

GAME AND FISH

CHAPTER 128.

[H. B. No. 156—Hale]

GAME AND FISH.

AN ACT Creating a State Game and Fish Board of Control and Chief Game Wardens and State Fish Commissioner, Deputies and Wardens and Defining Their Duties and Jurisdiction, and for the Protection, Propagation, Preservation, Taking, Use and Transportation of Game, Fish, Wild Birds, Fur Bearing Animals, and Certain Harmless Birds and Animals.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. OWNERSHIP IN STATE.] The ownership of and title to all wild birds, fish and fur bearing wild animals in the state of North Dakota, is hereby declared to be in the state, and no fish, wild birds, or wild animals which are protected by law shall be caught, taken or killed in any manner or at any time, or had in possession, except the person so catching, taking, killing or having in possession shall consent that the title of said fish, wild birds, or wild animals shall be and remain in the state of North Dakota for the purpose of regulating and controlling the use and disposition of the same after such catching, taking or killing. Any person catching, taking, killing or having in possession any wild birds or wild animals at any time, or in any manner shall be deemed to consent that the title to the same shall be and remain in the state for the purpose of regulating the use and disposition thereof, and such possession shall be deemed the consent of such person as aforesaid, whether said game or fish were taken within or without the state.

§ 2. DISTRICTS.] The state of North Dakota shall be divided into two districts, to be known as "Game District No. 1" and "Game District No. 2." Game District No. 1 shall consist of the following counties: Pembina, Walsh, Grand Forks, Nelson, Ramsey, Cavalier, Benson, Eddy, Towner, Wells, Pierce, Rolette, McLean, McHenry, Bottineau, Ward, Mountraille, Williams and McKenzie. Game District No. 2 shall consist of the following counties: Traill, Steele, Griggs, Foster, Cass, Barnes, Stutsman, Richland, Ransom, LaMoure, Sargent, Dickey, McIntosh, Logan, Emmons, Kidder, Oliver, Burleigh, Morton, Hettinger, Bowman, Billings, Stark, Dunn, Mercer and Adams.

§ 3. BOARD OF CONTROL. APPOINTMENT. TERMS. MEETINGS. COMPENSATION. RULES AND REGULATIONS.] A state board of control is hereby created, consisting of five members, to be appointed by the governor. Three members of such commission shall be appointed for a term of two years, commencing on the first day of April of the year 1909, and two members of such commission shall be appointed for a term of four years, commencing on the first day of April, 1909, and thereafter such appointment shall be made for a term of four years commencing at the expiration of such term. Vacancies arising from any cause shall be filled by the governor. Said commission shall hold its first meeting on the second Tuesday of the month succeeding its appointment and organize by electing one of said board as president, one of said board as vice-president, and one of said board as secretary. A quorum of said board shall consist of not less than three members. The state game and fish board of control after its organization may hold its meetings at any point in the state at such time and place as the president may designate, but there shall not be to exceed four regular meetings each year; provided, that the president of the board shall have power to call special meetings whenever in his judgment it becomes necessary. The members of said board shall receive as compensation for their services the sum of three dollars per day for each day in attending such meeting, and all expenses actually and necessarily incurred in traveling to and from such meeting, which sum shall be paid by the state treasurer out of the game and fish fund upon vouchers of the board duly certified by the president and secretary thereof. The board shall establish rules and regulations and employ the most efficient and practical means to carry out the provisions of this act. They shall require of the chief warden a monthly report in full, a copy of which shall be mailed to each member of said board, stating the names and numbers of employes, territory assigned (by counties), compensation paid, number of arrests, convictions and fines. Members shall serve without compensation except for necessary expenses to be paid upon an itemized statement thereof duly audited by said board.

§ 4. GENERAL POWERS. DUTIES.] Said board shall enforce the laws of this state, involving the protection and propagation of all game animals, game birds, fish and harmless birds and animals.

1. The propagation and preservation of such variety of game and fish as it shall deem to be of public value.

2. The collection and diffusion of such statistics and information as shall be germane to the purpose of this act.

3. The construction, control and management of all state fish hatcheries, including the control of ground owned or leased for such purposes.

4. The receiving from the United States commissioner of fisheries or other persons, and the gathering, purchase and distribution to the waters of this state of all fish spawn or fry.

5. The taking of fish from the public waters of the state for the propagation and stocking of other waters therein.

6. The seizure and disposition of all wild birds, wild animals and fish, either taken, killed, transported or possessed contrary to law, of all dogs, guns, seines, nets, boats, lights or other instrumentalities unlawfully used or held with intent to use, in pursuing, taking or attempting to take, concealing or disposing of the same, and for these purposes it is hereby authorized and empowered to make all such rules and regulations for the conduct of the business of said board as it may deem expedient.

§ 5. REPORTS AND RECORDS.] Said board shall, on or before December first of each even numbered year, submit to the governor a detailed report of its actions, including the amount of money received from all sources, and inventory of all birds, game, fish, guns, dogs, seines, nets and other property seized and sold, with the names of the purchasers, and the amount received, and an itemized statement of its disbursements. The books and vouchers of said board shall be subject to examination by the public examiner at all times.

§ 6. CHIEF GAME WARDEN.] The board shall appoint a chief game warden for each of the game districts mentioned in section two of this act who shall devote all his time to the discharge of his duties, and shall receive compensation therefor to be fixed by said board, not exceeding fifteen hundred dollars per year, and actual expenses necessarily incurred in the discharge of his official duties. He shall act as such chief game warden during the pleasure of the board, and be subject to its direction. When the board is not in session, he is hereby authorized to exercise in its name all the rights, powers and authority vested in said board. Before entering upon the discharge of his duties he shall give a bond to the state of North Dakota, with sureties or security, to be approved by the board, in the penal sum of five thousand dollars conditioned for the faithful accounting of all state property coming into his hands.

§ 7. FISH COMMISSIONER.] The board shall appoint a state fish commissioner, who shall devote all his time to the discharge of his duties, and shall receive compensation therefor to be fixed by said board, but such compensation shall not exceed twelve hundred dollars per annum and actual expenses necessarily incurred in the discharge of his duties. He shall act as such fish commissioner, and when the board is not in session he is hereby authorized to exercise in its name all the rights, powers and authority vested in said board relating to and pertaining to the propagation and distribution of fish.

§ 8. EMPLOYES.] The board may appoint and remove at pleasure a sufficient number of game wardens, other persons and office assistants as may be necessary to carry out the purposes of this chapter, and fix their periods of service and compensation to be paid from the game and fish commission fund:

§ 9. OTHER OFFICIALS. ATTORNEY.] The attorney general, state's attorneys, sheriffs, constables and other peace officers, are hereby required, and it is made their duty, to enforce the provisions of this chapter. Such attorneys shall appear for said board in all civil actions in which it or its wardens may be interested officially, and shall appear in the prosecution of criminal actions arising under this chapter.

§ 10. EXECUTION OF WRIT.] All members of the board of control and all wardens and deputies appointed by such board, shall have full power and authority to serve and execute all warrants and processes of law issued by the court in enforcing the provisions of this act, or any other law of this state relating to the preservation and propagation of game and fish, in the same manner as any constable or sheriff may serve and execute the same, and for the purpose of enforcing the provisions of this chapter they may call to their aid any sheriff, deputy sheriff, constable or police officer or any other person, and it shall be the duty of all sheriffs, deputy sheriffs, constables or police officers and other persons, when called upon, to enforce and aid in enforcing the provisions of this chapter. The chief warden, any member of the board of control and any deputy shall have the power to arrest without warrant any person or persons found in the act of violating any law enacted for the purpose of protecting or propagating game and fish.

§ 11. BONDS.] Each district game warden shall give bonds to be approved by the board and filed with the secretary of state, conditioned for the faithful discharge of their respective duties, to the amount of five hundred dollars. Special deputy game wardens and other persons employed by the board, shall give bonds when required.

§ 12. DUTIES.] It shall be the duty of the state district game and fish wardens to keep a complete and correct record of all his transactions, in a record book for that purpose, showing dates of appointment of deputies, names of persons violating the game and fish laws, date of arrest, amount of fines, and costs (separately) imposed, and the names of the justice or magistrate before whom the persons appeared. All such records shall be open to the public when requested, and the state district game and fish wardens shall make a full report of all matters of record to the game and fish board of control showing the number of hunting permits issued in his district, resident and non-resident, and showing the amount of fees for such permits and for the distribution of same, such report to be made annually on the first day of December of each year, and in said report to make such recommendations as in his judgment are necessary for the better protection, preservation and propagation of wild birds and wild animals, and fish, and the enforcement of laws governing the same.

§ 13. TERMS DEFINED. AGENCY NO EXCUSE.] The words "sell" and "sale" as used in this chapter shall be construed as meaning any

sale or offer to sell, or having in possession with intent to sell, use or dispose of the same contrary to law. The word "person" shall be deemed to include partnerships, associations and corporations, and no violation of any provision of this chapter shall be excused for the reason that the prohibited act was done as the agent or employe of another, nor that it was committed by or through an agent or employe of the person so charged. The word "possession" shall be deemed to include both actual and constructive possession, as well as the control of the article referred to. The terms "waters of this state" shall be held to include all the boundary waters of the state, and the provisions of this chapter shall be deemed to extend and be in force and effect over, upon and in all thereof. The terms "any part thereof" or "the parts thereof" whenever used in this chapter shall be deemed to include the hides, horns and hoofs of any animal so referred to, and the plumage and skin and every other part of any bird so referred to.

§ 14. INSPECTION OF HOTELS, ETC.] The members of the board of control and all game wardens, shall inspect from time to time hotels, restaurants, cold storage houses or plants and ice houses commonly used in storing meats, game or fish for private parties, including all buildings used for like purpose, for the purpose of determining whether game or fish are kept therein in violation of the provisions of this chapter. Any person in possession or control, or in charge of any hotel, restaurant, storage plant or building referred to, or any part thereof, who refuses or fails to permit any member of the game and fish board of control or any warden or deputy to enter any such building, or any part thereof, or any receptacle therein, for the purpose of making such inspection, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars or over fifty dollars and costs of prosecution, or imprisonment in the county jail for a term of not less than ten or over twenty days for the first offense, and upon conviction for a second offense, shall be punished by imprisonment in the county jail for a period of not less than twenty or over thirty days.

§ 15. CONTRABAND GAME. SEIZURE AND SEARCH.] Any bird, animal, fish, or any part thereof, caught, killed, shipped or had in possession or under control contrary to any of the provisions of this chapter is hereby declared to be contraband. The board of control, all game wardens, sheriffs and their deputies, constables and police officers, shall seize and take possession of any and all birds, animals, or fish, or any part thereof which have been caught, taken, killed or had in possession or under control, or shipped contrary to any provision of this chapter. Any court having jurisdiction may upon complaint showing probable cause for believing that any bird, animal, fish, or any part thereof, caught, taken, killed or had in possession or under control by any person, or shipped or transported contrary to the provisions of this chapter, is concealed or illegal.

kept in any building, car or receptacle, shall issue a search warrant and cause a search to be made in any such place for any such birds, animals, fish or any parts thereof, and may cause any building, inclosure or car to be entered, and any apartment, chest, box, locker, crate, basket, package or any other receptacle whatever, to be broken, opened and the contents thereof examined. All such officers taking or seizing such birds, animals or fish, or any part thereof, shall at once report all the facts attending the same to the commission.

§ 16. CONTRABAND DEVICES.] All nets, seines, lanterns, snares, devices, contrivances and materials while in use, kept or had or maintained for the purpose of catching, taking or selling, or attracting or deceiving any bird, animal or fish contrary to any provision of this chapter within this state, or upon or in the boundary waters thereof, including fish houses, inclosures, or other shelter structures or appliances erected or maintained upon the ice or in any waters, or on the shore of any lake, pond, or stream, is hereby declared to be and is a public nuisance. The chief game wardens and all members of the board [of control], all district and special wardens, sheriffs and their deputies, constables and police officers shall, without warrant or process, take, seize, abate and destroy any and all of the same while being used, had or maintained for such purpose, and no liability shall be incurred thereby to any person.

§ 17. WITNESSES.] In any prosecution under the provisions of this chapter, the participant in the violation thereof may testify as a witness against any other person violating the same, without incriminating himself in so doing. The evidence so given shall not be used in any criminal proceedings for such violation.

§ 18. LIMITATIONS.] All prosecutions under this chapter shall be commenced within two years from the time the offense is committed.

§ 19. EXCHANGE SPECIMENS.] The board may secure, by purchase or otherwise, and exchange specimens of game birds, game animals or fish with the game commission or state game warden of other states for breeding purposes, and not otherwise, and may also grant permission under the seal of said board, to any accredited representative of any incorporated society of natural history, to collect for scientific purposes only, under such restrictions as the board may impose, nests, eggs, birds, animals or fish protected by this chapter. Such specimens shall not be sold or transferred nor removed from the state until inspected by the board.

§ 20. FISHWAYS] Any person owning, erecting, managing or controlling any dam or other obstruction across any river, creek or stream, within or forming the boundary line of this state, shall construct in connection with such dam, a durable and efficient fishway in such manner and of such shape and size as the board may direct. Such fishway shall be kept in good repair by the person so owning,

controlling, managing, operating or using such dam or obstruction. If any person fails to construct or keep in good repair durable and efficient fishways as herein provided, for the space of ten days after notice, the board may construct or repair the same, and the cost thereof may be recovered from the owner or any person managing, or being in control thereof, in a civil action brought in the name of the state of North Dakota. Any money so recovered shall be credited to the game and fish commission fund. All fishways heretofore or hereafter erected in any dam or obstruction across any of the streams in this state, shall at all times be under the supervision and control of the board. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

§ 21. SAWDUST DEPOSITS.] Any person who deposits any sawdust or other refuse in any streams or water wherein the commission has deposited fish fry, or may deposit any such fry, or where any brook trout naturally abound, shall be deemed guilty of a misdemeanor.

§ 22. DISPOSITION OF FINES.] All fines collected under any of the provisions of this chapter shall be paid into the county treasury of the proper county to be added to the state school fund.

§ 23. DISPOSITION OF OTHER MONEYS.] All moneys collected by the board upon licenses issued by it, by the sale of game seized and sold, and from all other sources except fines, shall be paid into the general fund of the state of North Dakota, to be credited to the game and fish commission fund, to be used for the purpose of enforcing the provisions of this act; provided, that any surplus money accumulating to the credit of the game and fish commission fund may be used for the propagation of fish and game birds.

§ 24. REWARDS.] The following rewards may be paid by the board out of any fund subject to its order, to any person or persons making complaint thereof upon the arrest and conviction of any person violating any of the provisions of this chapter, or other enactments involving deer or antelope, the sum of twenty-five dollars; any game bird or fish, ten dollars; provided, however, that this section shall not apply to any game warden regularly employed and receiving salary from the said board.

§ 25. DOMESTICATED GAME.] The board may issue permits to breed or domesticate any of the game birds or animals mentioned in this chapter. Application for such permits shall be made in writing to the board and shall contain the name and address of the applicant, description of the premises on which such birds or animals will be kept, number and kind of such birds and animals in possession at the time of making such application. The board thereupon may issue permits to the applicant to keep such birds or animals. Any person holding such permit shall before the fifteenth day of December of each year report the increase or decrease to the board from the number at the time of making application for the permit.

Any such animals or birds may be sold or shipped within or without the state upon receipt of written permission to do so from the board.

§ 26. NESTS AND EGGS.] No person shall at any time take or have in possession or under control, or needlessly break up or destroy, or in any manner interfere with any nests, or the eggs of any of the kinds of birds, the killing of which is at any or all times prohibited.

§ 27. MANNER OF TAKING.] No person shall at any time catch, take or kill any of the birds or animals mentioned in this chapter in any other manner than by shooting them with a gun held to the shoulder of the person discharging the same, except as herein otherwise specially provided.

§ 28. TRAPS, SNARES, LIGHTS, ETC.] No person shall at any time set, lay, prepare or have in possession any trap, snare, artificial light, net, bird lime, swivel gun or set gun or any contrivance whatever, for the purpose of catching, taking or killing any of the birds or game animals in this chapter mentioned, except that decoys and stationary blinds may be used in hunting wild geese, brant and ducks, and no person or combination of persons shall, either alone or in combination with or by arrangement or agreement with any other person or persons, use or cause to be used, any floating battery, electric, steam, gasoline or other boat or floating vessel for the purpose of raising or driving any game birds from their resting or feeding places in any waters of this state.

§ 29. SHOOTING AFTER DARK.] No person shall hunt, pursue, catch, shoot at, or in any way molest any of the game birds or animals mentioned in this chapter within the borders of the state, during the time elapsing between one-half hour after sunset and one-half hour before sunrise. For the purpose of enforcing this provision, it shall be understood that the time of sunrise and sunset shall be designated by the calendar.

§ 30. USE OF DOGS.] No person shall hunt, pursue, catch, take or kill deer or antelope with any dog or dogs. No person shall train or run any dog or dogs, owned or controlled by them, known as "bird dogs," including pointers, setters, droppers or spaniels, or allow same to run loose in fields, or upon lands in which game birds may be found, or apt to be frequented by game birds, between the first day of April and the fifteenth day of August (both inclusive), following of each year.

§ 31. ENTERING GROWING GRAIN.] No person shall at any time enter into any growing, standing, shocked grain or bunched flax not his own, with intent to take or kill any bird or animal, nor permit any dog with which he shall be hunting to do so for such purpose, without permission from the owner or person in charge thereof.

§ 32. GAME KILLED IN ANOTHER STATE.] No person shall at any time have in his possession or under his control within this

state, any bird, animal or fish, or any part thereof, which has been caught, taken or killed outside of this state at a time when it is unlawful to have in possession or under control such bird, animals or fish, or parts thereof, if caught, taken or killed in this state, or which have been unlawfully taken or killed outside this [state] or unlawfully shipped therefrom into this state.

§ 33. POSSESSION OF GAME AND FISH PRESUMPTION.] The possession or having under control by any person of any bird, animal or fish or any part thereof, the killing of which is at any time herein prohibited, shall be prima facie evidence that it was the property of this state at the time it was caught, taken or killed, in this state; also that such possession or having under control at any time, when the killing, taking or possession thereof is by this chapter declared to be unlawful, shall be prima facie evidence that such taking and killing occurred during the closed season, to disprove which it shall be necessary for the party in possession thereof to show that at the time it was caught, taken or killed outside, or within this state, that it was lawfully caught, taken or killed outside, or within this state, and that he was lawfully in possession thereof.

§ 34. SKINS.] Nothing in this chapter shall be construed as prohibiting the buying, shipping or having in possession at any time the skins of fur bearing animals killed within or without the state, or hides of moose, deer, caribou, or antelope killed within or without the state upon proof that the hide was taken at a time when such taking and killing was lawful.

§ 35. GAME BIRDS, SEASONS FOR KILLING.] No person shall hunt, take, kill, ship, convey or cause to be shipped or transported by common or private carrier, to any person either within or without the state, expose for sale, sell to any one, have in possession with intent to sell, or have in possession or under control at any time, any turtle dove, snipe, prairie chicken, pinnated, white breasted or sharp tailed grouse, quail, partridge, ruffed grouse, Chinese ringneck or English pheasant, Hungarian partridge, wild duck of any variety, wild goose of any variety, brant or any variety of aquatic fowl whatever, or any part thereof, except: First. That any turtle dove, snipe, prairie chicken, pinnated grouse, ruffed grouse, white breasted or sharp tailed grouse, woodcock, upland plover or golden plover may be killed and had in possession between the seventh day of September and the first day of November (both inclusive) following. Second. That wild duck of any variety, wild goose of any variety, brant or crane and swan may be killed and had in possession between the seventh day of September and the fifteenth day of December (both inclusive) following. Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars for each bird or more than twenty-five dollars and cost of prosecution, or by imprisonment in the county jail for not less than

twenty days or more than thirty days, or by both fine and imprisonment in the discretion of the court, for each and every bird killed or destroyed contrary to the provisions of this section.

§ 36. DEER, SEASON FOR KILLING.] No person shall hunt, catch, take, kill, ship, convey or cause to be shipped or transported by common carrier to any person, either within or without the state, or purchase, expose for sale, have in possession with intent to sell to any person, or have in possession or under control at any time any deer, or any part thereof, including the hides and horns, except as herein provided; provided, that two deer may be killed between November tenth and November thirtieth (both inclusive) of the same year by any one person; provided, further, that it shall be unlawful to hunt or kill any deer in the manner commonly known as driving in parties consisting of more than four persons. But no person shall kill or have in possession during said time, more than two such deer or parts thereof; and provided, further, that any person who is lawfully in possession of such deer, or any part thereof, may ship or cause the same to be shipped in the manner provided for by this chapter, but not otherwise. Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars for each deer, and cost of prosecution, or by imprisonment in the county jail for not less than twenty days or more than thirty days, or by both such fine and imprisonment in the discretion of the court, for each and every deer killed or destroyed contrary to the provisions of this section.

§ 37. RESIDENTS' HUNTING LICENSE. SHIPMENT OF GAME.] Every resident of this state is prohibited from hunting, taking or killing any game bird or game animal unless he shall have first procured and have on his person a license therefor from the county auditor in the county in which he resides, which said license shall not be transferable; provided, however, that this does not apply to any resident of this state from hunting on lands owned or cultivated by him, or any member of his family, residing permanently with him, during the open season as provided for in this chapter. County auditors shall issue such hunting license upon payment of a license fee of one dollar, and the application for such license shall be made in writing upon application blanks furnished by the game and fish board of control. Said application must state full name and address of applicant, age, weight, height, color of hair and eyes, and the following statement be signed by applicant and witnessed by a resident freeholder of the county in which license is to be issued:

I am a bona-fide resident of.....county, North Dakota, and have been during the past six months.

Witness Signed

All applications received shall be kept on file by the county auditor, subject to inspection by the board and its deputies, at any time prior to December fifteenth of each year, at which time they shall be forwarded to the board, together with all unused licenses. Said license, when issued, shall describe the licensee, designate his place of residence, and have printed on it in large black figures the year for which issued and the words "not transferable." Such license shall expire on the fifteenth day of December following its issuance. Ten cents of the amount received for the issuance of the said license shall be retained by the county auditor as his fee, and the balance remitted to the state treasurer who shall credit the same to the game and fish commission fund, to be used in enforcing the provisions of this chapter. Any resident having procured a resident hunting license as required, and being lawfully in possession of any of the game birds or game animals mentioned in this chapter, may ship by common carrier to his address in the county where he resides not to exceed two days' bag limit of any of the game birds as herein provided for in this chapter, nor more than two deer or parts thereof, and any common carrier is hereby permitted to receive for shipment any such game birds or deer, when same is plainly marked with a suitable tag bearing name and address of licensee, and number of his hunting license, and when the same is not enclosed in any box, trunk, can, bag, or any receptacle that prevents easy inspection of contents.

§ 38. NON-RESIDENT LICENSE. SHIPMENT OF GAME.] Every person not a resident of this state is prohibited from hunting, taking or killing any game bird or game animal, unless he shall have first procured a license therefor from the game and fish board of control, which said license shall not be transferable. Said board shall issue to any non-resident a license to hunt game birds and game animals during the open season, subject to the limitations provided for in this chapter, upon the payment of twenty-five dollars, which license shall expire on the fifteenth day of December following its issuance. Said license shall describe the licensee, designate his place of residence, and have printed on it in large black letters the year for which issued, and the words "non-resident license," "not transferable." Any non-resident having procured such license may carry with him on leaving this state not to exceed twenty either prairie chicken, turtle dove, crane, swan, grouse of any variety, or twenty of the same combined, and fifty either snipe, plover, wild duck, goose or brant, or fifty of the same combined, nor more than two deer or parts thereof, and any common carrier is hereby permitted to carry any such game birds or deer, or parts thereof, when same is accompanied and carried on same train or conveyance by the person who is legally in possession of the same; provided, that the same is plainly marked with a suitable tag, bearing name and address of licensee and number of his non-resident license, and that it

is not concealed in any box, trunk, bag, can or any receptacle that prevents easy inspection of contents.

§ 39. HUNTING WITHOUT LICENSE.] Any person, either a resident or non-resident of this state, who shall hunt, take or kill any of the game birds or animals in this state, without having first procured a license therefor as provided in this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than one hundred dollars and costs of prosecution, or by imprisonment in the county jail for not less than ten days nor more than thirty days for each and every offense.

§ 40. RETAINING GAME. PERMISSION.] Any resident of this state who is lawfully in possession of any of the game birds or deer which have been killed at a time and in a manner permitted by the provisions of this chapter, and who is desirous of retaining possession of the same for his own use for a longer period than five days after the close of the open season, shall before the end of the first five days after the close of the open season, apply to the game and fish board of control, for permission to do so. Such application shall state number of such birds or deer and designate the place in which they are to be kept. The board shall grant such permission, if satisfied that applicant is retaining same for his own use and not for any purpose contrary to the provisions of this chapter.

§ 41. MINK. MUSKRAT.] No person shall take, catch or kill any mink or muskrat between the fifteenth day of April and the fifteenth day of November (both inclusive) following; provided, that when any of the animals mentioned in this section are doing damage to, or destroying property, the person whose property is being damaged or destroyed may kill them at any time.

§ 42. HARMLESS BIRDS. GAME BIRDS DEFINED.] No person shall catch, take, ship or cause to be shipped to any person within or without the state, purchase, offer or expose for sale, sell to anyone, have in possession with intent to sell, or have in possession or under control at any time, living or dead, any wild bird other than a game bird, nor any part thereof, irrespective of whether said wild bird was captured or killed within or without the state, and for the purposes of this chapter the following only shall be considered game birds: The anatidae, commonly known as swan, geese, brant, river and sea ducks; the limicolae, commonly known as plover, snipe, woodcock; the gallinae, commonly known as grouse, prairie chickens, pheasants, partridges and quail; provided, that blackbirds, crows, English sparrows, sharp-shinned hawks, Cooper hawks and great-horned owls may be killed and had in possession at any time, but nothing herein contained shall be construed to prevent the keeping and sale of imported song birds as domestic pets.

§ 43. ATTEMPTED VIOLATION.] Any person traveling in any manner in any part of this state off the public highway, outside of the im-

mediate bounds of the inhabited parts of any village, town or city in possession of any kind of a shotgun, with or without a dog or dogs commonly used or kept for the purpose of use in hunting any game birds mentioned in this chapter, from the first day of July to the sixth day of September (both inclusive) each year, shall be presumed to have violated or attempted to so violate the provisions of this chapter as to unlawful hunting, shooting or taking of game birds as mentioned in this chapter, the hunting, taking or shooting of which is prohibited during said time, and proof of the possession of said shotgun, with or without dog or dogs, during said time and in such place, shall be prima facie evidence of guilt of such person to so violate, or attempt to violate the provisions of this chapter as to hunting, shooting or taking such game birds. The use of traps, snares and all other devices used to take game birds as defined in this chapter is hereby prohibited and subjects the person using the same to all penalties prescribed in this section for hunting, shooting, snaring, trapping or taking any of the game birds, and the fact that any traps, snares or other devices used for the purpose of trapping, snaring or taking game birds, are found in the possession of, or upon the premises of any person, shall be prima facie evidence of the guilt, violation or attempted violation by such person of the provisions of this chapter. Any person convicted of violation or attempted violation of any provision of this section shall be punished not only by the fine herein prescribed, but also by forfeiture of any gun or guns, dog or dogs, in his possession while so offending, and any court having jurisdiction may, upon due proof, adjudge the same forfeited, and may order any dog or dogs, gun or guns so used to be sold by the game and fish board of control and the proceeds of such sale shall be placed to the credit of the game and [fish] commission fund. Any person convicted of the violation of any of the provisions of this section shall be fined not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or both fine and imprisonment at the discretion of the court.

§ 44. FISH MAY BE TAKEN, WHEN.] No person shall catch, take, kill or have in possession or under control for any purpose whatever any of the fish hereinafter mentioned, within the periods herein limited, to-wit: Any variety of trout or land-locked salmon between the first day of October and the first day of May (both inclusive) following. Any black, gray or Oswego bass between the fifteenth day of October and the first day of June (both inclusive) following. Any variety of pike, crappies or perch between the fifteenth day of October and the first day of May (both inclusive) following.

§ 45. POWERS AND DUTIES.] The state fish commissioner shall have charge of all state fish hatcheries and appurtenances. He shall examine all state waters, and whenever suitable waters are found

arrange to plant, stock or deposit such fish as are available. He shall co-operate with the United States commissioners of fisheries, make application, receive, apportion and deposit such fish spawn or fry received, throughout the public waters of this state. He shall co-operate with and assist clubs and individuals in the stocking of the lakes and streams of this state with fish. He shall, with the consent of the game and fish board of control, remove or take by any means from any of the public waters of this state containing a surplus of fish any reasonable quantity for the stocking of other public waters of this state, or to be used for hatching or propagating purposes, or for exchange with other states for equal numbers of other species, but in no case shall the numbers so taken be so great as to perceptibly deplete such lakes or streams. The state game and fish board of control shall have no power to authorize any individual, club, society or person to remove or take from any of the public waters of this state for exchange, propagation or scientific purposes any fish excepting only under the personal supervision of the state fish commissioner or some one appointed by him. The state fish commissioner may take or cause to be taken at any time by any means from any of the lakes in this state any suckers, red horse or carp.

§ 46. MANNER OF TAKING.] No person shall catch, kill or destroy in any manner than by angling for them with a hook and line held in the hand or attached to a rod so held, nor with more than one line, nor with more than one hook, or artificial lure attached thereto, and no person shall have in his possession any of the above mentioned fish caught, taken or killed in any waters of this state except as provided in this chapter; provided, that pickerel, suckers, red horse, carp and bullheads may be taken with a spear without limit at any time, but no artificial light shall be used in the taking of said fish at any time, and that the use of set lines is permitted in the Missouri, Mouse and Red rivers; provided, further, that in the Missouri and Mouse rivers pound nets, seines or dip nets may be used, except that it shall be unlawful to use any such net within a distance of one thousand feet from the mouth of any stream emptying into the Missouri river.

§ 47. FISHING NEAR FISHWAYS.] No person shall catch, take or kill any fish in any lake or stream within four hundred feet of any fishway, or have in his possession or under his control any fish so caught, taken or killed.

§ 48. USE OF DRUGS, DYNAMITE, TRAPS, ETC.] No person shall have in possession, lay, set, use or prepare any drug, poison, lime, medicated bait, fish berries, dynamite or other explosive or any other deleterious substance whatever, or lay, stretch, or place any tip-up snare, fish trap, set or trot line or any net, wire, string, rope, or cable of any sort in any of the waters of this state with intent thereby or therewith to catch, take or kill any fish: provided, that a min-

now seine not exceeding twenty feet in length may be used for taking minnows for bait from the first day of May to the fifteenth of October, following, and that a net may be used in the Missouri and Mouse rivers as provided for in section 42.

§ 49. FISH HOUSES.] No person shall erect, have or maintain on the ice in any waters of this state, except Missouri, Mouse and Red rivers, any fish house, structure, inclosure or shelter whatever to protect the person of the occupant while engaged in fishing through the ice.

§ 50. SALE OF FISH.] No person shall have in possession for sale or with intent to sell, expose or offer for sale, or sell to any person, at any time, any variety of trout or black, grey or Oswego bass, or any variety of pike, crappies, perch or land-locked salmon which have been caught within the borders of the state.

§ 51. SIZE OF FISH TO BE TAKEN.] No person shall at any time catch, take or kill, or have in possession, or under control any black, grey or Oswego bass, trout of any variety, land-locked salmon or pike that are less than eight inches in length, measurement in each case to be made from the tip of the snout to the fork of the tail. Any person catching such fish shall at once return the same to the water from which they are taken with as little injury as possible.

§ 52. NUMBER OF FISH TO BE TAKEN.] No person shall in any one day catch, take, kill or destroy to exceed fifteen each black, grey or Oswego bass, trout of any variety, land-locked salmon, pike, perch or crappies, or fifteen of the same combined, or have in possession at any time to exceed fifty each or all of the same combined. Any person violating any provision of this section shall upon conviction be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each and every offense and cost of prosecution, or by imprisonment in the county jail for not less than ten nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court, for each and every fish so killed or destroyed, contrary to the provisions of this section.

§ 53. PLANTED FISH PROTECTED.] All planted fish or fish eggs placed in the public waters of this state for the purpose of propagating, breeding or growth shall be, and are hereby protected for a period of five years from the time of such planting.

§ 54. FISH SCREENS.] The board may cause to be placed in lakes having an outlet into the waters outside the borders of this state a fish screen of such size and construction as to prevent the escape of fish into the waters outside the border of this state: provided, that such screen shall in no way obstruct or interfere with the natural flow of water in such outlet.

§ 55. BAG LIMIT OF GAME BIRDS.] No person shall in any one day take, catch, kill or destroy to exceed ten each prairie chicken or grouse of any variety, turtle dove, crane or swan, or ten of the same combined, or have in possession at any time to exceed twenty each

or all of the same combined; nor more than twenty-five each wild duck of any variety, wild goose or brant of any variety, woodcock, snipe or plover of any variety, or twenty-five of the same combined; or have in possession at any time to exceed fifty each, or all of the same combined. Any person violating any provision of this section shall, upon conviction, be punished by a fine of not less than ten dollars, nor more than twenty-five dollars for each and every bird, and cost of prosecution, or by imprisonment in the county jail for not less than twenty days nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court, for each and every bird so killed or destroyed, or had in possession contrary to the provisions of this section.

§ 56. ANTELOPE, BEAVER AND OTTER PROTECTED.] No person shall hunt, shoot at, catch, kill, trap or in any way destroy any antelope, beaver or otter within the boundary limits of the state of North Dakota before January 1st, 1920. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars and cost of prosecution, or by imprisonment in the county jail for not less than three months nor more than six months, or by both fine and imprisonment in the discretion of the court.

§ 57. SALE OF GAME BY COMMISSION.] The game and fish commission is hereby authorized to sell to residents of this state, at the highest market price obtainable therefor, all furs, fish, game animals or game birds now or which may hereafter come into its possession. The proceeds thereof shall be turned into the state treasury and credited to the game and fish commission fund. A record of such sales, including the name of the purchaser and the price paid, shall be kept by the board. Said board shall before selling tag the same in a manner to be determined by it.

§ 58. RESISTING BOARD OF CONTROL OR ITS WARDENS.] Whoever shall resist or obstruct the board of control or any member thereof, or any warden or other officer of this state in the discharge of his duties under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than fifty nor more than one hundred dollars and cost of prosecution, or by imprisonment in the county jail for not less than twenty nor more than thirty days for each and every offense.

§ 59. GENERAL PENALTY.] Any person who violates any provision of this chapter for which penalty has not been heretofore specifically provided, shall be guilty of a misdemeanor, and upon conviction be punished by a fine of not less than ten dollars nor more than fifty dollars and cost of prosecution, or by imprisonment in the county jail for not less than twenty nor more than thirty days.

§ 60. PROFESSIONAL DOG TRAINERS.] Professional dog trainers are prohibited from running and training dogs within this state between the first day of May and the fifteenth day of August.

§ 61. REPEAL.] All laws heretofore enacted by the legislative assembly of this state relating to the subjects of this act are hereby repealed.

§ 62. EMERGENCY.] An emergency exists in this that there is nothing in the present laws prohibiting shooting ducks and geese in the spring, therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 5, 1909.

CHAPTER 129.

[H. B. No. 213—Johnson, of Rolette]

FISH HATCHERY.

AN ACT Creating, Establishing and Locating a Fish Hatchery and Fish Cultural Station at Fish Lake, Birchwood Park, in Rolette County, North Dakota, and Making an Appropriation Therefor.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. ESTABLISHMENT OF FISH HATCHERY.] There is hereby created and established a fish hatchery and fish cultural station to be located at Fish lake, Birchwood Park, Rolette county, North Dakota, on the southeast quarter of section three, and the northeast quarter of section ten, all in township one hundred and sixty-three, north of range seventy-one west, for the propagation of fish to stock the lakes and streams of this state; provided, that this fish hatchery shall not be established nor its work undertaken unless a suitable tract of land be donated free of charge by warranty deed to the state of North Dakota.

§ 2. APPROPRIATION.] There is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of three thousand dollars for the building and establishing of this fish hatchery and two thousand dollars for excavating, piping, and connections for rearing, retention and propagating ponds, and for no other purpose.

§ 3. EMERGENCY.] Whereas, an emergency exists in this that it is for the best interests of the state to make the product of this fish hatchery available as soon as possible, therefore this act shall be in force from and after its passage and approval.

Approved March 20, 1909.