

LEGISLATIVE BILL 779

Approved by the Governor March 15, 1974

Introduced by Wiltse, 1

AN ACI to amend section 37-526, Reissue Revised Statutes of Nebraska, 1943, section 81-805, Revised Statutes Supplement, 1972, and section 37-501, Revised Statutes Supplement, 1972, as amended by section 1, Legislative Bill 765, Eighty-third Legislature, Second Session, 1974, relating to the Game and Parks Commission; to change a prohibition; to harmonize with previous legislation; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 37-501, Revised Statutes Supplement, 1972, as amended by section 1, Legislative Bill 765, Eighty-third Legislature, Second Session, 1974, be amended to read as follows:

37-501. It shall be unlawful (1) to shoot from any public-highway roadway, as defined in section 39-602, at any bird or animal protected by this act; (2) except as provided in section 37-226, to hunt, shoot, or take or attempt to hunt, shoot, or take any bird or animal with the aid of an artificial light attached to or used from a motor vehicle; Provided, that nothing in this subdivision shall prohibit the hunting on foot of raccoon with the aid of a handlight, or the hunting, shooting, or taking of nonprotected species of wildlife in the protection of property by landowners or operators or their regular employees on land under their control on foot or from a motor vehicle with the aid of artificial light; (3) to hunt, kill or attempt to hunt or kill any protected species from any boat or watercraft while being propelled by sails or electric, gas or steam power or from an aeroplane or hydroplane; (4) to use any rifle, pistol, revolver, swivel gun, or shotgun larger than ten gauge, in hunting any game birds, or to trap, snare, net or attempt to trap, snare or net any game bird or birds; Provided, that game birds obtained from the holder of a game farm permit or otherwise legally obtained which have been transported and are tagged in accordance with commission regulations and which are being used for dog training purposes, may be reclaimed through the use of recall boxes or recall pens by the holder of a written permit issued by the commission, subject to regulations established by the commission. Such person owning or controlling any device used for reclaiming purposes

shall, prior to the operation thereof, pay an annual fee of ten dollars to the commission for each such device under his ownership or control. The commission is hereby authorized to promulgate rules and regulations for the possession, use and licensing of such reclaim devices; (5) to take or needlessly destroy the nests or eggs of any game bird or birds; (6) to hunt, kill or attempt to hunt or kill any game bird or birds by attracting them to the place where hunted by the distribution of grain or other feed, commonly called baiting; (7) except as provided in section 37-214.03, to hunt, kill, take or attempt to hunt, kill or take any game bird or birds from a vehicle of any kind; (8) to hunt, kill, take, trap or attempt to hunt, kill, take or trap any game birds with nets, traps or clubs, except as specified in subdivision (4) of this section; (9) to hunt, drive, or stir up game birds or game animals with or from any aircraft or boat propelled by sail or power; or (10) to have or carry, except as permitted by law, any shotgun having shells in either the chamber, receiver, or magazine in or on any vehicle on any highway.

Sec. 2. That section 37-526, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-526. It shall be unlawful to hunt, kill, take or pursue or to attempt to hunt, kill, take or pursue any form of wild mammal or wild bird within a two hundred yard radius of an inhabited dwelling or livestock feed lot; Provided, that this section shall not prohibit any owner, tenant or operator or their guests from hunting, killing, taking or pursuing any form of wild mammal or wild bird within such radius if the area is under their ownership or control.

Sec. 3. That section 81-805, Revised Statutes Supplement, 1972, be amended to read as follows:

81-805. Except as herein otherwise provided, the Game and Parks Commission shall have sole charge of state parks, game and fish, recreation grounds, and all things pertaining thereto. All funds rendered available by law, including funds already collected for said purposes, may be used by the commission in administering and developing such resources. The commission shall adopt and carry into effect plans to replenish and stock the state with game and whenever it is in the best interest of the public to do so, to stock the streams, lakes, and ponds, whether public or private, of this state with fish. It may plan such extensions and additions to existing hatcheries and such new plants as may be necessary to supply fully the state with game and fish, and cause said

plans to be executed, after ascertaining the cost thereof. With the consent of the Governor, it may by purchase, when funds on hand or appropriated therefor are sufficient, or by gift, devise, or otherwise, acquire title in the name of the State of Nebraska to sites therein situated outside organized municipalities, for additional state parks, hatcheries, recreation grounds, game farms, game refuges, and public shooting grounds, and may enter into appropriate contracts with reference thereto, all within the limits of amounts that may be appropriated, contributed, or available therefor. For these purposes, the commission may enter into appropriate contracts, leases, or lease-purchase agreements. The commission, with the consent of the Governor, is authorized to take, receive, and hold, either in the name of the state or in trust for the state, exempt from taxation, any grant or devise of lands and any gift or bequest of money or other personal property made in furtherance of the purposes contemplated by this section, and shall have such funds, or the proceeds of such property, invested. Such invested funds shall be known as the State Park and Game Refuge Fund, and shall be used and expended under the direction of the commission. Any money in the State Park and Game Refuge Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259. The commission is authorized to make a survey of all lands and areas in the state which are suitable for state parks, game refuges, or other similar purposes contemplated by this section, and to locate and designate any or all of such lands or areas, or parts thereof, and to take such action as may tend to preserve or conserve the same. The commission shall publish such informational material as it deems necessary and may, at its discretion, charge appropriate fees therefor. The commission is authorized and empowered to adopt and promulgate rules and regulations, under the procedures set forth in sections 84-901 to 84-919, governing the administration and use of all property, real and personal, under its ownership or control, and the commission is charged with the duty and responsibility of adopting such regulations as it shall deem necessary to administer the following activities and facilities:

(1) The commission may adopt regulations to designate camping areas on appropriate lands under its ownership or control and to permit camping thereon. As a condition to such permission, the commission may prescribe such rules and regulations as are reasonable and proper governing public use of such camping areas including, but not limited to, access to camping areas, area capacity, sanitation, opening and closing hours, public safety, fires, establishment and collection of

fees where appropriate, protection of property, and zoning of activities, such rules and regulations to be posted on appropriate signs at the areas; Provided, that any person who camps on lands owned or controlled by the commission not designated as a camping area by the commission, or any person who fails to observe the conditions of occupancy, use, or access, posted as provided in this section, shall not have permission. Any person violating the provisions of the regulations above authorized shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in subdivision (9) of this section:

(2) The commission may adopt regulations permitting any type of fire, including the smoking of tobacco in any form, and providing for the size, location, and the conditions under which a fire may be established on any area under its ownership or control. The commission may enact regulations permitting the possession, or use, of any type of fireworks not prohibited by law on any areas under its ownership or control. The commission may adopt regulations authorizing management personnel to temporarily revoke permission by the posting of appropriate signs for all fires of any kind whatsoever, including smoking and the use of fireworks, in any area under its ownership or control, when such posting is in the interest of public health, safety, and welfare, or for the preservation of property; Provided, that any person who shall light any type of fire, who shall use any fireworks, or who shall smoke tobacco in any form, or who shall leave, unattended and unextinguished, any fire of any type in any location, in any area under the ownership or control of the commission, unless the commission shall have given permission, which permission shall not have been revoked, to such type of fire, use or possession of fireworks, or to such smoking of tobacco, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in subdivision (9) of this section:

(3) The commission may adopt regulations permitting pets, domestic animals, and poultry, to be brought upon, possessed, grazed, maintained, or run at large, on any area, or portion of any area, under its ownership or control; Provided, that any person who brings upon, possesses, grazes, maintains, or permits to run at large his pets, domestic animals, or poultry on any area, or portion of any area, under the ownership or control of the commission, unless the commission shall have permitted such bringing upon, possession, grazing, maintaining, or running at large, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in subdivision (9) of this section:

(4) The commission is authorized to enact regulations, temporarily or permanently, permitting hunting, fishing, or the public use of firearms, bow and arrow, or any other projectile weapons or devices on any area or any portion of any area under its ownership or control. The commission is authorized to enact special regulations permitting trapping on any such area or areas; Provided, that any person who shall, without the permission of the commission, hunt, fish, trap, or use firearms, bow and arrow, or any other projectile weapon or device on any area or any portion of any area under the ownership or control of the commission, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in subdivision (9) of this section;

(5) The commission is authorized to enact regulations permitting swimming, bathing, boating, wading, water skiing, and the use of any floatation device on all or any portion of any area under its ownership or control. Such regulations may include permission for swimming, bathing, boating, water skiing, wading, or the use of floatation devices, and all other water-related recreational activities in all areas, or any portion of any specific area, under the ownership or control of the commission, and may provide for special general conditions for specific swimming, water skiing, boating, bathing, or wading areas, which shall be posted at such areas; Provided, that any person who shall swim, bathe, boat, wade, water ski, or use any floatation device on all or any portion of any area under the ownership or control of the commission, unless the commission shall have given permission for such activity in the specific area or portion thereof, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in subdivision (9) of this section;

(6) The commission may enact regulations relating to the protection, use or removal of, any public real or personal property on any area under its ownership or control, and may regulate or prohibit the construction or installation of any privately-owned structure on such area. The commission may close all or any portion of any area under its ownership or control to any form of public use or access with the erection of proper signs, without the enactment of formal written regulations; Provided, that any person who shall, without the permission of the commission, construct or install any privately-owned structure, or who shall use or remove any public real or personal property, on any area under the ownership or control of the commission, or who shall enter or remain upon all or any portion of any area under the ownership or control of the commission, where proper signs or

public notices prohibiting the same have been erected or displayed, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in subdivision (9) of this section;

(7) Any person who shall abandon any motor vehicle, trailer, or other conveyance, in any area under the ownership or control of the commission, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in subdivision (9) of this section;

(8) The commission is authorized to enact regulations permitting the sale, trade, or vending of any goods, products or commodities of any type in any area under its ownership or control; Provided, that any person who shall sell, trade, or vend any goods, products or commodities of any type, in any area under the ownership or control of the commission, without having received the prior permission of the commission for such activity, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in subdivision (9) of this section;

(9) Where the permission of the commission is required as a prerequisite to any activity set out in ~~sections--39-736--to--39-738--and~~ this section, such permission shall be established by resolution of the commission; Provided, that such resolution may set out the circumstances under which the supervisor or managing official in charge of any area under the ownership or control of the commission may give such permission in emergency situations, and such resolutions may further provide for the revocation of such permission by the secretary of the commission, or by the supervisor or managing official of any area under the ownership and control of the commission. The commission, with regard to roads on any area under its ownership or control, may establish such regulations deemed necessary as authorized by sections 39-663 and 39-697. Any law enforcement official, including any conservation officer or deputy conservation officer, is authorized to enforce the provisions of ~~sections-39-736-to-39-738-and~~ this section and the rules and regulations established under the authority of sections 39-663 and 39-697. Where a violation has occurred in or on any area under the ownership or control of the commission any conservation officer or deputy conservation officer may arrest and detain any person committing such violation, or committing any misdemeanor or felony as provided by the laws of this state until a legal warrant can be obtained. Any person guilty of a misdemeanor violation as set forth in ~~sections-39-736-to-39-738-and~~ this section or rules

and regulations established under the authority of sections 39-663 and 39-697 shall, upon conviction thereof, be punished by a fine of not less than ten dollars, nor more than one hundred dollars, or by imprisonment in the county jail not to exceed thirty days, or both such fine and imprisonment.

The commission is authorized to issue, regardless of any other requirements or qualifications of law, without cost, special fishing permits to wards of the state, on a group basis, for therapeutic purposes, when application has been made to the commission by the head of the appropriate state institution involved. The commission is further authorized to enter into agreements with other states bordering on the Missouri River providing for reciprocal recognition of licenses, permits, and laws of the agreeing states. The commission may disseminate information on the state park system and the wildlife resources of the state so as to inform the public of the outdoor recreation opportunities to be found in Nebraska.

The commission is authorized to grant easements across real estate under its control for purposes that are in the public interest and do not negate the primary purpose for which the real estate is owned or controlled by the commission.

Sec. 4. That original section 37-526, Reissue Revised Statutes of Nebraska, 1943, section 81-805, Revised Statutes Supplement, 1972, and section 37-501, Revised Statutes Supplement, 1972, as amended by section 1, Legislative Bill 765, Eighty-third Legislature, Second Session, 1974, are repealed.