

LEGISLATIVE BILL 174

Approved by the Governor May 9, 1983

Introduced by Constitutional Revision & Recreation Committee, Lahedz, 5, Chairperson; Sieck, 24; Jacobson, 33; Rupp, 22; Abboud, 12; Fowler, 27

AN ACT to amend sections 37-216.02 to 37-216.09, Reissue Revised Statutes of Nebraska, 1943, relating to game and parks; to establish a requirement for trout stamps; to provide a fee; to provide powers and duties for the Game and Parks Commission; to provide penalties; to provide an affirmative defense; to provide an operative date; and to repeal the original sections.

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

Section 1. (1) Except as provided in subsection (2) of this section, no resident or nonresident individual sixteen years of age or older shall kill or possess any trout taken in this state unless, at the time of such killing or possessing, such individual carries on his or her person an unexpired trout stamp, validated by his or her signature in ink across the face of the stamp prior to the time of killing or possessing such trout. Such stamp shall be issued upon the payment of five dollars as provided by the rules and regulations of the Game and Parks Commission.

(2) The requirements of subsection (1) of this section shall not apply (a) to any special public use areas operated by the Game and Parks Commission for put and take trout fishing for which a fee is charged, or (b) in those cases in which a fishing permit is not required.

Sec. 2. That section 37-216.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-216.02. The habitat stamp, provided for by section 37-216.01, and the trout stamp, provided for in section 1 of this act, shall not be transferable. Such stamps shall expire at midnight on December 31 of the year in which issued.

Sec. 3. That section 37-216.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-216.03. Any stamp, issued under the provisions of sections 37-216.01 to 37-216.09 and section 1 of this act, shall be 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. 4. That section 37-216.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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 1 of this act, 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 1 of this act, for any person not legally entitled thereto; (4) for any person disqualified for a stamp to 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 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 1 of this act 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 1 of this act 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 1 of this act 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. 5. That section 37-216.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-216.05. 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. 6. That section 37-216.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-216.06. Any person, firm, or corporation, authorized to sell the stamps, as provided by sections 37-216.01 to 37-216.09 or section 1 of this act, 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. 7. That section 37-216.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(2) 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 State 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 such habitat or trout stamps shall be liable upon their official bonds for failure to pay the money from the sale of the stamps, as required by sections 37-216.01 to 37-216.09 or section 1 of this act, coming into their hands. Any other person, firm, or corporation who shall receive stamp fees, under the provisions of sections 37-216.01 to 37-216.09 or section 1 of this act, or the rules of the commission, and who shall fail to pay over the same to the commission in accordance with its rules and sections 37-216.01 to 37-216.09 or section 1 of this act 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. 8. That section 37-216.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-216.08. All money received from the sale of the 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.

Sec. 9. That section 37-216.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-216.09. Any person who shall violate any provision of sections 37-216.01 to 37-216.09 or section 1 of this act, or who shall violate or fail 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 1 of this act 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. 10. This act shall become operative on January 1, 1984.

Sec. 11. That original sections 37-216.02 to 37-216.09, Reissue Revised Statutes of Nebraska, 1943, are repealed.