

SENATE BILL No. 43

AN ACT concerning the department of wildlife and parks; relating to service fees; commercial guide permits; certain permit purchases after recovering permit violation notices; amending K.S.A. 32-989 and K.S.A. 2002 Supp. 32-964 and 32-1001 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 32-964 is hereby amended to read as follows: 32-964. (a) As used in this section:

(1) “Commercial guide services” means providing, offering to provide, arranging for or assisting with *big game or migratory waterfowl* hunting ~~or fishing~~ activities for others on a commercial basis, including but not limited to providing any one or more of the following when used in conjunction with or for *big game or migratory waterfowl* hunting ~~or fishing~~ activities: Pack or riding livestock, transportation other than by commercial carrier, equipment or facilities.

(2) “Commercial basis” means that the recipient of the services agrees to provide valuable consideration as compensation for the guide services, and the services are provided as part of a business relationship. Evidence of a business relationship includes, without limitation, advertisement of the guide services, written agreement of the terms of payment or services provided by an employee of a commercial guide. Providing guide services on land not owned or leased by the individual providing the services shall not by itself constitute evidence that the services are provided on a commercial basis.

(3) Terms defined in K.S.A. 32-701 and amendments thereto have the meanings provided by that section.

(b) A valid commercial guide permit or associate guide permit is required to provide commercial guide services in this state.

(c) The provisions of subsection (b) do not apply to a person who:

(1) Possesses a controlled shooting area license and commercial guide services performed by the person are confined to the licensed controlled shooting area;

(2) owns private land and commercial guide services performed by the person are confined to lands owned by the individual;

(3) is a tenant, as defined by K.S.A. 32-937 and amendments thereto, and commercial guide services performed by the person are confined to farm or ranch land with respect to which the person is such a tenant; or

(4) provides commercial guide services only in cooperation with an educational or not-for-profit event approved by the secretary.

(d) Any person who desires to provide commercial guide services shall apply to the secretary for a commercial guide permit. The application shall give the name and address of the applicant, the type of commercial guide services to be provided, the area of the state where guide services would occur, a listing of facilities proposed for use, a listing of equipment to be available to the commercial guide service customers, including pack or riding livestock, and such other information as required by the secretary. The fee prescribed pursuant to K.S.A. 32-988 and amendments thereto shall accompany the application.

(e) The secretary may issue a commercial guide permit if the secretary determines that:

(1) The applicant possesses adequate knowledge of wildlife and parks laws of this state and rules and regulations of the secretary;

(2) the applicant possesses adequate knowledge of hunting ~~or fishing~~ skills;

(3) the applicant is 16 or more years of age; and

(4) the application is complete and accurate.

The secretary may require an applicant to successfully complete a written or oral examination before issuing a commercial guide permit and may establish an annual date by which applications must be submitted.

(f) A commercial guide permittee shall make such reports of permitted activities to the secretary as required by rule and regulation adopted by the secretary in accordance with K.S.A. 32-805 and amendments thereto.

(g) A commercial guide permittee may employ one or more associate guides to conduct services authorized by the commercial guide permit while the associate guide is in the employment of the commercial guide permittee. A commercial guide permit or associate guide permit is required for any individual so employed by a commercial guide permittee.

(h) Any individual who desires to obtain an associate guide permit

shall apply to the secretary. The application shall give the name and address of the applicant; the name, address and commercial guide permit number of the commercial guide by whom the applicant would be employed; the notarized signature of such commercial guide permittee; and such other information as required by the secretary. The fee prescribed pursuant to K.S.A. 32-988 and amendments thereto shall accompany the application.

(i) The secretary may issue an associate guide permit if the secretary determines that:

(1) The applicant possesses adequate knowledge of wildlife and parks laws of this state and rules and regulations of the secretary;

(2) the applicant possesses adequate knowledge of hunting ~~or fishing~~ skills; and

(3) the application is complete and accurate.

The secretary may require an applicant to successfully complete a written or oral examination prior to issuance of an associate guide permit and may establish an annual date by which applications must be submitted.

(j) Commercial guide permits and associate guide permits expire on December 31 of each year.

(k) A commercial guide permittee or associate guide permittee may assist with the legal taking of wildlife while providing commercial guide services but shall not perform the actual taking or shooting of wildlife for the guided person.

(l) Unless exempt pursuant to K.S.A. 32-919 and amendments thereto, a commercial guide permittee or associate guide permittee shall be required to possess a valid hunting license issued to such permittee in order to conduct hunting activities. ~~Unless exempt pursuant to K.S.A. 32-911 and amendments thereto, a commercial guide permittee or associate guide permittee shall be required to possess a valid fishing license issued to such permittee in order to conduct fishing activities.~~ A commercial guide permittee or associate guide permittee shall be required to possess any stamp as required by law to engage in the activity.

(m) It shall be unlawful to perform commercial guide services without having in possession the written permission of the owner or the person in lawful possession of the land where the commercial guide services are performed.

(n) The secretary shall adopt, in accordance with K.S.A. 32-805 and amendments thereto, such rules and regulations as necessary to administer and govern commercial guide services, including such restrictions and conditions as required for wildlife resource protection and to protect the public interest and public safety.

(o) In addition to any other penalty prescribed by law, the secretary, in accordance with the Kansas administrative procedure act, may refuse to issue, refuse to renew, suspend or revoke a commercial guide permit or an associate guide permit if the secretary finds that the applicant has:

(1) Failed to comply with the wildlife and parks laws of this state or rules and regulations of the secretary;

(2) been convicted of a violation of the fish, wildlife, boating or parks laws of another jurisdiction;

(3) been convicted of a felony involving the use of violence or the use of weapons;

(4) been convicted of any other felony within the previous five years;

or

(5) failed to provide required reports.

(p) The secretary upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions as necessary for the purpose of determining initial and continuing qualifications of applicants for commercial guide permits and associate guide permits.

(q) The secretary may prepare a general publication listing commercial guide permittees and services offered by the permittees for the purpose of assisting the public in securing the services of a commercial guide. No commercial guide permittee shall be included in such publication without the written consent of the permittee.

Sec. 2. K.S.A. 32-989 is hereby amended to read as follows: 32-989.
(a) In addition to the fees prescribed pursuant to law or rules and regulations of the secretary, the secretary shall, and the county clerk and any

agent appointed pursuant to K.S.A. 32-985, *and amendments thereto*, may, charge and retain a service charge fee not to exceed ~~\$.50~~ \$1.00 for each license, permit, stamp or other issue of the department issued or sold by such secretary, county clerk or agent, except:

(1) When such service charge fee is otherwise established by law, the amount charged shall be the amount otherwise established;

(2) *for licenses, permits, stamps or other issues sold by an approved telephone agent or over the internet by an approved internet agent, for which the agent may charge and receive a service fee charge negotiated by the secretary and the agent, in addition to the actual cost remitted to the department of the licenses, permits, stamps or other issues sold during a telephone or internet transaction other than the service charge per issue and the negotiated service charge fee;*

(3) in the case of a migratory waterfowl habitat stamp, the service charge fee shall not exceed ~~\$.25~~ \$.50; and

~~(3)~~ (4) the secretary shall not charge service charge fees for issues of the department issued or sold to a person appointed by the secretary pursuant to K.S.A. 32-985, *and amendments thereto*, to sell such issues.

(b) Any moneys collected by the secretary for fees imposed pursuant to this section shall be disposed of as provided by K.S.A. 32-990, 32-991 and 32-993, *and amendments thereto*. Any such moneys collected by the county clerk shall be deposited in the county general fund.

Sec. 3. K.S.A. 2002 Supp. 32-1001 is hereby amended to read as follows: 32-1001. (a) It is unlawful for any person to:

(1) Participate or engage in any activity for which such person is required to have obtained a license, permit, stamp or other issue of the department under the wildlife and parks laws of this state or under rules and regulations of the secretary unless such person has obtained a currently valid such license, permit, stamp or other issue issued to such person;

(2) fail to carry in such person's possession a currently valid license, permit, stamp or other issue of the department, issued to such person, while participating or engaging in any activity for which such person is required to have obtained such license, permit, stamp or other issue under the wildlife and parks laws of this state or under rules and regulations of the secretary;

(3) refuse to allow examination of any license, permit, stamp or other issue of the department while participating or engaging in any activity for which such person is required to have obtained such license, permit, stamp or other issue under the wildlife and parks laws of this state or under rules and regulations of the secretary, upon demand by any officer or employee of the department or any officer authorized to enforce the laws of this state or rules and regulations of the secretary;

(4) while participating or engaging in fishing or hunting: (A) Fail to carry in such person's possession a card or other evidence which such person is required to carry pursuant to K.S.A. 32-980 and amendments thereto; or (B) refuse to allow inspection of such card or other evidence upon demand of any officer or employee of the department or any officer authorized to enforce the laws of this state or rules and regulations of the secretary; or

(5) make any false representation to secure any license, permit, stamp or other issue of the department, or duplicate thereof, or to make any alteration in any such license, permit, stamp or other issue.

(b) No person charged with violating subsection (a)(1) for failure to obtain a vehicle or camping permit for use of any state park, or any portion thereof or facility therein, or any other area or facility for which a vehicle or camping permit is required pursuant to rules and regulations of the secretary shall be convicted thereof unless such person refuses to purchase such permit after receiving a permit violation notice, which notice shall require the procurement of: (1) The proper daily permit or permits and payment, within 24 hours, of a late payment fee of \$15; or (2) an annual vehicle or camping permit, as the case may be, if such permit has been established by rule and regulation and adopted by the secretary. ~~The provisions of this subsection (b)(2) shall expire on December 31, 2003.~~

(c) (1) In any prosecution charging a violation of subsection (a)(1) for failure to obtain a permit required by K.S.A. 32-901 and amendments

thereto, proof that the particular vehicle described in the complaint was in violation, together with proof that the defendant named in the complaint was at the time of the violation the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the time when and place where the violation occurred.

(2) Proof of a written lease of, or rental agreement for, a particular vehicle described in the complaint, on the date and at the time of the violation, which lease or rental agreement includes the name and address of the person to whom the vehicle was leased or rented at the time of the violation, shall rebut the prima facie evidence that the registered owner was the person who parked or placed the vehicle at the time when and place where the violation occurred.

(d) No person who is a resident of this state and charged with violating subsection (a)(1) or (a)(2) shall be convicted thereof if such person produces in court or the office of the arresting officer the appropriate license, permit, stamp or other issue of the department, lawfully issued to such person and valid at the time of such person's arrest.

Sec. 4. K.S.A. 32-989 and K.S.A. 2002 Supp. 32-964 and 32-1001 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.