

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

400L0318

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1049** - 01/26/2005

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: The Committee on Judiciary at the request of the Department of Game, Fish and Parks

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the permitting and  
2 the regulation of shooting preserves and to declare an emergency.

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

4 Section 1. That § 41-10-1 be amended to read as follows:

5 41-10-1. ~~In~~ Terms used in this chapter, ~~unless the context otherwise requires~~ mean:

6 (1) "Commission," ~~shall mean the South Dakota~~ the Game, Fish and Parks Commission,  
7 acting directly or through its duly authorized officers or agents;

8 (2) "Department," the Department of Game, Fish and Parks, acting directly or through  
9 its duly authorized officers or agents;

10 (3) "Person," ~~shall include~~ includes individuals, copartnerships, associations, and  
11 corporations;

12 (3)(4) "Shooting ~~preserves~~ preserve," ~~shall be an~~ any acreage either privately owned  
13 or leased on which hatchery raised game is released for the purpose of hunting,  
14 for a fee, over an extended season.



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

2 41-10-2. The ~~Game, Fish and Parks Commission~~ department may issue and renew shooting  
3 preserve operating permits for privately owned and operated shooting preserves.

4 Section 3. That § 41-10-3 be amended to read as follows:

5 41-10-3. Any person owning, holding, or controlling, by lease or otherwise, any contiguous  
6 tract of land of not more than ~~one~~ two thousand ~~two~~ five hundred ~~eighty~~ sixty acres, who desires  
7 to establish a shooting preserve under the regulations provided in this chapter, ~~shall~~ may make  
8 application to the ~~Game, Fish and Parks Commission~~ department for a shooting preserve  
9 operating permit. ~~Said~~ The application shall be made by the applicant, ~~his agent, or his~~ or the  
10 applicant's agent or attorney, and shall be accompanied by a fee which is determined as provided  
11 by § 41-10-4.

12 Section 4. That § 41-10-4.5 be amended to read as follows:

13 41-10-4.5. Upon receipt of a written application for a new shooting preserve operating  
14 permit, the ~~commission shall schedule a public hearing on the application~~ department shall  
15 notify the public of the application by publishing notice of the time and manner in which  
16 interested persons may present data, opinions, or arguments in writing to the department on the  
17 application and the manner in which interested persons may request status as an interested party  
18 and request receipt of written notice of the decision of the department. The department shall  
19 publish the notice of the time, place, and purpose of the hearing once at least twenty days ~~before~~  
20 the hearing prior to the time designated by the department in the published notice in at least  
21 three newspapers of general circulation in areas of the state likely to be affected by the proposed  
22 permit. ~~After the hearing, the commission may issue the permit in accordance with the~~  
23 requirements of § 41-10-7. No more than ten days after the time designated by the department  
24 in the published notice, the department shall provide and mail by certified mail, return receipt

1 requested, written notice of its decision made in accordance with the requirements of § 41-10-7  
2 to the applicant and to any person who submitted within the prescribed time and manner data,  
3 opinions, or arguments in writing to the department in opposition to issuance of the new  
4 operating permit and who requested the status as an interested party in accordance with this  
5 section and the published notice. The date that written notice of the decision is mailed to the  
6 applicant and to an interested person who requested the status of an interested party constitutes  
7 the respective date notice of application denial or approval has been provided as referenced in  
8 sections 9 and 10 of this Act.

9 Section 5. That § 41-10-6 be amended to read as follows:

10 41-10-6. Upon receipt of the application for a shooting preserve operating permit, the ~~Game,~~  
11 ~~Fish and Parks Commission~~ department shall inspect the area described in ~~such~~ the application,  
12 the premises, and the facilities. The ~~commission~~ department also shall evaluate the ability of the  
13 applicant to operate an area of this character.

14 Section 6. That § 41-10-7 be amended to read as follows:

15 41-10-7. If the ~~Game, Fish and Parks Commission~~ department ~~finds that~~ is satisfied that all  
16 of the following criteria have been established by the applicant:

- 17 (1) The applicant for a shooting preserve operating permit proposes to comply with all  
18 of the provisions of this chapter;
- 19 (2) The applicant is financially able to provide the necessary facilities and services to  
20 operate a shooting preserve;
- 21 (3) The preserve shall be open to the general public without restrictions as to race, color,  
22 or creed;
- 23 (4) The operation will not work a fraud upon persons who are permitted to hunt thereon;
- 24 (5) The operation is not designed to circumvent game laws and regulations;

- 1 (6) The issuance of the permit will be in the public interest;
- 2 (7) The applicant is a resident of the state;
- 3 (8) The applicant does not operate or own any interest in more than ~~two~~ one shooting
- 4 preserves ~~preserve~~ comprised of a contiguous tract of land of more than one thousand
- 5 two hundred eighty acres nor more than two shooting preserves each of which are
- 6 comprised of a contiguous tract of land of one thousand two hundred eighty acres or
- 7 less; and
- 8 (9) The preserve for which an operating permit is requested is at least one mile from any
- 9 game production area or other publicly owned shooting area, or if located within one
- 10 mile of such areas, the preserve would not take unfair advantage of wildlife habitat
- 11 developments or wildlife population existing on those areas, or would not otherwise
- 12 be detrimental to the public interest;

13 the ~~commission~~ department shall approve the application and issue a shooting preserve  
14 operating permit for the operation of a shooting preserve on the property described in the  
15 application with the rights and subject to the limitations prescribed in this chapter and the  
16 commission rules promulgated ~~thereunder~~ pursuant to this chapter. However, the provisions of  
17 subdivisions (7) and (9) of this section do not apply to any shooting preserve licensed pursuant  
18 to this chapter, prior to July 1, 1986.

19 Section 7. That § 41-10-14 be amended to read as follows:

20 41-10-14. Within the limits set by the ~~Game, Fish and Parks Commission~~ commission, in  
21 rules promulgated pursuant to chapter 1-26, the shooting preserve operator may establish ~~his~~  
22 ~~own~~ shooting hours and limitations and restrictions on the age, sex, ~~and~~ number, and type of  
23 each game species that may be taken by each person, ~~and he~~. The operator may establish ~~his~~  
24 ~~own shooting hours, bag limits, and~~ the fees to be charged to ~~his~~ the operator's guests.

1 Section 8. That § 41-10-16 be amended to read as follows:

2 41-10-16. Any person licensed to hunt a species as required by this chapter may harvest and  
3 legally possess pen raised or wild game shot on a shooting preserve if ~~such~~ the game is tagged  
4 as directed by the ~~Game, Fish and Parks Commission~~ commission in rules promulgated  
5 pursuant to chapter 1-26. The provisions of this section relating to issuance of tags and  
6 remittance of tag fees, shall be administered by the ~~Department of Game, Fish and Parks~~  
7 department pursuant to commission rules adopted pursuant to § 41-2-18. The cost of each ~~such~~  
8 tag to the shooting preserve operator shall be established by the commission in rules  
9 promulgated pursuant to chapter 1-26.

10 Section 9. That chapter 41-10 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 If an applicant is denied a shooting preserve operating permit by the department, the  
13 applicant may make a written request to the department for a contested case hearing before the  
14 commission pursuant to chapter 1-26. The written request shall be mailed to the department by  
15 certified mail, return receipt requested, on or before ten days have elapsed from the date that the  
16 notice of application denial has been provided and mailed to the applicant by certified mail,  
17 return receipt requested.

18 Section 10. That chapter 41-10 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 If an applicant is granted a new shooting preserve operating permit by the department, any  
21 interested person who has requested the status of an interested party and who has presented data,  
22 opinion, or arguments in writing to the department pursuant to the requirements in § 41-10-4.5  
23 may make a written request to the department for a contested case hearing before the  
24 commission pursuant to chapter 1-26. The written request shall be mailed to the department and

1 the applicant by certified mail, return receipt requested, on or before ten days have elapsed from  
2 the date that the notice of application approval has been provided to the interested party.

3 Section 11. That ARSD 41:09:01:01 be amended to read as follows:

4 41:09:01:01. Operation plan to be submitted with application. A person submitting an  
5 application for a shooting preserve permit shall submit with the application a detailed plan of  
6 operation for the proposed private shooting preserve for approval of the ~~commission~~  
7 department.

8 Section 12. That ARSD 41:09:01:06 be amended to read as follows:

9 41:09:01:06. Applications - New and renewal -- Appeal process for renewal applications.  
10 Applications for new shooting preserves and renewal applications for existing shooting  
11 preserves must be received in the Pierre office of the department no earlier than January 1 and  
12 no later than March 1 of the year the shooting preserve operation is to begin. ~~The commission~~  
13 ~~shall review all new applications at a regular meeting.~~

14 ~~—The director of the Division of Wildlife shall consider all renewal applications. If the~~  
15 ~~director denies a renewal application, the department shall send a notice of denial to the~~  
16 ~~applicant by certified mail, return receipt requested.~~

17 ~~—The applicant may appeal the denial of the renewal application by the director by giving~~  
18 ~~notice of appeal and requesting review by the commission. The notice of appeal and request for~~  
19 ~~review must be mailed to the department by certified mail, return receipt requested, within 30~~  
20 ~~days after the date of the notice of application denial. If the notice of appeal and request for~~  
21 ~~review are made within the 30-day time limit, the commission shall review the renewal~~  
22 ~~application at a regular meeting.~~

23 Section 13. That ARSD 41:09:01:06.01 be repealed.

24 ~~—41:09:01:06.01. Notice of public hearing. Upon receipt of a written application for licensing~~

1 ~~of a shooting preserve located within one mile of a publicly owned shooting area, the~~  
2 ~~department shall schedule a public hearing on the application. The department shall publish the~~  
3 ~~notice of the time and place of hearing once at least 20 days before the hearing in at least three~~  
4 ~~newspapers of general circulation in different parts of the state likely to be affected by the~~  
5 ~~application.~~

6 Section 14. Whereas, this Act is necessary for the support of the state government and its  
7 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
8 full force and effect from and after its passage and approval.