

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 64

Introduced by Cornett, 45.

Read first time January 06, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to wildlife; to amend sections 37-202, 37-209.01,
2 37-210.01, 37-246, and 37-478, Reissue Revised Statutes
3 of Nebraska, and sections 29-818, 37-201, 37-477, 37-479,
4 and 37-481, Revised Statutes Cumulative Supplement, 2010;
5 to change provisions relating to seized property,
6 wildlife in captivity, and captive wildlife permits; to
7 define and redefine terms; to harmonize provisions; and
8 to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-818, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 29-818 (1) Except for wildlife, pet animals, or equines
4 as provided in subsection (2) of this section, property seized under
5 a search warrant or validly seized without a warrant shall be safely
6 kept by the officer seizing the same unless otherwise directed by the
7 judge or magistrate, and shall be so kept so long as necessary for
8 the purpose of being produced as evidence on any trial. Property
9 seized may not be taken from the officer having it in custody by
10 replevin or other writ so long as it is or may be required as
11 evidence in any trial, nor may it be so taken in any event where a
12 complaint has been filed in connection with which the property was or
13 may be used as evidence, and the court in which such complaint was
14 filed shall have exclusive jurisdiction for disposition of the
15 property or funds and to determine rights therein, including
16 questions respecting the title, possession, control, and disposition
17 thereof.

18 (2)(a) Any wildlife, pet animal, or equine seized under a
19 search warrant or validly seized without a warrant may be kept by the
20 officer seizing the same on the property of the person who owns,
21 keeps, harbors, maintains, or controls such ~~pet animal, or equine.~~

22 (b) When any wildlife, pet animal, or equine is seized or
23 held the court shall provide the person who owns, keeps, harbors,
24 maintains, or controls such ~~pet animal or equine~~ with notice that a
25 hearing will be had and specify the date, time, and place of such

1 hearing. Such notice shall be served by personal or residential
2 service or by certified mail. If such notice cannot be served by such
3 methods, service may be made by publication in the county where such
4 ~~pet animal or equine~~ was seized. Such publication shall be made after
5 application and order of the court. Unless otherwise determined and
6 ordered by the court, the date of such hearing shall be no later than
7 ten days after the seizure.

8 (c) At the hearing, the court shall determine the
9 disposition of the wildlife, pet animal, or equine, and if the court
10 determines that ~~any pet animal or equine~~ such animal shall not be
11 returned, the court shall order the person from whom ~~the pet animal~~
12 ~~or equine~~ such animal was seized to pay all expenses for the support
13 and maintenance of the ~~pet animal, or equine,~~ including expenses for
14 shelter, food, veterinary care, and board, necessitated by the
15 possession of the ~~pet animal, or equine.~~ At the hearing, the court
16 shall also consider the person's ability to pay for the expenses of
17 the ~~pet animal or equine~~ and the amount of such payments. Payments
18 shall be for a succeeding thirty-day period with the first payment
19 due on or before the tenth day following the hearing. Payments for
20 each subsequent succeeding thirty-day period, if any, shall be due on
21 or before the tenth day of such period.

22 (d) If a person becomes delinquent in his or her payments
23 for the expenses of the wildlife, pet animal, or equine, the court
24 shall hold a hearing to determine the disposition of the seized ~~pet~~
25 ~~animal, or equine.~~ Notice of such hearing shall be given to the

1 person who owns, keeps, harbors, maintains, or controls such ~~pet~~
2 animal ~~or equine~~ and to any lienholder or security interest holder of
3 record as provided in subdivision (b) of this subsection.

4 (e) An appeal may be entered within ten days after a
5 hearing under subdivision (c) or (d) of this subsection. Any person
6 filing an appeal shall post a bond sufficient to pay all costs of
7 care of the wildlife, pet animal, or equine for thirty days. Such
8 payment will be required for each succeeding thirty-day period until
9 the appeal is final.

10 (f) Should the person be found not guilty, all funds paid
11 for the expenses of the wildlife, pet animal, or equine shall be
12 returned to the person.

13 (g) For purposes of this subsection:

14 (i) Pet animal means any domestic dog, domestic cat, mini
15 pig, domestic rabbit, domestic ferret, domestic rodent, bird except a
16 bird raised as an agricultural animal and specifically excluding any
17 bird possessed under a license issued by the State of Nebraska or the
18 United States Fish and Wildlife Service, nonlethal aquarium fish,
19 nonlethal invertebrate, amphibian, turtle, nonvenomous snake that
20 will not grow to more than eight feet in length at maturity, or such
21 other animal as may be specified and for which a permit shall be
22 issued by an animal control authority after inspection and approval,
23 except that any animal forbidden to be sold, owned, or possessed by
24 federal or state law is not a pet animal; ~~and~~

25 (ii) Equine means a horse, pony, donkey, mule, hinny, or

1 llama; and -

2 (iii) Wildlife means animals that cannot be kept in
3 captivity without a permit under section 37-477.

4 (h) This section shall not preempt, and shall not be
5 construed to preempt, any ordinance of a city of the metropolitan
6 class.

7 Sec. 2. Section 37-201, Revised Statutes Cumulative
8 Supplement, 2010, is amended to read:

9 37-201 Sections 37-201 to 37-811 and sections 7 and 8 of
10 this act shall be known and may be cited as the Game Law.

11 Sec. 3. Section 37-202, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 37-202 For purposes of the Game Law, unless the context
14 otherwise requires, the definitions found in sections 37-203 to
15 37-247 and sections 7 and 8 of this act are used.

16 Sec. 4. Section 37-209.01, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 37-209.01 Captive, as it pertains to captive wildlife,
19 captive wild birds, ~~or~~ captive wild mammals, or captive wild reptiles
20 means the condition of captivity.

21 Sec. 5. Section 37-210.01, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 37-210.01 Captivity means a condition which limits or
24 restricts the free egress or free range of wild birds, wild mammals,
25 wild reptiles, or other wildlife by the use of fences, barriers, or

1 restraints.

2 Sec. 6. Section 37-246, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 37-246 Wild mammals means: ~~the species of mammals native~~
5 ~~to, migrating to or through, or having established free ranging~~
6 ~~populations in the State of Nebraska except the fallow deer, the~~
7 ~~house mouse, the Norway rat, the black rat, the feral domestic dog,~~
8 ~~and the feral domestic cat.~~

9 (1) Class Mammalia, Order Artiodactyls, including
10 hippopotamuses, giraffes, camels, and deer, but not including fallow
11 deer, cattle, swine, sheep, or goats;

12 (2) Class Mammalia, Order Carnivora:

13 (a) Family Felidae, including lions, tigers, cougars,
14 leopards, lynx, bobcats, ocelots, and servals, but not including
15 domestic cats and feral domestic cats;

16 (b) Family Canidae, including wolves, coyotes, foxes, and
17 jackals, but not including domestic dogs and feral domestic dogs;

18 (c) Family Ursidae, including all bears;

19 (d) Family Mustelidae, including weasels, skunks,
20 martins, and minks, but not including ferrets;

21 (e) Family Procyonidae, including raccoons and coatis;

22 (f) Family Hyaenidae, including hyenas; and

23 (g) Family Viverridae, including civets, genets,
24 mongooses, and binturongs;

25 (3) Class Mammalia, Order Edentatia, including anteaters,

1 armadillos, and sloths;

2 (4) Class Mammalia, Order Marsupialia, including
3 opossums, kangaroos, and wallabies, but not including sugar gliders;

4 (5) Class Mammalia, Order Perissodactyla, including
5 rhinoceroses, tapirs, but not including horses, donkeys, and mules;

6 (6) Class Mammalia, Order Primates, including lemurs,
7 monkeys, chimpanzees, and gorillas;

8 (7) Class Mammalia, Order Proboscidae, including
9 elephants;

10 (8) Class Mammalia, Order Rodentia, including squirrels,
11 beavers, porcupines, and prairie dogs, but not including house mice,
12 Norway rats, black rats, quinea pigs, rats, mice, gerbils, hamsters,
13 and degus; and

14 (9) Any other species of mammals native to, migrating to
15 or through, or having established free-ranging populations in the
16 state.

17 Sec. 7. Wild reptiles means:

18 (1) Class Reptilia, Order Squamata:

19 (a) Family Varanidae, only water monitors and crocodile
20 monitors;

21 (b) Family Iguanidae, only green iguanas and rock
22 iguanas;

23 (c) Family Boidae, all species whose adult length has the
24 potential to exceed eight feet;

25 (d) Family Pythonidae, all species whose adult length has

1 the potential to exceed eight feet;

2 (e) Family Colubridae, only boomslangs and African twig
3 snakes;

4 (f) Family Elapidae, all species, including coral snakes,
5 cobras, and mambas;

6 (g) Family Nactricidae, only keelback snakes; and

7 (h) Family Viperidae, all species, including copperheads,
8 cottonmouths, and rattlesnakes; and

9 (2) Class Reptilia, Order Crocodilia, all species,
10 including crocodiles, alligators, caimans, and gavials.

11 Sec. 8. Wildlife sanctuary means a nonprofit organization
12 as described in section 170(b)(1)(A)(vi) of the Internal Revenue Code
13 that operates a facility that is a place of refuge where abused,
14 neglected, unwanted, impounded, abandoned, orphaned, or displaced
15 wildlife are provided care for their lifetime or released back to
16 their natural habitat and is a facility with the following
17 characteristics:

18 (1) No activity that is not inherent to the animal's
19 nature, natural conduct, or the animal in its natural habitat is
20 conducted except as needed for routine animal husbandry;

21 (2) No commercial activity involving animals occurs
22 including, but not limited to, the sale of or trade in animals,
23 animal parts, animal by-products or animal offspring; the sale of
24 photographic opportunities involving animals; or the use of animals
25 for any type of entertainment purpose;

1 (3) No unescorted public visitations or direct contact
 2 between the public and the animals occurs; or

3 (4) No breeding of animals occurs in the facility.

4 Sec. 9. Section 37-477, Revised Statutes Cumulative
 5 Supplement, 2010, is amended to read:

6 37-477 (1) No person shall keep in captivity in this
 7 state, without first obtaining a permit to do so as provided by
 8 section 37-478 or 37-479, any:

9 (a) Wild ~~wild~~ birds; 7

10 (b) Wild ~~any wild~~ mammals; 7

11 (c) Wild reptiles;

12 (d) Nongame ~~any nongame~~ wildlife in need of conservation
 13 as determined by the commission under section 37-805; and

14 (e) Wildlife 7, ~~or any wildlife~~ determined to be an
 15 endangered or threatened species under the Endangered Species Act or
 16 section 37-806, ~~without first having obtained a permit to do so as~~
 17 provided by section 37-478 or 37-479.

18 ~~(2) Except as provided in subsection (3) of this section,~~
 19 ~~no person shall keep in captivity in this state any wolf, any skunk,~~
 20 ~~or any member of the families Felidae and Ursidae. This subsection~~
 21 ~~shall not apply to (a) the species Felis domesticus, (b) any zoo,~~
 22 ~~park, refuge, wildlife area, or nature center owned or operated by a~~
 23 ~~city, village, state, or federal agency or any zoo accredited by the~~
 24 ~~Association of Zoos and Aquariums or the Zoological Association of~~
 25 ~~America, or (c) any person who holds a captive wildlife permit issued~~

1 ~~pursuant to section 37-479 and who raises Canada Lynx (Lynx~~
2 ~~canadensis) or bobcats (Lynx rufus) solely for the purpose of~~
3 ~~producing furs for sale to individuals or businesses or for the~~
4 ~~purpose of producing breeding stock for sale to persons engaged in~~
5 ~~fur production.~~

6 ~~(3) Any person legally holding in captivity, on March 1,~~
7 ~~1986, any animal subject to the prohibition contained in subsection~~
8 ~~(2) of this section shall be allowed to keep the animal for the~~
9 ~~duration of its life. Such animal shall not be traded, sold, or~~
10 ~~otherwise disposed of without written permission from the commission.~~

11 (2) Any person holding wildlife in captivity prior to the
12 effective date of this act that was not required to have a permit
13 under this section prior to such date but on and after such date is
14 required to have a permit shall be allowed to keep the animal for the
15 duration of the animal's life if the person obtains a captive
16 wildlife auction permit or a captive wildlife permit for such animal
17 in accordance with section 37-478 or 37-479 within sixty days after
18 such date. Such animal shall not be traded, sold, or otherwise
19 disposed of without written permission from the commission.

20 ~~(4)-(3)~~ The commission shall adopt and promulgate rules
21 and regulations governing the purchase, possession, propagation,
22 sale, and barter of wild birds, wild mammals, wild reptiles, and
23 wildlife in captivity.

24 Sec. 10. Section 37-478, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 37-478 (1) To conduct an auction in this state of captive
2 wild birds, captive wild mammals, captive wild reptiles, or other
3 captive wildlife as specified in ~~subsection (1) of~~ section 37-477, a
4 person shall apply to the commission on a form prescribed by the
5 commission for a captive wildlife auction permit. An applicant for a
6 permit shall specify the dates of the auction and shall apply for a
7 permit for each auction to be held in the state. The application for
8 the permit shall include the applicant's social security number. The
9 fee for such permit shall be not more than sixty-five dollars, as
10 established by the commission pursuant to section 37-327. The
11 commission shall adopt and promulgate rules and regulations
12 specifying application requirements and procedures, reporting and
13 inspection requirements, and other requirements related to auction
14 activities.

15 (2) A permitholder shall not (a) take wild birds, wild
16 mammals, wild reptiles, or other wildlife from the wild in Nebraska
17 or (b) purchase ~~wild birds, wild mammals, or other wildlife~~ such
18 animals from any person other than the commission or a person
19 authorized to propagate and dispose of ~~wild birds, wild mammals, or~~
20 ~~other wildlife.~~ such animals. A permit under this section is not
21 required for an auction of domesticated cervine animals as defined in
22 section 54-701.03.

23 Sec. 11. Section 37-479, Revised Statutes Cumulative
24 Supplement, 2010, is amended to read:

25 37-479 ~~(1)~~ (1)(a) To purchase, possess, propagate, or

1 sell captive wild birds, captive wild mammals, captive wild reptiles,
2 or other captive wildlife as specified in ~~subsection (1) of section~~
3 37-477 or to sell parts thereof, except as provided in section
4 37-505, a person shall apply to the commission on a form prescribed
5 by the commission for a captive wildlife permit and meet the
6 requirements of this subsection. The commission shall adopt and
7 promulgate rules and regulations specifying application requirements
8 and procedures. The permit shall expire on December 31. The
9 application for the permit shall include the applicant's social
10 security number. The annual fee for such permit shall be not more
11 than thirty dollars, as established by the commission pursuant to
12 section 37-327.

13 (b) A holder of a captive wildlife permit shall maintain
14 liability insurance coverage in an amount of not less than two
15 hundred fifty thousand dollars for each occurrence for liability
16 damages for destruction of or damage to property and death or bodily
17 injury to a person caused by the wild animal. The permitholder shall
18 provide a copy of the policy for liability insurance to the
19 commission on an annual basis.

20 (c) The holder of a captive wildlife permit shall have
21 continuously posted and displayed at each possible entrance onto the
22 premises where a wild animal is kept a conspicuous sign, clearly
23 legible and easily readable, stating that a wild animal is on the
24 premises. In addition, the permitholder shall conspicuously display a
25 sign with a warning symbol that informs children of the presence of a

1 wild animal. The commission shall prescribe the exact content and
2 size of the signs.

3 (d) A holder of a captive wildlife permit shall report to
4 the commission by January 15 for the preceding calendar year on forms
5 provided by the commission. The commission shall adopt and promulgate
6 rules and regulations specifying the requirements for the reports.

7 (2) A permitholder shall not (a) take wild birds, wild
8 mammals, ~~wild reptiles, or other~~ wildlife from the wild in Nebraska
9 or (b) purchase ~~wild birds, wild mammals, or wildlife~~ such animals
10 from any person other than the commission or a person authorized to
11 propagate and dispose of ~~wild birds, wild mammals, or wildlife.~~ such
12 animals. A permit under this section is not required for possession
13 or production of domesticated cervine animals as defined in section
14 54-701.03.

15 (3)(a) If a captive wild bird, captive wild mammal,
16 captive wild reptile, or other captive wildlife specified in section
17 37-477 escapes, either intentionally or unintentionally, the owner or
18 possessor of the wild animal shall immediately contact a law
19 enforcement officer of the city or county where the wild animal was
20 kept to report the escape. The owner or possessor is liable for all
21 expenses associated with efforts to recapture the wild animal.

22 (b) No person shall intentionally release a captive wild
23 bird, captive wild mammal, captive wild reptile, or other captive
24 wildlife specified in section 37-477. If such an animal is
25 intentionally released the person releasing the wild animal is liable

1 for all expenses associated with efforts to recapture the wild
2 animal.

3 ~~(3)~~(4) It shall be unlawful to lure or entice wildlife
4 into a domesticated cervine animal facility for the purpose of
5 containing such wildlife. Any person violating this subsection shall
6 be guilty of a Class II misdemeanor and upon conviction shall be
7 fined at least one thousand dollars.

8 Sec. 12. Section 37-481, Revised Statutes Cumulative
9 Supplement, 2010, is amended to read:

10 37-481 Sections 37-477 to 37-480 shall not be construed
11 to require the obtaining of a permit for the purpose of keeping in
12 captivity wild birds, wild mammals, wild reptiles, or other wildlife
13 as specified in ~~subsection (1) of section 37-477~~ or for the purpose
14 of purchasing, possessing, propagating, selling, bartering, or
15 otherwise disposing of ~~any wild birds, wild mammals, or wildlife as~~
16 ~~specified in subsection (1) of section 37-477~~ such animals by (1) any
17 governmental agency or university research facility, zoo, park,
18 refuge, wildlife sanctuary, wildlife area, or nature center owned or
19 operated by a city, village, state, or federal agency or any zoo
20 accredited by the Association of Zoos and Aquariums or the Zoological
21 Association of America or (2) any circus licensed by the United
22 States Department of Agriculture.

23 Sec. 13. Original sections 37-202, 37-209.01, 37-210.01,
24 37-246, and 37-478, Reissue Revised Statutes of Nebraska, and
25 sections 29-818, 37-201, 37-477, 37-479, and 37-481, Revised Statutes

- 1 Cumulative Supplement, 2010, are repealed.