

GAME, FISH, PREDATORS, AND BOATING

CHAPTER 230

SENATE BILL NO. 2038
(Legislative Council)
(Interim Game and Fish Committee)

HUNTING WHILE INTOXICATED

AN ACT to provide for implied consent to chemical testing for purposes of determining intoxication while being afield with a gun or other firearm or bow and arrow; to create and enact a new subsection to section 20.1-02-15.1 of the North Dakota Century Code, relating to the powers of the game and fish commissioner, deputy commissioner, and game wardens; to amend and reenact sections 20.1-01-02 and 20.1-01-06 of the North Dakota Century Code, relating to being afield with a gun or other firearm or bow and arrow while intoxicated; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 20.1-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-02. Definitions. In this title, unless the context or subject matter otherwise requires:

1. "Afield" means being away from one's home or camp. The term does not include driving or being in actual physical control of a motor vehicle in violation of section 39-08-01 or equivalent ordinance.
2. "Any part thereof" or "the parts thereof" includes the hide, horns, or hoofs of any animal specified, and the plumage, skin, and every other part of any bird specified.
- ~~2-~~ 3. "Associated equipment" means:
 - a. Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component;
 - b. Any accessory or equipment for, or appurtenance to, a boat; and
 - c. Any marine safety article, accessory, or equipment intended for use by a person on board a boat; but
 - d. Excluding radio equipment.
- ~~3-~~ 4. "Big game" means deer, moose, elk, bighorn sheep, mountain goats, and antelope.
- ~~4-~~ 5. "Boat" means any vessel:

* NOTE: Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2036, chapter 232; by section 1 of Senate Bill No. 2043, chapter 233; and by section 3 of Senate Bill No. 2050, chapter 231.

- a. Manufactured or used primarily for noncommercial use;
 - b. Leased, rented, or chartered to another for the latter's noncommercial use; or
 - c. Engaged in the carrying of six or fewer passengers.
- ~~5-~~ 6. "Commissioner" means the state game and fish commissioner.
- ~~6-~~ 7. "Confiscate" or "confiscated" means to hold subject to the order of a court of competent jurisdiction.
- ~~7-~~ 8. "Department" means the state game and fish department.
- ~~8-~~ 9. "Deputy commissioner" means the deputy state game and fish commissioner.
- ~~9-~~ 10. "Endangered species" means any species whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
- a. The destruction, drastic modification, or severe curtailment of its habitat.
 - b. Its overutilization for scientific, commercial, or sporting purposes.
 - c. The effect on it of disease, pollution, or predation.
 - d. Other natural or manmade factors affecting its prospects of survival or recruitment within the state.
 - e. Any combination of the foregoing factors.
- The term also includes any species classified as endangered pursuant to the Endangered Species Act of 1973, Public Law 93-205.
- ~~10-~~ 11. "Established road or trail" means any public highway or road, improved or otherwise, dedicated for public ingress or egress, or any other road or trail normally used for travel but does not include temporary trails across cultivated land used for agricultural purposes.
- ~~11-~~ 12. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, and red or gray foxes.
- ~~12-~~ 13. "Game birds" includes all varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sagehens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, and crows.
- ~~13-~~ 14. "Guide" or "outfitter" means any resident who holds that person out to the public as a guide or outfitter, and who provides, for compensation, transportation, equipment, arrangement of lodging, or that person's own or another's personal services for the primary purpose of assisting a person or persons to locate or catch fish or

to locate, pursue, or hunt small game, big game, or fur-bearers. Nonresidents are not entitled to act as guides or outfitters in this state.

- ~~14-~~ 15. "Gun dogs" includes any dog used to hunt protected wildlife.
- ~~15-~~ 16. "Harmful wild birds" includes blackbirds, magpies, English sparrows, and starlings.
- ~~16-~~ 17. "Harmless wild birds" includes all wild birds not defined herein as "harmful wild birds" or "game birds".
- ~~17-~~ 18. "Hunt" or "hunting" means shooting, shooting at, pursuing, taking, attempting to take, or killing any game animals and game birds; searching for or attempting to locate or flush any game animals and game birds; luring, calling, or attempting to attract game animals and game birds; hiding for the purpose of taking or attempting to take game animals and game birds; and walking, crawling, or advancing toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds. The term does not include possessing or using photographic equipment.
- ~~18-~~ 19. "Manufacturer" means any person engaged in:
- a. The manufacture, construction, or assembly of boats or associated equipment.
 - b. The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.
 - c. The importation into the state for sale of boats, associated equipment, or components thereof.
- ~~19-~~ 20. "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion. The term does not include a vessel having a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.
- ~~20-~~ 21. "Motor-driven vehicle" means any land vehicle, with or without wheels, that is propelled by any motor.
- ~~21-~~ 22. "Operate" means to navigate or otherwise use a motorboat or a vessel.
- ~~22-~~ 23. "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
- ~~23-~~ 24. "Passenger" means every person carried on board a vessel other than:
- a. The owner or his representative.

- b. The operator.
 - c. Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.
 - d. Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for that person's carriage.
- ~~24-~~ 25. "Person" includes every partnership, association, and corporation. No violation of this title may be excused because it was done as the agent or employee of another, nor because it was committed by or through an agent or employee of the person charged.
- ~~25-~~ 26. "Possession" means control, actual possession, and constructive possession of the article or thing specified.
- ~~26-~~ 27. "Private fish hatchery" means a body of water, whether natural or artificial, and any other facilities used, maintained, or operated by any private person, firm, or corporation for the propagation and production of fish for sale or planting in other waters. Except in the case of trout, walleye, northern pike, and crappie, which may be raised in a private fish hatchery without the commissioner's approval, the commissioner may, by rule, regulate the species of fish which may be raised in a private fish hatchery. No waters stocked by any state or federal governmental agency may be considered a private fish hatchery.
- ~~27-~~ 28. "Public waters" means waters to which the general public has a right to access.
- ~~28-~~ 29. "Resident" means any person who has actually lived within this state or maintained that person's home therein for at least six months immediately preceding the date that residence is to be determined. A "nonresident" is any person who has not done so.
- ~~29-~~ 30. "Resident species" means any species nearly all of whose individuals in this state are located within this state for at least three-fourths of annual cycle of the species.
- ~~30-~~ 31. "Retrieve" means to have taken possession and made ready for transportation.
- ~~31-~~ 32. "Sell" and "sale" means any sale or offer to sell, or possession with intent to sell, use, or dispose of, the article or thing specified, contrary to law.
- ~~32-~~ 33. "Shooting preserve" or "preserve" means any privately owned or leased acreage [hectarage] on which hatchery-raised game birds are released to be hunted for a fee over an extended season.
- ~~33-~~ 34. "Sinkbox" or "sunken device" means a raft or any type of low floating device having a depression that affords a hunter a means of concealing that person below the surface of the water.
- ~~34-~~ 35. "Small game" includes all game birds and tree squirrels.

- ~~35-~~ 36. "Species" includes any subspecies of wildlife and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.
- ~~36-~~ 37. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future and includes any species classified as threatened pursuant to the Endangered Species Act of 1973, Public Law 93-205.
- ~~37-~~ 38. "Undocumented vessel" means a vessel which does not have a valid marine document as a vessel of the United States.
- ~~38-~~ 39. "Vessel" means any watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- ~~39-~~ 40. "Waterfowl" includes all varieties of geese, brant, swans, ducks, rails, and coots.
- ~~40-~~ 41. "Waters" when not qualified means waters not open to the general public.
- ~~41-~~ 42. "Waters of the state" means all waters of this state, including boundary waters. This title extends to and is in force and effect over, upon, and in all such waters.
- ~~42-~~ 43. "Wildlife" means any member of the animal kingdom including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

SECTION 2. AMENDMENT. Section 20.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-06. ~~Going~~ Being afield with gun or other firearm ~~when or bow and arrow while intoxicated prohibited - Penalty.~~ No person ~~shall go~~ may be afield at any time, with a gun or other firearm, ~~when or a bow and arrow, while intoxicated or under the influence of alcoholic beverages or drugs.~~ Upon conviction of a person for violating this section, ~~his that person's~~ hunting license ~~shall become~~ is void. The judge of the convicting court shall take the license, mark it revoked, and send it to the department. If the conviction is reversed on appeal, the license ~~shall~~ must be restored to the defendant. Game wardens, including special wardens, ~~shall~~ have the authority of a general peace officer in the enforcement of this section. In addition to the penalty provided in this chapter, any person convicted of committing a subsequent offense under this section ~~shall be~~ is ineligible for a hunting license in this state for two years from and after ~~such~~ the conviction.

SECTION 3. A new subsection to section 20.1-02-15.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

To enforce sections 4 through 18 of this Act.

SECTION 4. Implied consent to determine alcoholic and drug content of blood. Any person who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent, and shall consent, subject to sections 4 through 18, to a chemical test of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in sections 4 through 18, "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely hunting or being afield with a gun or other firearm or a bow and arrow, and "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under sections 4 through 18. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the person, except persons mentioned in section 7, under arrest and informing that person that the person is or will be charged with the offense of being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of sections 4 through 18, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the person charged that refusal of the person to submit to the chemical test determined appropriate will result in a revocation for up to four years of the person's hunting privileges. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-01-06, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under sections 4 through 18.

SECTION 5. Chemical test of hunter in serious bodily injury or fatal accident. Notwithstanding section 4 or 9, when a hunter is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the hunter is in violation of section 20.1-01-06, the hunter may be compelled by a game warden or a police officer to submit to a chemical test.

SECTION 6. Persons qualified to administer chemical test and opportunity for additional test. Only a physician, or a qualified technician, chemist, or registered nurse acting at the request of a game warden or a law enforcement officer may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of that person's own choosing administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden

or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

SECTION 7. Consent of person incapable of refusal not withdrawn. Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal, is deemed not to have withdrawn the consent provided by section 4 and the chemical test may be given.

SECTION 8. Action following chemical test result for a hunter. If a person submits to a chemical test under section 4, 6, or 7 and the test shows that person to have an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after being afield with a gun or other firearm or a bow and arrow, the following procedures apply:

1. The game warden or law enforcement officer shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the commissioner's official notification to the person of the commissioner's intent to revoke, suspend, or deny hunting privileges in this state.
2. If a chemical test administered under section 4 or 7 was by saliva or urine sample or by drawing blood as provided in section 6 and the person tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the person resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available and, within twenty-four hours, forward the license to the game warden or law enforcement agency making the arrest or to the commissioner. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the commissioner's official notification to the person of the commissioner's intent to revoke, suspend, or deny hunting privileges in this state.
3. The game warden or law enforcement officer, within five days of issuing the statement of intent and taking possession of the hunting license, shall forward to the commissioner a certified written report in the form required by the commissioner and the person's hunting license taken under subsection 1 or 2. If the notice was given and the license was taken because of the results of a chemical test, the report must show that the game warden or officer had reasonable grounds to believe the person had been

afield with a gun or other firearm or a bow and arrow while in violation of section 20.1-01-06, that the person was lawfully arrested, that the person was chemically tested under sections 4 through 18, and that the results of the test show that the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the commissioner a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the game warden or officer.

SECTION 9. Revocation of privilege to hunt upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 4 or 18, no chemical test may be given, but the game warden or law enforcement officer shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the commissioner's official notification to the person of the commissioner's intent to revoke hunting privileges in this state and of the hearing procedures under sections 4 through 18. The commissioner, upon the receipt of that person's hunting license and a certified written report of the game warden or law enforcement officer in the form required by the commissioner, forwarded by the warden or officer within five days after issuing the statement of intent and taking possession of the person's hunting license, showing that the warden or officer had reasonable grounds to believe the person had been afield with a gun or other firearm or a bow and arrow while in violation of section 20.1-01-06 or, for purposes of section 18, had reason to believe and had, through personal observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof, that the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 4 or 18, shall revoke that person's hunting privileges for the appropriate period under this section, or if the person is without hunting privileges in this state, the commissioner shall deny to the person hunting privileges for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in sections 4 through 18. In the revocation of the person's hunting privileges the commissioner shall give credit for time in which the person was without hunting privileges after the day of the person's refusal to submit to the chemical test. The period of revocation or denial of hunting privileges under this section is:
 - a. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person's hunting privileges have not previously been suspended, revoked, or issuance of a license denied for a violation of sections 4 through 18 or section 20.1-01-06.

- b. Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person's hunting privileges have been once previously suspended, revoked, or issuance of a license denied for a violation of sections 4 through 18 or section 20.1-01-06.
 - c. Four years if the person's record shows that within the five years preceding the most recent refusal under this section, the person's hunting privileges have at least twice previously been suspended, revoked, or issuance of a license denied under sections 4 through 18, or for a violation of section 20.1-01-06 and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's hunting privileges are not subject to revocation under this section if:
- a. No administrative hearing request is made under section 11;
 - b. The person mails an affidavit to the commissioner within ten days after the game warden or law enforcement officer issues the statement of intent and takes possession of that person's hunting license. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 20.1-01-06 within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license;
 - (2) Agrees that the person's hunting privileges must be suspended;
 - (3) Acknowledges the right to a section 11 administrative hearing and section 12 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's hunting privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
 - c. The person pleads guilty to violating section 20.1-01-06 within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the commissioner within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license; and

- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the commissioner prior to the return or reinstatement of the person's hunting privileges.
3. The court shall mail a copy of an order granting a withdrawal of a guilty plea to violating section 20.1-01-06 to the commissioner within ten days after it is ordered. Upon receipt of the order, the commissioner immediately shall revoke the person's hunting privileges as provided under this section without providing an administrative hearing.

SECTION 10. Administrative sanction for being afield with a gun or other firearm or a bow and arrow while having certain drug concentrations.

1. After the receipt of a person's hunting license, if taken under section 8, and the certified report of a game warden or a law enforcement officer and if no written request for hearing has been received from the arrested person under section 11, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the game warden or law enforcement officer had reasonable grounds to arrest the person and chemical test results show that the arrested person had been afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after being afield with a gun or other firearm or a bow and arrow, the commissioner shall suspend the person's hunting privileges as follows:
- a. For one year if the person's record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 20.1-01-06 or the person's hunting privileges have not previously been suspended or revoked under sections 4 through 18.
- b. For two years if the person's record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 20.1-01-06 or the person's hunting privileges have once previously been suspended or revoked under sections 4 through 18.
- c. For three years if the person's record shows that within the five years preceding the date of the arrest, the person's hunting privileges have at least twice previously been suspended, revoked, or issuance denied under sections 4 through 18, or for a violation of section 20.1-01-06, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. In the suspension of the person's hunting privileges the commissioner shall give credit for the time the person was without a hunting license after the day of the offense.

SECTION 11. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or denial under section 9 or 10, the commissioner shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the commissioner within ten days after the date the game warden or law enforcement officer issued a statement of intent to revoke, suspend, or deny hunting privileges and took possession of that person's hunting license. The hearing must be held within twenty-five days after the date the game warden or law enforcement officer issued a statement of intent to revoke, suspend, or deny hunting privileges and took possession of that person's hunting license, but the hearing officer may extend the hearing to within thirty-five days after the date the game warden or law enforcement officer issued a statement of intent to revoke, suspend, or deny hunting privileges and took possession of that person's hunting license if good cause is shown.
2. If the issue to be determined by the hearing concerns suspension of hunting privileges for being afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the commissioner and at a time and place designated by the commissioner. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had reasonable grounds to believe the person had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the person was placed under arrest; whether the person was tested in accordance with section 4 or 7 and, if applicable, section 6; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the office of the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that the privilege to hunt might be suspended based on the results of the chemical test is not an issue.
3. If the issue to be determined by the hearing concerns revocation of hunting privileges for refusing to submit to a chemical test under section 4 or 18, the hearing must be before a hearing officer assigned by the commissioner at a time and place designated by the commissioner. The hearing must be recorded. The scope of a hearing for refusing to submit to a chemical test under section 4 may cover only the issues of whether a game warden or law enforcement officer had reasonable grounds to believe the person had been afield with a gun or other firearm or a bow and arrow in violation of section 20.1-01-06; whether the person was placed under arrest; and whether that person refused to submit to the chemical test. The scope of a hearing for refusing to submit to a chemical test under section 18 may cover only the issues of whether the game warden or law enforcement officer had reason to believe and had, through the officer's observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof and whether the person refused to submit to the

onsite screening test. Whether the person was informed that the privilege to hunt would be revoked or denied for refusal to submit to the test is not an issue.

4. At a hearing under this section, the regularly kept records of the commissioner may be introduced. Those records establish prima facie their contents without further foundation. For purposes of sections 4 through 18, any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the commissioner from the office of the state toxicologist or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the commissioner from a certified breath test operator, and any copy of a certified copy of a certificate of the office of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the commissioner from the office of the state toxicologist or the clerk of district court, are regularly kept records of the commissioner.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the commissioner's official notification to the person of the revocation, suspension, or denial of hunting privileges in this state. The hearing officer shall report the findings, conclusions, and decisions to the commissioner within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the commissioner shall return the person's hunting license.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on the revocation, suspension, or denial of hunting privileges will be based on the written request for hearing, game warden's or law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the commissioner, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the commissioner's official notification to the person of the revocation, suspension, or denial of hunting privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 12.

SECTION 12. Judicial review. Any person whose hunting privileges have been suspended, revoked, or denied by the decision of the hearing officer under section 11 may appeal within seven days after the date of the hearing under section 11 as shown by the date of the hearing officer's decision, notwithstanding section 28-32-15, by serving on the commissioner and filing a notice of appeal and specifications of error in the district court in the

county where the events occurred for which the demand for a chemical test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the commissioner and to the hearing officer who rendered the decision. Neither the commissioner nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the commissioner or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the commissioner or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the commissioner or hearing officer. The court may direct that the matter be returned to the commissioner or hearing officer for rehearing and the presentation of additional evidence.

SECTION 13. Credit for suspension of hunting privileges. After conviction of a person for violating section 20.1-01-06, the commissioner, in suspending the person's hunting privileges, shall give credit for the time in which the suspension or revocation of hunting privileges has been or is being imposed under sections 4 through 18 in connection with the same offense.

SECTION 14. Interpretation of chemical tests. Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having, at that time, an alcohol, other drug, or a combination thereof concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor, drugs, or a combination thereof.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol, other drug, or a combination thereof concentration in a person is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof.
3. A person having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after being afield with a gun or other firearm or a bow and arrow is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of being afield with a gun or other firearm or bow and arrow.
4. Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven cubic centimeters of urine.

5. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
6. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the clerk of the district court in each county and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.
7. Copies of the records referred to in subsections 5 and 6, certified by the clerk of the district court, must be admitted as prima facie evidence of the matters stated in the records.
8. A certified copy of the analytical report of a blood, urine, or saliva test issued by the office of the state toxicologist must be accepted as prima facie evidence of the results of a chemical test performed under sections 4 through 18.
9. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the person who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act.

10. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

SECTION 15. Proof of refusal admissible in any action or proceeding. If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was afield with a gun or other firearm or bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof.

SECTION 16. Effect of evidence of chemical test. Sections 4 through 18 do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent, the purpose of the evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

SECTION 17. Liability. Any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting warden or officer is not liable in any civil action for damages arising out of the act except for gross negligence.

SECTION 18. Screening tests. Any person who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent to submit to an onsite screening test of the person's breath for the purpose of estimating the alcohol, other drug, or a combination thereof content of the person's blood upon the request of a game warden or a law enforcement officer who has reason to believe and has, through the officer's observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof. A person may not be required to submit to a screening test of breath while at a hospital as a patient if the medical practitioner in immediate charge of the person's case is not first notified of the proposal to make the requirement, or objects to the test on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test must be performed by a game warden or an enforcement officer certified as a chemical test operator by the state toxicologist and according to methods and with devices approved by the state toxicologist. The results of the screening test must be used only for determining whether a further test is to be given under the provisions of section 4. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for up to four years of that person's hunting privileges. If the person refuses to submit to the screening test, none may be given, but the refusal is sufficient cause to revoke the person's hunting privileges in the same manner as provided in section 9, and a hearing as provided in section 11 and a judicial review as provided in section 12 must be available. However, the commissioner may not revoke a person's hunting privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 4 for the same incident. This section does not supersede any provisions of sections 4 through 17, nor does any provision of sections 4 through 17 supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a person certified by the state toxicologist as qualified to perform analysis for alcohol, other drugs, or a combination thereof in a person's blood, breath, saliva, or urine.

Approved April 5, 1991
Filed April 8, 1991

CHAPTER 231

SENATE BILL NO. 2050
(Legislative Council)
(Interim Game and Fish Committee)

GAME AND FISH DEPARTMENT DIRECTOR

AN ACT to amend and reenact section 4-01-17.1, subsection 3 of section 10-06-04.3, sections 20.1-01-02, 20.1-01-03, 20.1-01-04, 20.1-01-26, 20.1-01-28, subsection 3 of section 20.1-01-30, sections 20.1-02-01, 20.1-02-02, 20.1-02-03, 20.1-02-04, 20.1-02-05, 20.1-02-06, 20.1-02-07, 20.1-02-09, 20.1-02-10, 20.1-02-11, 20.1-02-14, 20.1-02-14.1, 20.1-02-15, 20.1-02-15.1, 20.1-02-16, 20.1-02-16.1, 20.1-02-16.2, 20.1-02-16.3, 20.1-02-17, subsection 1 of section 20.1-02-17.1, sections 20.1-02-18.1, 20.1-02-18.4, 20.1-02-19, 20.1-02-25, 20.1-03-01.1, 20.1-03-02, subsection 5 of section 20.1-03-06, subsections 5 and 6 of section 20.1-03-10, sections 20.1-03-12.1, 20.1-03-15, 20.1-03-16, 20.1-03-17, 20.1-03-18, 20.1-03-19, 20.1-03-21, 20.1-03-22, 20.1-03-23, subsection 3 of section 20.1-03-25, sections 20.1-03-27, 20.1-03-30, 20.1-03-31, 20.1-04-03, 20.1-04-04, 20.1-05-07, 20.1-06-04, 20.1-06-05, 20.1-06-07, subsections 1 and 2 of section 20.1-06-10, sections 20.1-06-12, 20.1-06-13, 20.1-06-14, 20.1-06-15, 20.1-06-16, 20.1-06-17, 20.1-07-02, subsection 4 of section 20.1-07-03.1, sections 20.1-07-05, 20.1-08-02, 20.1-08-04.5, 20.1-09-02, 20.1-09-03, 20.1-09-04, 20.1-09-05, 20.1-10-01, 20.1-10-04, 20.1-11-02, 20.1-11-04, 20.1-11-05, 20.1-11-06, 20.1-11-07, 20.1-11-08, 20.1-11-09, 20.1-11-10, 20.1-12-02, 20.1-12-03, 20.1-12-04, 20.1-12-05, 20.1-12-06, 20.1-12-07, 20.1-12-08, 20.1-12-09, 20.1-13-04, 24-02-37.1, 37-07.3-04, 55-01-01, 55-08-02.1, 55-11-10, 57-02-08.4, 57-02-08.6, 57-02.1-02, 57-02.1-03, 57-02.1-04, 57-02.1-05, subsection 2 of section 61-31-02, subsection 4 of section 61-31-05, sections 61-31-08, 61-31-10, 61-32-02, 61-32-03, 61-32-04, 61-32-05, 61-32-06, 61-32-09, and subsection 1 of section 61-33-09 of the North Dakota Century Code, relating to the director of the game and fish department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-01-17.1 of the North Dakota Century Code is amended and reenacted as follows:

4-01-17.1. State to cooperate with the animal and plant health inspection service and other agencies in destruction of predatory animals, destructive birds, and injurious field rodents. The commissioner of agriculture may cooperate with the United States department of agriculture, animal and plant health inspection service, or other appropriate federal agency, in the control and destruction of: coyotes, wolves, bobcats, and foxes ~~in this state~~ that are injurious to livestock, poultry, and big and small game; injurious field rodents in rural areas; and certain nongame species of birds causing crop damage or substantial economic loss. This control and destruction must be approved by the director of the game and fish commissioner department. The commissioner of agriculture may enter into

written agreements with the animal and plant health inspection service or other appropriate federal agency, and the director of the game and fish ~~commissioner~~ department covering the methods and procedures for the control and destruction of these birds and animals, the extent of supervision by either or both the commissioner of agriculture and the animal and plant health inspection service or other appropriate federal agency, and the use and expenditure of the funds appropriated therefor by the legislative assembly. The commissioner of agriculture, in cooperation with the animal and plant health inspection service or other appropriate federal agency, may enter into agreements with other governmental agencies and with counties, associations, corporations, or individuals when ~~such~~ cooperation is deemed to be necessary to promote the control and destruction of these birds and animals.

* SECTION 2. AMENDMENT. Subsection 3 of section 10-06-04.3 of the North Dakota Century Code is amended and reenacted as follows:

3. Before any farmland or ranchland ~~can~~ may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to an advisory committee consisting of the director of the parks and recreation department, the state engineer, the agriculture commissioner, the state forester, the director of the game and fish ~~commissioner~~ department, and the manager of the Garrison Diversion Conservancy District, for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall review the proposed acquisition plan and shall make recommendations to the governor within thirty days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

** SECTION 3. AMENDMENT. Section 20.1-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-02. Definitions. In this title, unless the context or subject matter otherwise requires:

1. "Any part thereof" or "the parts thereof" includes the hide, horns, or hoofs of any animal specified, and the plumage, skin, and every other part of any bird specified.
2. "Associated equipment" means:
 - a. Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component;
 - b. Any accessory or equipment for, or appurtenance to, a boat; and
 - c. Any marine safety article, accessory, or equipment intended for use by a person on board a boat; but

* NOTE: Subsection 3 of section 10-06-04.3 was also amended by section 2 of Senate Bill No. 2054, chapter 640.

** NOTE: Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2036, chapter 232; by section 1 of Senate Bill No. 2038, chapter 230; and by section 1 of Senate Bill No. 2043, chapter 233.

- d. Excluding radio equipment.
3. "Big game" means deer, moose, elk, bighorn sheep, mountain goats, and antelope.
4. "Boat" means any vessel:
- Manufactured or used primarily for noncommercial use;
 - Leased, rented, or chartered to another for the latter's noncommercial use; or
 - Engaged in the carrying of six or fewer passengers.
5. ~~"Commissioner" means the state game and fish commissioner.~~
- 6- ~~"Confiscate" or "confiscated" means to hold subject to the order of a court of competent jurisdiction.~~
- 7- ~~6.~~ "Department" means the ~~state~~ game and fish department.
- 8- ~~7.~~ "Deputy ~~commissioner~~ director " means the deputy ~~state game and fish commissioner~~ director of the department.
8. "Director" means the director of the department.
9. "Endangered species" means any species whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
- The destruction, drastic modification, or severe curtailment of its habitat.
 - Its overutilization for scientific, commercial, or sporting purposes.
 - The effect on it of disease, pollution, or predation.
 - Other natural or manmade factors affecting its prospects of survival or recruitment within the state.
 - Any combination of the foregoing factors.
- The term also includes any species classified as endangered pursuant to the Endangered Species Act of 1973, Public Law 93-205.
10. "Established road or trail" means any public highway or road, improved or otherwise, dedicated for public ingress or egress, or any other road or trail normally used for travel but does not include temporary trails across cultivated land used for agricultural purposes.
11. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, and red or gray foxes.

12. "Game birds" includes all varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sagehens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, and crows.
13. "Guide" or "outfitter" means any resident who holds that person out to the public as a guide or outfitter, and who provides, for compensation, transportation, equipment, arrangement of lodging, or that person's own or another's personal services for the primary purpose of assisting a person or persons to locate or catch fish or to locate, pursue, or hunt small game, big game, or fur-bearers. Nonresidents are not entitled to act as guides or outfitters in this state.
14. "Gun dogs" includes any dog used to hunt protected wildlife.
15. "Harmful wild birds" includes blackbirds, magpies, English sparrows, and starlings.
16. "Harmless wild birds" includes all wild birds not defined herein as "harmful wild birds" or "game birds".
17. "Hunt" or "hunting" means shooting, shooting at, pursuing, taking, attempting to take, or killing any game animals and game birds; searching for or attempting to locate or flush any game animals and game birds; luring, calling, or attempting to attract game animals and game birds; hiding for the purpose of taking or attempting to take game animals and game birds; and walking, crawling, or advancing toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds. The term does not include possessing or using photographic equipment.
18. "Manufacturer" means any person engaged in:
 - a. The manufacture, construction, or assembly of boats or associated equipment.
 - b. The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.
 - c. The importation into the state for sale of boats, associated equipment, or components thereof.
19. "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion. The term does not include a vessel having a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.
20. "Motor-driven vehicle" means any land vehicle, with or without wheels, that is propelled by any motor.
21. "Operate" means to navigate or otherwise use a motorboat or a vessel.
22. "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person

- entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
23. "Passenger" means every person carried on board a vessel other than:
 - a. The owner or his representative.
 - b. The operator.
 - c. Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.
 - d. Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for that person's carriage.
 24. "Person" includes every partnership, association, and corporation. No violation of this title may be excused because it was done as the agent or employee of another, nor because it was committed by or through an agent or employee of the person charged.
 25. "Possession" means control, actual possession, and constructive possession of the article or thing specified.
 26. "Private fish hatchery" means a body of water, whether natural or artificial, and any other facilities used, maintained, or operated by any private person, firm, or corporation for the propagation and production of fish for sale or planting in other waters. Except in the case of trout, walleye, northern pike, and crappie, which may be raised in a private fish hatchery without the ~~commissioner's~~ director's approval, the ~~commissioner~~ director may, by rule, regulate the species of fish which may be raised in a private fish hatchery. No waters stocked by any state or federal governmental agency may be considered a private fish hatchery.
 27. "Public waters" means waters to which the general public has a right to access.
 28. "Resident" means any person who has actually lived within this state or maintained that person's home therein for at least six months immediately preceding the date that residence is to be determined. A "nonresident" is any person who has not done so.
 29. "Resident species" means any species nearly all of whose individuals in this state are located within this state for at least three-fourths of annual cycle of the species.
 30. "Retrieve" means to have taken possession and made ready for transportation.
 31. "Sell" and "sale" means any sale or offer to sell, or possession with intent to sell, use, or dispose of, the article or thing specified, contrary to law.

32. "Shooting preserve" or "preserve" means any privately owned or leased acreage [hectarage] on which hatchery-raised game birds are released to be hunted for a fee over an extended season.
33. "Sinkbox" or "sunken device" means a raft or any type of low floating device having a depression that affords a hunter a means of concealing that person below the surface of the water.
34. "Small game" includes all game birds and tree squirrels.
35. "Species" includes any subspecies of wildlife and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.
36. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future and includes any species classified as threatened pursuant to the Endangered Species Act of 1973, Public Law 93-205.
37. "Undocumented vessel" means a vessel which does not have a valid marine document as a vessel of the United States.
38. "Vessel" means any watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
39. "Waterfowl" includes all varieties of geese, brant, swans, ducks, rails, and coots.
40. "Waters" when not qualified means waters not open to the general public.
41. "Waters of the state" means all waters of this state, including boundary waters. This title extends to and is in force and effect over, upon, and in all such waters.
42. "Wildlife" means any member of the animal kingdom including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

* SECTION 4. AMENDMENT. Section 20.1-01-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-03. Ownership and control of game and fish is in the state - Damages - Schedule of monetary values. The ownership of and title to all wild birds, fish, and wild animals within this state ~~shall be~~ is in the state for the purpose of regulating the enjoyment, use, possession, disposition, and conservation thereof, and for maintaining action for damages as herein provided. Any person catching, killing, taking, trapping, or possessing any wild birds, fish, or wild animals protected by law at any time or in any manner ~~shall be~~ is deemed to have consented that the title thereto ~~shall remain~~ remains in this state for the purpose of regulating the taking, use, possession, and disposition thereof. The state, through the office of

* NOTE: Section 20.1-01-03 was also amended by section 2 of Senate Bill No. 2036, chapter 232.

attorney general, may institute and maintain any action for damages against any person who unlawfully causes, or has caused within this state, the death, destruction, or injury of wild birds, fish, or wild animals, except as may be authorized by law. The state has a property interest in all protected wild birds, fish, and wild animals. This interest supports a civil action for damages for the unlawful destruction of wildlife by willful or grossly negligent act or omission. The commissioner director shall promulgate adopt by rule a schedule of monetary values of various species of fish and wildlife, said the values to represent the replacement costs of said the fish and wildlife and the value lost to the state due to the destruction or injury of said that species, together with other material elements of value. In any action brought under this section, the schedule shall constitute constitutes the measure of recovery for the fish and wildlife killed or destroyed. The funds ~~so~~ recovered shall must be deposited in the general fund, and devoted to the propagation and protection of desirable species of fish and wildlife.

SECTION 5. AMENDMENT. Section 20.1-01-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-04. Attorney general, state's attorneys, sheriffs, and peace officers to enforce game and fish laws. The attorney general, and all state's attorneys, sheriffs, and other peace officers shall enforce this title. The attorney general and the state's attorney of the county in which an action is to be brought or is pending shall appear for the commissioner director in all civil actions in which the commissioner director or any of the game wardens may be interested officially, and shall appear in the prosecution of criminal actions arising under this title.

* SECTION 6. AMENDMENT. Section 20.1-01-26 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-26. Suspension of hunting, trapping, or fishing privileges - Surrender and return of license. In addition to the penalty provided upon conviction under this title, the court may suspend the defendant's hunting, trapping, or fishing privileges for up to two years. The court may not suspend the defendant's privileges for a noncriminal violation if the defendant has not been convicted for a violation of this title in the last three years. Upon conviction for a violation of this title in the last three years, the court shall suspend the defendant's hunting, fishing, and trapping privileges for a period of at least six months. At the time of the suspension, the court shall determine whether the defendant must successfully complete the hunter education course provided for in section 20.1-03-01.1, as prescribed by the proper state or provincial natural resources or wildlife management agency, before the defendant may purchase a new or obtain the return of a valid hunting license.

Upon imposition of such suspension, the court shall take any hunting, trapping, or fishing license or permit held by the defendant and forward it, together with a certified copy of the suspension order, to the commissioner director. Except as otherwise provided in this section, upon expiration of the suspension, the commissioner director shall return the person's license or permit if it is still valid. No person may purchase, or attempt to purchase, a hunting, trapping, or fishing license or permit during a suspension period. If the court so ordered, no person who has had a hunting license suspended may purchase or attempt to purchase a hunting license nor may the commissioner director return a valid hunting license until the person has successfully completed the course provided for in section 20.1-03-01.1

* NOTE: Section 20.1-01-26 was also amended by section 3 of House Bill No. 1034, chapter 127.

and as prescribed by the proper state or provincial natural resources or wildlife management agency. A certificate of completion for a similar course issued by any other state or province of Canada is sufficient to meet this requirement. The person shall file proof of that completion with the court.

For the purpose of this section, the term "conviction" includes an admission or adjudication of a noncriminal violation.

SECTION 7. AMENDMENT. Section 20.1-01-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-28. Certain game and fish violations noncriminal - Procedures. Any person who has been cited for a violation that is designated as a noncriminal offense in this title or in related rules or proclamations may appear before a court of competent jurisdiction and pay the statutory fee at or prior to the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. A person appearing at the time scheduled in the citation may make a statement in explanation of that person's action and the judge may at that time waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, that person has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the judge must be identical to the statutory fee established by section 20.1-01-30. Within ten days after forfeiture of bond or payment of the statutory fee, the judge shall certify to the ~~commissioner~~ director admission of the violation.

This section does not allow a halting officer to receive the statutory fee or bond.

SECTION 8. AMENDMENT. Subsection 3 of section 20.1-01-30 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. For violation of a rule approved by the ~~commissioner~~ director or of an order or proclamation issued by the governor, the amount set in the rule, order, or proclamation up to a maximum of two hundred fifty dollars.

SECTION 9. AMENDMENT. Section 20.1-02-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-01. ~~State Director of the game and fish commissioner department - Office to be maintained - Appointment - Term - Removal. A state~~
~~The governor shall appoint the director of the game and fish commissioner~~
~~must be appointed by the governor department. He shall hold~~ The director holds office for a term of four years beginning on the first day of July after the governor's election and until ~~his~~ a successor is appointed and qualified. ~~He~~ The director is subject to removal by the governor for cause only.

SECTION 10. AMENDMENT. Section 20.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-02. Bond and oath of ~~commissioner~~ director - Where filed. Before entering upon ~~his~~ that person's duties and within ten days after the date of ~~his~~ appointment, the ~~commissioner~~ director shall take and file the

oath prescribed for civil officers and ~~shall~~ must be bonded in the penal sum of ten thousand dollars.

SECTION 11. AMENDMENT. Section 20.1-02-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-03. Compensation and expenses of ~~commissioner~~ director - Audit and payment. The salary of the ~~commissioner~~ shall director ~~must~~ be within the amount appropriated for salaries by the legislative assembly. The ~~commissioner~~ shall director ~~must~~ be reimbursed for the necessary expenses incurred by ~~him~~ the director in the performance of ~~his~~ the director's duties. The ~~commissioner's~~ director's salary and expenses ~~shall~~ must be paid out of the game and fish fund and ~~shall~~ must be audited and paid in the same manner as the salary and expenses of other state officers.

* SECTION 12. AMENDMENT. Section 20.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-04. Duties of ~~commissioner~~ director. The ~~commissioner~~ director shall:

1. Maintain an office in Bismarck.
2. ~~Establish such~~ Adopt rules and regulations as are necessary to the conduct of ~~his~~ the department.
3. Keep an accurate record of all the transactions and expenditures of ~~his~~ the department and submit to the governor and the ~~department of accounts and purchases~~ office of management and budget a biennial report as prescribed by section 54-06-04.
4. Enforce state laws involving game animals, game birds, fish, and harmless birds and animals.
5. Collect and distribute statistics and information germane to this title and publish ~~such~~ information and reports, including a monthly bulletin, for the education of the public in conservation matters.
6. Examine all waters of the state and, wherever suitable waters are found, arrange to plant, stock, or deposit available fish, spawn, or fry.
7. Cooperate with the United States ~~bureau of sport fisheries~~ fish and wildlife service, or any other appropriate federal agency, and make applications for fish, spawn, and fry, to apportion and deposit in waters of the state.
8. Cooperate with and assist clubs and individuals in stocking the waters of this state with fish.
9. Remove or take from any public waters containing a surplus of fish, any reasonable quantity of fish for stocking other public waters, for hatching or propagating purposes, or for exchange with other states and countries.
10. Control, construct, mark, designate, manage, and have charge of all state fish hatcheries, state game farms, game refuges, and game

* NOTE: Subsection 4 of section 20.1-02-04 was also amended by section 4 of Senate Bill No. 2036, chapter 232.

reserves owned, leased, or controlled for the propagation and protection of game birds, game animals, and fish.

11. Supervise the breeding, propagation, capture, distribution, and preservation of ~~such~~ game birds, game animals, and fish as ~~he~~ the director deems advisable.
12. ~~Make all~~ Adopt rules ~~and regulations~~ necessary for carrying out ~~the provisions of~~ section 20.1-10-01 and ~~such these~~ rules ~~and regulations shall~~ have the force of law after one publication in the daily newspapers of this state.
13. Provide the necessary blank forms for making applications for licenses of all kinds and distribute them among those authorized to sell licenses.
14. Keep a record of all permits issued for the purpose of propagation and domestication of game birds or protected animals.

* SECTION 13. AMENDMENT. Section 20.1-02-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-05. Powers of ~~commissioner~~ director. The ~~commissioner~~ director may:

1. Fix the salaries and the necessary travel and other expenses of department personnel subject to law and legislative appropriations.
2. Employ any part-time personnel necessary to run ~~his~~ the director's office and remove ~~such the~~ employees at will. Salaries and necessary traveling and other expenses of ~~such these~~ appointees ~~shall must~~ be authorized, audited, and paid in the same manner as salaries and expenses of state officers.
3. Accept from any person, or gather, or purchase, fish, spawn, or fry, for distribution in state waters.
4. Take alive at any time, under ~~his~~ the director's personal supervision or under the personal supervision of any of ~~his the~~ director's bonded appointees, any birds or animals for propagation purposes or for exchange with other states and foreign countries for game birds and animals of other species.
5. Order additional protection for any fish with an open season when, after investigation, ~~he the~~ director finds danger of extinction, undue depletion in any waters, or to aid in the propagation and protection of immature fish, by prescribing how, how many, where, and when ~~such the~~ fish may be taken. ~~Such The~~ orders ~~shall~~ have the force of law.
6. Take or cause to be taken at any time from any state public waters any suckers, carp, or pickerel.
7. With the governor's approval, purchase, lease, or condemn real estate, when it is required to carry out this title, and sell it when it is no longer required, in the name of the state.

* NOTE: Section 20.1-02-05 was also amended by section 1 of House Bill No. 1552, chapter 234.

8. Lease up to ninety-nine years any department land, for the purpose of development and improvement, to any nonprofit corporation, upon consideration of specified improvements to be made by the corporation and other improvements the department and the corporation may agree upon. The lease ~~shall~~ must provide that all funds received by the corporation through lease of the property be expended upon the leased premises for development and improvements. The corporation ~~shall have~~ has the authority, subject to approval by the ~~commissioner~~ director, to sublease the premises for cabin sites and other recreational purposes. Upon termination of the lease, the leased property, together with all improvements, ~~shall revert~~ reverts to the department.
9. With the governor's approval, enter into agreements with the bureau of reclamation for the management of lands in the Heart Butte area acquired by the bureau for the construction of dams on lakes or streams. Revenues derived from the management of ~~such these~~ lands or received from any federal agency for expenditure upon ~~such these~~ lands ~~shall may~~ not be commingled with other game and fish funds, but ~~shall~~ must be deposited by the ~~commissioner~~ director in a separate account. These funds are hereby appropriated for expenditure for ~~such~~ purposes as may be agreed upon by the bureau of reclamation, the ~~federal~~ United States fish and wildlife service, the national park service, and the ~~commissioner~~ director. The authority herein granted is effective only until the lands are resold to the former landowners by the bureau of reclamation.
10. Secure specimens of game birds, animals, and fish for breeding purposes by purchase or otherwise and by exchange with the game commissions or state game wardens of other states or countries.
11. Issue, at ~~his~~ the director's discretion, special permits to shoot wildlife from a stationary motor vehicle upon application from individuals who are physically unable to walk for purposes of hunting or taking wildlife. The application ~~shall must~~ be accompanied by a physician's statement verifying the person's condition. ~~Permits~~ A permit issued under this subsection ~~shall allow~~ allows the permittee to drive, or to be driven, on to any land for the purposes of hunting wildlife, except that neither any other passenger within the vehicle nor the driver, if someone other than the permittee, ~~shall may~~ be a hunter, unless ~~such~~ the other person is also a permittee. Provided, however, that ~~such~~ the land is privately owned and if the permittee is not going to drive or be driven along an established road or trail, the permittee ~~shall must~~ first obtain the consent of the owner or tenant to hunt on ~~such~~ the land in the manner provided in this title.
12. Issue to any person, who is a paraplegic or who has lost the use of one or both arms, a special permit to hunt game with a crossbow if ~~he~~ that person otherwise complies with and qualifies under the licensing and other provisions of this title.
13. Issue any resident license prescribed by this title to a person who has come to the state with a bona fide intention of becoming a resident, even though ~~he~~ that person has not been a resident of this state for the required time period immediately preceding the application for the license, or to any person who is a member of

the United States armed forces and who is within the state on duty or leave, or to any employee of the United States fish and wildlife service or the conservation department of any state or province of Canada in the state to advise or consult with the department. No license ~~shall~~ may be issued under this subsection unless an affidavit of a bona fide resident, setting forth the actual conditions, accompanies the application. This subsection ~~shall~~ does not apply to lottery permits, except that the ~~commissioner~~ director shall issue a resident deer hunting license to any resident of this state who is a member of the United States armed forces stationed outside this state and who shows proof of North Dakota residence and who pays the appropriate licensing fee. A deer license issued to a member of the United States armed forces under this subsection must be issued without being subject to the lottery for deer hunting licenses.

14. ~~Promulgate~~ Adopt rules and regulations, and issue permits for the transporting or introducing of fish, fish eggs, small game, big game, or fur-bearers after determining that ~~such the~~ fish, fish eggs, birds, or animals have been properly inspected for disease, and that the transplanting or introduction will be in compliance with state laws, and rules, and regulations. No person ~~shall~~ may transplant or introduce any fish or fish eggs into any of the public waters of this state, or transplant or introduce any species of small game, big game, or fur-bearers into this state without obtaining a permit from the ~~commissioner~~ director.
15. Pursuant to section 4-01-17.1, cooperate with the commissioner of agriculture, the ~~federal~~ United States fish and wildlife service, and other agencies in the destruction of predatory animals, destructive birds, and injurious field rodents. The ~~commissioner~~ director is hereby authorized to ~~promulgate~~ adopt rules and regulations in accordance with organized and systematic plans of the department of the interior for the destruction of these birds and animals. The ~~commissioner~~ director may determine the necessity and issue permits and rules and regulations therefor for the operation and use of private aircraft to assist in the destruction of the above birds and animals and aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.
16. Exercise authority to establish programs, and rules, and regulations and administer state and federal funds provided to the state for the preservation and management of resident species determined by the ~~commissioner~~ director to be threatened or endangered species of wildlife. The authority exercised ~~shall~~ must be in compliance with the Endangered Species Act of 1973, Public Law 93-205. Any person who violates rules and regulations established under this subsection ~~shall be~~ is guilty of a class B misdemeanor.
17. Subject to the provisions of chapter 28-32, ~~promulgate~~ adopt rules and regulations for the licensing of guides or outfitters, and may require ~~such~~ records and reports as ~~he shall deem~~ the director determines necessary. The ~~commissioner~~ director may, after due hearing as provided in chapter 28-32, revoke or refuse to renew the

- license of any person who violates such the rules and regulations or fails to provide such the records and reports.
18. Provide for the funding of a private land habitat improvement program with moneys derived from the interest earned on the game and fish fund. The state treasurer shall place the interest money in a special fund called the "game and fish department private land habitat improvement fund".
 19. Carry out a private land habitat improvement program by:
 - a. Entering into cost-sharing agreements with landowners or agencies working on private land to help defray all or a portion of their share of certain federally sponsored conservation practices considered beneficial to fish and wildlife.
 - b. Annual leasing and development of fish and wildlife habitat or sport fishing areas on private land.
 - c. Carrying out practices which will alleviate depredations caused by big game animals.
 20. Subject to prior approval of the attorney general, lease or exchange such lands under his the director's jurisdiction or control which are deemed necessary for the improved management of wildlife resources.
 21. Subject to prior approval of the attorney general, impose such any conditions or reservations to such the leases or exchanges as he may deem the director determines necessary.
 22. Adopt rules and issue permits for conducting fishing contests involving public waters of the state. The commissioner director by rule shall define the term "fishing contest" and shall set criteria for which a fishing contest permit is required. The commissioner director may deny permits. No person may conduct a fishing contest on public waters without first receiving a permit issued by the commissioner director.
 23. Issue duplicates of lost or destroyed game and fish licenses or permits. The procedure for reissuing the licenses or permits and fees to be charged shall must be prescribed by the commissioner director by rule.
 24. Establish noncriminal penalties for any rules adopted by the commissioner director. The maximum noncriminal penalty that may be set by the commissioner director is a fine of two hundred fifty dollars. Violation of any rule not designated as having a noncriminal penalty is considered a criminal violation as established in the appropriate chapter of this title.
 25. Issue, as a means of encouraging and promoting economic development in this state, complimentary fishing licenses to nonresident visiting dignitaries. The circumstances and conditions of complimentary fishing licenses issued must be determined by the commissioner director. The number of complimentary licenses may

not exceed fifty licenses per year. The director shall determine the visiting dignitaries shall be determined by the commissioner to be of national or international stature before being they are eligible for complimentary licenses.

SECTION 14. AMENDMENT. Section 20.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-06. Deputy commissioner director - Appointment, removal, oath, bond, reports. The commissioner director shall appoint, and may remove at pleasure, a deputy commissioner director who shall be is under his the director's direct control and supervision. The deputy, within ten days after the date of his that person's appointment, shall take and file the oath prescribed for civil officers and furnish a bond in the penal sum of five thousand dollars. Such The bond shall must conform to and shall must be filed in accordance with the provisions of law applicable to the bonds of state officers. The oath shall must be filed in the office of the secretary of state. The deputy commissioner director shall make monthly and annual reports to the commissioner director in the manner required by him the director.

SECTION 15. AMENDMENT. Section 20.1-02-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-07. Chief game warden, district deputy game wardens, biologists, and technicians - Appointment - Removal. The commissioner director, with the governor's approval, may appoint the following permanent employees:

1. A chief game warden who shall enforce all state game and fish laws and supervise all deputy game wardens.
2. District deputy game wardens, assigned by him the director, to enforce all state game and fish laws within specific appropriation limitations.
3. Biologists and technicians with specialized training and experience to perform duties specified by the commissioner director.

Such The appointees shall may be removed for cause only and in the manner specified by law.

SECTION 16. AMENDMENT. Section 20.1-02-09 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-09. Supervision of chief game warden by commissioner director - Records - Reports. The chief game warden shall be is under the direct control and supervision of the commissioner director and shall make monthly and annual reports to the commissioner director in a manner required by him the director. The chief game warden shall keep a complete and correct record, in a book provided for that purpose, of all his that person's transactions and of the name of each person violating the game and fish laws, the date of his that person's arrest, the amount of the fine and costs imposed upon and paid by each such person, and the name of the judge before whom he that person appeared. Such The record book, when requested, shall must be open to inspection by the public. The chief game warden shall make a

full report to the ~~commissioner~~ director within thirty days after the end of each fiscal year.

SECTION 17. AMENDMENT. Section 20.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-10. Special deputy game wardens - Appointment, removal, compensation. The ~~commissioner~~ director may appoint and remove at pleasure, one or more special deputy game wardens in each county. They ~~shall~~ serve for such the time and in such manner as the commissioner may direct director directs. They ~~shall~~ serve without compensation, but shall be are entitled to a reward pursuant to section 20.1-02-16.

SECTION 18. AMENDMENT. Section 20.1-02-11 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-11. Deputy game wardens supervised by ~~commissioner~~ director - To make reports. Each district deputy game warden and each special deputy game warden ~~shall be~~ are under the direct control and supervision of the ~~commissioner~~ director, and shall make monthly and annual reports to the ~~commissioner~~ director in a manner required by ~~him~~ the director.

SECTION 19. AMENDMENT. Section 20.1-02-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-14. Writs served and executed by game wardens - Peace officers and others to aid wardens, when. The ~~commissioner~~ director, deputy ~~commissioner~~ director, and all wardens and deputy wardens may serve and execute, in the same manner as any sheriff, all warrants and legal process issued by a court in enforcing this title. The officers of the department may call to their aid any sheriff, deputy sheriff, police officer, or other person to enforce this title. All peace officers or other persons, when called upon, shall enforce and aid in enforcing this title.

SECTION 20. AMENDMENT. Section 20.1-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-14.1. Uniform complaint and summons - Promise to appear. There is hereby established a uniform complaint and summons ~~which~~ that may be used in cases involving violations of this title. Whenever the complaint and summons established by this section is used, the provisions of the North Dakota Rules of Criminal Procedure relating to arrests without warrants ~~shall~~ do not apply, and the magistrates or state's attorneys ~~shall~~ are not be required to make another complaint of the offense charged in the uniform complaint and summons. The uniform complaint and summons ~~shall~~ must be of a form prescribed by the ~~game and fish commissioner~~ director and approved by the attorney general.

The time of court appearance to be specified in the summons ~~shall~~ must be at least five days after the issuance of ~~such the~~ such the summons unless the defendant ~~shall demand~~ demands an earlier hearing.

Upon receipt from the defendant of written promise to appear at the time and place specified in the summons, ~~he~~ shall the defendant must be released from custody. After signing a promise to appear, ~~defendant shall~~ the defendant must be given a copy of the uniform complaint and summons. Any person refusing to give ~~such a~~ such a written promise to appear may be arrested if

proper cause exists, or proceeded against by complaint and warrant of arrest as provided in the North Dakota Rules of Criminal Procedure. Defendant's failure to appear at the time and place designated after signing a promise to appear shall be is a class B misdemeanor.

The uniform summons and complaint shall may not be used if the officer, acting within his the officer's discretion, has reason to believe the defendant will not be subject to arrest upon a warrant issued by a magistrate. The halting officer shall forthwith take any person not released upon his that person's promise to appear before the nearest or most accessible magistrate.

* SECTION 21. AMENDMENT. Section 20.1-02-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-15. Police powers of commissioner director, deputy commissioner director, and bonded appointees of commissioner director. The commissioner director, deputy commissioner director, and any bonded appointees of the commissioner shall director have the power:

1. Of a peace officer for the purpose of enforcing this title and any other state laws, or rules, or regulations relating to big game, small game, fur-bearers, fish, and other wildlife.
2. To make arrests upon view and without warrant for any violation, committed in his that person's presence, of this title and any other state laws, or rules, or regulations relating to big game, small game, fur-bearers, fish, and other wildlife.
3. To regulate dealers in green furs, propagation or possession of live protected wildlife, taxidermists, shooting preserves, guides and outfitters, commercial fishing operations, private fish hatcheries and commercial bait vendors. In the regulation of these licensed activities, the premises used to conduct the business and records required by law shall must be open for inspection at reasonable hours by game and fish law enforcement officers.

SECTION 22. AMENDMENT. Section 20.1-02-15.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-15.1. Additional powers of commissioner director, deputy commissioner director, chief game wardens or district game wardens. The commissioner director, deputy commissioner director, chief game wardens or district game wardens shall have the power of a peace officer in the following circumstances:

1. To enforce state laws, and rules, and regulations on any game refuge, game management area or other land or water owned, leased or managed by the department.
2. When responding to requests from other law enforcement agencies or officers for aid and assistance. For the purposes of this subsection, such a request from a law enforcement agency or officer shall mean means only a request for assistance as to a particular and singular violation or suspicion of violation of law, and shall does not constitute a continuous request for assistance outside the purview of enforcement of the provisions of this title.

* NOTE: Section 20.1-02-15 was also amended by section 5 of Senate Bill No. 2036, chapter 232.

3. The powers and duties ~~hereby~~ conferred ~~shall be~~ are supplemental to other powers and duties conferred upon the ~~commissioner~~ director, deputy ~~commissioner~~ director, chief game wardens or district game wardens and ~~shall~~ do not constitute an obligation beyond the regular course of duty of those officers.

This section ~~shall~~ may not be construed to limit the powers or duties of any peace officer within this state.

SECTION 23. AMENDMENT. Section 20.1-02-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16. ~~Commissioner~~ Director may pay rewards in connection with the conviction of violators - Amounts - Exceptions. The ~~commissioner~~ director, out of legislative reward appropriation, may pay complainants, upon the arrest and conviction of any person violating this title, a reward not to exceed:

1. One hundred dollars if the offense involves a violation relating to big game.
2. Fifty dollars if the offense involves a violation relating to game birds, fish, fur-bearers, or protected animals not mentioned in subsection 1.

This section ~~shall~~ does not apply when the complaint is made or required information is furnished by an officer, employee, or game warden who is regularly employed and who receives a salary from the department, or by a sheriff or other peace officer who receives a regular salary.

SECTION 24. AMENDMENT. Section 20.1-02-16.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.1. Use of game and fish fund. All income of the state game and fish department, deposited by the ~~commissioner~~ director with the state treasurer ~~shall~~ must be credited to the state game and fish fund and ~~said~~ the fund ~~shall~~ may be used only by the department. All money derived from the investment of ~~said~~ the fund or portions thereof ~~shall~~ must be credited to ~~said~~ the fund.

SECTION 25. AMENDMENT. Section 20.1-02-16.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.2. Nongame wildlife fund established - Uses - Appropriation. There is hereby established in the state treasury a special fund known as the nongame wildlife fund. The fund may be expended subject to appropriation by the legislative assembly to the game and fish department and must be used only for the purposes of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state. The game and fish department shall allocate a portion of the fund to other state agencies for the purpose stated in this section, and with approval of the ~~game and fish commissioner~~ director. For the purpose of this section, "nongame wildlife" means all species of native animals not commonly taken for sport or commercial purposes and does not include animals determined by the game and fish department to be harmful animals. "Natural areas" and "nature preserves" mean areas as defined in section 55-11-02.

SECTION 26. AMENDMENT. Section 20.1-02-16.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.3. Small and big game habitat restoration trust fund - Advisory committee - Transfer - Continuing appropriation. The small and big game habitat restoration trust fund is established to further farmer-sportsmen relations and to enhance small and big game habitat by providing funds for the leasing of private land to establish or preserve small and big game habitat, food plot development, and to carry out a private land habitat improvement program by entering into cost-sharing agreements with landowners or agencies working on private land to help defray all or a portion of their share of certain federally sponsored conservation practices considered especially beneficial to small and big game. No more than forty acres [64.76 hectares] per owner or operator may be leased under this program. No land may be purchased with small and big game habitat restoration trust fund moneys, and no funds may be used for administrative purposes. The private land habitat improvement program advisory committee shall advise the ~~commissioner~~ director concerning expenditures from the small and big game habitat restoration trust fund. The ~~commissioner~~ director shall provide staff services to the advisory committee. All members of the advisory committee must be residents of this state and must serve without remuneration. The amount of one hundred thousand dollars must be transferred annually from the game and fish operating fund to the small and big game habitat restoration trust fund. The interest earned by moneys contained in the small and big game habitat restoration trust fund is hereby appropriated as a standing and continuing appropriation for the purposes of this section.

SECTION 27. AMENDMENT. Section 20.1-02-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-17. Conditional assent to federal aid projects - Proceeds from license fees and application to be used for administration of department. North Dakota assents to the Act of Congress entitled "An Act to provide that the United States shall aid the states in wildlife restoration projects and for other purposes" [Pub. L. 75-415; 50 Stat. 917; 16 U.S.C. 669 et seq.], and the Act of Congress entitled "An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes" [Pub. L. 81-681; 64 Stat. 430; 16 U.S.C. 777 et seq.] subject to the conditions of section 20.1-02-17.1. The ~~commissioner~~ director may conduct and establish cooperative wildlife and fish restoration projects as defined in these Acts, in compliance with the Acts and with rules ~~and regulations promulgated~~ adopted by the federal agency administering these Acts.

Hunting and fishing license fees and application fees assessed under section 20.1-03-12.2 ~~shall~~ may only be used for departmental programs and administration.

SECTION 28. AMENDMENT. Subsection 1 of section 20.1-02-17.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~state game and fish commissioner~~ director shall submit proposed wildlife and fish restoration programs or projects and updated segments thereof involving proposed acquisitions by purchase, lease, easement, or servitude of wetlands, water, or land areas by certified mail with return receipt to the board of county commissioners of the county or counties in which the affected areas

are located for the board's approval prior to agreement with and approval by the secretary of the interior.

SECTION 29. AMENDMENT. Section 20.1-02-18.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-18.1. Federal wildlife area acquisitions - Submission to county commissioners, opportunity for public comment, and impact analysis required. The governor, the ~~game and fish commissioner~~ director, or their designees, responsible under federal law for final approval of land, wetland, and water acquisitions by the United States department of the interior, its bureaus or agencies, for waterfowl production areas, wildlife refuges, or other wildlife or waterfowl purposes, shall submit the proposed acquisitions by certified mail with return receipt to the board of county commissioners of the county or counties in which the land, wetland, and water areas are located for the board's recommendations.

The board of county commissioners of the county affected, or a designee or designees of the board, shall, within twenty-one days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas. The board shall give public notice of the date, hour, and place where the public may comment on the proposed acquisitions. The notice must be published once each week for two successive weeks in the official newspaper of the county or counties in which the land and water areas are located. The notice must set forth the substance of the proposed action, and must include a legal description of the proposed acquisitions. The board of county commissioners shall make its recommendations by certified mail with return receipt within sixty days after receipt of an acquisition proposal.

A detailed impact analysis from the federal agency involved must be included with the acquisition proposal for board of county commissioner consideration in making recommendations. The analysis must include the recreational and wildlife impacts. In addition, the county agent of the affected county or counties shall prepare an impact analysis for board of county commissioner consideration which must include the fiscal, social, and agricultural impacts of the proposed acquisitions. The department of the interior shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses must also be forwarded to the office of intergovernmental assistance which shall furnish copies to all interested state agencies and political subdivisions, which agencies and political subdivisions have thirty days to review the analyses and return their comments to the office of intergovernmental assistance. Upon expiration of the thirty-day period, all comments received by the office of intergovernmental assistance must be forwarded to the federal agency involved and to the state official or agency responsible for final acquisition approval. The federal agency may, after consideration of ~~such~~ the comments, file a final impact analysis with the governor, the board of county commissioners, and any other state official or agency responsible for final acquisition approval.

SECTION 30. AMENDMENT. Section 20.1-02-18.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-18.4. Wetlands mediation advisory board. The wetlands mediation advisory board consists of the governor, or the governor's duly authorized designee, as chairman; the commissioner of agriculture, or the commissioner's duly authorized designee; the president, or a member selected

by the president, of the North Dakota farmers union; the president, or a member selected by the president, of the North Dakota farm bureau; the president, or a member selected by the president, of the North Dakota national farmers organization; the state engineer of the water commission, or the state engineer's duly authorized designee; the ~~state game and fish commissioner~~ director, or the ~~commissioner's~~ director's duly authorized designee; the regional director of the United States fish and wildlife service, or the regional director's duly authorized designee; the executive director, or a member selected by the executive director, of the state association of counties; and the executive vice president, or a member selected by the executive vice president, of the state association of soil conservation districts.

* SECTION 31. AMENDMENT. Section 20.1-02-19 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-19. Removal proceedings - Game and fish hearing board. The removal of all game and fish employees other than the deputy ~~commissioner~~ director, and temporary, part-time, or probation appointees may be instituted only by the filing of a verified written charge with the governor. If the governor believes ~~such the~~ charges constitute grounds for removal, ~~he the~~ governor shall order a hearing thereon, on fifteen days' notice to the individual accused, before a hearing board consisting of the governor as chairman, the secretary of state, and the attorney general. If the governor believes that ~~such the~~ charge or charges do not constitute grounds for removal, ~~he the governor~~ shall dismiss the charges forthwith.

** SECTION 32. AMENDMENT. Section 20.1-02-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-25. Meetings and duties. Each board member shall hold a public meeting at least twice each fiscal year in ~~his the board member's~~ respective district to make their presentations and to determine the needs and the opinions of those interested in such activities. The board shall meet at least twice each fiscal year. The board has the authority to advise the ~~commissioner~~ director regarding any policy of hunting, fishing, and trapping regulations, and may make general recommendations concerning the operation of the department and its programs which the ~~commissioner~~ director may carry out. The board shall forward copies of its recommendations to the governor. This section does not limit or restrict the powers, duties, and authority of the governor in the issuance of orders and proclamations as provided in chapter 20.1-08.

SECTION 33. AMENDMENT. Section 20.1-03-01.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-01.1. ~~Commissioner~~ Director to appoint and train instructors - Prescribe course material and classroom sites - Certify completion. The ~~commissioner~~ director shall provide classroom instruction on, and shall select, train, and certify persons or department personnel qualified to provide instruction on, firearms and bow safety and hunter responsibility, and shall prescribe the course material to be used, classroom locations, and the dates for teaching the course in this state. The ~~commissioner~~ director shall authorize the issuance of a certificate of completion to all persons satisfactorily completing the course.

* NOTE: Section 20.1-02-19 was repealed by section 1 of House Bill No. 1267, chapter 236.

** NOTE: Section 20.1-02-25 was also amended by section 3 of House Bill No. 1258, chapter 237.

SECTION 34. AMENDMENT. Section 20.1-03-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-02. General game license - Stamps allowed for specific licenses. No person ~~shall~~ may:

1. Acquire any resident or nonresident license to hunt, catch, take, or kill any small game or big game animal unless ~~he~~ that person first obtains an annual general game license.
2. Hunt, catch, take, trap, or kill any small game or big game animal unless ~~he~~ that person has in ~~his~~ that person's possession an annual general game license together with the specific license required.

The ~~commissioner~~ director shall design and furnish, for sale to residents and nonresidents, an annual general game license. A stamp may be prepared by the ~~commissioner~~ director to be affixed to a general game license in place of each separate small game or big game hunting license.

SECTION 35. AMENDMENT. Subsection 5 of section 20.1-03-06 of the North Dakota Century Code is amended and reenacted as follows:

5. Be issued in the name of the ~~commissioner~~ director.

SECTION 36. AMENDMENT. Subsections 5 and 6 of section 20.1-03-10 of the North Dakota Century Code are amended and reenacted as follows:

5. Have connected to it ~~such~~ detachable shipping tags as the ~~commissioner~~ director may deem advisable.
6. Be issued in the name of the ~~commissioner~~ director.

SECTION 37. AMENDMENT. Section 20.1-03-12.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12.1. Habitat restoration stamp required - Use of revenue - No land purchases allowed. A habitat restoration stamp is required for every resident and nonresident general game license for which a stamp fee of three dollars must be charged. The habitat restoration stamp fee is in addition to the annual general game license fee charged pursuant to section 20.1-03-12. No land may be purchased with habitat restoration stamp moneys. All moneys generated by the habitat restoration stamp program, including the habitat restoration stamp print, the interest earned on the habitat restoration stamp program, the interest earned on any unspent habitat restoration stamp program funds, and any and all other moneys resulting from the habitat restoration stamp program must be placed in the habitat restoration stamp fund and are intended to provide a fund to lease privately owned lands for wildlife habitat. Not more than ten percent of this fund may be used for administrative purposes. All other moneys generated by the habitat restoration stamp program must be used for lease payments. Any moneys generated by the habitat restoration stamp program and not expended during a biennium must be expended for the same purposes during the next biennium. Any land needed for reestablishing the wildlife population and habitat may be leased for periods up to six years, but no more than forty acres [16.18 hectares] in any section [259.00 hectares] of land may be leased for ~~such~~ these purposes. Hunting may not be prohibited on ~~such~~ these lands. In those judicial districts encompassing the historically prime pheasant range, as

determined by the ~~state game and fish commissioner~~ director, fifty percent of the expenditures within that judicial district must be for pheasant restoration and enhancement.

SECTION 38. AMENDMENT. Section 20.1-03-15 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-15. Taxidermist's license - Who to issue. ~~An~~ The director shall issue an annual license to practice taxidermy shall be issued by the commissioner upon payment of the appropriate license fee.

SECTION 39. AMENDMENT. Section 20.1-03-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-16. Records required of licensed taxidermists - Contents - Inspection of records and unmounted specimens by game officials - Penalty. Each person having a license to practice taxidermy shall keep a record showing the name of every person who furnished ~~him~~ the licensee with a green or unmounted specimen, and the species of each ~~such~~ specimen. The licensee, upon request, shall exhibit the record and all unmounted specimens in ~~his~~ the licensee's possession to the ~~commissioner~~ director, the deputy ~~commissioner~~ director, or any bonded game warden. Any person who violates this section is guilty of a class 1 noncriminal offense.

SECTION 40. AMENDMENT. Section 20.1-03-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-17. Issuance of licenses - Who to issue - County auditor may appoint agents to receive service fees - Disposition of proceeds. All hunting, fur-bearer, fishing, and taxidermists' licenses must be issued by county auditors, the ~~commissioner~~ director, deputy ~~commissioner~~ director, and bonded game wardens. The deputy ~~commissioner~~ director and each bonded game warden shall send the ~~commissioner~~ director all license fees. For each license the county auditor issues, the county auditor shall collect the authorized charges and record them in the county auditor's record of cash received. The county auditor shall retain, as compensation, twenty-five cents for the issuance of each of the first one thousand resident hunting, fishing, or fur-bearer licenses issued each year and fifteen cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in excess of the first one thousand licenses issued each year; one dollar for the issuance of each nonresident hunting or fur-bearer license; twenty-five cents for the issuance of each nonresident fishing license; and ten cents for the issuance of each nonresident general game license.

The county auditor may appoint agents to distribute hunting and fishing licenses or stamps. The county auditor may require agents to show evidence of adequate financial security before the agents are appointed. Adequate financial security may be evidenced by a letter of credit, cash deposit, or bond. Agents may be bonded through the state bonding fund. The agents may charge purchasers a service fee of fifty cents for each license. Service fees may be retained by the agent. The remainder of the license fees must be returned to the county auditor, for deposit with the county treasurer, at least once each month, and not later than three days after the close of the month. Notwithstanding section 26.1-21-11, if a claim against the state bonding fund is not filed within sixty days of the expiration of the reporting period provided in this section, the claim is waived. Deposits are to be accompanied by a report showing the amounts received from the sale of

each type of license, the amount retained, and the net amounts deposited. The county treasurer shall credit the fees so deposited to a separate account and shall hold the fees, subject to warrant for payment thereof drawn by the county auditor in favor of the commissioner director. The commissioner director shall deposit all license or stamp fees received with the state treasurer to be credited to the game and fish fund.

SECTION 41. AMENDMENT. Section 20.1-03-18 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-18. County auditors to file applications and stubs - Game officials may inspect file - Return of unused supplies. Each county auditor shall keep on file all license applications ~~he~~ the auditor receives and all the stubs of licenses ~~he~~ the auditor issues. These applications and stubs may be inspected at any time by the commissioner director or ~~his~~ the director's duly authorized deputies and wardens. Within thirty days after the close of each open season, the auditor shall transmit to the commissioner director all applications, stubs, and unused or mutilated licenses covering that open season.

SECTION 42. AMENDMENT. Section 20.1-03-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-19. When reports and remittances to be made by county auditors to the commissioner director. Each county auditor, on the first day of February and August of each year, and within thirty days after the close of each open season, shall make a complete report of all license sales to the commissioner director on forms furnished by the commissioner director, accompanied by a warrant drawn on the county treasurer to cover such report.

SECTION 43. AMENDMENT. Section 20.1-03-21 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-21. Failure to turn over money collected under provisions of this title unlawful - Penalty. It ~~shall be~~ is unlawful for a person to fail or refuse to turn over any moneys collected or authorized to be collected under this title, or to fail or refuse to turn over and deliver to the commissioner director all applications, stubs, and mutilated and unused licenses and permits. The commissioner director may take appropriate action to recover from the person so defaulting, or on ~~his~~ that person's bond.

SECTION 44. AMENDMENT. Section 20.1-03-22 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-22. Buying or shipping green furs - License required - Expiration of license. No person ~~shall may~~ engage in the business of buying or shipping green furs in this state unless ~~he~~ that person first obtains a license from the commissioner director. A license issued under this section ~~shall expire~~ expires on the first day of September following the date of its issue, and ~~shall may~~ be issued only upon payment of the appropriate fee.

SECTION 45. AMENDMENT. Section 20.1-03-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-23. Records to be kept by licensed dealers in green furs - Report to commissioner director - Penalty. Each person licensed to engage in the business of buying or shipping green furs shall keep a true and correct

record of each purchase of ~~such green~~ furs made by that person. The record must show:

1. The date of the purchase.
2. The name and address of the seller.
3. The kind and number of furs involved in the purchase.
4. The amount of money paid to the seller for the furs purchased.
5. Any additional information as the ~~commissioner~~ director may require.

The information contained in the record must be furnished to the ~~commissioner~~ director on forms prepared by the ~~commissioner~~ director and under ~~such~~ rules as the ~~commissioner~~ director may adopt. Any person who violates this section is guilty of a class 1 noncriminal offense.

SECTION 46. AMENDMENT. Subsection 3 of section 20.1-03-25 of the North Dakota Century Code is amended and reenacted as follows:

3. Ship upland game or migratory waterfowl by common carrier, upon identifying ~~himself that person~~ by displaying ~~his that person's~~ nonresident license, if the shipment is carried openly for content inspection and is plainly marked with tags issued by the ~~commissioner~~ director. These tags must be designed so they can be used only once.

SECTION 47. AMENDMENT. Section 20.1-03-27 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-27. Licenses to be carried on person - Licenses to be shown officers upon demand - Penalty. Any person holding a hunting, trapping, or fishing license required under this title shall carry the license on ~~his that person's~~ person when hunting, trapping, or fishing. Upon the request or demand of the ~~commissioner~~ director, the deputy ~~commissioner~~ director, any game warden, or any police officer, that person shall show the license immediately to the officer making the request or demand. Any person who violates this section is guilty of a class 2 noncriminal offense.

* SECTION 48. AMENDMENT. Section 20.1-03-30 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-30. Processing fee for application for antelope license when not eligible. The fee remitted by any person who applies for a special resident antelope license when by any law or proclamation ~~he that person~~ is ineligible to apply because of any waiting period, ~~shall be is~~ forfeited. The ~~commissioner~~ director shall notify the applicant ~~he that the applicant~~ is ineligible for ~~such~~ this reason. The fees received by the department pursuant to this section ~~shall~~ must be deposited in the state game and fish fund.

SECTION 49. AMENDMENT. Section 20.1-03-31 of the North Dakota Century Code is amended and reenacted as follows:

- * NOTE: Section 20.1-03-30 was also amended by section 1 of Senate Bill No. 2048, chapter 244.

20.1-03-31. Using or claiming as one's own the license or permit of another person unlawful. No person ~~shall may~~ use the license or permit of another person or attempt to deceive the commissioner director, the deputy commissioner director, any game warden, or any police officer, by claiming ~~such a that~~ license as ~~his~~ that person's own.

SECTION 50. AMENDMENT. Section 20.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-03. Harmless wild birds protected - Imported songbirds as domestic pets may be possessed and sold. No person, without a permit issued by the commissioner director, shall kill, catch, take, ship, cause to be shipped, purchase, offer, or expose for sale, sell, have in ~~his that person's~~ possession or under ~~his that person's~~ control, any harmless wild bird, or any part thereof, irrespective of whether ~~such~~ the harmless wild bird was captured or killed in or out of this state. Imported songbirds used and to be used as domestic pets may be bought, sold, shipped, or possessed at any time.

SECTION 51. AMENDMENT. Section 20.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-04. Nests and eggs of protected birds protected. No person, without a permit issued by the commissioner director, ~~shall may~~ take, have in ~~his that person's~~ possession or under ~~his that person's~~ control, or needlessly break up or destroy, or in any manner interfere with, the nest or the eggs of any kind of bird, the killing of which is prohibited.

SECTION 52. AMENDMENT. Section 20.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-05-07. When seals to be attached to carcasses of big game animals - Commissioner Director to furnish seals. Each person having a big game hunting license, immediately after killing a big game animal, shall affix to the animal's carcass a locking seal bearing ~~his that person's~~ big game hunting license number. The director shall furnish the locking seal ~~shall be furnished by the commissioner~~ with each big game hunting license issued, ~~and shall~~. The seal ~~must~~ be attached and sealed in a manner prescribed by the commissioner director.

SECTION 53. AMENDMENT. Section 20.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-04. Possession of seines, setlines, fishtraps. No person, except as provided in sections 20.1-06-05 and 20.1-06-06, ~~shall may~~ set, use, or have in ~~his that person's~~ possession, or transport other than by public carrier, any setnets, seines, setlines, or fishtraps. Violators ~~shall be~~ are deemed to be in possession of a public nuisance, and the commissioner director, any bonded game warden, or any peace officer shall, without warrant or process, seize the items and hold them subject to the order of a court of competent jurisdiction.

SECTION 54. AMENDMENT. Section 20.1-06-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-06-05. Removing undesirable fish. The commissioner director, any person authorized by the commissioner director, or anyone contracting with

the ~~commissioner~~ director, may kill or take fish from waters of this state in any manner prescribed by the ~~commissioner~~ director when in the ~~commissioner's~~ director's judgment it is in the best interest of public fishing. All such fish must be disposed of at the ~~commissioner's~~ director's discretion. Money derived from ~~such~~ the disposal must be deposited in the state treasury and credited to the game and fish fund. All money received and expended must be itemized, and written records thereof must be kept in the ~~commissioner's~~ director's office. Any person desiring to contract with the ~~commissioner~~ director to take such fish, as determined by the ~~commissioner~~ director, from the waters of this state, by means of not more than five hoop-nets or traps, not more than five setlines of ten hooks, or not more than one hundred feet [30.48 meters] of seine, must be awarded the contract upon payment of the appropriate fee. These contracts may not specify the disposition of the fish.

SECTION 55. AMENDMENT. Section 20.1-06-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-06-07. Fishhouses - License - Removal - Penalty.

1. No person, except as provided in section 20.1-06-05, ~~shall~~ may erect, have, or maintain on the ice in any waters of this state, a fishhouse used or to be used while ice fishing, or a dark house used or to be used for spearfishing, without first obtaining a separate license for each unit used. Licenses ~~shall~~ must be issued by the ~~commissioner~~ director, for the period of five winter fishing seasons, including the season commencing in the year of purchase. Fishhouse licenses are not transferable and fishhouses that are transferred must be relicensed for a five-year period by the new owner of the fishhouse. Licenses are subject to the rules the ~~commissioner~~ director may adopt governing the construction, maintenance, and use of ~~such~~ these units. The outside of each licensed unit ~~shall~~ must have inscribed on it, in readily distinguishable characters at least six inches [15.24 centimeters] high, the license number and the owner's name. Any person who violates this subsection is guilty of a class 2 noncriminal offense.
2. Each unit ~~shall~~ must be removed from the ice by that date established by the governor's proclamation. Failure to remove a unit is deemed an abandonment and the ~~commissioner~~ director may remove or destroy abandoned units.

SECTION 56. AMENDMENT. Subsections 1 and 2 of section 20.1-06-10 of the North Dakota Century Code are amended and reenacted as follows:

1. Persons authorized by section 20.1-06-05 may sell fish as directed by the ~~commissioner~~ director.
2. Any person, firm, or corporation peddling fish may do so only after obtaining a license issued by the ~~commissioner~~ director upon payment of the required annual fee. ~~Such~~ The person, firm, or corporation shall keep a full and complete record of the source of ~~such~~ fish as prescribed by the ~~commissioner~~ director.

SECTION 57. AMENDMENT. Section 20.1-06-12 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-12. Regulations governing private fish hatcheries. Any person operating a private fish hatchery ~~shall~~ is not be subject to fishing seasons, limits, legal size restrictions, or other methods of taking fish as provided in any governor's proclamation. The ~~commissioner is hereby authorized to promulgate~~ director may adopt rules and regulations governing the operation of private fish hatcheries. No license ~~shall be~~ is required of any person for taking fish by angling at a licensed private fish hatchery operated in accordance with the rules and regulations of the ~~commissioner~~ director. The hatchery operator shall furnish to each person taking ~~such~~ fish a written certificate in ~~such~~ the form as the ~~commissioner shall prescribe~~ director prescribes, giving the number and description of the fish taken and ~~such~~ other information as the ~~commissioner~~ director requires, whereupon ~~such~~ the fish may be possessed, shipped, or transported within the state in like manner as fish taken by residents under a license. The ~~commissioner~~ director shall issue an annual license to operate ~~said~~ the hatchery during a calendar year or a portion of a year upon application and payment of the appropriate fee by the owner or operator. ~~Such~~ The license may be suspended for noncompliance with the ~~commissioner's~~ director's regulations.

SECTION 58. AMENDMENT. Section 20.1-06-13 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-13. Property rights - Fish wild by nature. Any person, firm, or corporation raising and owning any lawfully possessed fish, wild by nature, ~~shall have~~ has the same property rights therein as enjoyed by owners of domestic fish. They ~~shall~~ are, however, be subject to all rules and regulations promulgated ~~adopted~~ by the ~~commissioner~~ director regarding the introduction and release into the state of ~~such~~ the fish, as provided in subsection 14 of section 20.1-02-05.

SECTION 59. AMENDMENT. Section 20.1-06-14 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-14. Minnow bait wholesalers and retailers - License. The ~~commissioner~~ director shall adopt rules and regulations to control and supervise the operations of minnow or other live bait wholesalers. The ~~commissioner~~ director shall issue a license to each ~~such~~ wholesaler when ~~he~~ the wholesaler has complied with the ~~commissioner's~~ director's rules and regulations and has paid the appropriate annual license fee. The ~~commissioner~~ director shall also issue a minnow or other live bait retailer's license to any person upon payment of the appropriate license fee. No person ~~shall~~ may sell minnows or other live bait at wholesale or retail without first obtaining the appropriate license. The ~~commissioner~~ director may require each retailer or wholesaler to submit ~~such~~ reports as the ~~commissioner~~ director may deem necessary.

SECTION 60. AMENDMENT. Section 20.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-15. Fishways at dams. Any person owning, erecting, managing, or controlling any dam or other obstruction across any river, creek or stream within or forming the boundary of this state, at the ~~commissioner's~~ director's direction, shall construct and keep in good repair, a durable and efficient fishway in the manner, shape, and size as the ~~commissioner~~ director may direct. Upon failure to construct or maintain ~~such~~ the fishway, after giving ~~such~~ the person ten days' notice, the ~~commissioner~~ director may construct or repair the fishway and recover the costs from the person owning,

erecting, managing, or controlling the dam or obstruction. No person ~~shall~~ may construct any fishway without the approval of the ~~commissioner~~ director.

SECTION 61. AMENDMENT. Section 20.1-06-16 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-16. Turtles not to be taken without permit or contract from ~~game and fish commissioner~~ director. No person ~~shall~~ may engage in the commercial taking, trapping, or hooking of turtles without obtaining a permit from the ~~commissioner~~ director, who may issue ~~such~~ the permits at ~~his~~ the ~~director's~~ director's discretion. The ~~commissioner~~ director shall designate the form of ~~such~~ the permits, the areas or waters in which the permits are valid, and any other restrictions.

The ~~commissioner~~ director shall have authority to contract with any person to remove turtles from any waters or areas of this state. Moneys derived from the sale of turtle permits or turtle removal contracts ~~shall~~ must be credited to the game and fish fund in the same manner as income from sale of fishing licenses.

SECTION 62. AMENDMENT. Section 20.1-06-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-06-17. Frogs - Season for taking - Regulations. No person ~~shall~~ may engage in the taking of frogs for sale for human consumption or scientific purposes without obtaining a frog license from the ~~commissioner~~ director. No person ~~shall~~ may buy, job, take on consignment or ship frogs without obtaining the appropriate resident or nonresident commercial frog license. The ~~commissioner~~ director shall designate the form of ~~such~~ the licenses, the areas in which the license is valid, and any other restrictions. The ~~commissioner~~ director shall issue regulations relating to the manner of taking, shipping, buying, or selling and may require reports from each licensee at ~~such~~ the time and containing ~~such~~ such information as deemed necessary. Except as provided in subsection 3 of section 20.1-03-04.1, it is unlawful to take frogs on private land without written permission of the owner or operator of the land.

SECTION 63. AMENDMENT. Section 20.1-07-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-07-02. Property rights - Wild fur-bearing animals. Any person, firm, or corporation raising and owning any protected fur-bearing animal, or in possession of the pelt of any wild animal lawfully obtained, ~~shall have~~ has the same property rights therein as enjoyed by owners of domestic animals. They ~~shall are, however, be~~ are subject to all rules ~~and regulations~~ promulgated adopted by the ~~commissioner~~ director in regard to the introduction and release into the state of ~~such~~ the animals, as provided in subsection 14 of section 20.1-02-05.

SECTION 64. AMENDMENT. Subsection 4 of section 20.1-07-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The ~~commissioner~~ director shall establish and publish in pamphlet form safety standards for snares used for the taking of coyotes, which will prevent the accidental holding of deer and other

appropriate animals. These standards must be followed by any person using a snare pursuant to this section.

SECTION 65. AMENDMENT. Section 20.1-07-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-07-05. Manner of taking protected fur-bearing animals restricted - Destruction of property of others unlawful - Penalty. It is unlawful to molest or destroy the natural burrow, den, or retreat of any protected fur-bearer, or to damage or injure the property of another while taking or attempting to take ~~such~~ that fur-bearer. The governor, at the advice of the ~~commissioner~~ director, may by proclamation determine the manner in which fur-bearing animals may be taken in accordance with this section. Any person who violates this section is guilty of a class 2 noncriminal offense.

* SECTION 66. AMENDMENT. Section 20.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-02. Governor may vary statutory open and closed season by order or proclamation. Whenever the governor, after investigation and recommendation by the ~~commissioner~~ director, finds:

1. That any species of big game, small game, fish, or fur-bearers for which an open season is provided, are in danger of depletion or extinction, or when necessary for proper protection during the propagating period, ~~he~~ the governor may, by order, provide protection for ~~such~~ the species additional to that provided by law.
2. That any species of big game, small game, or fish, have become sufficient in numbers to warrant an open season, or to be detrimental, or a nuisance to the farmers of the state, ~~he~~ the governor may, by order, declare an open season thereon, or may extend the open season provided by law.
3. That any species of fur-bearing animals have become sufficient in numbers to warrant an open season or have become a menace to other species of wildlife in the state, ~~he~~ the governor may, by order, declare an open season thereon, or may extend the open season provided by law.
4. That due to climatic conditions a hunting season may create a fire hazard, ~~he~~ the governor may, by order, close or postpone, and reopen, any hunting season in areas where ~~such~~ these conditions exist, upon reasonable notice through the media. The emergency closing or postponement and reopening can be accomplished without complying with section 20.1-08-05.

SECTION 67. AMENDMENT. Section 20.1-08-04.5 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.5. Governor's proclamation concerning the hunting of deer with muzzleloading long guns. The governor shall by proclamation provide for a one-week season following the regular deer hunting season to hunt deer with muzzleloading long guns in ~~such~~ the manner, number, places, and times as the governor prescribes. Licenses to hunt deer with muzzleloading long guns must be issued by the ~~commissioner~~ director by lottery as prescribed by the ~~commissioner~~ director, with a maximum of seven hundred licenses issued each

* NOTE: Section 20.1-08-02 was also amended by section 8 of Senate Bill No. 2036, chapter 232.

season. As used in this section, the term "muzzleloading long gun" means any forty-five or larger caliber long gun loaded through the muzzle.

SECTION 68. AMENDMENT. Section 20.1-09-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-09-02. Permits to propagate, domesticate, or possess birds or animals. Permits to propagate, domesticate, or possess live protected birds or animals may be issued by the ~~commissioner~~ director to any North Dakota resident. These permits ~~shall~~ expire on December thirty-first of the year they are issued. One permit may cover several species of birds or animals, but a single permit ~~shall may~~ not cover both birds and animals. No person ~~shall may~~ possess any live protected animal or bird without first obtaining a permit from the ~~commissioner~~ director.

SECTION 69. AMENDMENT. Section 20.1-09-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-09-03. Contents of application for permit to propagate, domesticate, or possess live birds or animals. An application for a permit to propagate, domesticate, or possess live protected birds or animals ~~shall~~ must be made upon forms furnished by the ~~commissioner~~ director, ~~shall~~ must be signed by the applicant, and ~~shall~~ must state:

1. The name and address of the applicant.
2. A description of the premises where the applicant will keep the birds or animals.
3. The number and kind of birds or animals in the applicant's possession at the time of application, and whether they are wild or domesticated.
4. ~~Such Any~~ other information as the ~~commissioner may require~~ director requires.

SECTION 70. AMENDMENT. Section 20.1-09-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-09-04. Reports to ~~commissioner~~ director by persons holding propagation permits - Contents of reports. Every person holding a permit to propagate and domesticate protected birds or animals shall report to the ~~commissioner~~ director annually, on or before December thirty-first, any increase or decrease in the number of birds or animals held under ~~such~~ the permit during the year in which the report is made.

SECTION 71. AMENDMENT. Section 20.1-09-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-09-05. Sale, collection, and transportation of birds, animals, and eggs held for propagation - ~~Commissioner's~~ Director's consent necessary. Protected birds or animals held for propagation and domestication under a permit may be sold or transported live for propagation purposes. Their eggs may be collected, sold, or transported during seasons the ~~commissioner shall~~ prescribe director prescribes. All ~~such~~ collections, sales, and shipments ~~shall~~ must be with the ~~commissioner's~~ director's written permission. Protected birds or animals raised in North Dakota under a propagation permit

may be disposed of, with the ~~commissioner's~~ director's written permission, at times ~~he~~ the director may prescribe. The carcasses of these birds or animals may be disposed of as food when properly identified by a suitable tag or seal furnished by the ~~commissioner~~ director.

SECTION 72. AMENDMENT. Section 20.1-10-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-10-01. Property unlawfully taken, transported, or used to be confiscated by certain game and fish officials - Procedure. The ~~commissioner~~ director, deputy ~~commissioner~~ director, or any bonded game warden shall seize all wild birds, wild animals, or fish, or any part thereof, taken, killed, or possessed, or transported contrary to law, and shall seize all dogs, guns, seines, nets, boats, lights, automobiles, vehicles, instrumentalities, appliances, and devices unlawfully used, or held with intent to be unlawfully used, in pursuing, taking, or attempting to take, concealing, or disposing of wild birds, wild animals, or fish, or any part thereof. Property used or held with the intent to be used unlawfully in pursuing, taking, attempting to take, concealing, or disposing of wild birds, wild animals, or fish may not be confiscated when the violation is a noncriminal offense. All property seized ~~shall~~ must be held subject to the order of a court of competent jurisdiction. When property is confiscated, the confiscating officer shall bring the alleged offender before a court of competent jurisdiction for the purpose of determining disposition. However, if the court having nominal jurisdiction over the alleged wrongdoer determines that the value of the confiscated property exceeds the court's jurisdictional limitations, the matter may, upon the motion of either party, be removed to district court for determination. If the alleged offender desires an attorney, a reasonable time ~~shall~~ must be given to secure counsel. If it is not feasible to bring the alleged offender immediately before the court, the property ~~shall~~ may not be seized or confiscated if the alleged offender gives a receipt to the officer assuring delivery before the court when the matter comes up. The receipt ~~shall~~ must contain the provisions of this section to advise the alleged offender of the law.

SECTION 73. AMENDMENT. Section 20.1-10-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-10-04. Who to sell confiscated property - Bills of sale - Disposition of proceeds of sale. All confiscated property that a court has ordered to be disposed of by the ~~commissioner~~ director must be turned over to the North Dakota wildlife federation to be sold for the highest price obtainable. On any ~~such~~ sale of animals, birds, or fish, or parts thereof, the seller shall issue to each purchaser a bill of sale on forms prepared and furnished by the ~~commissioner~~ director. The sale proceeds, after the expenses of the seizure and the sale are deducted, must be remitted to the North Dakota wildlife federation report all poachers fund. The remittance must be accompanied by a complete and certified report of the sale supported by proper vouchers covering all deductions made for expenses. This report must be filed for record with the ~~commissioner~~ director.

SECTION 74. AMENDMENT. Section 20.1-11-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-02. Game refuges on privately owned or leased lands - How established. Any person owning, or having control by lease or otherwise, for the required time, of any lands within this state, may establish a state game

refuge thereon by filing with the commissioner director a written application containing:

1. The name of the owner or lessee of the lands described therein.
2. The written consent of the owner, or, if the application is made by a lessee, the written consent of both the owner and the lessee, to the establishment of a state game refuge thereon.
3. The time for which the refuge is to be established, which ~~shall~~ must be for five years or more from the date the application is filed with the commissioner director. The lease may be made renewable at the option of both parties and may be terminated at any time by mutual consent of both parties.
4. The extent and legal description of the lands involved. The lands must be ten acres [4.05 hectares] or more, but cannot exceed six sections [1,553.99 hectares] in any one township.
5. A brief dedication of ~~such the~~ lands to this state for the purpose of a state game refuge.
6. A waiver by the owner, or, if the application is made by a lessee, by both the owner and lessee, of all rights of ~~himself that person~~ and members of ~~his that person's~~ family to hunt, shoot, trap, or kill any game bird or protected animal on the land during the life of the dedication of the lands to this state as a state game refuge.

After ~~such the~~ application, in due form, has been filed with the commissioner director and has been accepted by ~~him the director~~, the lands described in the application ~~shall~~ constitute a state game refuge for the time set forth in the application.

SECTION 75. AMENDMENT. Section 20.1-11-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-04. Game refuges on public lands may be established by commissioner director - Duration of public land refuges. The commissioner director may establish state game refuges on any unsold public lands of this state. ~~Such~~ The refuge ~~shall continue~~ continues to exist until canceled by the commissioner director or until the land on which it is located is sold to a private person.

SECTION 76. AMENDMENT. Section 20.1-11-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-05. Establishment of state game or fish management areas. The commissioner director may establish game or fish management areas upon any state-owned lands for the use and benefit of the game and fish department, or upon any publicly or privately owned land leased or given by license to the game and fish department for hunting and fishing purposes. These game or fish management areas may be opened for hunting, fishing, or trapping under chapter 20.1-08. The commissioner director may ~~establish~~ adopt rules ~~and regulations~~ concerning the use of game or fish management areas pursuant to chapter 28-32.

SECTION 77. AMENDMENT. Section 20.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-06. Public record of state game refuges to be kept by ~~commissioner~~ director - Contents of record. The ~~commissioner~~ director shall keep a record of all state game refuges established on privately owned or leased lands or on public lands. This record ~~shall~~ must list each state game refuge by the county in which it is located and, with reference to each refuge established on privately owned or leased lands, ~~shall~~ must show:

1. The name of the person making the dedication.
2. The period for which it is dedicated.
3. The legal description of the land on which it is located.

~~Such~~ The record ~~shall be~~ is open to public inspection.

SECTION 78. AMENDMENT. Section 20.1-11-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-07. Game refuges, game management areas to be posted by ~~commissioner~~ director - Inscription on signs - Location. The ~~commissioner~~ director shall post each state game refuge and game management area with sign boards bearing the words "state game refuge" or "state game management area". These signs ~~shall~~ must be located at each corner of the refuge or management area, and along the outer lines at intervals of approximately four hundred forty yards [402.34 meters].

SECTION 79. AMENDMENT. Section 20.1-11-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-08. Hunting and trapping within refuge prohibited - Exception in case of carnivorous birds or animals. The owner or lessee of any lands or lake set aside as a state game refuge under this chapter ~~shall~~ may not hunt or carry firearms within the limits thereof, nor permit the members of ~~his~~ that person's family or other persons to do so. However, if ~~he~~ that person has reason to believe there are carnivorous birds or animals within the refuge, or if ~~he~~ that person finds any of the same thereon, ~~he~~ that person may, with the ~~commissioner's~~ director's written permission, hunt, trap, and kill any carnivorous or unprotected birds and animals ~~which~~ that prey upon protected game birds or animals found within the refuge.

SECTION 80. AMENDMENT. Section 20.1-11-09 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-09. When predatory animals on state game refuges may be destroyed by persons designated by ~~commissioner~~ director. The ~~commissioner~~ director, with the consent of the refuge owner or lessee, may designate any game warden or other person to destroy, subject to the regulations of the ~~commissioner~~ director, predatory birds or animals within any state game refuge.

SECTION 81. AMENDMENT. Section 20.1-11-10 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-10. ~~Commissioner~~ Director to mark game farms, refuges, management areas, breeding and resting places - Destroying or defacing signs unlawful. The ~~commissioner~~ director shall mark all game farms, state game refuges, game or fish management areas, breeding grounds, and resting places under ~~his~~ the director's protection. No person ~~shall~~ may mutilate, destroy, tear or pull down, or shoot at any ~~such~~ designating mark or other special or general warning sign or card.

SECTION 82. AMENDMENT. Section 20.1-12-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-02. Operating permit for shooting preserve. Any person who desires to establish a shooting preserve under this chapter may apply to the ~~commissioner~~ director for a shooting preserve operating permit. The application must be made by the applicant, the applicant's agent, or the applicant's attorney; must be in ~~such~~ the form as the ~~commissioner~~ may prescribe ~~director prescribes~~; and must be accompanied by the appropriate operating permit fee. Acreage [hectarage] amounts must include lands used for hatching, game production areas, or headquarters areas. Upon the receipt of the application, the ~~commissioner~~ director shall inspect the area described therein, including the facilities, and shall investigate the ability of the applicant to operate an area of this character, in accordance with section 20.1-12-03. The permit, if granted, must be issued for one year, and may be renewed annually by payment of the appropriate operating permit fee.

SECTION 83. AMENDMENT. Section 20.1-12-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-03. Prerequisites for the issuance of permits - Bonds. Before issuing any permit under this chapter, the ~~commissioner~~ director shall determine that:

1. The applicant is financially able to provide the necessary facilities and services to operate a shooting preserve.
2. The applicant proposes to comply with this chapter.
3. The operation of the preserve will not work a fraud upon persons permitted to hunt thereon.
4. The operation of the preserve is not designed to circumvent game laws or ~~regulations~~ rules.
5. The issuance of the permit will be in the public interest.

Before any permit is issued to the applicant, that person must file a two thousand dollar bond to the state, executed by a surety company authorized to do business in the state, and conditioned that the applicant will comply with this chapter and the rules adopted by the ~~commissioner~~ director thereunder, and will pay any fine and costs upon conviction of the permittee for violation of this chapter and all reasonable costs arising from any hearing for revocation or suspension of the permit. The bond requirement of this section does not apply to any person who is both the record title owner and operator of a private shooting preserve.

SECTION 84. AMENDMENT. Section 20.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-04. Types of game that may be hunted on shooting preserve - Identification of game. Game birds that may be stocked on a shooting preserve and hunted under this chapter shall must be artificially propagated pheasants, quail, partridges, turkeys, prairie chickens, and such any other species as allowed by the commissioner director. The commissioner director shall determine the minimum stock of each species to be hunted and released on the permit area during the shooting preserve season.

All game birds released on a shooting preserve shall must be marked prior to release as prescribed by the commissioner director by rule or regulation. All mallard ducks released on a shooting preserve shall must have the right hind toenails clipped before the birds attain the age of four weeks.

* SECTION 85. AMENDMENT. Section 20.1-12-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-05. Operation of shooting preserve - Season - Search of premises permitted. Any guest of a shooting preserve operator, in possession of a general game license, may harvest any game bird within the defined limits of the shooting preserve, subject to this chapter. The shooting preserve operator may establish that person's own restrictions on the age, sex, and number of each game bird that may be taken by each guest, and the fee to be paid by each guest. The exterior boundaries of each shooting preserve must be clearly defined and posted with signs erected around the extremity at intervals of three hundred feet [91.44 meters] or less. Each shooting preserve operator and that person's guest shall comply with and be subject to chapter 20.1-01. Shooting preserve operators may restrict or set the hours during which game birds may be hunted, subject to section 20.1-01-10. The season for shooting preserves may be all or part of the seven-month period beginning September first and ending March thirty-first of the following year. All permits must be issued upon the express condition that the permittee agrees that any law enforcement officer or any representative of the commissioner director may enter and search the premises or any part thereof at any reasonable time to ensure compliance with state laws and the commissioner's director's rules and regulations.

SECTION 86. AMENDMENT. Section 20.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-06. Game birds to be tagged. Each shooting preserve operator shall tag all game birds harvested by guests before the birds are consumed or removed from the shooting preserve premises. The tags shall must distinguish between birds released by the shooting preserve operator, and wild birds. Tags shall must be numbered consecutively, dated by year of issuance, and shall must be self-sealing. The commissioner director shall provide tags to shooting preserve operators, at nominal cost to them. Once affixed, tags shall must remain attached until the game birds are prepared for consumption.

SECTION 87. AMENDMENT. Section 20.1-12-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-07. Guest register and records to be maintained. Each shooting preserve operator shall maintain a guest register listing the

* NOTE: Section 20.1-12-05 was also amended by section 2 of Senate Bill No. 2040, chapter 250.

guest's name and address, the number of ~~his~~ that person's North Dakota general game license, the date on which the guest hunted, the number of game birds and species taken and their tag numbers, with wild birds and operator released birds listed separately. A record must also be maintained by each shooting preserve operator of the source of game released in the operator's preserve, the date of release, and the number and kind of game bird or species released. The records required by this section must be open for inspection by the commissioner director, the commissioner's director's representative, or any law enforcement officer at any reasonable time.

SECTION 88. AMENDMENT. Section 20.1-12-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-08. Rules ~~and regulations~~ to be promulgated adopted by the commissioner director. The commissioner director shall promulgate adopt rules ~~and regulations~~ reasonably necessary to implement this chapter.

SECTION 89. AMENDMENT. Section 20.1-12-09 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-09. Revocation of permit. The commissioner is hereby authorized director, after due notice to the shooting preserve operator and a hearing thereon, ~~to~~ may revoke or suspend the permit of any operator for any violation of this chapter or of the rules ~~and regulations~~ of the commissioner director.

SECTION 90. AMENDMENT. Section 20.1-13-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-13-04. Rules ~~and regulations~~ - Licensing watercraft for hire - Annual inspection - Penalty. The commissioner director, to promote the public safety, shall adopt rules to license watercraft used for hire, or furnished with cottages let for hire, and to prescribe the safety equipment, construction, and manner of operation of ~~such the~~ craft. The commissioner director shall provide for annual inspection of all watercraft used for hire to determine if rules governing ~~such the~~ watercraft have been complied with, and may issue licenses to operate ~~such the~~ watercraft. The commissioner director shall issue, along with each license, some evidence that the craft has been inspected and conforms to the standards governing ~~such the~~ craft. No person ~~shall~~ may operate watercraft used for hire or furnished with cottages let for hire without a current year's license. Any person who violates this section is guilty of a class 2 noncriminal offense.

* SECTION 91. AMENDMENT. Section 24-02-37.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-37.1. Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the director of the game and fish commissioner department, the director of state parks and recreation, the director of the economic development commission, and the commissioner. The committee shall meet at the call of the commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the

* NOTE: Section 24-02-37.1 was also amended by section 3 of Senate Bill No. 2054, chapter 640; by section 30 of Senate Bill No. 2058, chapter 95; and by section 4 of Senate Bill No. 2073, chapter 600.

commissioner regarding funding requested projects. All final decisions regarding funding requested projects are in the sole discretion of the commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

SECTION 92. AMENDMENT. Section 37-07.3-04 of the North Dakota Century Code is amended and reenacted as follows:

37-07.3-04. Payments in lieu of real estate taxes. For land acquired under this chapter, the adjutant general shall make payments in lieu of real estate taxes to the counties in which the property is located in the same manner and according to the same conditions and procedures as provided in chapter 57-02.1 for payments in lieu of real estate taxes by the ~~state director of the game and fish commissioner department~~, except no county may receive less in payments under this section for any parcel or tract of land for any year than the county received in real estate taxes for the last year in which the land was taxable.

* SECTION 93. AMENDMENT. Section 55-01-01 of the North Dakota Century Code is amended and reenacted as follows:

55-01-01. State historical board. There ~~shall be~~ is a state historical society of North Dakota which ~~will be~~ is under the supervision and control of the state historical board. The board ~~shall consist~~ consists of nine members who ~~shall be~~ are appointed by the governor. Each member appointed to the board must be a citizen and resident of the state of North Dakota. Appointments ~~shall be~~ are for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified except that the first appointments under this section ~~shall be~~ are staggered so that the term of three members ~~shall expire~~ expires each year. Vacancies occurring other than by the expiration of an appointive term ~~shall~~ must be filled by appointment for the remainder of the term only in the same manner as regular appointments. The board of directors shall select from its membership a president, vice president, and secretary to serve as officers of the board. The secretary of state, state engineer, ~~state highway commissioner~~ director of the department of transportation, state forester, ~~state director of the game and fish commissioner department~~, director of the state library librarian, and state treasurer ~~shall be~~ are ex officio members of the board and shall take care that the interests of the state are protected.

** SECTION 94. AMENDMENT. Section 55-08-02.1 of the North Dakota Century Code is amended and reenacted as follows:

55-08-02.1. Outdoor recreation interagency council - Composition - Functions. ~~A~~ The state outdoor recreation interagency council ~~shall exist and shall be~~ is composed of the state engineer of the water commission, ~~commissioner of the state director of the game and fish department~~, superintendent of the state historical board, ~~commissioner of the state highway department~~ director of the department of transportation, executive secretary of the state soil conservation committee, state parks and recreation director, chairman of the state water commission, state health officer, director of the economic development commission, state forester, and

* NOTE: Section 55-01-01 was also amended by section 1 of House Bill No. 1307, chapter 638.

** NOTE: Section 55-08-02.1 was also amended by section 46 of Senate Bill No. 2058, chapter 95, and by section 19 of Senate Bill No. 2054, chapter 640.

the commissioner of university and school lands. The governor or his the governor's designee ~~shall be~~ is the council chairman.

The members of the council:

1. Shall deal with the distribution of state general fund appropriations which are to be matched with federal outdoor recreation grants-in-aid at the state level. Each member ~~shall~~ have has one vote in such these matters.
2. Shall meet periodically at the call of the chairman and shall keep minutes and other financial records dealing with ~~such~~ the meetings.
3. Shall cooperate with the United States or any appropriate agency thereof, particularly in connection with the distribution and use of federal aid funds which the state may become eligible to receive.
4. Shall encourage cooperation among public, voluntary, and commercial agencies and organizations.
5. Subject to the approval of the governor, may adopt rules for the conduct of its affairs as may be deemed necessary, including the time, place, and notice of regular meetings, call and notice of special meetings, and number of members required for a quorum to transact business.

* SECTION 95. AMENDMENT. Section 55-11-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-11-10. Advisers to the state parks and recreation department. The superintendent of the state historical board, the state commissioner of agriculture, the state forester, and the ~~state~~ state director of the game and fish commissioner department shall serve as advisers to the department. ~~Such~~ The advisers may, in the discretion of the department, attend meetings dealing with the purposes of this chapter but ~~shall~~ have no right to vote. This section does not prevent the department from meeting from time to time in its discretion without the participation of the advisers.

** SECTION 96. AMENDMENT. Section 57-02-08.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.4. Conditional property tax exemption for owners of wetlands. Wetlands qualifying under this section ~~shall be~~ are exempt from taxation. To qualify for the tax exemption, the owner of wetlands must annually file with the county director of tax equalization, on a form prescribed by the state tax commissioner, a legal description of the wetlands for which an exemption is claimed and an agreement to not drain, fill, pump, concentrate water in a smaller and deeper excavation in the wetland basin or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. To qualify for the exemption the agreement must be filed by June thirtieth of the year for which the exemption is claimed. The exemption is not available for years prior to filing of the agreement or for any year in which the terms of the agreement are violated. The county director of tax equalization shall certify to the county auditor, for each landowner receiving the exemption, the landowner's name, the amount of tax which would

* NOTE: Section 55-11-10 was repealed by section 41 of Senate Bill No. 2054, chapter 640.

** NOTE: Section 57-02-08.4 was also amended by section 2 of Senate Bill No. 2211, chapter 649.

have been due on the exempt acreage, and that the landowner has filed the required agreement. The amount of the wetlands exemption must be reflected upon the property tax statement of each eligible taxpayer.

For purposes of this section "wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner of agriculture and the director of the game and fish commissioner department, in accordance with United States fish and wildlife service circular no. 39 (1971 edition), drainage of which would be feasible and practical.

When wetlands are drained or altered so the land no longer qualifies for the exemption provided by this section, the land is subject to additional taxes which would have been assessed if the property had not qualified for the exemption provided by this section. The taxes which would have been due on the land without the exemption for the ten years preceding the year in which the exemption is terminated ~~shall be~~ must computed, and the property owner shall pay the difference between ~~such this~~ amount and the taxes which were actually paid on the property in addition to taxes currently due. Absence of water on property qualifying for the exemption under this section, caused by drought conditions, ~~shall does~~ not disqualify the property from the exemption under this section.

The wetlands tax exemption provided by this section does not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands. The owner of property exempt under this section may use the property in any manner which does not violate the agreement filed with the county director of tax equalization.

No property ~~shall be~~ is exempt under this section unless the tax commissioner has certified to the county auditor of each county before August first of the taxable year that funds are available in the state treasury which may be used for payment of any state obligations under section 57-02-08.5.

SECTION 97. AMENDMENT. Section 57-02-08.6 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.6. Authorization for receipt of funds. The state treasurer ~~shall be~~ is authorized to receive funds for this program by legislative appropriation and by gift, grant, devise, or bequest of any money or property from any private or public source. Funds appropriated from any source for this purpose are not subject to section 54-44.1-11 and all income and moneys derived from the investment of ~~such~~ the funds must be credited to the fund for this program. The ~~state~~ director of the game and fish commissioner department, the commissioner of agriculture, and the state engineer shall work with the governor, the United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source of funding to implement sections 57-02-08.4 and 57-02-08.5.

SECTION 98. AMENDMENT. Section 57-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-02.1-02. Imposition of payments. The ~~state~~ director of the game and fish commissioner department shall annually make payments, subject to legislative appropriations, to the counties in which property subject to valuation is located pursuant to the provisions of this chapter. ~~Such~~ The

payments ~~shall be~~ are in lieu of taxes which would otherwise be available to ~~such~~ the counties if the real property upon which these payments are based were not owned by the state, United States, or a political subdivision of this state.

SECTION 99. AMENDMENT. Section 57-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-02.1-03. Assessment of property - Notice of county auditors. All property subject to valuation under this chapter ~~shall must~~ be assessed and valued for the purpose of making the payments herein provided for, in the same manner as other real property in this state is assessed and valued for tax purposes, except that improvements to any real property ~~shall may~~ not be considered in ~~such the~~ valuation. The county auditors of the counties in which ~~such~~ the property is located, prior to June thirtieth of each year, shall give notice in writing to the ~~state director of the game and fish commissioner~~ department and state tax commissioner of the value placed upon the property subject to valuation by the county boards of equalization.

SECTION 100. AMENDMENT. Section 57-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

57-02.1-04. Appearance before state board of equalization. The state board of equalization shall equalize the value placed upon any tract of land subject to valuation under this chapter. The ~~state director of the game and fish commissioner~~ department may appear before the state board of equalization to be heard for the purpose of opposing any unreasonable or unjust value placed upon property subject to valuation as equalized by the county board of equalization, or of opposing any increase or decrease in ~~such~~ the valuation as proposed by the state board of equalization, to the end that all valuations of like property may be uniform and equal throughout the state.

SECTION 101. AMENDMENT. Section 57-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

57-02.1-05. Computation of payment - Remittance to counties.

1. Upon receipt of the decision of the state board of equalization, the ~~state director of the game and fish commissioner~~ department shall compute the payments due to the counties in which property subject to valuation is located by extending the mill levies which apply to other taxable property in the taxing districts in which the property is located. ~~Such~~ The mill levies ~~shall must~~ be extended against the property subject to valuation in the same manner as used for other taxable property in ~~such the~~ taxing districts. The payments due to each county ~~shall be~~ are the figure determined as herein provided. No county ~~shall may~~ receive less in ~~such these~~ payments for any parcel or tract of land for any year than ~~such~~ the county received in payments made pursuant to this chapter for 1974.
2. After computing the payments due to each county, the ~~state director of the game and fish commissioner~~ department shall remit to ~~such~~ the counties the amounts due from the department, on or before March first of the succeeding year for which the assessments and valuations were made.

SECTION 102. AMENDMENT. Subsection 2 of section 61-31-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner with the advice of the director of the game and fish commissioner department, in accordance with ~~the~~ United States fish and wildlife service circular No. 39 (1971 edition).

SECTION 103. AMENDMENT. Subsection 4 of section 61-31-05 of the North Dakota Century Code is amended and reenacted as follows:

4. Agree that during a drought emergency up to one hundred percent of the grass cover that is part of a waterbank contract may be released to the landowner for haying or grazing, if the portion not released is protected by an adequate fence, including a temporary electric fence that has been approved by the commissioner. The release date ~~shall~~ must be determined by the commissioner with the approval of the state director of the game and fish commissioner department. The landowner ~~shall have~~ has first option to hay or graze released land at a per-acre [.40 hectare] rate, established by the commissioner, which ~~shall~~ must be deducted from the next waterbank payment. If the landowner does not qualify for emergency haying or grazing, the commissioner may conduct a lottery subject to the approval of the landowner, to award haying or grazing privileges to qualified applicants. If haying or grazing privileges are awarded to any person other than the landowner, the commissioner shall collect for the hay harvested and the landowner ~~shall~~ is entitled to receive ~~his~~ that person's full waterbank payment.

SECTION 104. AMENDMENT. Section 61-31-08 of the North Dakota Century Code is amended and reenacted as follows:

61-31-08. Conservation and development practices. For the purpose and implementation of wetland conservation and development plans as provided in sections 61-31-04 and 61-31-05, the commissioner ~~shall have~~ has authority to enter into agreements with the state director of the game and fish commissioner department for any assistance which may be appropriate and which will further the objectives of this chapter.

SECTION 105. AMENDMENT. Section 61-31-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-31-10. Authorization for receipt of funds - Continuing appropriation. The commissioner is authorized to receive funds for this program from any private or public source, and is also authorized to receive any funds from any North Dakota state agency, which have been specifically authorized for that purpose by the legislative assembly. The commissioner shall work with the governor, director of the game and fish commissioner department, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop sources of funding to implement this chapter.

All funds received by the commissioner from any private or public source and from any North Dakota state agency as well as all funds appropriated by the legislative assembly for implementing this chapter must be transferred to a special fund in the state treasury, which is hereby

created, to be known as the state waterbank fund. The state waterbank fund and interest earned thereon is hereby appropriated as a standing and continuing appropriation solely for the purpose of implementing this chapter, including payment of money due upon waterbank agreements entered under this chapter.

SECTION 106. AMENDMENT. Section 61-32-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-02. Definitions. In sections 61-32-01 through 61-32-11, unless the context or subject matter otherwise provides:

1. "Commission" means the state water commission.
2. ~~"Commissioner" means the commissioner of the game and fish department.~~
3. ~~"Department" means the game and fish department.~~
3. "Director" means the director of the department.
4. "District" means a water resource district.
5. "Manmade wetland" means new or expanded water areas, or any portion thereof, created by excavation, diking, damming, or diversion, and determined by the state engineer and the ~~game and fish commissioner~~ director to have material wildlife values.
6. "Person" means any person, firm, partnership, association, corporation, agency, or any other private or governmental organization which includes, ~~but is not limited to,~~ any agency of the United States, a state agency, or any political subdivision of the state.
7. "Replacement wetland" means either restoration of previously drained natural wetland or manmade wetlands which are not used for mitigation for any other project.
8. "Sheetwater" means shallow water from any source that floods land not normally subject to standing water.
9. "State engineer" means the state engineer appointed by the state water commission pursuant to section 61-03-01.
10. "Water resource board" means the water resource district's board of managers.
11. "Wetland" means a natural depressional area that is capable of holding shallow, temporary, intermittent, or permanent water. It ~~shall~~ does not include sheetwater.

SECTION 107. AMENDMENT. Section 61-32-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-03. Permit to drain waters required - Replacement of wetlands - Downstream impacts - Penalty. Any person, before draining water from a wetland, or any series thereof, which has a watershed area comprising eighty

acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application must be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the wetland for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to the state engineer for final approval. A permit may not be granted until the state water resources policy has been considered and an investigation discloses that the water which will be drained from the wetland, or any series thereof, will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the register of deeds of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. In addition to the above requirements of this section, the state engineer and the ~~commissioner~~ director must jointly find that the wetland acres proposed to be drained will be replaced by an equal acreage of replacement wetlands, or through debits to the wetland bank as provided in section 61-32-05, before any permit for drainage ~~can~~ may be approved by the state engineer or water resource board. The provisions of this section do not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer, for which mitigation is required as part of ~~such~~ the project.

Any person draining, or causing to be drained, water of a wetland, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, is guilty of an infraction, and ~~shall be~~ is required to restore the wetland so drained in accordance with sections 61-32-01 through 61-32-11. The state engineer may adopt rules for temporary permits for emergency drainage.

SECTION 108. AMENDMENT. Section 61-32-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-04. Administration - Rulemaking authority - Guidelines. The state engineer and, where specified, the ~~commissioner~~ director shall adopt rules to implement sections 61-32-01 through 61-32-11, including rules for procedure. The rules must be consistent with the following guidelines and the other provisions of sections 61-32-01 through 61-32-11:

1. The requirement that wetlands proposed to be drained must be replaced by an equal acreage of replacement wetlands is not applicable to sheetwater, regardless of the area covered by sheetwater.
2. Purchase, easement, lease, or other acquisition that is necessary to comply with sections 61-32-01 through 61-32-11 ~~shall~~ must be limited to willing sellers. When land is removed from the tax base to protect wetlands, replacement payments ~~shall~~ must be made by the entity which purchases the land so that the amount of money that would otherwise be received in taxes if ~~such~~ the land was not removed from the tax base is not diminished.

3. The state engineer and the ~~commissioner~~ director shall jointly determine whether the number of replacement wetland acres comply with the replacement requirements of sections 61-32-01 through 61-32-11. The area of a wetland must be jointly determined by the normal water level. It is not necessary to replace wetlands proposed to be drained with restored wetlands of the same type or classification.
4. Any person who proposes to drain a wetland for which a permit is required shall pay ten percent of the cost of acquisition, easement, lease, and construction of replacement wetlands. The other ninety percent must be paid by either federal, state, or private interests, or any combination thereof. Any person may pay more than ten percent if that person desires. The cost of acquisition for replacement acres must be determined by average costs of wetland acres placed in the wetlands bank, as prescribed by the state engineer and the ~~commissioner~~ director. Federal, state, and private wildlife and water entities shall cooperate and work together to locate, make contacts with landowners, do appraisals, and perform other tasks necessary for lease, purchase, or other acquisition to meet the replacement requirements of sections 61-32-01 through 61-32-11.
5. In order to satisfy the replacement of wetlands requirement, manmade wetlands with material wildlife values, or any portion thereof, as determined by the state engineer and the ~~commissioner~~ director, are eligible along with restoration of drained natural wetlands to comply with the replacement of wetlands requirement.
6. The replacement of wetlands requirement for each drainage proposal or project must be accomplished with approximately fifty percent of the replacement wetlands being located in the county or contiguous counties in which the proposed drainage is located, and with the other approximately fifty percent of replacement wetlands being located anywhere in this state. If the state engineer and the ~~commissioner~~ director jointly find that replacement wetland acres are not available in the county or contiguous counties where the proposed drainage is located, replacement wetlands may be obtained anywhere in the same biotic area.
7. Any purchase, easement, lease, or other acquisition under sections 61-32-01 through 61-32-11 may not obstruct the natural or existing flow of water of any natural watercourse or artificial channel to the detriment of any upstream or downstream landowner.

SECTION 109. AMENDMENT. Section 61-32-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-05. Wetlands bank. The state engineer and the ~~commissioner~~ director shall jointly establish a wetlands bank. The records of acreages of replacement wetlands debited from and credited to ~~such~~ the bank must be maintained by the state engineer. The acreages of all replacement wetlands constructed after January 1, 1987, must be carried as a credit in ~~such~~ the bank. However, any unauthorized drainage constructed after July 1, 1975, which is closed or restored as a result of final enforcement action pursuant to section 61-32-07, may not be credited to the wetlands bank. The acreages of all wetlands drained after January 1, 1987, except those projects for

which permits were applied for prior to January 1, 1987, must be charged as a debit against acreage credit balances. No more than two thousand five hundred acres [1011.70 hectares] may be carried as a debit balance to the wetlands bank, except for drainage of wetlands for which a permit is not required. Wetlands drained during surface coal mining operations may not be charged as a debt against acreage credit balances.

SECTION 110. AMENDMENT. Section 61-32-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-06. Uniform wetlands classification. The state engineer and the ~~commissioner~~ director shall establish a uniform classification system of wetlands. All federal, state, and local entities shall follow this classification system when referring to wetlands in this state.

SECTION 111. AMENDMENT. Section 61-32-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-09. Wetlands replacement fund - Continuing appropriation. There is hereby created a special revolving wetlands replacement fund in the state treasury to which funds received by the ~~commissioner~~ director pursuant to sections 61-32-01 through 61-32-11 must be deposited. The ~~commissioner~~ director is authorized to receive funds for the wetlands replacement fund from any private or public source. The ~~commissioner~~ director shall work with the governor, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop additional funding to implement sections 61-32-01 through 61-32-11. All funds received from any source, not including state revenues, are hereby appropriated to the ~~commissioner~~ director, and may be expended for the purpose of implementing sections 61-32-01 through 61-32-11 including acquisition, easement, lease, and construction of replacement wetlands.

*SECTION 112. AMENDMENT. Subsection 1 of section 61-33-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of state parks and recreation, the ~~state~~ director of the game and fish ~~commissioner~~ department, and the state health officer, or their representative.

Approved March 14, 1991
Filed March 15, 1991

* NOTE: Subsection 1 of section 61-33-09 was also amended by section 39 of Senate Bill No. 2054, chapter 640.

CHAPTER 232

SENATE BILL NO. 2036
(Legislative Council)
(Interim Game and Fish Committee)

CLAM CONTROL

AN ACT to create and enact a new section to chapter 20.1-02 and three new subsections to section 20.1-03-12 of the North Dakota Century Code, relating to fees for licenses and permits to harvest clams; and to amend and reenact subsection 42 of section 20.1-01-02, sections 20.1-01-03, 20.1-01-14, subsection 4 of section 20.1-02-04, subsections 1 and 2 of section 20.1-02-15, subsections 1 and 2 of section 20.1-08-02, subsection 1 of section 20.1-08-04, and section 20.1-10-02 of the North Dakota Century Code, relating to the definition of, ownership of, duties of the game and fish commissioner concerning, and proclamations of the governor relating to, wildlife.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 42 of section 20.1-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

42. "Wildlife" means any member of the animal kingdom including ~~without limitation~~ any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. Wildlife does not include domestic animals as defined by the board of animal health, or birds or animals held in private ownership.

** SECTION 2. AMENDMENT. Section 20.1-01-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-03. Ownership and control of ~~game and fish wildlife~~ is in the state - Damages - Schedule of monetary values. The ownership of and title to all ~~wild birds, fish, and wild animals~~ wildlife within this state ~~shall be~~ is in the state for the purpose of regulating the enjoyment, use, possession, disposition, and conservation thereof, and for maintaining action for damages as herein provided. Any person catching, killing, taking, trapping, or possessing any ~~wild birds, fish, or wild animals~~ wildlife protected by law at any time or in any manner ~~shall be~~ is deemed to have consented that the title thereto ~~shall remain~~ remains in this state for the purpose of regulating the taking, use, possession, and disposition thereof. The state, through the office of attorney general, may institute and maintain any action for damages against any person who unlawfully causes, or has caused within this state, the death, destruction, or injury of ~~wild birds, fish, or wild animals~~ wildlife, except as may be authorized by law. The state has a property

* NOTE: Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2038, chapter 230; by section 1 of Senate Bill No. 2043, chapter 233; and by section 3 of Senate Bill No. 2050, chapter 231.

** NOTE: Section 20.1-01-03 was also amended by section 4 of Senate Bill No. 2050, chapter 231.

interest in all protected ~~wild birds, fish, and wild animals~~ wildlife. This interest supports a civil action for damages for the unlawful destruction of wildlife by willful or grossly negligent act or omission. The commissioner shall ~~promulgate~~ adopt by rule a schedule of monetary values of various species of ~~fish and wildlife, said~~ the values to represent the replacement costs of ~~said fish and the wildlife and the value lost to the state due to the destruction or injury of said the species, together with other material elements of value.~~ In any action brought under this section, the schedule ~~shall constitute~~ constitutes the measure of recovery for the ~~fish and wildlife killed or destroyed.~~ The funds ~~so~~ recovered ~~shall~~ must be deposited in the general fund, and devoted to the propagation and protection of desirable species of ~~fish and~~ wildlife.

SECTION 3. AMENDMENT. Section 20.1-01-14 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-14. Possession or control of ~~birds, fish, or animals~~ wildlife prima facie evidence of criminal offense. Possession or control by any person of any ~~birds, animals, or fish~~ wildlife, or any part thereof, the killing, taking, or possessing of which is unlawful, is prima facie evidence ~~such game the wildlife~~ was caught, taken, or killed in this state in violation of this title.

* SECTION 4. AMENDMENT. Subsection 4 of section 20.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Enforce state laws involving ~~game animals, game birds, fish, and harmless birds and animals~~ wildlife.

** SECTION 5. AMENDMENT. Subsections 1 and 2 of section 20.1-02-15 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Of a peace officer for the purpose of enforcing this title and any other state laws, ~~or rules, or regulations~~ relating to ~~big game, small game, fur-bearers, fish, and other~~ wildlife.
2. To make arrests upon view and without warrant for any violation, committed in ~~his~~ that person's presence, of this title and any other state laws, ~~or rules, or regulations~~ relating to ~~big game, small game, fur-bearers, fish, and other~~ wildlife.

SECTION 6. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Clam harvesting privilege fee. There is hereby imposed, for the grant of the privilege of the right to harvest clams, a privilege fee of ten percent of the market value of clam shells harvested in this state. The fee imposed by this section must be paid to the commissioner for deposit in the game and fish fund. The commissioner may adopt rules under chapter 28-32 for the administration of the fee imposed under this section.

SECTION 7. Three new subsections to section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

For a resident commercial clam license, one hundred dollars.

* NOTE: Subsection 4 of section 20.1-02-04 was also amended by section 12 of Senate Bill No. 2050, chapter 231.

** NOTE: Section 20.1-02-15 was also amended by section 21 of Senate Bill No. 2050, chapter 231.

For a nonresident commercial clam license, one thousand dollars.

For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the commissioner a surety bond in the sum of two thousand dollars.

* SECTION 8. AMENDMENT. Subsections 1 and 2 of section 20.1-08-02 of the North Dakota Century Code are amended and reenacted as follows:

1. That any species of ~~big game, small game, fish, or fur-bearers~~ wildlife for which an open season is provided, are in danger of depletion or extinction, or when necessary for proper protection during the propagating period, ~~he~~ the governor may, by order, provide protection for ~~such~~ that species additional to that provided by law.
2. That any species of ~~big game, small game, or fish,~~ wildlife have become sufficient in numbers to warrant an open season, or to be detrimental, or a nuisance to the farmers of the state, ~~he~~ the governor may, by order, declare an open season thereon, or may extend the open season provided by law.

SECTION 9. AMENDMENT. Subsection 1 of section 20.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A gubernatorial order or proclamation under this chapter ~~shall~~ must prescribe, as to each species of ~~big game, small game, fish, or fur-bearers~~ wildlife named therein, the following:
 - a. In what manner they may be taken.
 - b. In what numbers they may be taken and possessed and may limit ~~such~~ the numbers by sex.
 - c. In what places they may be taken.
 - d. At what times they may be taken and possessed.

SECTION 10. AMENDMENT. Section 20.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-10-02. ~~Game or fish~~ Wildlife packed or commingled with contraband ~~to must~~ be confiscated. If ~~two or more animals, birds, or fish~~ any wildlife, or parts thereof, ~~are~~ is packed, stored, or contained in the same shipment, bag, or other receptacle or ~~are~~ is otherwise commingled, and one or more has been taken in violation of this title, the entire contents ~~shall~~ must be confiscated.

Approved April 16, 1991
Filed April 18, 1991

* NOTE: Section 20.1-08-02 was also amended by section 66 of Senate Bill No. 2050, chapter 231.

CHAPTER 233

SENATE BILL NO. 2043
(Legislative Council)
(Interim Game and Fish Committee)

TAKING OF FUR-BEARERS

AN ACT to amend and reenact subsection 11 of section 20.1-01-02 and section 20.1-07-04 of the North Dakota Century Code, relating to the definition of fur-bearers for game and fish purposes and depredating fur-bearing animals; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 11 of section 20.1-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, mountain lions, black bears, and red or gray foxes.

SECTION 2. AMENDMENT. Section 20.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-07-04. Depredating fur-bearing animals - Destruction and disposition. A landowner or tenant or that person's agent may destroy catch or kill any wild fur-bearing animal which that is committing depredations upon his that person's poultry, domestic animals, or crops, but he shall. A landowner or tenant or that person's agent shall notify and obtain the approval of the commissioner before catching or killing a mountain lion or black bear. Except as provided in this section, a landowner or tenant or that person's agent may not commercialize in, sell, or ship an animal or the pelt or any part of such an animal caught or killed under this section during the closed season. The landowner or tenant or that person's agent may possess a mountain lion or black bear killed under this section.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 11, 1991
Filed March 11, 1991

- * NOTE: Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2036, chapter 232; by section 1 of Senate Bill No. 2038, chapter 230; and by section 3 of Senate Bill No. 2050, chapter 231.

CHAPTER 234

HOUSE BILL NO. 1552
(Representatives Boehm, Muhs)
(Senator Meyer)

PREDATOR CONTROL

AN ACT to create and enact a new subsection to section 20.1-02-05 of the North Dakota Century Code, relating to the powers of the game and fish commissioner; to amend and reenact subdivision c of subsection 19 of section 20.1-02-05 of the North Dakota Century Code, relating to the powers and duties of the game and fish commissioner; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subdivision c of subsection 19 of section 20.1-02-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. Carrying out practices ~~which that~~ will alleviate depredations caused by predatory animals and big game animals.

SECTION 2. A new subsection to section 20.1-02-05 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Carry out a coyote depredation prevention program by conducting practices that will alleviate depredations caused by coyotes.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, the sum of \$80,000, or so much thereof as may be necessary, to the game and fish department for the purpose of carrying out a coyote depredation prevention program for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 10, 1991

Filed April 10, 1991

* NOTE: Section 20.1-02-05 was also amended by section 13 of Senate Bill No. 2050, chapter 231.

CHAPTER 235

HOUSE BILL NO. 1398
(Representatives Hanson, Kroeber, Henegar)
(Senator Marks)

BIGHORN SHEEP TROPHIES

AN ACT to create and enact a new section to chapter 20.1-02 of the North Dakota Century Code, relating to the plugging or tagging of mounted bighorn sheep trophy heads and horns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Mounted bighorn sheep trophy heads and horns - Plugging or tagging required - Rules. Any person who brings into this state any mounted trophy head or horns, has any trophy head or horns mounted in this state, or comes into possession of any horns of dall sheep, stone sheep, desert bighorn sheep, or rocky mountain bighorn sheep shall have the trophy head or horns plugged or tagged by the department. A trophy head or horns plugged or tagged in the state, province or territory of Canada, or in Mexico where the sheep was taken satisfies the requirements of this section. The department may adopt rules to implement the provisions of this section.

Approved March 13, 1991
Filed March 13, 1991

CHAPTER 236

HOUSE BILL NO. 1267
(Oban)

GAME AND FISH HEARING BOARD

AN ACT to repeal sections 20.1-02-19, 20.1-02-20, 20.1-02-21, and 20.1-02-22 of the North Dakota Century Code, relating to the game and fish hearing board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. REPEAL. Sections 20.1-02-19, 20.1-02-20, 20.1-02-21, and 20.1-02-22 of the North Dakota Century Code are repealed.

Approved March 11, 1991
Filed March 11, 1991

* NOTE: Section 20.1-02-19 was amended by section 31 of Senate Bill No. 2050, chapter 231.

CHAPTER 237

HOUSE BILL NO. 1258
(Representatives Oban, A. Olson, Hanson)
(Senators Heinrich, Nelson, Meyer)

GAME AND FISH ADVISORY BOARD MEMBERS

AN ACT to amend and reenact sections 20.1-02-23, 20.1-02-24, and 20.1-02-25 of the North Dakota Century Code, relating to appointments to the game and fish advisory board; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-02-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-23. Game and fish advisory board - Appointment - Qualifications - Term. ~~There is hereby created a~~ The state game and fish advisory board ~~consisting~~ consists of eight members, one from each of the following districts, appointed by the governor:

1. District one shall consist of the counties of Divide, McKenzie, and Williams.
2. District two shall consist of the counties of Bottineau, Burke, McHenry, Mountrail, Pierce, Renville, and Ward.
3. District three shall consist of the counties of Benson, Cavalier, Eddy, Ramsey, Rolette, and Towner.
4. District four shall consist of the counties of Grand Forks, Nelson, Pembina, and Walsh.
5. District five shall consist of the counties of Cass, Ransom, Richland, Sargent, Steele, and Traill.
6. District six shall consist of the counties of Barnes, Dickey, Foster, Griggs, LaMoure, Logan, McIntosh, Stutsman, and Wells.
7. District seven shall consist of the counties of Burleigh, Emmons, Grant, Kidder, McLean, Mercer, Morton, Oliver, Sheridan, and Sioux.
8. District eight shall consist of the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope, and Stark.

Not less than four ~~Four~~ members shall ~~must~~ be bona fide farmers or ranchers and four members must be bona fide sportsmen. Each farmer or rancher appointment must be made from a list of three names submitted by agricultural organizations requested by the governor to submit the list and each sportsman appointment must be made from a list of three names submitted by outdoor, sportsmen, wildlife, and conservation organizations requested by the governor

to submit the list. Appointments ~~shall be~~ are for a term of four years from the first day of July of the year of expiration of the basic term, and until a successor has been appointed and qualified. Vacancies occurring other than by the expiration of an appointive term ~~shall may~~ be filled by appointment for the remainder of the term only. No member of the board may serve longer than two full terms. The members of the advisory board ~~shall be~~ are subject to removal by the governor for cause only. The advisory board shall select from their members a chairman, vice chairman, and secretary who ~~shall~~ serve in ~~such these~~ positions until June thirtieth of the year next following their selection.

SECTION 2. AMENDMENT. Section 20.1-02-24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-24. Compensation. Each member of the advisory board ~~shall~~ is entitled to be paid a per diem of fifty dollars for each day of service in going to, attending, and returning from the meetings required by section 20.1-02-25 to be held in ~~his~~ that person's respective district and the meetings of the advisory board. Each member ~~shall~~ is entitled to be reimbursed for necessary and actual expenses at the rates and in the manner provided by law for other state officers. ~~Such~~ The compensation and expenses ~~shall must~~ be paid out of department appropriations.

* SECTION 3. AMENDMENT. Section 20.1-02-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-25. Meetings and duties. Each board member shall hold a public meeting at least twice each fiscal year in ~~his~~ that person's respective district to make ~~their~~ presentations and to determine the needs and the opinions of those interested in ~~such these~~ activities. The board shall meet at least twice each fiscal year. The board has the authority to advise the commissioner regarding any policy of hunting, fishing, and trapping regulations, and may make general recommendations concerning the operation of the department and its programs ~~which that~~ the commissioner may carry out. The board shall forward copies of ~~its~~ recommendations to the governor. This section does not limit or restrict the powers, duties, and authority of the governor in the issuance of orders and proclamations as provided in chapter 20.1-08.

SECTION 4. EFFECTIVE DATE. This Act applies to appointments made after June 30, 1992.

Approved March 18, 1991
Filed March 19, 1991

* NOTE: Section 20.1-02-25 was also amended by section 32 of Senate Bill No. 2050, chapter 231.

CHAPTER 238

HOUSE BILL NO. 1038
(Legislative Council)
(Interim Game and Fish Committee)

LANDOWNER GRATIS HUNTING LICENSES

AN ACT to amend and reenact subsections 3, 5, and 7 of section 20.1-03-11 of the North Dakota Century Code, relating to licenses issued to landowners to hunt big game.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 3, 5, and 7 of section 20.1-03-11 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Upon execution and A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive without charge, upon filing of an affidavit describing a minimum of a quarter section [64.75 hectares] of land owned or that is leased for agricultural purposes or owned by any that person and which is within a district open for hunting of deer, such person shall receive, without charge, a license to hunt deer. The license shall must include a description of the land described in the affidavit and may be used to hunt deer only upon such that land.

5. Upon execution and A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive without charge, upon filing of an affidavit describing a minimum of a quarter section [64.75 hectares] of land owned or that is leased for agricultural purposes or owned by any that person and which is within a district or unit open for hunting of antelope, such person shall receive, without charge, a license to hunt antelope. The license must include a description of the land described in the affidavit and may be used to hunt antelope only upon such that land. The number of licenses issued without charge under this section subsection may not exceed the total number of licenses prescribed for each district or unit in the governor's proclamation. If the number of applications for licenses issued without charge under this section subsection exceeds the number of licenses prescribed for the district or unit in the governor's proclamation less any licenses which that are otherwise designated to be issued with a charge under this section subsection, the licenses to be issued without charge will must be issued by lottery as prescribed in the governor's proclamation. If the number of licenses prescribed for the district or unit in the governor's proclamation exceeds fifty and if the number of applications for these licenses exceeds the number of licenses prescribed for the district or unit in the governor's proclamation,

* NOTE: Subsection 7 of section 20.1-03-11 was also amended by section 1 of House Bill No. 1504, chapter 239.

then one-half of the licenses exceeding fifty ~~will~~ must be issued by lottery as prescribed in the governor's proclamation and may not be issued to landowners without charge. The licenses issued by lottery as prescribed in this ~~section~~ subsection are not subject to the provisions of subdivision a of subsection 2 of section 20.1-08-04.

7. Upon execution and A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive, upon payment of the fee requirement for a resident big game license and filing of an affidavit describing a minimum of one a quarter section [64.75 hectares] of land owned or that is leased and actively farmed or ranched for agricultural purposes or owned by any that person and which is within a district or unit open for hunting of elk, that person is entitled to receive; upon payment of the fee requirement for a resident big game license; a preferential landowner license to hunt elk within the district or unit in which the land described in the affidavit is located. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: township one hundred forty-seven north, range ninety-six west; township one hundred forty-eight north, range ninety-six west; township one hundred forty-seven north, range ninety-seven west; township one hundred forty-eight north, range ninety-seven west of the fifth principal meridian, in Dunn County; and the west one-half of township one hundred forty-nine north, range ninety-five west; township one hundred forty-nine north, range ninety-six west, and the east one-half of township one hundred forty-nine north, range ninety-seven west of the fifth principal meridian, in McKenzie County. The number of licenses issued under this subsection for each designated district or unit for hunting elk may not be less than one permit, nor exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection is not eligible to apply for a license to hunt elk in future years. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is less than twenty. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 239

HOUSE BILL NO. 1504
(Wardner, Henegar, Soukup)

ROCKY MOUNTAIN ELK FOUNDATION RAFFLE

AN ACT to amend and reenact subsection 7 of section 20.1-03-11 and section 20.1-08-04.6 of the North Dakota Century Code, relating to licenses to hunt elk and to creation of a rocky mountain elk foundation raffle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 7 of section 20.1-03-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Upon execution and filing of an affidavit describing a minimum of one-quarter section [64.75 hectares] of land owned or leased and actively farmed or ranched by any person within a district or unit open for hunting of elk, that person is entitled to receive, upon payment of the fee requirement for a resident big game license, a preferential landowner license to hunt elk within the district or unit in which the land described in the affidavit is located. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: township one hundred forty-seven north, range ninety-six west; township one hundred forty-eight north, range ninety-six west; township one hundred forty-seven north, range ninety-seven west; township one hundred forty-eight north, range ninety-seven west of the fifth principal meridian, in Dunn County; and the west one-half of township one hundred forty-nine north, range ninety-five west; township one hundred forty-nine north, range ninety-six west, and ~~the east one-half of~~ township one hundred forty-nine north, range ninety-seven west of the fifth principal meridian, in McKenzie County. The number of licenses issued under this subsection for each designated district or unit for hunting elk may not be less than one permit, nor exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection is not eligible to apply for a license to hunt elk in future years but is eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's

* NOTE: Subsection 7 of section 20.1-03-11 was also amended by section 1 of House Bill No. 1038, chapter 238.

proclamation is less than twenty. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit.

SECTION 2. AMENDMENT. Section 20.1-08-04.6 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.6. Governor's proclamation concerning the hunting of elk - license recipients not eligible to apply again Rocky mountain elk foundation raffle. The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor shall prescribe prescribes. Licenses to hunt elk must be issued by lottery, except as provided under subsection 7 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the rocky mountain elk foundation a license to hunt elk in a manner, places, and times as the governor prescribes. The rocky mountain elk foundation shall hold a raffle under rules adopted by the commissioner with only residents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds must be used for elk management and related projects in North Dakota as described under rocky mountain elk foundation policies and objectives. The rocky mountain elk foundation shall submit reports concerning the raffle as the commissioner requires. A person who has received a may only receive one license to hunt elk is not eligible to apply for another such license issued by lottery and one nontransferable license to hunt elk through the rocky mountain elk foundation raffle in a lifetime.

Approved March 27, 1991
Filed March 28, 1991

CHAPTER 240

SENATE BILL NO. 2511
(Langley, Meyer)

NONRESIDENT FUR BUYERS AND SHIPPERS

AN ACT to amend and reenact subsection 15 of section 20.1-03-12 of the North Dakota Century Code, relating to licenses for nonresident green fur buyers or shippers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 15 of section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. For a license to a nonresident buyer or shipper of green furs, or ~~his~~ that person's agent, five hundred the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or comparable license in that person's state of residence, or fifty dollars, ~~whichever is greater.~~

Approved March 25, 1991
Filed March 26, 1991

CHAPTER 241

HOUSE BILL NO. 1482
(Nelson)

GUIDE AND OUTFITTER DEER LICENSE

AN ACT to create and enact a new subsection to section 20.1-03-12 and a new section to chapter 20.1-03 of the North Dakota Century Code, relating to fees for game and fish licenses and permits and to guides and outfitters providing white-tailed deer licenses to nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

For a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents, two hundred and fifty dollars.

SECTION 2. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Guides and outfitters - White-tailed deer licenses - Fees. The governor shall make any white-tailed deer licenses remaining after the second sale available to guides or outfitters licensed in this state. The first one hundred of any such remaining licenses, or all such licenses if less than one hundred remain, must be for antlered deer only. A guide or outfitter may not purchase or obtain more than five white-tailed deer licenses under this section in any one year. A guide or outfitter shall pay the fee required for a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents for each license purchased under this section. A guide or outfitter may provide to nonresidents, for compensation, big game guiding and outfitting services and one white-tailed deer license per nonresident as provided in this section to hunt white-tailed deer in the manner, at the places, and during the times the governor prescribes by proclamation.

Approved March 26, 1991
Filed March 26, 1991

CHAPTER 242

HOUSE BILL NO. 1313
(Representatives Belter, Dalrymple)
(Senators Nelson, Meyer)

GAME AND FISH FEES

AN ACT to create and enact three new subsections to section 20.1-03-12 of the North Dakota Century Code, relating to fees for game and fish licenses and permits; and to amend and reenact section 20.1-03-12.2 of the North Dakota Century Code, relating to game and fish application fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Three new subsections to section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

For a resident swan license, five dollars.

For a nonresident swan license, twenty dollars.

For a resident and nonresident sandhill crane license, five dollars.

SECTION 2. AMENDMENT. Section 20.1-03-12.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12.2. Elk, moose, and bighorn sheep - Application fee Hunting license and permit application fees. Each person applying for a license or permit to hunt elk, moose, or bighorn sheep, or antelope under this chapter ~~shall~~ must be assessed a nonrefundable application fee of three dollars for each ~~such~~ license or permit application in addition to the fee charged for the issuance of the license or permit under this chapter.

Approved April 16, 1991
Filed April 18, 1991

CHAPTER 243

HOUSE BILL NO. 1035
(Legislative Council)
(Interim Game and Fish Committee)

COMBINATION GAME AND FISH LICENSES

AN ACT to create and enact a new subsection to section 20.1-03-12 and a new section to chapter 20.1-03 of the North Dakota Century Code, relating to the establishment of a combination game and fish license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

For a combination license, twenty-five dollars.

SECTION 2. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Combination license - Commissioner authorized to establish. The commissioner may establish a combination license consisting of a general game license, resident fishing license, resident small game license, habitat stamp, and fur-bearer license.

Approved March 19, 1991
Filed March 19, 1991

CHAPTER 244

SENATE BILL NO. 2048
(Legislative Council)
(Interim Game and Fish Committee)

HUNTING LICENSE LOTTERY FEE FORFEITURE

AN ACT to amend and reenact section 20.1-03-30 of the North Dakota Century Code, relating to the forfeiture of game and fish license fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 20.1-03-30 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-30. ~~Processing fee for application~~ Application for ~~antelope~~ license ~~when~~ issued by lottery - Forfeiture of fee if not eligible to apply. The fee remitted by any person who applies for a ~~special resident antelope~~ license issued by lottery when by any law or proclamation ~~he~~ that person is ineligible to apply because of any waiting period, ~~shall be~~ is forfeited. The commissioner shall notify the applicant ~~he~~ that the applicant is ineligible for ~~such~~ this reason and the fee has been forfeited. The fees received by the department pursuant to this section ~~shall~~ must be deposited in the state game and fish fund.

Approved March 14, 1991
Filed March 15, 1991

* NOTE: Section 20.1-03-30 was also amended by section 48 of Senate Bill No. 2050, chapter 231.

CHAPTER 245

SENATE BILL NO. 2396
(Senator Nalewaja)
(Representative Wilkie)

BIG GAME TRANSPORTATION PERMITS

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to permits for the transportation of big game.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Permits for the transportation of big game. Upon request, a resident or nonresident may obtain a permit for the transportation of big game from the commissioner, deputy commissioner, chief game wardens, district game wardens, or any law enforcement officer. The commissioner shall determine the criteria for and the conditions under which a permit for the transportation of big game may be issued under this section.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 246

SENATE BILL NO. 2047
(Legislative Council)
(Interim Game and Fish Committee)

GUNS FOR TAKING GAME BIRDS

AN ACT to repeal section 20.1-04-09 of the North Dakota Century Code, relating to guns lawfully usable in pursuing or taking game birds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 20.1-04-09 of the 1989 Supplement to the North Dakota Century Code is repealed.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 247

HOUSE BILL NO. 1434
(Gilmore, Henegar)

GUN DOG TRAINER PERMITS

AN ACT to create and enact a new section to chapter 20.1-04 of the North Dakota Century Code, relating to gun dog permits and permit fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-04 of the North Dakota Century Code is created and enacted as follows:

Gun dog activities - Permit required - Fee.

1. The commissioner shall issue a permit for the following gun dog activities:
 - a. The training exercises of a resident or nonresident professional trainer;
 - b. The training exercises of a nonresident amateur trainer who brings more than four gun dogs into the state; and
 - c. Hosting field trials that use live wild birds.
2. The application for the permit must be in a form prescribed by the commissioner and must be accompanied by the appropriate fee.
3. Upon the receipt of the completed application and fee the commissioner shall issue a permit for a specified period of time and shall require the permit holder to submit an annual report.
4. The fees for the permits are:
 - a. For a resident professional gun dog trainer for training exercises or hosting field trials, ten dollars.
 - b. For a nonresident professional gun dog trainer for training exercises or hosting field trials, one hundred dollars.
 - c. For a permit to a nonresident amateur who brings more than four gun dogs into this state, twenty-five dollars.
5. For purposes of this section a professional trainer is a person who trains any breed of gun dog for remuneration that is the basis for that person's livelihood.

Approved March 27, 1991
Filed March 28, 1991

CHAPTER 248

SENATE BILL NO. 2042
(Legislative Council)
(Interim Game and Fish Committee)

BIG GAME HUNTER GARMENTS

AN ACT to amend and reenact section 20.1-05-06 of the North Dakota Century Code, relating to daylight fluorescent orange garments worn by big game hunters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-05-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-05-06. Big game hunters to wear daylight fluorescent orange garments - Exception - Penalty. Every person, while hunting big game, shall wear a head covering and an outer garment above the waistline, both of daylight fluorescent orange color, totaling four hundred square inches [2580.64 square centimeters] or more of ~~clothing~~ solid fluorescent orange color, and both to be worn conspicuously on the person. This section does not apply to any person hunting big game with bow and arrow during special bow hunting seasons. Any person who violates this section is guilty of a class 2 noncriminal offense.

Approved March 11, 1991
Filed March 11, 1991

CHAPTER 249

SENATE BILL NO. 2046
(Legislative Council)
(Interim Game and Fish Committee)

PADDLEFISH AND STURGEON PROTECTION

AN ACT to amend and reenact section 20.1-06-02 of the North Dakota Century Code, relating to the protection of fish species of special concern; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-06-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-02. Fish protected - Penalty. No person ~~shall~~ may take, attempt to take, catch, kill, or destroy any species of fish in this state except as provided in this title. Any person who takes into possession and kills or destroys any paddlefish or pallid sturgeon in violation of this title is guilty of a class C felony.

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 250

SENATE BILL NO. 2040
(Legislative Council)
(Interim Game and Fish Committee)

HUNTING PREDATORS AND SHOOTING PRESERVES

AN ACT to create and enact a new section to chapter 20.1-08 of the North Dakota Century Code, relating to orders and proclamations of the governor; to amend and reenact section 20.1-12-05 of the North Dakota Century Code, relating to the operation of shooting preserves; and to repeal section 20.1-01-10 of the North Dakota Century Code, relating to the hours for hunting game birds and protected animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-08 of the North Dakota Century Code is created and enacted as follows:

Governor's proclamation concerning the hunting of predators. Notwithstanding any other provision of law, the governor may provide by proclamation for the taking of any wildlife, whether protected or unprotected, determined by the governor to be a harmful predator, in a manner and number, at any place, and during any time, including after dark, as the governor prescribes.

* SECTION 2. AMENDMENT. Section 20.1-12-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-05. Operation of shooting preserve - Season - Search of premises permitted. Any guest of a shooting preserve operator, in possession of a general game license, may harvest any game bird within the defined limits of the shooting preserve, subject to this chapter. The shooting preserve operator may establish that person's own restrictions on the age, sex, and number of each game bird that may be taken by each guest, and the fee to be paid by each guest. The exterior boundaries of each shooting preserve must be clearly defined and posted with signs erected around the extremity at intervals of three hundred feet [91.44 meters] or less. Each shooting preserve operator and that person's guest shall comply with and be subject to chapter 20.1-01. Shooting preserve operators may restrict or set the hours during which game birds may be hunted, subject to ~~section 20.1-01-10 gubernatorial proclamation~~. The season for shooting preserves may be all or part of the seven-month period beginning September first and ending March thirty-first of the following year. All permits must be issued upon the express condition that the permittee agrees that any law enforcement officer or any representative of the commissioner may enter and search the premises or any part thereof at any reasonable time to ensure compliance with state laws and the commissioner's rules and regulations.

SECTION 3. REPEAL. Section 20.1-01-10 of the 1989 Supplement to the North Dakota Century Code is repealed.

Approved April 5, 1991
Filed April 8, 1991

* NOTE: Section 20.1-12-05 was also amended by section 85 of Senate Bill No. 2050, chapter 231.

CHAPTER 251

SENATE BILL NO. 2051
(Legislative Council)
(Interim Game and Fish Committee)

BIG GAME PROCLAMATIONS

AN ACT to amend and reenact subsection 2 of section 20.1-08-04 of the North Dakota Century Code, relating to the governor's proclamation concerning the taking of big game.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 20.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The governor in ~~his~~ the governor's proclamation or order may determine the number of resident and nonresident big game licenses to be issued for the taking of each species, age, or sex. When a limited number of big game licenses or special permits are to be issued, ~~he~~ the governor shall by order or proclamation declare the manner of issuance of such the licenses and permits. The governor may by proclamation or order determine the time period for which a recipient of a big game license or special permit obtained by lottery shall be is ineligible to again apply for the same type of license or special permit shall be as follows:
 - a. ~~Five ensuing seasons for an antelope gun license.~~
 - b. ~~A period to be set by governor's proclamation for a deer gun license or special permit.~~

Approved March 14, 1991
Filed March 15, 1991

CHAPTER 252

HOUSE BILL NO. 1329
(Gabrielson, Payne)

GAME AND FISH PROCLAMATION CONTENTS

AN ACT to amend and reenact section 20.1-08-05 of the North Dakota Century Code, relating to publication of gubernatorial game and fish proclamations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-08-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-05. Proclamation to be published - Exceptions - Period proclamation is in effect. Except as provided in subsection 4 of section 20.1-08-02, a summary of each order or proclamation issued by the governor pursuant to this chapter shall must be published once in the official newspaper of each county affected thereby. The summary must include a list of the species that may be harvested, the date that the season for each species opens and closes, the daily and possession limits for each species, any changes in regulations from the previous year, and any changes in units opened or closed to hunting or fishing from the previous year. The summary must also list the address and phone number of the game and fish department and state that a copy of the complete legal proclamation may be obtained from the department. No such order or proclamation shall take effect becomes effective until after such publication the department prints each complete proclamation or order and distributes a copy to each county auditor affected thereby.

Approved April 8, 1991
Filed April 8, 1991

CHAPTER 253

SENATE BILL NO. 2037
 (Legislative Council)
 (Interim Game and Fish Committee)

BOATING ACCIDENTS

AN ACT to amend and reenact section 20.1-13-08 of the North Dakota Century Code, relating to boating collisions, accidents, casualties, and liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-13-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13-08. Collisions, accidents, casualties, and liability. ~~It shall be the duty of the~~ The operator of a vessel involved in a collision, accident, or other casualty, so far as ~~he~~ that person can do so without serious danger to ~~his~~ that person's own vessel, crew, and passengers, ~~to shall~~ render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and necessary to save them from or minimize any danger caused by the collision, accident, or other casualty. ~~He~~ That person shall also give ~~his~~ that person's name, address, and vessel identification in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty. If a collision, accident, or other casualty involving a vessel results in death or injury to a person or damage to property in excess of ~~one hundred dollars~~ an amount specified by the commissioner by rule, or a person disappears from ~~such the~~ the vessel under circumstances that indicate death or injury, the operator ~~thereof~~ of the vessel shall file with the department a full description of the collision, accident, or other casualty, including such information as ~~said agency~~ the commissioner may, ~~by regulation,~~ require by rule.

Any operator of a vessel, or other person who complies with ~~the provisions of~~ this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted ~~shall~~ may not be held liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance where the assisting person acts as an ordinary, reasonably prudent ~~man~~ person would have acted under the same or similar circumstances.

Approved March 11, 1991
 Filed March 11, 1991

CHAPTER 254

SENATE BILL NO. 2039
(Legislative Council)
(Interim Game and Fish Committee)

BOATING WHILE INTOXICATED

AN ACT to provide for implied consent to chemical testing for purposes of determining intoxication while operating a motorboat or vessel; to create and enact a new subsection to section 20.1-02-15.1 of the North Dakota Century Code, relating to the powers of the game and fish commissioner, deputy commissioner, and game wardens; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-02-15.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

To enforce sections 2 through 15 of this Act.

SECTION 2. Implied consent to determine alcoholic and drug content of blood. Any person who operates a motorboat or vessel in this state is deemed to have given consent, and shall consent, subject to sections 2 through 15, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in sections 2 through 15, "operates" means to be in motion, en route, but not at anchor or aground; "vessel" means any watercraft used or designed to be used for navigation on the water such as a boat operated by machinery, either permanently or temporarily affixed, a sailboat other than a sailboard, an inflatable manually propelled boat, a canoe, kayak, or rowboat, but does not include an inner tube, air mattress, or other water toy; "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely operating a motorboat or vessel; and "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under sections 2 through 15. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the person, except persons mentioned in section 5, under arrest and informing that person that the person is or will be charged with the offense of operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of sections 2 through 15, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the person charged that refusal of the person to submit to the chemical test determined appropriate will result in that person being prohibited from operating a motorboat or vessel for up to three years. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section

20.1-13-07, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under sections 2 through 15.

SECTION 3. Chemical test of operator in serious bodily injury or fatal accident. Notwithstanding section 2 or 7, when the operator of a motorboat or vessel is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the operator is in violation of section 20.1-13-07, the operator may be compelled by a game warden or a police officer to submit to a chemical test.

SECTION 4. Persons qualified to administer chemical test and opportunity for additional test. Only a physician, or a qualified technician, chemist, or registered nurse acting at the request of a game warden or a law enforcement officer may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of that person's own choosing administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

SECTION 5. Consent of person incapable of refusal not withdrawn. Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal, is deemed not to have withdrawn the consent provided by section 2 and the chemical test may be given.

SECTION 6. Action following chemical test result for a motorboat or vessel operator. If a person submits to a chemical test under section 2, 4, or 5 and the test shows that person to have an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after the operating of a motorboat or vessel, the following procedures apply:

1. The game warden or law enforcement officer shall immediately issue a statement of intent to prohibit the person from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the person from operating a motorboat or vessel serves as the commissioner's official notification to the person of the commissioner's intent to prohibit the person from operating a motorboat or vessel in this state.

2. If a chemical test administered under section 2 or 5 was by saliva or urine sample or by drawing blood as provided in section 4 and the person tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the person resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to prohibit the person from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the person from operating a motorboat or vessel serves as the commissioner's official notification to the person of the commissioner's intent to prohibit the person from operating a motorboat or vessel in this state.
3. The game warden or law enforcement officer, within five days of issuing the statement of intent, shall forward to the commissioner a certified written report in the form required by the commissioner. If the statement was given because of the results of a chemical test, the report must show that the game warden or officer had probable cause to believe the person had been operating a motorboat or vessel while in violation of section 20.1-13-07, that the person was lawfully arrested, that the person was chemically tested under sections 2 through 15, and that the results of the test show that the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the commissioner a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the game warden or officer.

SECTION 7. Revocation of privilege to operate motorboat or vessel upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 2, no chemical test may be given, but the game warden or law enforcement officer shall immediately issue to that person a statement of intent to prohibit the person from operating a motorboat or vessel. The statement serves as the commissioner's official notification to the person of the commissioner's intent to prohibit the person from operating a motorboat or vessel in this state and of the hearing procedures under sections 2 through 15. The commissioner, upon the receipt of the certified written report of the game warden or law enforcement officer in the form required by the commissioner, forwarded by the warden or officer within five days after issuing the statement of intent, showing that the warden or officer had probable cause to believe the person had been operating a motorboat or vessel while in violation of section 20.1-13-07 or had observed that the motorboat or vessel was operated in a negligent, reckless, or hazardous manner as defined by the commissioner by rule, that

the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 2, shall prohibit the person from operating a motorboat or vessel in this state for the appropriate period under this section. The period for which a person is prohibited from operating a motorboat or vessel under this section is:

- a. One year if the person's record shows that within the five years preceding the most recent refusal under this section, the person has not been prohibited from operating a motorboat or vessel for a violation of sections 2 through 15, or for a violation of section 20.1-13-07.
 - b. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has once been prohibited from operating a motorboat or vessel for a violation of sections 2 through 15, or for a violation of section 20.1-13-07.
 - c. Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has twice been prohibited from operating a motorboat or vessel under sections 2 through 15, or for a violation of section 20.1-13-07, and the prohibitions resulted from at least two separate arrests.
2. A person may not be prohibited from operating a motorboat or vessel under this section if:
- a. No administrative hearing request is made under section 9;
 - b. The person mails an affidavit to the commissioner within ten days after the game warden or law enforcement officer issues the statement of intent. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 20.1-13-07 within twenty-five days after the game warden or law enforcement officer issues the statement of intent;
 - (2) Agrees that the person may not operate a motorboat or vessel for the appropriate period;
 - (3) Acknowledges the right to a section 9 administrative hearing and section 10 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person may not operate a motorboat or vessel for the appropriate period as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the game warden or law enforcement officer issues the statement of intent, or the court does not accept the guilty plea, or the guilty plea is withdrawn;

- c. The person pleads guilty to violating section 20.1-13-07 within twenty-five days after the game warden or law enforcement officer issues the statement of intent;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the commissioner within twenty-five days after the game warden or law enforcement officer issues the statement of intent; and
 - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the commissioner prior to the end of the prohibition from operating a motorboat or vessel.
3. The court shall mail a copy of an order granting a withdrawal of a guilty plea to violating section 20.1-13-07 to the commissioner within ten days after it is ordered. Upon receipt of the order, the commissioner immediately shall prohibit the person from operating a motorboat or vessel as provided under this section without providing an administrative hearing.

SECTION 8. Administrative sanction for operating motorboat or vessel while having certain drug concentrations. After the receipt of the certified report of a game warden or a law enforcement officer and if no written request for hearing has been received from the arrested person under section 9, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the game warden or law enforcement officer had probable cause to arrest the person and chemical test results show that the arrested person was operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after operating a motorboat or vessel, the commissioner shall prohibit the person from operating any motorboat or vessel in this state as follows:

1. For ninety-one days if the person's record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 20.1-13-07 or the person has not been prohibited from operating a motorboat or vessel under sections 2 through 15.
2. For three hundred sixty-four days if the person's record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 20.1-13-07 or the person has once been prohibited from operating a motorboat or vessel under sections 2 through 15.
3. For two years if the person's record shows that within the five years preceding the date of the arrest, the person has twice been prohibited from operating a motorboat or vessel under sections 2 through 15, or for a violation of section 20.1-13-07, or any combination thereof, and the prohibitions resulted from at least two separate arrests.

SECTION 9. Administrative hearing on request.

1. Before prohibiting a person from operating a motorboat or vessel under section 7 or 8, the commissioner shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the commissioner within ten days after the date the game warden or law enforcement officer issued a statement of intent to prohibit the person from operating a motorboat or vessel. The hearing must be held within twenty-five days after the date of issuance of the statement of intent, but the hearing officer may extend the hearing to within thirty-five days after the issuance of the statement of intent if good cause is shown.
2. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the commissioner and at a time and place designated by the commissioner. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had probable cause to believe the person had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the person was placed under arrest; whether the person was tested in accordance with section 2 or 5 and, if applicable, section 4; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the office of the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that that person may be prohibited from operating a motorboat or vessel based on the results of the chemical test is not an issue.
3. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for refusing to submit to a chemical test under section 2, the hearing must be before a hearing officer assigned by the commissioner at a time and place designated by the commissioner. The hearing must be recorded. The scope of a hearing for refusing to submit to a chemical test under section 2 may cover only the issues of whether a game warden or law enforcement officer had probable cause to believe the person had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the person was placed under arrest; and whether that person refused to submit to the chemical test.
4. At a hearing under this section, the regularly kept records of the commissioner may be introduced. Those records establish prima facie their contents without further foundation. For purposes of sections 2 through 15, any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the commissioner from the office of the state toxicologist or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the commissioner from a certified breath test operator, and any copy of a certified copy of

a certificate of the office of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the commissioner from the office of the state toxicologist or the clerk of district court, are regularly kept records of the commissioner.

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the commissioner's official notification to the person that the person is prohibited from operating a motorboat or vessel in this state. The hearing officer shall report the findings, conclusions, and decisions to the commissioner within ten days of the conclusion of the hearing.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on prohibition of the person from operating a motorboat or vessel will be based on the written request for hearing, game warden's or law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the commissioner, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the commissioner's official notification to the person that the person is prohibited from operating a motorboat or vessel in this state for the appropriate period. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 10.

SECTION 10. Judicial review. Any person who has been prohibited from operating a motorboat or vessel by the decision of the hearing officer under section 9 may appeal within seven days after the date of the hearing under section 9 as shown by the date of the hearing officer's decision, notwithstanding section 28-32-15, by serving on the commissioner and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a chemical test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the commissioner and to the hearing officer who rendered the decision. Neither the commissioner nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the commissioner or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the commissioner or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the commissioner or hearing officer. The court may direct that the matter be returned to the

commissioner or hearing officer for rehearing and the presentation of additional evidence.

SECTION 11. Interpretation of chemical tests. Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after operating a motorboat or vessel is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a motorboat or vessel.
2. Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven cubic centimeters of urine.
3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
4. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the clerk of the district court in each county and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

5. Copies of the records referred to in subsections 3 and 4, certified by the clerk of the district court, must be admitted as prima facie evidence of the matters stated in the records.
6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the office of the state toxicologist must be accepted as prima facie evidence of the results of a chemical test performed under sections 2 through 15.
7. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the person who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act.
8. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

SECTION 12. Proof of refusal admissible in any action or proceeding. If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof.

SECTION 13. Effect of evidence of chemical test. Sections 2 through 15 do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent, the purpose of the evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

SECTION 14. Liability. Any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting warden or officer is not liable in any civil action for damages arising out of the act except for gross negligence.

SECTION 15. Operation of motorboat or vessel during period of prohibition - Penalty. Any person who operates a motorboat or vessel on the waters of this state during the period the person is prohibited from operating a motorboat or vessel under sections 2 through 15 is guilty of a class A misdemeanor.

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