
A  
C  
A  
J  
S  
I  
L  
S

California spiny lobster during closed season in violation of California Code of Regulations, title 14, section 29.90, subdivision (a), and for failure to exhibit his catch on demand in violation of section 2012. After the People filed a misdemeanor complaint (Case No. MO31897) against Maikhio, he was arraigned and pleaded not guilty. Maikhio subsequently moved to suppress evidence pursuant to Penal Code section 1538.5.

On December 14, the trial court heard Maikhio's motion to suppress, together with motions to suppress made by two other defendants in similar cases.<sup>2</sup> At the hearing, Fleet testified that at about 11:00 p.m. on August 19, 2007, he was on duty and observed activities on the Ocean Beach pier by using a spotting telescope mounted on his truck, which was parked on Narragansett Street. Fleet saw Maikhio fishing on the pier, using a method called hand-lining. Maikhio was accompanied by a woman and an infant. Fleet saw Maikhio catch something and place it in a black bag next to him. Fleet could not see what Maikhio had caught and placed in the bag. Fleet watched as Maikhio and the other two persons left the pier, entered the parking lot, and drove away from the parking lot in Maikhio's vehicle. Fleet then stopped Maikhio's vehicle because he "wanted to make sure . . . that he [Maikhio] was in compliance with the California fishing laws and regulations." Fleet testified that he did "[n]ot necessarily" suspect at the time of the stop that Maikhio had broken the law.

After stopping Maikhio's vehicle, Fleet, who was in uniform, approached Maikhio and introduced himself as a DFG warden. Fleet asked Maikhio if he had any fish or lobsters in his vehicle. Maikhio answered, "no." Fleet then searched the vehicle pursuant to section 1006 and found the black bag in the rear passenger area under the woman's feet. He looked inside the bag and found a California spiny lobster. Fleet placed Maikhio in handcuffs for his (Fleet's) safety, sat Maikhio on the curb, and continued his search of the vehicle (which revealed nothing more). Maikhio eventually admitted the lobster was his.

Fleet issued a citation to Maikhio for possessing a lobster during closed season (Cal.Code Regs., tit. 14, § 29.90, subd. (a)) and for failing to exhibit his catch on demand (§ 2012). Fleet testified that, pursuant to his training as a DFG warden, he waited to stop Maikhio's vehicle until after Maikhio left the pier and parking lot so that Fleet would not "blow [his] cover" at the pier and therefore could continue to effectively "work" the pier and catch other possible law violators that night. On direct examination by the prosecutor, Fleet described the method of "hand-line" fishing:

"They were fishing on the pier in a method we call hand lining, which is commonly used to catch lobsters. It's an illegal method of catching lobsters, but it's very productive and it's basically a person holds a fishing line in their hand, either the fishing line goes back to their fishing rod and reel or they hold it in their hand and they jerk the fishing line which generally has a treble hook on the bottom of it with the weight on it and squid is usually used for bait. And it gives them a better feel of the bottom because a lobster doesn't strike the bait, it will actually climb onto the bait and they lift the line up when they feel weight on it, they jerk it which causes the hook to penetrate the lobster and they bring it up. It's very common and that's what drew my attention to [Maikhio]."

However, on cross-examination, Fleet admitted that hand-lining can also be used for regular fishing. Following arguments of counsel, the trial court granted Maikhio's motion to suppress evidence.

On appeal, the Appellate Division of the San Diego County Superior Court initially reversed the trial court's order granting Maikhio's motion to suppress and, after a rehearing, again reversed trial court's order. The appellate division concluded Fleet lawfully stopped Maikhio under sections 1006 and 2012 to conduct a compliance inspection. In addition, it concluded Fleet had reasonable suspicion to believe Maikhio was in possession of an illegally caught lobster, based on his observation of Maikhio using the hand-lining method to catch something, because that method of fishing is commonly used to catch lobsters.



# New Hampshire Guide's Association

*Your best source for Dedicated Professional Hunting, Fishing, and Outdoor Guides!*

[www.NHGuidesAssociation.com](http://www.NHGuidesAssociation.com)

Chairman James Webb  
House Committee on Fish and Game and Marine Resources  
New Hampshire House of Representatives  
107 North Main Street  
Concord, NH 03301

February 4, 2018

Chairman Webb and Honorable Members of the Committee,

My name is David Poole, I am a resident of Rumney, and I am the Legislative Liaison for the New Hampshire Guides' Association. We are a professional organization of hunting, fishing and recreational guides that offer services to the citizens and visitors of our great state. We would like to submit this written testimony to voice our opposition to HB 1527.

The passage of this bill would adversely affect the day to day enforcement of our Fish and Game Laws and Regulations. To require our Conservation Officers to meet a burden of "probable cause" before they "stop" and "search" in the field is ludicrous. For many, many years Conservation Officers in New Hampshire, as well as many other states, have had the responsibility to protect the state's resources through routine field checks of licenses and bag limits. They also have been tasked with the responsibility of making sure that methods of taking wildlife are being adhered to. This is facilitated by having a statute like RSA 206:26 which lays out their powers. The law has been written with this wording or similar wording as far back as the early 1900's. Given our litigious society, we think if this practice was unconstitutional it would have been struck down as such by our courts before now. In fact, there have been a couple of challenges to the ability of Conservation Officers to make these nonintrusive checks in New Hampshire, and these challenges have been denied. The sportsmen and women of New Hampshire expect to be checked in the field by Conservation Officers. Without this expected omnipresence, it is our position that this precious resource would suffer, if not cease to exist, in some instances.

As a matter of comparison, let us take a look at a routine field check of a waterfowl hunter. By federal statute as well as state statute, waterfowl hunters must use a nontoxic shot and a shotgun not capable of holding more than three rounds of ammunition. The reason why is not complex, it is to protect the resource. In years gone by, market hunters decimated waterfowl populations by over harvesting ducks and geese. The restriction of three shells came about because firearms abilities progressed to pump and semi-automatic actions that made it possible to shoot at waterfowl multiple times with great rapidity. The addition of larger magazines

allowed for more shells to be stored in these firearms. It has been well documented that lead shot is toxic when ingested by dabbling migratory waterfowl, as well as loons and other water birds. We found it written in a Department of the Interior publication dated 1980:

“A density of one pellet per square foot is not unusual in wetlands and three or four pellets per square foot can be found in some popular hunting areas.”

So after more than a decade of research it became mandatory nationwide that waterfowl hunters could not use lead shot starting in the 1990-91 waterfowl season. The State of New Hampshire adopted this restriction and Conservation Officers were tasked with how to make this check as nonintrusive as possible. At the time, steel shot was the alternative, so the officer simply would take the hunter's shells and place a magnet on them. The legal shells would be drawn to the magnet, and the lead pellets in illegal shells would not. As far as the number of shells in a firearm, the officers either safely put shells into the magazine or used a gauge to measure the number of shells that will fit into a hunter's magazine. The magazine should only allow two shells to fit in, and that leaves one for the chamber. This check is quick, and the hunter is then free to go along about his day of hunting. Contrasted with the prospect of a Conservation Officer needing “probable cause” before he can take this firearm and its shells in hand to inspect them, a specific process would need to take place. To meet this burden of proof for probable cause, the officer would need to seize the firearm and shells, find a judge, obtain a search warrant from a court, check the gun and shells, either return the firearm and shells if there is no violation, or go summons the violator, and then file a return on the search warrant to the court. Quite frankly this will take days. We could talk about hundreds of scenarios where these day to day checks need to be made in an effort to make sure bag limits for and methods of taking wildlife are being adhered to.

As sportsmen and women, we find the added steps an unnecessary intrusion that can be frustrating at the minimum. As professional guides, we see it as bad for business. No paying client is going to be happy with this inconvenience. One may simply say, “...well, just give the officer permission to make this check”. Permission is an exception to probable cause. That is true, but again in this litigious society believe me when I say a defense attorney will simply argue that his client was intimidated into giving the officer permission to search, and there are courts that will buy it. So, the officer is left to do the job he is empowered to do. That would mean, get the warrant and do it right, alleviating any risk of questions in court.

It is our opinion that the ability to hunt and fish in the State of New Hampshire is a privilege and not a right. We also believe that the resources of the state belong to all of us, and in that respect, we all have an obligation to protect them and see that the laws and rules in place are observed by everyone. We entrust New Hampshire's Conservation Officers to see that everybody follows those laws and rules. This is a highly regulated sport and industry. These field checks are routine and happen thousands of times per year. These laws have been enforced since the mid 1800's.

I personally find it interesting that under RSA 214:1 “License Required” it says in the last sentence:

“ The licensee shall carry such license on his or her person when so engaged, and the license shall be subject to inspection on demand of any person.”

In my opinion, that sentence is there because in New Hampshire we believe that this resource belongs to all of us, and we all should look out for it as if it were our own property. The notion that a sworn law enforcement officer needs to prove “probable cause” to make these checks, and yet private citizens have the legislative authority to check hunting and fishing licenses is truly absurd.

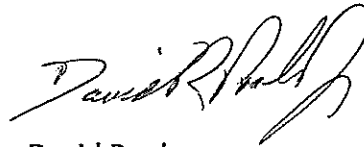
Limiting Conservation Officers' power to search or arrest only "any person who is committing a criminal offense relating to all wildlife" effectively negates any enforcement of most of the Title XVIII rules. The vast majority of Title XVIII offences are violations and therefore this bill would not allow any enforcement of those rules. For example FIS 211:2-e Freshwater Smelt, Section III " Any person who violates the provisions of this section shall be guilty of a violation"

This resource can be, and in some cases, is fragile. Again, we believe that this resource belongs to all of us, so one could make the rationalization that a fish and game law violator is a thief. They take from you and I when they take wildlife out of season or in excess of their daily bag limit. This isn't like stealing copper pipe from someone's basement. We probably have insurance, and they readily sell copper pipe at the hardware store. It is easily replaced. This resource is a living, self-propagating thing that must be protected and nurtured to survive. If a moose is taken in violation, it can't be replaced by going to the local livestock auction, purchasing an adult moose, and then releasing it into the wild.

In closing, the New Hampshire Guide's Association understands the responsibility of the New Hampshire Fish and Game Department to enforce laws and rules to protect the resources of the state. If Conservation Officers don't have the tools to do the job, they are destined to fail. As professional guides, we understand that if they fail, we fail. It is as simple as that.

On behalf of the New Hampshire Guide's Association, I want to thank you for allowing us to be heard on this matter. We implore you to find this bill inexpedient to legislate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Poole", with a stylized flourish at the end.

David Poole

New Hampshire Guides' Association



## **New Hampshire Firearms Coalition**

### ***NH's Only No-Compromise Gun Rights Organization***

February 6, 2018

To: New Hampshire House Fish and Game and Marine Resources Committee

From: Alan M. Rice, President, New Hampshire Firearms Coalition  
(603) 471-2721 OR email to: alanrice@nhfc-ontarget.org

**RE: Support for HB 1527, AN ACT relative to the authority of fish and game officers regarding arrest and search and seizure.**

Dear Committee Members:

I am writing to express the support of the New Hampshire Firearms Coalition for HB 1527 which is a relatively simple bill.

State Troopers, local police officers and deputy sheriffs may arrest for felonies, misdemeanors and violations upon probable cause that a crime has occurred. Probable cause, that is it is more probable than not, that the suspect committed the criminal act. See R.S.A. 594:10.

Probable cause is a modest burden of proof that stops far short of the standard for a conviction which is beyond a reasonable doubt.

Unlike police officers, Conservation officers, may arrest on a showing of *reasonable suspicion*. This is a far lower burden of proof. Reasonable suspicion allows an officer to make a threshold inquiry. For example, a broken taillight provides a police officer with reasonable suspicion to stop a car and make an inquiry as to why the taillight is broken and perhaps uncover evidence of a crime. Police officers and state troopers cannot arrest based upon reasonable suspicion.

We have received reports from our members of Conservation Officers using the threat of arrest (and sometimes an actual arrest) to force confessions of wrongdoing. NHFC leadership was horrified when we saw some of the blatant Fourth and Fifth Amendment violations displayed on the TV show *North Woods Law: New Hampshire*. Hunters forced to walk a Conservation Officer around a kill site and answer questions, only to get summonsed anyway. Maybe being a little to close to the road or to close to building even though no one was harmed? And the threat of arrest used to force a confession.

The vast majority of fish and game offenses are violations. The lowest level of criminal offense in New Hampshire. Offenses that carry no risk of incarceration and a fine of no more than \$50. Truly the lowest level of any offense. When the standard for arrest is reasonable suspicion a person can be arrested for almost nothing. When this happens their personal reputation is tarnished and their name is entered into the NCIC arrest index file. This is just wrong, the abuses must be stopped.

HB 1527 will not change anything other than forcing Conservation Officers to meet the same standards of proof to make an arrest as every other law enforcement officer in New Hampshire.

Accordingly, I would urge this committee to vote HB 1527, "ought to pass"

Thanks for your kind consideration.

PO Box 7182, Milford, NH 03055  
<http://www.nhfc-ontarget.org>



## New Hampshire Advisory Committee on Marine Fisheries



January 17, 2018

Glenn Normandeau  
Executive Director  
NH Fish and Game Department  
11 Hazen Drive  
Concord, NH 03301

Dear Glenn:

The Advisory Committee on Marine Fisheries (ACMF) met in January of this year and reviewed several legislative proposals that could impact the Fish and Game Department's ability to effectively enforce laws and regulations designed to sustainably manage marine resources.

The Advisory Committee voted to oppose HB 1376. This bill would repeal the prohibition on collecting seaweed at night. This law is one of a series of laws designed to limit the harvest of seaweed in order to provide for the long term sustainability of this important marine habitat. Limiting the take and collection to daylight hours is a common aid to enforcement of resource protection regulations that is used for other resources such as lobsters, soft shell clams and deer.

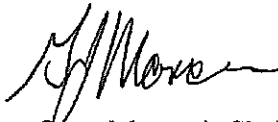
The ACMF voted to support legislation developed by the Fish and Game Department to exempt rules pertaining to marine species managed under the Magnusson-Stevens Act (MSA) from rule making requirements under the administrative procedures act. In recent years, National Marine Fisheries Service has been making annual changes to seasonal closures and harvest limits for certain groundfish species and the rules for state waters have been different than federal waters for weeks or months while the Department went through the rule making under the state's administrative procedures act. The Committee believes that this legislative change will provide the Department with the opportunity for timelier implementation of state rules designed to be complementary to federal rules implemented under MSA while still providing the public with the opportunity for public input.

The ACMF also voted to oppose **HB 1527**. This bill appears to substantially weaken the ability of fish and game officers to enforce fish and game laws and rules. Fish and game laws and rules are established to protect the marine fisheries of our state and the livelihood of our state's commercial fisherman. Taking the ability of a Conservation Officer to inspect fish and game while in the field at the level of Probable Cause would waste valuable time and potentially allow other violations to go unchecked while procuring search or arrest warrants. Conservation Officers should be allowed to inspect marine species at the level of articulable suspicion so that necessary fisheries management can be sustained. Also, taking the Conservation Officers abilities to arrest violators, as any other law enforcement officer, belittles the importance of fish and game

laws and threatens the future of marine fisheries both commercially and recreationally. A Conservation Officers ability to inspect marine species at the level of articulable suspicion is a proven method of enforcement and is the reason why our marine resources are viable today.

Finally, the ACMF voted to oppose HB1526 which would repeal the authority of the Executive Director of the Fish and Game Department to set license fees. The Executive Director was originally given this authority by the legislature in 2015 at the recommendation of a legislative study committee looking at ways for ensuring the financial stability and sustainability of the Fish and Game Department. The ACMF believes this was an important step in helping the Department with obtaining sufficient financial resources to carry out its legislatively mandated responsibilities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Geno Marconi', with a stylized flourish at the end.

Geno Marconi, Chairman  
Advisory Committee on Marine Fisheries

Cc: Robert Phillipson, Chair of Fish and Game Commission  
Doug Grout, Chief of Marine Fisheries

Bill as  
Introduced

HB 1527 - AS INTRODUCED

2018 SESSION

18-2625  
04/01

HOUSE BILL            **1527**

AN ACT                relative to the authority of fish and game officers regarding arrest and search and seizure.

SPONSORS:            Rep. Hoell, Merr. 23; Rep. Itse, Rock. 10; Rep. Wallace, Rock. 33

COMMITTEE:          Fish and Game and Marine Resources

---

ANALYSIS

This bill revises the arrest, search, and seizure powers of a conservation officer and limits the authority of conservation officers to the enforcement of only the fish and game laws.

---

Explanation:        Matter added to current law appears in *bold italics*.  
Matter removed from current law appears [~~in brackets and struck through~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eighteen*

AN ACT relative to the authority of fish and game officers regarding arrest and search and seizure.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Conservation Officers; Powers. Amend RSA 206:26, V-VI to read as follows:

2           V. To arrest without warrant, but based on probable cause, and on view any person ~~found~~  
3 ~~violating any law, rule or regulation~~ **who is committing a criminal offense** relating to all  
4 wildlife, take such person before a court having jurisdiction for trial, and detain such person in  
5 custody at the expense of the state until trial;

6           VI. To stop and to search without a warrant ~~and to examine in the field,~~ in the highway,  
7 at an airbase, or on the stream, any person, or any boat, conveyance, aircraft, vehicle, gamebag,  
8 game coat, creel, crate, box, locker or other receptacle, in the presence of the owner if reasonably  
9 possible, or any so-called fish house or bob-house, in the presence of the occupant, for all wildlife,  
10 when there is ~~reasonable and articulable suspicion~~ **probable cause** to believe that **the owner or**  
11 **occupant is committing a criminal offense relating to** any wildlife, or any illegal apparatus  
12 subject to forfeiture, is concealed thereon or therein;

13           2 Conservation Officers; Powers. Amend RSA 206:26, VIII-IX to read as follows:

14           VIII. **Pursuant to a warrant based on probable cause**, to seize and take possession of  
15 all wildlife, which has been caught, taken or killed, or had in possession, or under control, or which  
16 has been shipped or is about to be shipped, at any time, in any manner, or for any purpose, contrary  
17 to the laws of this state and to dispose of all wildlife which has been confiscated, seized or picked up  
18 for any reason, in a manner prescribed by the executive director, unless otherwise authorized by the  
19 court exercising proper jurisdiction;

20           IX. **Pursuant to a warrant based on probable cause**, to seize all fishing tackle, guns,  
21 shooting and hunting paraphernalia, hunting or fishing licenses, traps, boats, decoys or other  
22 appliances used in ~~violation of any law or rule~~ **committing a criminal offense** relating to all  
23 wildlife when making an arrest, or found in the execution of a search warrant, and hold the same at  
24 the owner's expense until the fine and costs imposed for the violation have been paid in full;

25           3 Conservation Officers; Powers. Amend RSA 206:26, XIII-XV to read as follows:

26           XIII. In emergencies upon their requests, to cooperate with other law enforcement agencies;  
27 **and**

28           XIV. To have and exercise **only** the powers and privileges granted by RSA 594 as to matters  
29 within their jurisdiction under this section~~;~~ **and**

30           ~~XV. To enforce all provisions of RSA title XXI relative to motor vehicle laws, absent any~~

HB 1527 - AS INTRODUCED

- Page 2 -

1 ~~violation or suspected violation of fish and game laws, with the same authority and powers as any~~  
2 ~~other certified law enforcement officer in the state].~~

3 4 Fish and Game; Authority and Duties of Executive Director and Conservation Officers.

4 Amend the introductory paragraph of RSA 206:26-b, I and RSA 206:26-b, I(a)-(b) to read as follows:

5 I. The executive director and each conservation officer shall:

6 ~~(a) Be ex officio constables throughout the state;~~

7 ~~(b) Have general power to enforce all criminal laws of the state and to serve criminal~~  
8 ~~processes and make arrests, under proper warrants, in all counties] *have the power and*~~  
9 ~~*authority to enforce all fish and game laws under title XVIII, and to serve criminal*~~  
10 ~~*process and make arrests under proper warrants for violations of the fish and game laws;*~~  
11 and

12 5 Marine Species; Search and Seizure. Amend RSA 211:75, I to read as follows:

13 I. To search without a warrant ~~[and examine]~~ any person or any boat, conveyance, vehicle,  
14 box, bag, locker, traps, crate or other receptacle or container for marine species, when the  
15 conservation officer has ~~[reasonable and articulable suspicion]~~ *probable cause* to believe that  
16 marine species taken contrary to the provisions of this chapter are concealed thereon or therein.

17 6 Marine Species; Search and Seizure. Amend RSA 211:75, III to read as follows:

18 III. *Pursuant to a warrant based on probable cause*, to seize and take possession of  
19 any marine species which have been caught, taken or killed or had in possession or under control or  
20 which have been shipped or are about to be shipped at any time, in any manner, or for any purpose,  
21 contrary to the laws of this state.

22 7 Effective Date. This act shall take effect 60 days after its passage.