

**Testimony for Public Hearing  
Kansas House Judiciary Committee  
March 11, 2015  
3:30pm – Room 112-N**

By  
Brian Sloop  
2105 Greenbrier Dr  
Lawrence, KS 66047

SB 112 (Committee) – an ACT concerning wildlife, parks and tourism; relating to citations; amending KSA 2014 Supp. 32-1049 and repealing the existing section.

Good afternoon, my name is Brian Sloop and I am an avid outdoor user of the Kansas Parks system with a growing interest in legislative and legal impacts on recreation. Thank you for the opportunity to present in Opposition to SB 112.

The changes proposed in SB 112 to K.S.A. 32-1049 appear mundane but the ramifications of a single word change from *shall* to *may* is significant. This change opens the door to potential abuse by County Prosecutors for leveling additional or unintended misdemeanor charges. I urge this Committee to strike the proposed change.

The Supplemental Note on Senate Bill 112 is misleading. “SB 112 would allow officer discretion in issuing citations for misdemeanor violations of KDWPT....” I believe this is a false statement that sets the tone for misinterpretation of the true intent of the proposed change.

Referencing SB 112 line notations; Line 7 “Whenever a person is charged for any violation.....” continuing on Line 13 “the officer shall (may) prepare a written citation...” An officer always has discretion in issuing a citation and KSA 32-1049 does nothing to restrict or mandate. IF the person IS charged, a citation must be issued and the following instructional paragraphs take over.

Special interests representing KDWPT and County Prosecuting Attorneys make no bones about their interpretation and intent with this single word change from *shall* to *may*. Summarizing from their earlier Senate testimony and quoting from the KDWPT website on legislative actions “**SB112** -- This bill amends K.S.A 32-1049, relating to violations of wildlife, parks and tourism laws **to clarify that county attorneys can file charges without a written citation.**”  
<http://kdwpt.state.ks.us/KDWPT-Info/Legislative-Update-Report/Updated-February-17,-2015>

I am concerned about the potential abuse of Prosecutorial power this word change makes. There is a checks and balances on minor charges between Officers and Prosecuting Attorneys. Trained Field Officers decide if actions result in a misdemeanor citation while Prosecutors are lawyers, charged with weighing the charges and presenting the case in a criminal trial if necessary.

Removal of this Check paves the way for Prosecutorial power abuse if a prosecutor has an agenda either obvious or subliminal. A Prosecutor could now add additional charges not intended by the citing officer, possibly due to weak evidence. The result could be a stack of intimidating charges intended to overwhelm an ill advised citizen into a quick plea bargain, thus making a quick and easy settlement/win for the Prosecutor's cap. Yes, a better advised (and moneyed) individual could beat back weak charges but at a greater personal litigious cost while the Prosecutor simply follows a "justified" agenda.

This change may make officers LESS effective in the field as they spend time creating more in depth reports for the County Attorney to use later for additional charges. Is the goal of officers public safety (advanced by stopping more offenders) or revenue generation (advanced by more offenses per defendant)?

With budget cuts, KDWPT must do more with less and they have already established they feel there is a lack of officers in the field.

This Law has served well since 1975. Protections granted as well as Checks and Balances established are the backbones of citizens' rights. They should not be altered in the name of Convenience or Agenda fulfillment.

Regarding the striking of section e)

Line 29 in SB 112; section "(e) Any officer violating any provisions of this section is guilty of misconduct in office and shall be subject to removal from office."

Upon initial reading, this line could conceivably be applied in an overly harsh manner but my question is "How many times has this actually occurred in 40+ years?"

A person might ask, "How or why this clause would be called upon?" One potential answer, the same reason I oppose the word change above – Prosecutorial abuse; either an Agenda or personal vendetta.

In striking section e) entirely, this Special interest in the name of Officers is effectively protecting themselves from the same potential abuses they are opening to citizens.

IF this Committee does feel a change to section e) is warranted, I propose leaving the sentiment but softening. One possible suggestion –

"e) Any officer violating any provisions of this section may be considered guilty of misconduct in office and subject to punishment up to removal from office"



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## Updated February 17, 2015

Updated: 2/17/15

### 2015 Bills

**SB46** -- This bill would require domesticated deer that enter a premises alive or leave a premises alive or dead for any purpose, other than for direct movement to a licensed or registered slaughter facility in Kansas, have official identification, as prescribed by rules and regulations of the animal health commissioner. **The bill passed out of the Senate Committee on Agriculture.**



**SB50** -- This bill would amend K.S.A. 79-1439, which deals with property tax valuation classification of bed and breakfast properties. The proposed amendment would allow outbuildings or adjacent properties to be included as long as the total number of bedrooms does not exceed five. **This bill was referred to the Senate Committee on Assessment and Taxation.**

**SB97** -- This bill would amend K.S.A. 32-1301 which regulates contact with dangerous animals. The amendment would allow clouded leopards and certain dangerous animals weighing 25 pounds or less full physical contact with members of the public and incidental contact with the public for animals weighing 40 pounds or less. **This bill passed out of committee and is on Senate General Orders.**

**SB112** -- This bill amends K.S.A. 32-1049, relating to violations of wildlife, parks and tourism laws to clarify that county attorneys can file charges without a written citation. **The bill was referred to the Senate Committee on Judiciary and has a hearing scheduled for Feb. 19, 2015, 10:30 a.m., RM 346S.**

**SB113** -- This bill amends K.S.A. 32-1001, relating to KDWPT licenses, permits, stamps, specifying that only physical licenses, permits or stamps shall be surrendered under judges' orders of forfeiture or suspension. This amendment is proposed to prepare for the advent of electronic licensing. **The bill was referred to the Senate Committee on Judiciary and has a hearing scheduled for Feb. 19, 2015, 10:30 a.m., RM 346S.**

**SB120** -- This bill would amend K.S.A. 32-833, relating to land purchases by KDWPT, to exempt lands purchased with Natural Resource Damage Restoration Funds from required legislative approval. **The bill was referred to the Senate Committee on Natural Resources and had a hearing on Feb. 11, 2015. It is scheduled for Final Action on Feb. 19, 2015, 8:30 a.m. RM 159-S**

**SB132** -- This bill would amend K.S.A. 32-1301 to add nonhuman primates and wolves, excluding hybrids, to the list of "dangerous regulated animals." The bill was referred to the Senate Committee on Natural Resources.

**SB134** -- This bill would amend statutes concerning noxious weeds and would allow the Secretary of the Department of Agriculture, with recommendations from the state advisory committee, to declare any species of weed a noxious weed. It would also allow county commissions, with approval of the Secretary, to designate noxious weeds to be controlled within the county. This bill was referred to the Senate Committee on Agriculture and has a hearing scheduled for Feb. 10, 2015, 8:30 a.m., RM 159-S.

**SB169** -- This is the Senate companion bill to HB2116, which would designate the channel catfish as the official fish of the state of Kansas. The bill was referred to the Senate Committee on Natural Resources.

**SB190** -- This bill would amend K.S.A. 32-1139 to allow a person to operate a sailboat of a length 20 feet or less without completing a boater education course if that person is enrolled in an instructor-led class. **This bill was referred to the Senate Committee on Transportation and has a hearing scheduled for February 18, 2015, 8:30 a.m., RM 546-S.**

**HB2029** -- This is the companion bill of SB46 regarding identification of domesticated deer. **The bill was referred to the House Committee on Agriculture and Natural Resources and had a hearing on Jan. 27. The bill was placed on Final Action on Feb. 10, 2015.**

**HB2116** -- This bill would designate the channel catfish as the official fish of the state of Kansas. The department supports this bill. **The bill was referred to the House Committee on Agriculture and Natural Resources.**

**HB2117** -- This bill would require anyone born on or after January 1, 1995 to complete an approved boater safety education course before operating a motorboat or sailboat on Kansas waters. The current law only requires boater safety education of boaters younger than 21. The department supports this bill. **The bill was referred to the House Committee on Agriculture and Natural Resources and has a hearing scheduled for February 17, 2015, 3:30 p.m., RM 112-N.**

**HB2168** -- This is the House companion bill for SB50, which would allow outbuildings or adjacent properties to be classified as a bed and breakfast for tax valuation purposes. **This bill was referred to the House Committee on Taxation and had a hearing on Feb. 12, 2015.**

**HB2341** -- This bill would amend K.S.A. 2014 concerning wildlife; relating to seizure of wildlife; disposal, and would require the department to return seized antlers, antler sheds and horns of

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