

ENABLING ACT AND CONSTITUTION
AND
THE LAWS
PASSED AT THE
Sixth Session
OF THE
LEGISLATURE
OF THE
State of South Dakota.

Begun and Held at Pierre, the Capital of Said State, on
Tuesday, the Third Day of January, A. D. 1899,
and Concluded March 3, A. D. 1899.

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5. If it is colored, powdered or treated in any manner whereby damage or inferiority is concealed.

6. If it contains any added substance or ingredient which is poisonous or injurious to health.

§ 27. PROSECUTIONS—PROVISO.] In all prosecutions under the various sections of this Act, the cost thereof shall be paid in the manner now provided by law, and it shall be the duty of all prosecuting attorneys to represent and prosecute in behalf of the people, within their respective counties, all such cases of offense arising under the provisions of this Act, and all fines imposed shall be paid into the state treasury. Provided, nothing in this Act shall be construed to affect stocks purchased, on hand, and for sale prior to the taking effect of this Act.

§ 28. PENALTY.] Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five (25) dollars, nor more than fifty (50) dollars and costs, or by imprisonment in the county jail for not less than thirty days, nor more than ninety days.

§ 29. REPEAL.] All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Approved February 28, 1899.

GAME.

CHAPTER 90.

[H. B. 47.]

PROVIDING FOR THE PROTECTION OF GAME.

AN ACT for the Protection of Game, and the Appointment of Wardens, and the Licensing of Hunters, and Prescribing Penalties for the Violation of its Provisions.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. (1) SHOOTING OR KILLING RESTRICTED—PENALTY.] Every person who shoots or kills any prairie chicken, pinnated grouse, sharp tailed grouse, ruffed grouse, woodcock or quail, between the first day of January and the first day of

September following, or any song bird or insect eating bird at any time, excepting crows, blackbirds and sparrows; or

(2) Shoots or kills any wild duck, wild goose, brant or wild crane between the first day of May and the first day of September following, or shoots or kills any plover or curlew between the fifteenth day of May and the first day of September following; or

(3) At any time kills or shoots any wild duck, goose or brant with any swivel gun or other gun, except such as is commonly shot from the shoulder, or in hunting such birds makes use of any artificial light or battery; or

(4) Uses or employs any trap, snare, net or bird line, or medicated, drugged or poisoned grain or food to capture or kill any of the birds mentioned in Sub-Divisions 1, 2 or 3 of this section; or

(5) Wantonly destroys any nest of eggs or any of the birds mentioned in Sub-Divisions 1, 2 or 3 of this section; or

(6) Shoots, kills, traps or takes any beaver or otter at any time prior to the fifteenth day of January A. D. 1911, or thereafter between the fifteenth day of December and the fifteenth day of October following; or

(7) Knowingly hunts in any way, upon the enclosed, occupied or cultivated lands of another without the consent of the owner or tenant; or

(8) Shoots or kills in one day more than twenty-five of the game birds mentioned in Sub Divisions 1, 2 or 3 of this section, is guilty of a misdemeanor, and upon conviction thereof before a justice of the peace of the county, is punishable by a fine of not more than ten dollars (\$10) for each of the birds mentioned in Sub-Divisions 1, 2 or 3 of this section, so shot or killed or nests or eggs so destroyed, and for each violation of Sub-Divisions 4 or 5 of this section; and not more than one hundred dollars (\$100) for each animal mentioned in Sub Division 6 of this section, so shot, or killed, trapped or taken, and not more than one hundred dollars and not less than twenty-five dollars, for a violation of Sub-Divisions 7 or 8 of this section, in the discretion of the court.

§ 2. HAVING GAME IN POSSESSION.] Every person who has in his possession any of the birds or animals mentioned in the last section, after fifteen days from the close of the respective seasons during which it shall be lawful to hunt or kill the same, shall be guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the county, is punishable in the manner and to the extent provided in the last section for the killing of the same.

§ 3. SHIPPING OR SELLING OUT OF THE STATE.] It shall be unlawful for any person, railroad company, express company, or other common carrier, or the servants or agents of

such common carrier, at any time to send, ship, carry or transport out of this state, or to have in his or their possession for that purpose any game mentioned in this Act, and the possession of such game by any person, railroad company, express company or other common carrier shall be deemed presumptive evidence of the violation of the laws of this state enacted for the protection of game; provided, nothing in this Act shall be construed to abridge or repeal any existing laws of this state prohibiting the sale of game within this state.

Provided, nothing in this section shall prevent any person from taking game during the open season, and three days thereafter, out of the state when shipped in open view, tagged and plainly labelled with the name of the owner thereof and accompanied by him, to be used for food only, and not for commercial purposes, and in no instance shall any person be permitted to take out of the state, at any one time, a greater number than twenty-five birds. Any person, corporation or company violating any of the provisions of this section, shall be punished by a fine of not less than ten dollars, nor more than fifty dollars for each offense.

§ 4. ATTEMPT TO VIOLATE.] Any attempt to violate any provision of any section of this Act shall be deemed a violation of such provision.

§ 5. Any person or persons traveling in any manner in any part of this state outside of the immediate bounds of the inhabited parts of any village, town or city in possession of any kind of a shot gun and ammunition with dog or dogs ordinarily used or kept for the use of hunting any game mentioned in this Act from the first day of July, and to the first day of September each year shall be presumed to have violated or attempted to violate the provisions of this Act as to unlawful shooting or taking of game mentioned in this Act, the taking or shooting of which is prohibited during said time and proof of the possession of such property during said time and in such place shall be prima facie evidence of the guilt of such person or persons to so violate or attempt to violate the provisions of this Act as to shooting, killing or taking such game:

That the use of traps, snares and all other devices used to snare, trap or take game birds, as defined in this Act is hereby prohibited and subjects the person or persons using the same to all the penalties prescribed in this Act for shooting, trapping and ensnaring or taking game birds, and the fact that any traps, snares or other devices used for the purpose of trapping, snaring or taking game birds, are found in the possession of, or upon the premises of any person or persons, shall be prima facie evidence of the guilt, violation or attempted violation by such person or persons of the provisions of this Act.

§ 6. FORFEITURE AND CONFISCATION OF HUNTERS' OUT-FITS.] Any person offending against any of the provisions of any section of this Act shall be punished not only by the fine herein prescribed, but also by a forfeiture of any gun or guns, dog or dogs, trap or other sporting implement in his or their possession while so offending, and any court having jurisdiction may, upon due proof, adjudge the same forfeited, and order such traps to be destroyed, and may order any dog or dogs, gun or guns so used to be sold at either public or private sale, and the proceeds of such sale shall be paid to the county, to be placed in the county game fund. Any person convicted of the violation of any of the provisions of this section shall be fined not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or by both fine and imprisonment in the discretion of the court.

§ 7. UNLAWFUL TO SERVE TO GUESTS IN PUBLIC HOUSES.] No keeper of a hotel, restaurant or boarding house shall serve to any of his guests any game, the taking or killing of which is prohibited by law, during any of the said periods when the taking or killing of the same is prohibited by the laws of this state.

§ 8. WARDENS—HOW APPOINTED AND QUALIFIED.] The fish wardens who are now appointed, or who may hereafter be appointed, shall be game wardens. Each game warden, sheriff, constable, or other officer of the law, is charged with the duty of enforcing the provisions of this Act. He shall arrest, or cause to be arrested, all violators thereof, and shall prosecute all offenses against the same. He shall have the power to arrest without a warrant any person or persons found violating any of the provisions of this law, when detected in the commission of the act. And he may seize and take into his custody all the birds, or any part thereof, shot, killed or taken during the period when the shooting, killing or taking is not permitted by this Act. Each warden, before entering upon the duties of his office, shall take an oath to support the Constitution and faithfully and impartially discharge the duties of his office, which oath and appointment shall be filed with the secretary of state.

§ 9. APPOINTMENT OF DEPUTIES.] Each warden may appoint not more than ten deputies, residents in his county. Such appointment must be made in writing, and shall be revokable in writing at the pleasure of the principal. Each deputy so appointed shall take and subscribe on the back of his appointment his oath of office. Such appointments or revocations with the oath of office shall be filed with the auditor of the county for which he is appointed. Such appointments may be in substantially the following form.

STATE OF SOUTH DAKOTA,)

County of)

The undersigned hereby constitutes and appoints....., a resident of said county, a deputy game warden within and for said county, to hold his said office for the period ending on the first day of March, ..., unless before that date revoked.

Dated this day of

Warden.

§ 10. JURISDICTION OF WARDEN.] Each warden shall have jurisdiction throughout the state to make complaint against, arrest and prosecute, all violators of the laws for the protection of game, and each deputy shall have like jurisdiction throughout his county.

§ 11. DUTIES OF WARDEN.] It is hereby made the duty of each warden and deputy warden, within his county, to see to the enforcement of the provisions of the laws for the protection of game, and to make complaint and to prosecute all violators of the provisions of said laws, which shall come to his knowledge, or of which he shall be credibly informed; and such wardens and their deputies, within their respective counties, are authorized to arrest without warrant any person found violating the provisions of said game laws when detected in the act, or found with the game in their possession at the time of their arrest, and to take the party offending before any court having jurisdiction to try the offender, or to give immediate notice thereof to the state's attorney of the county in which the arrest was made, who shall forthwith make complaint or information against such offender, and prosecute the same. The fees therefor shall be the same as now provided by law for like service in criminal actions.

§ 12. WARDEN ENTITLED TO ONE-HALF OF FINE RECOVERED.] In all prosecutions instituted in the manner set forth in this Act the warden, deputy warden, or other officer instituting such prosecution shall be entitled to one-half of the penalty or fine when recovered, and the remainder of such penalty or fine shall go to the county game fund.

§ 13. INFORMER ENTITLED TO ONE-HALF OF FINE RECOVERED.] Any person making complaint and furnishing evidence which shall lead to the prosecution and conviction of any offender under the provisions of the game laws, shall be entitled to one-half the fine or penalty, when recovered in such prosecution, and the other half to go to the county game fund.

§ 14. PROVIDING FOR HUNTERS' LICENSE.] It shall be unlawful for any person not a bona fide resident and citizen of this state to pursue, hunt or kill within this state, any game bird or animal intended to be protected by the laws of this state, at any time, without first procuring a hunter's license therefor

from the county treasurer. Any person applying for hunter's license shall state in writing over his own signature, his name and place of residence, and shall pay to the county treasurer therefor the sum of ten dollars before such license shall issue. Such license shall not be transferable, and shall be substantially in the following form:

HUNTER'S LICENSE.

STATE OF SOUTH DAKOTA, }
County of..... }

This is to certify that.....of in the State of.....having this day made application for a hunter's license, and having paid therefor the sum of ten dollars, as required by law is hereby permitted to shoot and kill, within this state during the year A. D. any of the birds and animals intended to be protected by the game laws of this state, during the time in said year when the shooting and killing of such birds and animals is not prohibited by law.

In witness whereof I have hereunto subscribed my name, and caused the seal of the county clerk to be affixed hereto, this day of.....A. D.....

.....
County Treasurer.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten nor more than fifty dollars.

§ 15. PROVIDING FOR GAME FUND AND PAYMENTS TO PROSECUTE.] All costs that shall be collected and all fines and penalties or shares thereof which shall be recovered and paid into the county treasury, and all moneys received for hunter's license, and the proceeds of any and all game, dogs and guns sold, shall be kept as a separate fund to be called a game fund, to be expended by the board of county commissioners toward the payment of expenses of the game wardens which shall be incurred in the enforcement of the provisions of the game laws of this state.

§ 16. PARTY TESTIFYING, TESTIMONY CANNOT BE USED AGAINST HIM.] In any prosecution or judicial proceeding under the provisions of any of the game laws of this state any person participating in or in any way accessory to any violation thereof, may testify as a witness against any other person violating the same, without criminating himself by so doing, and nothing in the testimony which he shall so give, or in any admissions he shall make in relation thereto as such witness shall at any time be used against him in any criminal proceedings against him for such violation.

§ 17. PROVIDING FOR SEARCH.] Any court having jurisdiction of any of the offenses under this Act, upon receiving proof by affidavit of probable cause for believing in the concealment of any game, the killing or taking of which is prohibited in this Act, shall issue a search warrant and cause search to be made in any place therefor, and to that end the officer serving such warrant may cause any building, enclosure, or car named therein to be entered, and any apartment, chest, box, locker, crate, basket or package to be broken open and the contents thereof examined.

§ 18. JOINING OFFENSES IN ONE COUNT.] In prosecutions under the game statutes of this state it shall be permissible in any indictment, information or complaint [to join in one count or statement the several offenses, or any number] of them which are named in any section of such statutes, when not repugnant in their nature or penalty, and such count or statement shall be sustained by proof of any one of the offenders charged.

§ 19. PROPERTY IN GAME AND ARTICLES CONFISCATED.] No person shall at any time acquire or have any property in any game which has been taken, captured or killed, or had in possession contrary to law, but the same shall be the property of the state, to be disposed of for the benefit of the fund to enforce the game laws, and any warden or his deputy may seize the same when found, and sell the same, together with any dogs or guns forfeited, and pay the proceeds of the sale to the county treasurer, to be placed in the game fund, and the possession of the officer so seizing the same, and that of any one who shall thereafter purchase the same, shall be deemed lawful.

§ 20. DEFINITION AND MEANING OF TERMS.] The word "person" as used in this Act, shall include the plural as well, and also all individuals, firms, joint stock companies, and all combinations thereof, and the masculine gender shall include the feminine as well, and the word "possession" shall include both actual and constructive possession.

§ 21. RESISTING OFFICERS MISDEMEANOR.] Whoever shall resist or obstruct any officer by force, threat, or otherwise in the discharge of his duties under this Act shall be guilty of a misdemeanor and be punished by a fine of not less than ten dollars, nor more than fifty dollars for such offense.

§ 22. LIMITATION ONE YEAR.] All prosecutions under this Act shall be commenced within one year from the time the offense was committed.

§ 23. JURISDICTION IN JUSTICE COURT, HOW PROSECUTED.] All justices of the peace and police justices within their jurisdiction shall have concurrent jurisdiction with the circuit court to try and determine all offenses arising under the provisions of this Act and of all the laws of this state for the protection of game. All prosecutions shall be in the name of the

state and shall be instituted and prosecuted in accordance with the provisions of the law for criminal procedure in the courts where the prosecution is had. In all convictions the costs of the prosecution shall be taxed against the defendants as in other criminal cases and the court shall order as a part of the judgment that the defendant shall stand committed to jail until the fine and costs shall be paid.

Provided, the term of imprisonment shall not exceed thirty days in any one case.

§ 24. REPEAL.] All Acts or parts of Acts in conflict with this Act are hereby repealed.

Approved March 6, 1899.

CHAPTER 91.

[H. B. 178.]

RELATING TO THE PROTECTION OF LARGE GAME.

AN ACT for the Protection of Large Game.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. UNLAWFUL TO KILL LARGE GAME—WHEN.] It shall be unlawful for any person or persons to pursue, hunt or kill by any means or device whatever, any buffalo, elk, deer, antelope or mountain sheep between the first day of January and the fifteenth day of October in each year, within the boundaries of the State of South Dakota.

§ 2. UNLAWFUL TO SELL.] It shall be unlawful for any person or persons to sell or offer for sale within the State of South Dakota, at any time, any carcasses or parts of carcasses of any of the animals named in Section 1 of this Act.

§ 3. UNLAWFUL TO TRANSPORT.] It shall be unlawful for any railway company, express company, or other common carrier, or the servants or agents of such common carrier, at any time to send, ship, carry or transport out of this state any carcass or carcasses of any of such animals as named in Section 1 of this Act.

§ 4. VIOLATION—PENALTY.] Any person or persons who shall violate any part of any of the three preceding sections shall, upon conviction thereof, be fined not less than twenty five dollars (§25) nor more than two hundred dollars (§200), or be imprisoned in the county jail not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment at the discretion of the court.