

## CORRECTED COPY

## LEGISLATIVE BILL 584

Approved by the Governor March 1, 1996

Introduced by Natural Resources Committee: Beutler, 28, Chairperson; Avery, 3; Bohlke, 33; Bromm, 23; Elmer, 44; Jones, 43; McKenzie, 34; Preister, 5

AN ACT relating to game and parks; to amend sections 37-104, 37-105, 37-202.02, 37-213, 37-215.03, 37-215.08, 37-216.01 to 37-216.09, 81-805, 81-815.60, and 81-2801, Reissue Revised Statutes of Nebraska, and sections 37-201 and 37-215, Revised Statutes Supplement, 1995; to change provisions relating to firearm and bow hunter education programs, hunting on farm and ranch land, and limited permits for hunting; to change and eliminate provisions relating to trout and habitat stamps; to provide for aquatic habitat stamps; to create a fund; to provide and change powers and duties relating to railroad rights-of-way and recreational trails; to eliminate a fund; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal section 37-217.01, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 37-104, Reissue Revised Statutes of Nebraska, is amended to read:

37-104. For the purpose of establishing and administering a mandatory firearm hunter safety training education program for persons born on or after January 1, 1977, under the age of sixteen years who hunt, take, or attempt to take by firearm any species of game, game birds, or game animals, the Game and Parks Commission shall ~~is hereby directed~~ to provide a program of firearm hunter safety education training leading to obtaining a certificate of competency successful completion in the safe handling of firearms and to shall locate and train volunteer ~~nonpaid~~ firearm hunter safety training education instructors. The program shall provide a training course having a minimum of ~~six ten~~ sixteen hours of instruction in the areas of safe firearms use, shooting and sighting techniques, hunter ethics, game identification, and conservation management. The commission shall ~~is further directed~~ to issue a firearm hunter safety education certificate of competency successful completion to persons having satisfactorily completed a firearm hunter safety training education course accredited by the commission Game and Parks Commission and to shall print, purchase, or otherwise acquire materials as necessary for effective program operation.

Commencing January 1, 1976; it shall be unlawful for any person born on or after January 1, 1977, persons under the age of sixteen years to hunt, take, or attempt to take by firearm any species of game, game birds, or game animals except:

(1) Residents of the State of Nebraska A person under the age of twelve years who are ~~is~~ accompanied by a person nineteen years of age or older having a valid hunting permit; and

(2) Residents of the State of Nebraska twelve years through fifteen years of age inclusive who have on their A person born on or after January 1, 1977, who has on his or her person a hunter safety education certificate of competency; successful completion issued by the person's state or province of residence or a firearm hunter education certificate issued by an accredited program recognized by the commission.

(3) Nonresidents who are accompanied by a person nineteen years of age or older having a valid hunting permit; and

(4) A nonresident who has on or about his person a valid hunter safety certificate issued by his state of residence or a hunter safety certificate issued by any recognized and accredited program as published by the commission.

Sec. 2. Section 37-105, Reissue Revised Statutes of Nebraska, is amended to read:

37-105. (1) The commission Game and Parks Commission shall establish and administer a bow hunter education program consisting of a minimum of six ten hours of instruction in the safe and ethical handling use of bow hunting equipment, the fundamentals of bow hunting, shooting and hunting techniques, and hunter ethics. When establishing such a program, the commission shall train volunteers as nonpaid bow hunter education training

instructors. The commission shall issue a certificate of competency successful completion to any person who satisfactorily completes a bow hunter education program established by the commission and shall print, purchase, or otherwise acquire materials necessary for effective program operation. The commission shall adopt and promulgate rules and regulations for carrying out and administering such program.

(2) On and after January 1, 1993, a person born on or after January 1, 1977, who is hunting antelope, deer, elk, or wild turkey with a bow and arrow may be issued a permit for bow and arrow hunting pursuant to section 37-215, 37-215.02, or 37-227 only if such person has completed the bow hunter education program and received the certificate of competency. Such permit may be issued to a nonresident applicant who possesses a valid certificate of competency or its equivalent issued by any state which has a program recognized and accredited by the commission shall have on his or her person a bow hunter education certificate of successful completion issued by his or her state or province of residence or a bow hunter education certificate issued by an accredited program recognized by the commission.

Sec. 3. Section 37-201, Revised Statutes Supplement, 1995, is amended to read:

37-201. For the purpose of supplying revenue for the propagation, importation, distribution, protection, and conservation of the wildlife of this state, including all wild animals, birds, fish, and all things pertaining thereto, every person sixteen years of age or older who hunts for game animals or game birds or takes bullfrogs or any other species defined as game or who angles for fish and every person sixteen years of age or older who engages in fur harvesting shall first pay a fee established by the commission pursuant to section 81-814.02 and obtain a permit except (1) the owner or his or her invitee who angles for fish in any body of water (a) which is entirely upon privately owned land, (b) which is entirely privately stocked, (c) which does not connect by inflow or outflow with other water outside such land, and (d) which is not operated on a commercial basis for profit and (2) any paraplegic who angles for fish in his or her privately owned body of water if he or she does not operate such body of water on a commercial basis for profit.

Any bona fide farmer or rancher as defined in section 37-215-03 person who owns or operates farm or ranch land and who actually resides on a portion of such farm or ranch land, together with members of his or her immediate family also residing on such land, may hunt, take, and possess, within duly established season bag and possession limits, upland game and all game except migratory waterfowl, shore birds, elk, deer, antelope, and wild turkey without paying a fee and without obtaining a hunting permit as required in this section and section 37-213 or a habitat stamp as required in sections 37-216.01 to 37-216.09. For purposes of this exemption, immediate family shall mean and be limited to husband and wife and their children and upland game shall mean and be limited to cottontail rabbits, squirrels, grouse, partridges, pheasants, prairie chickens, and quail. Such exemption shall only apply to hunting done on land owned or leased by the bona fide farmer or rancher operated by such person and shall not apply when hunting on the lands land of other persons. The commission may by rule and regulation require a farmer or rancher hunting under the provisions of this section person hunting without a permit claiming to come under this exemption to sign a statement presented by a conservation officer which states that such farmer or rancher is a bona fide farmer or rancher as defined in section 37-215-03 of the land upon which he or she is hunting facts which verify that the person comes within this exemption.

A violation of this section shall be a Class IV misdemeanor.

Any farmer or rancher owning or operating a farm or ranch may destroy or have destroyed any predator preying on livestock or poultry or causing other agricultural depredation on lands land owned or controlled by him or her without a permit issued by the commission. This section shall not be construed to allow such farmer or rancher to destroy or have destroyed species which are protected by the provisions of Chapter 37, article 3, the Nongame and Endangered Species Conservation Act, the federal Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 to 1544, the federal Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 to 667d, the federal Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668 to 668d, the federal Migratory Bird Treaty Act, as amended, 16 U.S.C. 703 to 718j, or rules and regulations adopted and promulgated pursuant to such article and acts.

Sec. 4. Section 37-202.02, Reissue Revised Statutes of Nebraska, is amended to read:

37-202.02. Lifetime hunting, fishing, or combination hunting and fishing licenses shall not allow fur harvesting or the hunting of deer, antelope, turkey, or other hunting or fishing done under authority of any

special permit. The holder of a lifetime permit shall be required to purchase any stamp which the holder of a comparable annual license is required to purchase license is required to purchase habitat stamps pursuant to section 37-216.01 but is not required to purchase aquatic habitat stamps pursuant to such section.

Sec. 5. Section 37-213, Reissue Revised Statutes of Nebraska, is amended to read:

37-213. (1) Unless holding a permit as required in the Game Law, it shall be unlawful:

(a) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to engage in fur harvesting or possess any fur-bearing animal or raw fur, except that a person may possess a fur-bearing animal or raw fur for up to ten days after expiration of a valid permit;

(b) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to hunt for, kill, shoot at, pursue, take, or possess any kind of game birds, game animals, or crows;

(c) For any person who is sixteen years of age or older to hunt or take or attempt to hunt or take any migratory waterfowl without first obtaining and affixing to his or her hunting permit a federal migratory bird hunting stamp. All such stamps affixed to hunting permits shall be signed by the holder of the hunting permit. Migratory waterfowl shall mean any ducks, geese, coots, or brant upon which an open season has been established by the commission; or

(d) For any person who is sixteen years of age or older to take, angle for, or attempt to take any kind of fish, bullfrog, snapping turtle, tiger salamander, mussel, or minnow from the waters of this state or possess the same, except that (i) the owner or invitee of the owner of any body of water which is located entirely upon privately owned land, which is entirely privately stocked, which does not connect by inflow or outflow with other water outside such land, and which is not operated on a commercial basis for profit and (ii) any paraplegic who angles for fish in his or her privately owned body of water if he or she does not operate such body of water on a commercial basis for profit shall not be required to hold a permit before fishing from or possessing fish or minnows taken from such waters.

(2) No fishing permit shall be required for fishing in any duly licensed commercial put-and-take fishery operating under rules and regulations adopted and promulgated by the commission. The annual fee for licensing such commercial put-and-take fishery shall be not less than fifty dollars and not more than sixty-five dollars per year, as established by the commission pursuant to section 81-814.02, payable in advance, and no person shall operate such an establishment without first obtaining such permit from the commission. Before issuing such permit the commission shall investigate each such establishment annually and be satisfied that the same is a bona fide commercial put-and-take fishery operating within all applicable state and federal laws.

(3) It shall be unlawful for a nonresident to hunt for, kill, shoot at, pursue, take, or possess any kind of game birds or game animals, mussel, turtle, or amphibian, to angle for or take or attempt to angle for or take any kind of fish, or to harvest fur or attempt to harvest fur while in the possession of a resident permit illegally obtained.

(4) It shall be unlawful for anyone to do or attempt to do any other thing for which a permit is required by the Game Law without first obtaining such permit and paying the fee required.

(5) During any season which permits the taking of deer with rifles using center-fire cartridges, wild animals other than deer may be hunted only with a shotgun, .22 rimfire rifle, or .22 rimfire handgun, except that this provision shall not apply to a holder of a valid deer permit or a limited deer permit under section 37-215.03. bona fide farmer or rancher who owns, leases, or resides upon farm or ranch land or a member of the immediate family of such farmer or rancher, while hunting on such farm or ranch land.

(6) Except as provided in sections 37-204 and 37-209, it shall be unlawful for any nonresident to trap or attempt to trap or to harvest fur or attempt to harvest fur from any wild mammal.

(7)(a) Any person violating this section shall be guilty of a Class II misdemeanor and shall be fined at least forty dollars.

(b) If the offense is failure to hold a hunting, fishing, fur-harvesting, deer, turkey, or antelope permit as required, unless issuance of the required permit is restricted so that permits are not available, the court shall require the offender to purchase the required permit and exhibit the permit to the court.

Sec. 6. Section 37-215, Revised Statutes Supplement, 1995, is

amended to read:

37-215. (1)(a) The commission may issue permits for the hunting and killing of deer and prescribe and establish regulations and limitations for the hunting, killing, transportation, and possession of deer. The commission may specify by regulation the information to be required on applications for such permits. Regulations and limitations for the hunting, killing, transportation, and possession of deer may include, but not be limited to, regulations and limitations as to the type, caliber, and other specifications of firearms and ammunition used and specifications for bows and arrows used. Such regulations and limitations may further specify and limit the method of hunting deer and may provide for dividing the state into management units or areas, and the commission may enact different deer harvest regulations for the different management units pertaining to sex, species, and age of the deer harvested.

(b) The number of such permits may be limited, as provided by the rules and regulations of the commission, and except as provided in section 37-215.04 the permits shall be disposed of in an impartial manner. Whenever the commission deems it advisable to limit the number of permits issued for any or all management units, the commission shall, by rules and regulations, determine who shall be eligible to apply for such permits. In establishing eligibility, the commission shall give preference to persons who did not receive a permit during the previous year or years.

(c) Such permits may be issued to allow killing of deer in the Nebraska National Forest and other game reserves and such other areas in the State of Nebraska as the commission may designate whenever the commission deems that permitting such killing will not be detrimental to the proper preservation of wildlife in Nebraska in such forest, reserves, or areas.

(d) The commission shall, pursuant to section 81-814.02, establish and charge a fee of not less than twenty dollars and not more than twenty-five dollars for residents and not less than one hundred fifty dollars and not more than two hundred dollars for nonresidents for each permit issued under this subsection.

(e) The commission may issue nonresident permits only after a reasonable period has first been provided solely for issuance of resident permits, and if the commission issues nonresident permits, the issuance of resident permits shall continue until permit quotas have been filled or a reasonable cutoff date reached. No permit shall be issued until after a reasonable period for making application, as established by the commission, has expired. When more valid applications are received for any management unit than there are permits available, such permits shall be allocated on the basis of a public drawing. All valid applications received during the predetermined application period shall be considered equally in any such public drawing without regard to time of receipt of such applications by the commission.

(f) No person shall be issued a permit to kill deer, antelope, or elk unless such person is at least twelve years of age, except that any person who is twelve through fifteen years of age shall only hunt deer, antelope, or elk when accompanied by a person twenty-one years of age or over.

(2) The commission may issue permits for the hunting and killing of antelope and may establish separate and, when necessary, different regulations therefor within the limitations prescribed in subsection (1) of this section for the taking of deer. The commission shall, pursuant to section 81-814.02, establish and charge a fee of not less than twenty dollars and not more than twenty-five dollars for residents and not less than one hundred dollars and not more than one hundred thirty dollars for nonresidents for each permit issued under this subsection. The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in subsection (1) of this section shall also apply to the distribution of antelope permits.

(3) The commission may issue permits for the hunting and killing of elk and may establish separate and, when necessary, different regulations therefor within the limitations prescribed in subsection (1) of this section for the taking of deer. Permits to hunt and kill elk issued pursuant to this subsection shall not be issued to nonresidents. The commission shall, pursuant to section 81-814.02, establish and charge a nonrefundable application fee of not less than five dollars and not more than seven dollars and a fee of not less than one hundred dollars and not more than one hundred thirty dollars for each elk permit issued. A person may obtain only one elk permit in his or her lifetime, except that an applicant for a limited permit to hunt elk pursuant to section 37-215.03, may obtain such limited permit once every five years. The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for

permits as described in subsection (1) of this section shall also apply to elk permits.

(4)(a) Subject to rules and regulations adopted and promulgated by the commission, the secretary of the commission may designate special deer depredation seasons by executive order. The secretary may designate a depredation season whenever he or she determines that deer are causing excessive property damage. The secretary shall specify the number of permits to be issued, shooting hours, the length of the depredation season, and the geographic area in which hunting will be permitted. Each such permit shall give the holder the right to take one deer. Hunting during a special depredation season shall be limited to residents and shall be restricted to firearms which are permissible for use during the regular deer season.

(b) The depredation season may commence not less than five days after the first public announcement that the depredation season has been established. Permits shall be issued beginning not less than three days after the first public announcement of the depredation season and shall be issued in an impartial manner at a location determined by the secretary. The commission shall, pursuant to section 81-814.02, establish and charge a fee of not less than twenty dollars and not more than twenty-five dollars for a special depredation season permit. Fifty percent of the fee shall be paid by the commission to a landowner or operator within the designated area upon satisfactory proof a deer was killed upon his or her farm or ranch during the special depredation season. Receipt of a depredation season permit shall not in any way affect a person's eligibility for a regular season permit.

Sec. 7. Section 37-215.03, Reissue Revised Statutes of Nebraska, is amended to read:

37-215.03. (1) ~~Except as provided in subsection (4) of this section, (a) a bona fide farmer or rancher a Nebraska resident who owns or leases eighty acres or more of farm or ranch land and actually resides on such land or is the owner-operator of such land for agricultural purposes or (b) a member of the such person's immediate family of such farmer or rancher also residing on such land or in the same household as the owner-operator may make application may apply for a limited permit to kill deer, antelope, elk, or wild turkey, or elk permit. The limited permit is valid during the predetermined period established by the commission pursuant to section 37-215 or 37-227. To qualify for a limited elk permit the farm or ranch land of the applicant must be within an area designated as an elk zone by the commission in its regulations. Only one limited permit for each species shall be issued annually for the farm or ranch land described in the application, except that both a spring and a fall turkey permit may be issued. Upon receipt of an application in proper form as prescribed by the commission, the commission may issue a limited permit which shall be restricted to the killing of restrict (a) the limited deer, antelope, elk, or wild turkey only on permit to hunting only on the farm or ranch lands land included in the application and shall not apply to the land of other persons and (b) the limited elk permit to hunting on the entire elk zone of which the farm or ranch land included in the application is a part. For purposes of this section, immediate family shall mean and be limited to husband and wife and their children. The 7 and all the conditions applicable to permits issued pursuant to section 37-215 or 37-227, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may adopt regulations for species harvest allocation pertaining to the sex and age of the species harvested which are different for this permit than for other hunting permits. Only one such permit for each species shall be issued annually for each farm or ranch.~~

(2) Except as provided in subsection (3) of this section, receipt of a limited permit or a permit issued pursuant to section 37-215 or 37-227 for any one-year or open season shall not bar receipt of a limited permit in any subsequent year or for any subsequent open season.

(3) A limited elk permit to kill elk issued pursuant to this section shall not be issued to any applicant more than once every five three years.

(4) For purposes of this section, bona fide farmer or rancher shall mean any person who materially participates in the business of farming or ranching and farming or ranching shall mean the cultivation of the soil or the harvesting of any agricultural or horticultural commodity, including, but not limited to, raising, shearing, feeding, or caring for livestock animals, for the production of income. In the case of an owner or tenant of land who makes an arrangement with another person or persons with respect to the farming or ranching of land which is owned or leased by the owner or tenant, material participation shall mean that the owner or tenant (a) furnishes a substantial portion of the machinery, implements, and livestock used in the production of the commodities or (b) assumes financial responsibility for a substantial part of the expense involved in the production of the commodities.

~~(5) The fee for a limited permit to hunt elk shall be one-fifth the fee for the regular permit to hunt elk. The fee for a limited permit to hunt deer, antelope, or wild turkey shall be one-half the fee for the regular permit for these species. shall be not less than fifty dollars and not more than sixty-five dollars; for a limited permit to hunt deer or antelope shall be not less than ten dollars and not more than fifteen dollars; and for a limited permit to hunt wild turkey shall be not less than seven dollars and fifty cents and not more than ten dollars; as established by the commission pursuant to section 81-814.02.~~

~~(6) (5) The commission may by rule and regulation prescribe forms to be filled out by the applicant for a limited permit as prescribed in this section to determine whether the applicant is a bona fide farmer or rancher Nebraska resident and is the owner or lessee of the described property or is a member of the family or household of such person. The applicant shall be a bona fide farmer or rancher with respect to each tract or parcel of land upon which the applicant proposes to harvest deer, antelope, elk, or wild turkey.~~

~~(7) No limited permit shall be issued under this section to a nonresident.~~

Sec. 8. Section 37-215.08, Reissue Revised Statutes of Nebraska, is amended to read:

37-215.08. The issuance of limited antelope hunting permits pursuant to section 37-215.03 in any management unit shall not exceed twenty percent of the regular permits authorized for such antelope management unit. The issuance of limited elk hunting permits pursuant to section 37-215.03 in any management unit shall not exceed thirty fifty percent of the regular permits authorized for such elk management unit.

Sec. 9. Section 37-216.01, Reissue Revised Statutes of Nebraska, is amended to read:

37-216.01. (1) Except as provided in subsection (2) of this section:

(a) ~~No~~ resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall take, hunt, kill, harvest, or possess any game bird, upland game bird, game animal, or fur-bearing animal unless, at the time of such taking, hunting, killing, harvesting, or possessing, such person carries on or about his or her person an unexpired habitat stamp validated by his or her signature in ink across the face of the stamp prior to the time of taking, hunting, killing, harvesting, or possessing such bird or animal; and

(b) ~~No resident or nonresident of Nebraska eighteen years of age or older shall take, hunt, fish, catch, kill, harvest, or possess any aquatic organism requiring a Nebraska fishing permit, including any fish, bullfrog, snapping turtle, tiger salamander, or mussel unless, at the time of such taking, hunting, fishing, catching, killing, harvesting, or possessing, such person carries on or about his or her person an unexpired aquatic habitat stamp validated by his or her signature in ink across the face of the stamp prior to the time of taking, hunting, fishing, catching, killing, harvesting, or possessing a fish, bullfrog, snapping turtle, tiger salamander, or mussel.~~

(2) ~~Habitat stamps are not required for holders of limited permits issued under section 37-215.03. Aquatic habitat stamps are not required when a fishing permit is not required or for holders of lifetime fishing licenses or lifetime combination hunting and fishing licenses.~~

(3) Any person to whom a stamp has been issued shall, immediately upon request, exhibit the stamp to any officer. Any person taking, hunting, fishing, catching, killing, harvesting, or possessing any game bird, upland game bird, game animal, or fur-bearing animal or aquatic organism requiring a fishing permit in this state without such a the appropriate stamp attached to a valid hunting or fur-harvesting permit or fishing permit and not actually on or about his or her person shall be deemed to be without such stamp. Such a habitat stamp shall be issued upon the payment of a fee of not less than ten dollars and not more than fifteen dollars per stamp. ~~as established by the~~ An aquatic habitat stamp shall be issued upon the payment of a fee of not less than five and not more than six dollars and fifty cents per stamp. The commission shall establish the fees pursuant to section 81-814.02.

~~(2) Subsection (1) of this section shall not apply to limited permits issued pursuant to section 37-215.03.~~

Sec. 10. Section 37-216.02, Reissue Revised Statutes of Nebraska, is amended to read:

37-216.02. The habitat stamp or aquatic habitat stamp, provided for required by section 37-216.01, and the trout stamp, provided for in section 37-217.01, shall is not be transferable. Such stamps shall expire and expires at midnight on December 31 of the year in which issued.

Sec. 11. Section 37-216.03, Reissue Revised Statutes of Nebraska,

is amended to read:

37-216.03. Any stamp, issued under the provisions of sections 37-216.01 to 37-216.09 and ~~37-217.01~~, shall be is subject to revocation by the Game and Parks Commission at the same time and for the same reasons that permits are subject to revocation, as provided for in section 37-207.

Sec. 12. Section 37-216.04, Reissue Revised Statutes of Nebraska, is amended to read:

37-216.04. It shall be unlawful: (1) For any person, holding a stamp under the provisions of sections 37-216.01 to 37-216.09, or section 37-217.01, to lend or transfer the stamp to another person or for any person to borrow or use the stamp of another; (2) for any person to (a) procure a stamp under an assumed name, (b) falsely state the place of his or her legal residence in procuring the stamp, or (c) make any other false statement in procuring the stamp; (3) for any person to knowingly issue or aid in securing a stamp under the provisions of sections 37-216.01 to 37-216.09 or section 37-217.01 for any person not legally entitled thereto; (4) for any person disqualified for a stamp to take, hunt, fish, catch, kill, harvest, or possess a fish, bullfrog, snapping turtle, tiger salamander, or mussel kill or possess trout or to hunt game birds, upland game birds, game animals, or fur-bearing animals with or without a stamp during any period when such right has been forfeited or for which his or her stamp has been revoked by the Game and Parks Commission; or (5) for anyone to take, hunt, fish, catch, kill, harvest, or possess a fish, bullfrog, snapping turtle, tiger salamander, or mussel kill or possess trout or hunt game birds, upland game birds, game animals, or fur-bearing animals without a permit as required by section 37-201 and the appropriate stamp attached thereto. Any person violating any of the provisions of sections 37-216.01 to 37-216.09 or section 37-217.01 shall be guilty of a Class V misdemeanor and the court shall require the offender to purchase the required stamp, and any stamp obtained or used in violation of sections 37-216.01 to 37-216.09 or section 37-217.01 shall be confiscated by the court.

It shall be an affirmative defense to prosecution for any violation of sections 37-216.01 to 37-216.09 or section 37-217.01 for which possession is an element of the offense that such possession was not the result of effort or determination or that the actor was unaware of his or her physical possession or control for a sufficient period to have been able to terminate such possession or control.

Sec. 13. Section 37-216.05, Reissue Revised Statutes of Nebraska, is amended to read:

37-216.05. Habitat stamps and aquatic habitat stamps and trout stamps shall be issued by the Game and Parks Commission. They may be procured from the secretary thereof or from such other persons, firms, and corporations as may be designated by the commission to sell the stamps and to collect the fees therefor.

Sec. 14. Section 37-216.06, Reissue Revised Statutes of Nebraska, is amended to read:

37-216.06. Any person, firm, or corporation, authorized to sell the stamps, as provided by under sections 37-216.01 to 37-216.09 or section 37-217.01, and collect the fees therefor, shall remit the fees for the stamps monthly to the secretary of the Game and Parks Commission. All remittances shall be upon a form to be supplied by the commission and a duplicate copy shall be retained by the persons, firms, or corporations authorized by the commission to sell the stamps.

Sec. 15. Section 37-216.07, Reissue Revised Statutes of Nebraska, is amended to read:

37-216.07. (1) The secretary of the Game and Parks Commission shall deposit remit all money received by him or her from the sale of habitat stamps, or from others authorized to sell such habitat stamps, with to the State Treasurer and shall take a receipt from him or her therefor. The State Treasurer shall place the funds so received in for credit to the Nebraska Habitat Fund. The Nebraska Habitat Fund is created, which is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. No expenditure shall be made from the Nebraska Habitat Fund until the Game and Parks Commission commission has presented a habitat plan to the Committee on Appropriations of the Legislature for its approval.

(2) The secretary of the commission shall remit all money received by him or her from the sale of aquatic habitat stamps, or from others authorized to sell aquatic habitat stamps, to the State Treasurer for credit to the Nebraska Aquatic Habitat Fund. The Nebraska Aquatic Habitat Fund is created. Any money in the fund available for investment shall be invested by

the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. No expenditure shall be made from the Nebraska Aquatic Habitat Fund until the commission has presented a habitat plan to the Committee on Appropriations and the Committee on Natural Resources of the Legislature for their approval. The secretary of the Game and Parks Commission shall deposit all money received from the sale of trout stamps with the State Treasurer and shall take a receipt from him or her therefor. The Treasurer shall place the funds so received in the State Game Fund. The Game and Parks Commission shall use the revenue derived from the sale of trout stamps for trout production, distribution, and management.

(3) The secretary of the commission and any county clerk or public official designated to sell habitat stamps or aquatic habitat or trout stamps shall be liable upon their official bonds for failure to pay remit the money from the sale of the stamps, as required by sections 37-216.01 to 37-216.09, or section 37-217-01, coming into their hands. Any other person, firm, or corporation who shall receive receives stamp fees, under the provisions of sections 37-216-01 to 37-216-09 or section 37-217-01, or the rules of the commission, and who shall fail fails to pay over remit the same to the commission in accordance with its rules and such sections 37-216-01 to 37-216-09 or section 37-217-01 and, after demand is made for the same, shall be liable to suit by the commission in double the amount of the funds wrongfully withheld and shall further be liable criminally for embezzlement.

Sec. 16. Section 37-216.08, Reissue Revised Statutes of Nebraska, is amended to read:

37-216.08. (1) All money received from the sale of habitat stamps, as provided by sections 37-216.01 to 37-216.09, shall be administered by the Game and Parks Commission for the acquisition on a willing-seller willing-buyer basis only, leasing, taking of easements, development, management, and enhancement of wildlife lands and habitat areas. Such funds may be used in whole or in part for the matching of federal funds.

(2) All money received from the sale of aquatic habitat stamps, as provided by sections 37-216.01 to 37-216.09, shall be administered by the commission and shall be used first for the maintenance and restoration of existing aquatic habitat, if maintenance and restoration is practicable, and second for the enhancement of existing aquatic habitat. Such funds may be used in whole or in part for the matching of federal funds.

Sec. 17. Section 37-216.09, Reissue Revised Statutes of Nebraska, is amended to read:

37-216.09. Any person who shall violate violates any provision of sections 37-216.01 to 37-216.09 or section 37-217-01 or who shall violate or fail violates or fails to comply with any regulation thereunder shall be guilty of a Class V misdemeanor.

It shall be an affirmative defense to prosecution for any violation of sections 37-216.01 to 37-216.09 or section 37-217-01 for which possession is an element of the offense that such possession was not the result of effort or determination or that the actor was unaware of his or her physical possession or control for a sufficient period to have been able to terminate such possession or control.

Sec. 18. (1) Pursuant to the National Trails System Act, and with the consent of the Governor pursuant to section 81-805, the Game and Parks Commission may acquire by gift, devise, or purchase all or any part of a railroad right-of-way in the state proposed to be abandoned for interim trail use. The commission, pursuant to the National Trails System Act, shall hold the right-of-way for one or more of the following uses:

- (a) To provide a state recreational trail open to the public;
- (b) To preserve wildlife habitat;
- (c) To provide a conservation, communications, utilities, and transportation corridor; and
- (d) Other uses approved by the commission.

(2) The right-of-way may be acquired only if the State of Nebraska is reasonably protected in a manner satisfactory to the commission for the costs of remedial action and environmental cleanup for conditions arising prior to conveyance to the state and the title is free and clear of all liens and encumbrances.

(3) The commission may use funds available by gift, appropriation, the Trail Development Assistance Fund, and other appropriate cash funds for uses consistent with those stated in this section and sections 37-1503 and 81-805.

(4) As long as the integrity of the right-of-way as an interim recreational trail and future rail use is not disturbed, the commission may lease and grant easement rights on the right-of-way. Any lease or use allowed shall be subject to all prescriptions of the National Trails System Act. All

revenue collected from such leases shall be remitted to the State Treasurer for credit to the Trail Development Assistance Fund pursuant to sections 37-1503 and 37-1504.

(5) The commission shall continue to allow all crossings across the right-of-way acquired at the time of acquisition on substantially the same terms and conditions as they existed prior to acquisition unless otherwise agreed between the commission and interested parties.

(6) The acquisition of the right-of-way shall be subject to the restoration of rail service. If a proposal for the operation of a railroad is approved by the Nebraska Railway Council and the Interstate Commerce Commission, the right-of-way shall be sold for the market value of the land and improvements and conditioned upon (a) the operation of a railroad along the right-of-way, (b) the grant of an easement to the commission for recreational trail use adjacent to the railroad if such use is feasible, and (c) the return of the right-of-way to the commission if rail service is discontinued.

Sec. 19. Section 81-805, Reissue Revised Statutes of Nebraska, is amended to read:

81-805. Except as otherwise provided in this section, 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 such 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 the 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 situated outside organized municipalities, except as provided in section 90-404, for additional state parks, hatcheries, recreation grounds, recreational trails, 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. For these purposes, the commission may enter into appropriate contracts, leases, or lease-purchase agreements.

The commission, with the consent of the Governor, may 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, which fund is hereby created, and shall be deposited, 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 Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The commission may 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 may locate and designate any or all of such lands or areas, or parts thereof and take such action as may tend to preserve or conserve them. The commission shall publish such informational material as it deems necessary and may, at its discretion, charge appropriate fees therefor.

The commission may adopt and promulgate rules and regulations, under the procedures set forth in the Administrative Procedure Act, governing the administration and use of all property, real and personal, under its ownership or control, and the commission shall adopt and promulgate rules and regulations it deems necessary to administer the following activities and facilities:

(1) The commission may adopt and promulgate rules and regulations to designate camping areas and permit camping 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 when appropriate, protection of property, and zoning of activities. Such rules and regulations shall be posted on appropriate signs at the areas.

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 authorized by this subdivision 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 and promulgate rules and regulations permitting any type of fire, including the smoking of tobacco in any form, and providing for the size, location, and conditions under which a fire may be established on any area under its ownership or control. The commission may enact rules and 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 and promulgate rules and 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. Any person who lights any type of fire, uses any fireworks, smokes tobacco in any form, or leaves 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 has given permission, which permission has not been revoked, to such type of fire, to such 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 and promulgate rules and regulations permitting pets, domestic animals, and poultry to be brought upon or possessed, grazed, maintained, or run at large on any area or portion of any area under its ownership or control. Any person who brings, possesses, grazes, maintains, or permits to run at large his or her pets, domestic animals, or poultry on any area or portion of any area under the ownership or control of the commission, unless the commission has permitted such bringing, 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 may ~~enact~~ adopt and promulgate rules and 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 may enact special rules and regulations permitting trapping and other forms of fur harvesting on any such area or areas. Any person who, without the permission of the commission, hunts, fishes, traps, harvests fur, or uses 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 may ~~enact~~ adopt and promulgate rules and regulations permitting swimming, bathing, boating, wading, waterskiing, 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, waterskiing, wading, 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, waterskiing, boating, bathing, or wading areas, which regulations and conditions shall be posted at such areas. Any person who swims, bathes, boats, wades, waterskis, or uses any floatation device on all or any portion of any area under the ownership or control of the commission, unless the commission has 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~~ adopt and promulgate rules and 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. Any person who, without the permission of the commission, constructs or installs any privately owned structure or who uses or removes any public real or personal property, on any area under the ownership or control of the

commission, or who enters or remains 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 abandons 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 may enact adopt and promulgate rules and regulations permitting the sale, trade, or vending of any goods, products, or commodities of any type in any area under its ownership or control. Any person who sells, trades, or vends 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; and

(9) When the permission of the commission is required as a prerequisite to any activity set out in this section, such permission shall be established by resolution of the commission. The 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 resolution 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 60-680 and 60-6,190. Any law enforcement official, including any conservation officer or deputy conservation officer, may enforce the provisions of this section and the rules and regulations established under the authority of sections 60-680 and 60-6,190. When 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 violation as set forth in this section or rules and regulations established under the authority of sections 60-680 and 60-6,190 shall be guilty of a Class V misdemeanor.

The commission may 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 may further 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 may 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. 20. Section 81-815.60, Reissue Revised Statutes of Nebraska, is amended to read:

81-815.60. If any portions of the right-of-way accepted under section 81-815.59 or section 18 of this act are not immediately developed as a recreational trail or for habitat, the Game and Parks Commission shall use its best efforts to lease undeveloped portions of the right-of-way, with first priority to adjacent landowners, for the purposes stated in such section 81-815.59 or section 18 of this act or for other purposes which are not inconsistent with the purposes of sections 81-815.58 to 81-815.63 or section 18 of this act until such time as a recreational trail or habitat may be developed. Any lease or use allowed shall be subject to all prescriptions of the National Trails System Act.

Sec. 21. Section 81-2801, Reissue Revised Statutes of Nebraska, is amended to read:

81-2801. No agency of this state shall purchase, lease, or acquire real estate from any railroad over a right-of-way outside of incorporated cities and villages which has been permitted to be abandoned by a federal agency without prior approval by the Legislature of such purchase, lease, or acquisition, except that (1) the Game and Parks Commission may acquire all or

any part of a railroad right-of-way proposed to be abandoned for interim trail use pursuant to section 18 of this act and section 81-805 and (2) the Department of Roads may acquire such real estate solely for the purpose of highway construction or improvements when such right-of-way is adjacent to an existing state highway or when such right-of-way is needed to maintain existing improvements that have previously been located upon such right-of-way through agreements, easements, or leases. Real estate acquired by the department pursuant to this section which is in excess of that needed or is deemed no longer necessary shall be disposed of as provided for in section 39-1325.

Sec. 22. Sections 1, 2, 4, 9 to 17, 23, and 25 of this act become operative on January 1, 1997. The other sections of this act become operative on their effective date.

Sec. 23. Original sections 37-104, 37-105, 37-202.02, and 37-216.01 to 37-216.09, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 24. Original sections 37-213, 37-215.03, 37-215.08, 81-805, 81-815.60, and 81-2801, Reissue Revised Statutes of Nebraska, and sections 37-201 and 37-215, Revised Statutes Supplement, 1995, are repealed.

Sec. 25. The following section is outright repealed: Section 37-217.01, Reissue Revised Statutes of Nebraska.