

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0150

HOUSE BILL NO. 1104

Introduced by: Representatives Gosch, Cronin, Hoffman, Jensen, Kopp, Novstrup (David), Pitts, Romkema, Sly, and Solum and Senators Olson (Russell), Brown, Gant, Howie, and Tieszen at the request of the Department of Game, Fish and Parks

1 FOR AN ACT ENTITLED, An Act to authorize a sentencing court to impose consecutive
2 revocations of hunting, fishing, or trapping privileges under certain conditions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 41-6-74.1 be amended to read as follows:

5 41-6-74.1. At the time of conviction for any one of the following offenses:

- 6 (1) Violation of any game and fish law punishable as a Class 1 misdemeanor;
- 7 (2) Violation of § 41-8-37, 41-9-1.2, or 41-8-17 except for a landowner, occupant, or
8 accompanying guests of the landowner or occupant on the owner's or occupant's land
9 or a person employed by the Department of Game, Fish and Parks in the performance
10 of the person's duty, or 41-12-12;
- 11 (3) Violation of any other statute or rule pertaining to fishing, hunting, or possessing
12 game or game fish without a license or during a closed season; or
- 13 (4) Taking or possessing in excess of the lawful daily or possession limit:
 - 14 (a) One or two paddlefish;



1 (b) Two or three turkeys;

2 (c) Four to six, inclusive, of any one game fish as regulated other than paddlefish;

3 or

4 (d) Four to six, inclusive, of any one small game animal as regulated;

5 the person's applicable hunting, fishing, or trapping privileges in South Dakota are automatically
6 revoked without further hearing for a period of one year following date of conviction. The
7 sentencing court may impose consecutive revocations of the person's hunting, fishing, or
8 trapping privileges if the person is convicted of two or more violations for which revocation of
9 the privileges is authorized under this title.

10 Section 2. That § 41-6-74.2 be amended to read as follows:

11 41-6-74.2. At the time of conviction for taking or possessing in excess of the lawful daily
12 or possession limit any of the following:

13 (1) Three or more paddlefish;

14 (2) Four or more turkeys;

15 (3) Seven or more of any one game fish as regulated other than paddlefish;

16 (4) Seven or more of any one small game animal as regulated; or

17 (5) Two or more big game animals, except turkeys;

18 the person's applicable hunting, fishing, or trapping privileges in South Dakota are automatically
19 revoked without further hearing for a period of three years following date of conviction. The
20 sentencing court may impose consecutive revocations of the person's hunting, fishing, or
21 trapping privileges if the person is convicted of two or more violations for which revocation of
22 the privileges is authorized under this title.

23 Section 3. That § 41-9-1.1 be amended to read as follows:

24 41-9-1.1. Except for controlled access facilities as defined in § 31-8-1, interstate highways,

1 unimproved section lines not commonly used as public rights-of-way, and highways within
2 parks or recreation areas or within or adjoining public shooting areas or game refuges posted
3 for restriction of an applicable use as hereinafter set forth by the Department of Game, Fish and
4 Parks, § 41-9-1 does not apply to fishing, trapping, or hunting on highways or other public
5 rights-of-way within this state that meet the requirements of § 41-9-1.3. For purposes of this
6 section, hunting on highways or other public rights-of-way includes:

- 7 (1) The shooting at or taking by legal methods of small game, except mourning dove,
8 that are located within the boundaries of the highway or public right-of-way;
- 9 (2) The shooting at or taking by legal methods of small game, except mourning dove,
10 that are in flight over private land if the small game has either originated from or has
11 taken flight from the highway or public right-of-way or if the small game is in the
12 process of flying over the highway or public right-of-way.

13 If subdivision (2) of this section is declared by an advisory opinion or adjudication of the
14 South Dakota Supreme Court to be a taking of private property requiring compensation,
15 subdivision (2) is void.

16 No person, except the adjoining landowner or any person receiving written permission from
17 the adjoining landowner, may use such highways or rights-of-way for the purposes of hunting
18 defined in this title within a six hundred sixty-foot safety zone surrounding an occupied
19 dwelling, a church, schoolhouse, or livestock. Neither the person discharging a firearm at small
20 game nor the small game being shot at may be within the safety zone. No person, except the
21 adjoining landowner or any person receiving written permission from the adjoining landowner,
22 may use such highways or rights-of-way for the purpose of trapping within six hundred sixty
23 feet of an occupied dwelling, church, or schoolhouse. A violation of this section is a Class 2
24 misdemeanor. If any person is convicted of knowingly discharging a firearm within six hundred

1 sixty feet of any occupied dwelling, church, or schoolhouse for which such distance has been
2 clearly and accurately marked and posted, the court shall, in addition to any other penalty,
3 revoke the person's hunting privileges for a period of one year from the date of conviction. The
4 sentencing court may order the revocation of hunting privileges authorized by this section to be
5 served consecutively with any other revocation of the person's hunting privileges imposed for
6 a violation for which the person is convicted and for which revocation of the privileges is
7 authorized under this title.

8 Section 4. That § 41-9-8 be amended to read as follows:

9 41-9-8. Any person who knowingly enters or remains on private property for the purpose
10 of hunting, fishing, or trapping, in violation of § 41-9-1 or 41-9-2, shall lose hunting, trapping,
11 or fishing privileges for one year following the conviction. The sentencing court may order the
12 revocation of hunting, fishing, or trapping privileges authorized by this section to be served
13 consecutively with any other revocation of the person's hunting, fishing, or trapping privileges
14 imposed for a violation for which the person is convicted and for which revocation of the
15 privileges is authorized under this title. If the person is the holder of a license to hunt, trap, or
16 fish, the court shall require the license holder to surrender and deliver the license to the court
17 to be returned to the Department of Game, Fish and Parks. For the purpose of this section, the
18 term, guilty, has the same meaning as the term, conviction, in § 32-12-53.

19 Unarmed retrieval of lawfully taken small game from either private land or land controlled
20 by the Department of Game, Fish and Parks or other public lands, is not a crime or petty offense,
21 if the retrieval of the small game does not involve the use of a motor vehicle.

22 It is a Class 2 misdemeanor for any person, while engaged in the retrieval of small game
23 from private land without permission of the landowner or lessee of the land, to intentionally
24 drive or flush any small game located on the land toward other hunters of the retriever's same

1 hunting group located on other parcels of land or rights-of-way. It is a Class 2 misdemeanor for
2 any person, who is a member of the same hunting group as the person performing the retrieval
3 without the permission of the landowner or lessee of the land, to intentionally discharge a
4 firearm at small game, except waterfowl, that originates from the private land during the
5 retrieval.

6 This section does not limit the civil remedies available to any landowner.