

CHAPTER 100

QUADRUPEDS AND BIRDS

**100.26 UNPROTECTED ANIMALS.**

HISTORY. 1945 c. 248 s. 4.

**100.27 SEASONS.**

HISTORY. 1945 c. 248 s. 4.

**100.28 LIMITS.**

HISTORY. 1945 c. 248 s. 4.

**100.29 RESTRICTIONS AND PROHIBITIONS.**

HISTORY. 1945 c. 248 s. 4.

**100.30 POSSESSION, SALE AND TRANSPORTATION.**

HISTORY. 1945 c. 248 s. 4.

Sections 100.01 to 100.25 were repealed by Laws 1945, Chapter 248, Section 7, and superseded by Minnesota Statutes 1945, Sections 100.26 to 100.30, in accordance with the following comparative table.

Number	Disposition
100.01 .....	100.29, sub. 1 (1), (2), (4), (5). Eliminates the use of a pistol in taking upland game birds. Provision as to traps omitted as unnecessary in view of authority vested in the commissioner under 100.27, sub. 4, to prescribe regulations as to trapping. Omits provision as to use of dogs as unnecessary.
100.02, sub. 1 .....	100.29, sub. 3.
100.02, sub. 2 .....	Omitted as unnecessary.
100.03 .....	98.48 (8). All provisions except those therein retained are omitted as unnecessary and impractical of enforcement.
100.035, sub. 1 .....	100.29, sub. 1, (6).
100.035, sub. 2 .....	97.55, sub. 2.
100.035, sub. 3 .....	98.54, sub. 4.
100.04 .....	100.27, sub. 1 and sub. 2 (3). Omits the special bow and arrow season in Itasca County as special legislation and as having been superseded or repealed by implication by the general bow and arrow deer season prescribed by Laws 1943, Chapter 176, now incorporated in 100.27, sub. 2, (1).
100.043, sub. 1 .....	100.27, sub. 2, (1).
100.043, sub. 2 .....	98.46, sub. 1, (2); sub. 2, (3); and sub. 6.
100.043, sub. 3 .....	100.29 (7).
100.043, sub. 4 .....	97.55, sub. 1.
100.05 .....	100.28, sub. 1.
100.051, sub. 1 .....	100.29, sub. 1, (8).

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Number	Disposition
100.051, sub. 2 .....	98.52, sub. 5.
100.053, sub. 1 and sub 2 .....	100.29, sub. 1, (9).
100.053, sub. 3 .....	97.55, sub. 1.
100.055, sub. 1 .....	100.29, sub. 1, (10).
100.055, sub. 2 .....	100.29, sub. 1, (11).
100.056 .....	97.55, sub. 2, (d).
100.057 .....	97.50, sub. 2.
100.06, sub. 1 .....	100.29, sub. 1, (12), (13), (14). Omits prohibition against use of artificial lights in taking deer as superseded by Laws 1941, Chapter 498. Now contained in Section 100.29.
100.06, sub. 2 .....	98.46, sub. 5, (7). Omits requirement of having a coupon tag attached to a deer when being transported other than by common carrier as an unnecessary requirement.
100.07 .....	100.29, sub. 2, (1). Omits prohibition against dogs in hunting lodges or lumber camps used by hunters in a locality frequented by deer or moose as indefinite and unworkable. Exception as to dogs on lands farmed by the owner of the dog or within limits of a city or village falls with the elimination of the restriction.
100.08, sub. 1 .....	100.27, sub. 3, (1); 100.28, sub. 2. Omits prohibition against taking squirrels in the limits of a village or city, or within one-quarter of a mile thereof, as a field to be properly covered by general law relating to the use of firearms, or by municipal ordinance.
100.08, sub. 2 .....	Repealed by Laws 1943, Chapter 63.
100.08, sub. 3 .....	100.27, sub. 3 (2), 100.29, sub. 1, (15).
100.09, sub. 1 .....	100.27, sub. 4 and sub. 7. Omits restriction against trapping for mink in muskrat houses or runways, taking mink from dens, or taking them with the aid of dogs, as unwise conservation regulation.
100.09, sub. 2 .....	100.27, sub. 4. Omits limits on number of muskrat traps, and against visiting traps between certain hours as a field for proper regulation by the commissioner.
100.09, sub. 3 .....	100.27, sub. 3, (3), and sub. 7. Omits the prohibition against the use of dogs as unwise legislation.
100.09, sub. 4 .....	100.30.
100.10, sub. 1 .....	100.27, sub. 1. Omits prohibition against a season for otter which is provided for in 100.27, sub. 4.
100.10, sub. 2 .....	100.27, sub. 4.
100.10, sub. 3 .....	Omitted as bad legislation and not in conformity with other provisions.
100.101 .....	98.46, sub. 1, (9).
100.102 .....	98.46, sub. 4, (2), and sub. 5.
100.103 .....	97.55, sub. 2.
100.11 .....	98.48 (6). Omits restrictions as to methods of trapping muskrat or beaver as being based on Spring trapping instead of Fall or Winter trapping as now authorized and as being a proper field for commissioner's regulation as authorized under 100.27, sub. 4.
100.12 .....	100.26, sub. 1.
100.13 .....	100.27, sub. 3, (5), and sub. 7.
100.135 .....	100.30.
100.14 .....	100.30.

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Number	Disposition
100.15	.....98.48 (7).
100.16	.....100.29, sub. 2, (2). Omits provision for summarily killing of a dog as bad legislation and an unnecessary penalty.
100.17	.....100.27, sub. 1 and sub. 5. Omits prohibition against discharging firearm at any upland game bird within limits of state trunk highway as unnecessary. Prohibition did not extend to any other roads than state trunk highways and shooting of migratory game birds has been permitted on all highways. There appears no logical reason for the exception.
100.18	.....100.28, sub. 2.
100.19	.....100.27, sub. 6.
100.20	.....100.29, sub. 1, (17) and (18).
100.21	.....100.29, sub. 1, (16).
100.22	.....100.26, sub. 2.
100.23	.....100.26, sub. 2.
100.24	.....Omitted as not relating to wild animals but to domestic stock.
100.25	.....100.26, sub. 2.

NOTE: The following annotations apply to Sections 100.01 to 100.25, which were superseded by Sections 100.26 to 100.30.

## 100.01 MANNER OF TAKING GAME.

**HISTORY.** 1919 c. 400, s. 4; G.S. 1923 s. 5498; 1925 c. 380; M.S. 1927 s. 5498; 1929 c. 170; 1931 c. 399 s. 1.

It is illegal to set traps in the evening before the day on which the season opens. OAG Feb. 14, 1929.

"Day time", as applied to birds and quadrupeds which cannot be classed as migratory game birds, is the period between sunrise and sunset. OAG Dec. 23, 1931.

There is no provision of law providing for permit to motor express service to carry guns for protection of cargo. OAG Aug. 2, 1934 (201a-1).

A bill absolutely prohibiting carrying firearms immediately preceding the opening of deer season would be unconstitutional, but a law requiring that firearms be sealed when carried would be valid. OAG Feb. 26, 1935 (82p).

Officers of the law can carry a loaded rifle in an automobile while engaged in the duties of their office, otherwise they cannot. OAG July 1, 1936 (201a-1).

There is no authority to confiscate loaded firearms being carried in an automobile, unless they are unlawfully used or had in possession with intent to unlawfully use the same in pursuing, taking, or attempting to take wild animals. OAG Sept. 13, 1939.

A gun, to be taken apart within the meaning of the statute, must be so dismantled as to be incapable of being fired, and a double or single barreled shot gun without the forearm in place is not taken apart. OAG Oct. 20, 1939.

The statutory expression, "contained in a case", refers to a gun case especially designed for the purpose of containing the gun, and a mere wrapping of cloth, clothing, or other articles does not comply with the requirement that the gun be encased. OAG Oct. 24, 1939.

It is unlawful for a hunter riding on fenders, running boards, or platforms attached to motor vehicles to carry a firearm unless it is unloaded in both barrels and magazine and taken apart or contained in a case. OAG Oct. 31, 1941.

A gun is either a rifle or a shot gun, depending upon the character of the ammunition used therein. OAG Nov. 26, 1941.

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## 100.02 QUADRUPEDS AND BIRDS

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### 100.02 ENTERING GROWING GRAIN; TRESPASSING.

HISTORY. 1919 c. 400 s. 7; G.S. 1923 s. 5501; M.S. 1927 s. 5501; 1943 c. 150 ss. 1, 3.

Entry on privately owned land with intent to take or kill wild animals after notice not to do so is a violation, though mere act of crossing flooded privately owned land without intent to take or kill animals would not violate this section. OAG April 18, 1936 (210a-5).

Licensed trappers have no right to trap upon state highways as against the objections of the abutting land owner, who owns the fee title to the land which the highway crosses. OAG Nov. 7, 1940.

The public has no right to hunt in drainage ditches against the prohibition of the owner of the fee title of the land, and such hunting constitutes a trespass. OAG Oct. 24, 1940.

It is correct to remit 50 per cent of the fines for violation of section 100.02 to the division of game and fish, upon the theory that the provision is essentially a game and fish law. OAG Dec. 20, 1940.

Officials of the division of game and fish, for the purpose of fulfilling their function in the management of the game resources of the state, may enter upon private lands without permission of the owner and not be compelled to answer a trespass charge, provided they do no more damage than reasonably necessary to discharge their duties. OAG March 6, 1940.

A deer shot upon property posted against hunting was killed in violation of the game and fish laws and neither the owner of the property nor the hunter obtained title thereto, although if the animal had been fatally shot off of the posted land and merely ran upon such land before dying, the hunter shooting the animal was legally entitled thereto. OAG Dec. 1, 1942.

Statement as to rights of landowners to seine minnows on flowage from public dam. OAG Sept. 18, 1944 (211c-6).

### 100.03 NO HUNTING WITHIN TWO MILES OF CERTAIN CITIES.

HISTORY. 1919 c. 400 s. 15; G.S. 1923 s. 5509; M.S. 1927 s. 5509; 1933 c. 392 s. 2; 1939 c. 244; 1939 c. 348.

### 100.035 HUNTING WHILE UNDER INFLUENCE OF NARCOTICS OR VISIBLY INTOXICATED.

HISTORY. 1943 c. 109.

### 100.04 OPEN SEASON FOR BIG GAME.

HISTORY. 1919 c. 400 s. 43; 1921 c. 450 s. 1; 1923 c. 426 s. 1; G.S. 1923 s. 5537; 1925 c. 380 s. 1; 1927 c. 263; M.S. 1927 s. 5537; 1929 c. 418 s. 1; 1937 c. 236 s. 1; 1939 c. 256; 1943 c. 119 s. 1.

The governor has no power to open the deer season at any time other than that provided by statute, but may shorten the season under certain conditions. OAG June 10, 1933.

An executive order opening the deer season does not alter the open season for bear. OAG Oct. 24, 1933.

### 100.043 BOW AND ARROW DEER SEASON.

HISTORY. 1943 c. 176.

### 100.05 LIMIT OF DEER.

HISTORY. 1919 c. 400 s. 44; G.S. 1923 s. 5538; 1925 c. 380; M.S. 1927 s. 5538.

### 100.051 USE OF RED IN DEER SEASON.

HISTORY. 1943 c. 616.

**100.053 BIG GAME HUNTING.**

HISTORY. 1941 c. 412 ss. 1 to 3.

**100.055 USE OF LIGHTS IN HUNTING BIG GAME.**

HISTORY. 1941 c. 498 s. 1; 1943 c. 534 s. 1.

The expression, "contained in a case", refers to a gun case especially designed for the purpose of containing the gun, and that a mere wrapping of cloth, clothing, or other articles does not comply with the requirement that the gun be encased. OAG Oct. 24, 1939.

**100.056 MOTOR VEHICLES USED IN HUNTING BIG GAME UNLAWFULLY SUBJECT TO CONFISCATION.**

HISTORY. 1941 c. 498 s. 2.

The owner of the automobile having no notice of the illegal use by her husband is entitled to a return of the car seized by the state. *State v Buick Sedan*, 216 M 130, 12 NW(2d) 1.

**100.057 CONFISCATION PROCEEDINGS AFTER SEIZURE.**

HISTORY. 1941 c. 498 s. 3.

**100.06 MANNER OF TAKING BIG GAME.**

HISTORY. 1919 c. 400 s. 45; 1921 c. 450 s. 2; G.S. 1923 s. 5539; 1925 c. 380; M.S. 1927 s. 5539; 1929 c. 418 s. 2; 1933 c. 392 s. 7; 1941 c. 482; 1943 c. 539 s. 1.

**100.07 DOGS NEAR DEER HABITATS.**

HISTORY. 1919 c. 400 s. 46; G.S. 1923 s. 5540; M.S. 1927 s. 5540.

Bird dogs or hounds, useful in taking other game, may be used in territory inhabited by deer, provided they are not kept in hunting lodge or used to run deer and moose, or kept in a lumber camp used by hunters. OAG Jan. 19, 1939.

**100.08 OPEN SEASON FOR CERTAIN ANIMALS.**

HISTORY. 1919 c. 400 s. 47; 1923 c. 342 s. 1; G.S. 1923 s. 5541; 1925 c. 380; M.S. 1927 s. 5541; 1929 c. 418 s. 3; 1931 c. 311; 1939 c. 121; 1939 c. 424 s. 1; 1941 c. 366; 1943 c. 63 s. 3.

**100.09 OPEN SEASON FOR FUR-BEARING ANIMALS.**

HISTORY. 1919 c. 400 s. 48; 1923 c. 342; G.S. 1923 s. 5542; 1925 c. 380; M.S. 1927 s. 5542; 1929 c. 418 s. 4; 1931 c. 379; 1933 c. 305; 1933 c. 392 s. 8; 1939 c. 424 s. 2; 1941 c. 60 s. 1; 1943 c. 125 s. 1; 1943 c. 336 s. 1.

Defendant, an Indian living on an allotment held in trust for him by the United States, cannot be punished by the state for taking a muskrat thereon in violation of the state laws. *State v Cloud*, 179 M 180, 228 NW 611.

Where a full-blood Chippewa Indian received a patent in fee from the United States to 160 acres of land on White Earth Indian Reservation, and the trust period having expired thereon, sold the land and removed therefrom, the state court had jurisdiction of a prosecution for a violation of the state game laws. *State v Bush*, 195 M 413, 263 NW 300.

Notwithstanding the provisions of section 100.14, the skins of fur-bearing animals must be legally tagged within five days of the close of the season in order to be bought and sold. OAG June 19, 1942.

The hours prescribed for the taking of game and fish under statutory restrictions are to be considered on the basis of sun time and war time schedules must be adjusted accordingly. OAG Feb. 19, 1942 (208a-3) 1942 No. 5.

**100.10 BADGER, MARTEN, FISHER, OTTER, OR BEAVER.**

HISTORY. 1919 c. 400 s. 49; 1923 c. 342; G.S. 1923 s. 5543; 1925 c. 380; 1927 c. 333; M.S. 1927 s. 5543; 1929 c. 418 s. 5; 1939 c. 424 s. 3; 1941 c. 60 s. 2; 1943 c. 125 s. 2.

Beaver may be taken when doing damage and may be taken by the department in ditch lands or tax-delinquent lands on state-owned lands which are not designated as game refuges. OAG March 8, 1934.

**100.101 BEAVER CAUSING DAMAGE, TAKING.**

HISTORY. 1941 c. 551 s. 1.

**100.102 REPORT OF TAKING OF BEAVER DOING DAMAGE.**

HISTORY. 1941 c. 551 s. 2.

**100.103 UNLAWFUL SALE OF BEAVER.**

HISTORY. 1941 c. 551 s. 3.

**100.11 PROTECTION OF HOMES OF MUSKRAT AND BEAVER; TAKING OF BEAVER AND MUSKRAT.**

HISTORY. 1919 c. 400 s. 50; 1923 c. 342; G.S. 1923 s. 5544; 1925 c. 380; M.S. 1927 s. 5544.

**100.12 ANIMALS THAT MAY BE TAKEN.**

HISTORY. 1919 c. 400 s. 51; 1921 c. 44 s. 7; 1923 c. 426 s. 1; G.S. 1923 s. 5545; M.S. 1927 s. 5545; 1929 c. 418 s. 6; 1939 c. 424 s. 4; 1943 c. 63 s. 2.

A person may not obtain foxes or fox cubs in any manner without obtaining a trapper's license. OAG July 2, 1934, (210b-3).

Foxes may be hunted from airplanes. OAG Oct. 2; 1944 (210a).

**100.13 OPEN SEASON FOR RABBITS AND HARE.**

HISTORY. 1939 c. 381 s. 1; M. Supp. 5546-1.

A hunting or trapping license is not required of permittees authorized under section 97.32 to shoot or trap rabbits which are doing damage. OAG Jan. 3, 1940.

**100.135 SALE OF RACCOON, HARE, AND RABBITS.**

HISTORY. 1943 c. 45 s. 1.

**100.14 TRAFFIC IN FURS.**

HISTORY. 1919 c. 400 s. 53; 1923 c. 342; G.S. 1923 s. 5547; 1925 c. 380; M.S. 1927 s. 5547; 1933 c. 392 s. 11; 1941 c. 410.

Law requiring fur dealers to keep complete book records of all transactions in buying and selling raw furs is a penal statute and its provisions are mandatory. The law does not offend against Minnesota Constitution, Article 1, Sections 7 and 10, nor against Article 4, Section 27. State v Stein, 215 M 308, 9 NW(2d) 763.

Notwithstanding the provisions of this section, the skins of fur-bearing animals must be legally tagged within five days of the close of the season in order to be bought and sold. OAG June 19, 1942.

**100.15 PET RACCOONS MAY BE KEPT.**

HISTORY. 1931 c. 378; M. Supp. s. 5547-1.

**100.16 BIRD DOGS.**

HISTORY. 1919 c. 400 s. 56; 1921 c. 242 s. 3; 1923 c. 426 s. 1; G.S. 1923 s. 5550; 1925 c. 380; M.S. 1927 s. 5550; 1933 c. 392 s. 13; 1941 c. 421; 1943 c. 581 s. 1.

Dogs are property. One who wrongfully takes, injures, or destroys a dog is answerable to the owner in damages and, if a dog trespasses or injures another, the owner is liable. *Oldenburg v Petersdorff*, 160 M 402, 404, 200 NW 446.

The statute is aimed at the use by a person of a dog in the prohibited period and place and does not authorize the summary destruction of a dog that accidentally strays into a protected field at a forbidden time. *Oldenburg v Petersdorff*, 160 M 402, 200 NW 446.

#### 100.17 OPEN SEASON FOR CERTAIN GAME BIRDS.

**HISTORY.** 1919 c. 400 s. 57; 1923 c. 426; G.S. 1923 s. 5551; 1925 c. 380; M.S. 1927 s. 5551; 1931 c. 69 s. 1; 1933 c. 392 s. 14; 1939 c. 424 s. 5; 1943 c. 634 s. 1.

A tribal Indian cannot be prosecuted by the state for shooting game out of season for consumption by himself and family where the shooting occurs within the limits of the reservation of his tribe, upon ceded lands, not allotted to or occupied by him, but allotted to a deceased Indian of the same tribe, no fee-simple patent having been issued. *State v Jackson*, 218 M 429, 16 NW(2d) 752.

The prohibition against hunting contained in the statute referred to applies only to trunk highways established under the state constitution, Article 16. The right to so hunt on such highways is subject to the right of the owner of the fee of the land upon which the highway is constructed to prohibit such hunting. The statutory prohibition of hunting birds on state trunk highways is confined to birds which are actually on the highways and does not forbid a hunter from shooting from the highway at game in or over adjacent fields. OAG Oct. 25, 1939.

#### 100.18 LIMIT OF BIRDS TAKEN.

**HISTORY.** 1919 c. 400 s. 58; 1923 c. 426; G.S. 1923 s. 5552; 1925 c. 380; M.S. 1927 s. 5552; 1931 c. 69 s. 2; 1939 c. 424 s. 6; 1943 c. 634 s. 2.

No person in a party may take in any one day the limit of upland game for himself and another member of the party, who has a license, but is not shooting. OAG June 27, 1940.

The director has authority to prohibit the taking of hen pheasants, notwithstanding the provision of the statute that the daily limit shall be not more than three, only one of which may be a female. OAG Sept. 5, 1940.

The aggregate daily bag of game birds is unrestricted except by daily or seasonal limit provisions. OAG Sept. 17, 1941.

#### 100.19 MIGRATORY GAME BIRDS; FEDERAL REGULATIONS ADOPTED.

**HISTORY.** 1939 c. 424 s. 14; M. Supp. s. 5548-1.

#### 100.20 MANNER OF TAKING WATER-FOWL AND RAILS.

**HISTORY.** 1919 c. 400 s. 62; 1923 c. 426; G.S. 1923 s. 5556; 1925 c. 380; M.S. 1927 s. 5556; 1931 c. 399 s. 7; 1933 c. 392 s. 15.

The game law does not permit the taking of water-fowl from an artificial blind constructed in the public waters of a lake upon an artificial embankment built for the purpose of erecting the blind thereon. *State v Figge*, 177 M 483, 225 NW 430.

Going from place to place along the shore of a lake in a motorboat is an offense under this section, though the motor is stopped during the act of shooting. OAG Jan. 3, 1930.

So long as a bar or reef remains exposed by reason of low water, it is lawful to take water-fowl therefrom, even though the height thereof has been artificially produced, but it will be different when the lake waters again reach their usual level. OAG Oct. 26, 1931.

A shot gun used in shooting at ducks in open water is subject to seizure. OAG May 25, 1933.

This section does not prohibit the planting of crops of aquatic vegetation, though the purpose is that such crops will eventually encourage or attract migratory water-fowl to remain in the vicinity. OAG June 2, 1933.

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A motor boat may be used in going to and from shooting grounds, but it is unlawful to hunt out of such a boat. The detachment of the motor and placing it in the bottom of the boat removes from the boat its character as a motor boat and is permissible under the statute. OAG Sept. 23, 1939.

A permanent artificial blind prohibited by the statute is one which will withstand seasonal changes, such as the storms and ice action which may be anticipated in this area. Placing poles in the mud and constructing a blind about or upon such poles, whether equipped with a platform or not, does not constitute a permanent artificial blind, if the structure will not withstand the seasonal conditions referred to. OAG Sept. 25, 1939.

A gun is a rifle or a shotgun within the meaning of migratory game bird regulations depending on the character of ammunition used. OAG Nov. 26, 1941 (210-D-7).

## 100.21 BIRD SNARES, TRAPS, OR NETS; PUBLIC NUISANCE; ABATEMENT; FLUSHING.

HISTORY. 1919 c. 400 s. 63; G.S. 1923 s. 5558; 1925 c. 380; M.S. 1927 s. 5558.

## 100.22 NESTS AND EGGS.

HISTORY. 1919 c. 400 s. 64; G.S. 1923 s. 5559; M.S. 1927 s. 5559.

## 100.23 CERTAIN WILD BIRDS PROTECTED.

HISTORY. 1919 c. 400 s. 65; G.S. 1923 s. 5560; 1925 c. 380; M.S. 1927 s. 5560.

## 100.24 CARRIER PIGEONS.

HISTORY. 1919 c. 400 s. 66; G.S. 1923 s. 5561; M.S. 1927 s. 5561.

## 100.25 UNPROTECTED BIRDS.

HISTORY. 1919 c. 400 s. 67; G.S. 1923 s. 5562; 1925 c. 380; M.S. 1927 s. 5562.