

MINUTES OF THE HOUSE WILDLIFE, PARKS AND TOURISM COMMITTEE

The meeting was called to order by Chairman Don Myers at 3:30 P.M. on February 21, 2005 in Room 241-N of the Capitol.

All members were present except:

Representative Broderick Henderson- excused
Representative L. Candy Ruff- excused
Representative Clark Shultz- excused

Committee staff present:

Hank Avila, Kansas Legislative Research
Dennis Hodgins, Kansas Legislative Research
Lisa Montgomery, Revisor of Statutes Office
Betty Caruthers, Committee Secretary

Conferees appearing before the committee:

Ron Klataske, Audubon of Kansas
Christopher Tymeson, Kansas Department of Wildlife & Parks
Keaton Kelso, K & K Outfitters
Ken Corbet, Ravenwood Hunters
Wes Tral, Kansas Sport Hunting Association

Others attending:

See attached list.

Moved by Representative Flaharty, seconded by Representative Kilpatrick for approval of Minutes of the House Committee on Wildlife, Parks and Tourism held on February 16, 2005 be approved.

Motion carried.

Chairman Myers recognized Revisor, Lisa Montgomery to present an amendment for **HR 6016 - Resolution urging the Kansas congressional delegation to sponsor the Flint Hills National Heritage Area. (Attachment 1)**

Representative Mah stated that she has received numerous e-mails from people in favor of this resolution believing that this will "save the Flint Hills."

Representative Morrison asked about the landowners and whether or not this resolution in any way curtails the usage of their land.

Ron Klataske stated that this resolution will not have any impact, favorably or unfavorably, on the wind power development.

Representative Ohara brought up the concern of any counties or communities who may not want to do this.

Chairman Myers requested that our Research Department fully investigate what might be involved as far as private property rights. Chairman Myers expressed concern that we not tread on someone's property rights, and therefore we will come back next year to hear the findings of the Research Department.

Chairman Myers announced that **HR 6016** will be carried over until next year.

Chairman Myers recognized Revisor, Lisa Montgomery to present 3 amendments regarding **HB 2253 - Imposes minimum fines and jail times for certain wildlife violations.** The first amendment is in regards to the recommendations by the Department of Wildlife & Parks. (Attachment 2) **HB 2253** was passed favorably out of the Committee on 2/16/05 but there was an amendment that dealt with the Wildlife & Parks Statutes dealing with their violations which had to be amended. The Committee worked the bill initially without amending the bill with the balloon.

CONTINUATION SHEET

MINUTES OF THE House Wildlife, Parks and Tourism Committee at 3:30 P.M. on February 21, 2005 in Room 241-N of the Capitol.

Amendment #2 was then reviewed which involved amending some Statutes. They had been added to **HB 2253** but were different when realizing what was actually being requested in the beginning. (Attachment 3) Amendment #3 was then reviewed which included recommendations from both amendment #1 and amendment #2. (Attachment 4)

Representative Flaharty moved to reconsider **HB 2253**, seconded by Representative Swenson.

Motion carried.

Representative Flaharty moved to amend **HB 2253** with balloon #3, seconded by Representative Long.

Motion carried.

Representative Swenson moved to pass **HB 2253** favorably as amended, seconded by Representative Flaharty.

Motion carried. Representative Weber requested her vote of no be recorded.

Chairman Myers asked Representative Grange to carry the bill.

Chairman Myers reviewed Proponents and Opponents for **HB 2459 - Transfer of antelope permit by landowner or tenant to resident or nonresident**. Chris Tymeson noted that much of this follows along the same lines as deer management. Representative Flaharty moved to table **HB 2459**, seconded by Representative Swenson.

Motion carried.

Chairman Myers opened hearings on **HB 2466 - Repealing the requirement for permits to offer commercial guide services**.

Chairman Myers recognized Revisor, Lisa Montgomery to give a briefing of the bill. A copy of the Statutes that would be repealed by this bill was distributed. (Attachment 5) It does repeal the State's authority to issue commercial guide service permits.

Chairman Myers recognized Chris Tymeson who spoke from a neutral position of the Kansas Department of Wildlife & Parks on this bill. (Attachment 6) With this bill they would no longer be regulating commercial guides. Provisions of the bill would be effective July 1, 2005. Mr. Tymeson suggested an amendment making the effective date for this bill January 1, 2006 rather than the middle of the year.

Chairman Myers recognized proponents of **HB 2466** for testimony.

Keaton Kelso is an Outfitter in 4 states and Kansas is the only state in which he needs a license. His concern is the people who are practicing without going through the process of getting licensed. He believes we have a process of regulating the law abiding citizens who are trying to guide rather than dealing with those who are not guiding with a license. He also expressed concerns regarding some of the Guide Regulations. (Attachment 7)

Chairman Myers recognized Ken Corbet who feels that repealing the present Statutes would be a positive thing. (Attachment 8)

Chairman Myers recognized Wes Tral who has chosen other nearby states for his business due to present licensing requirements in Kansas. He would like to see this changed in order to build businesses here in Kansas. (Attachment 9)

Hearings on **HB 2466** were closed.

Chairman Myers called for Final Action on **HB 2466**.

CONTINUATION SHEET

MINUTES OF THE House Wildlife, Parks and Tourism Committee at 3:30 P.M. on February 21, 2005 in Room 241-N of the Capitol.

Motion withdrawn.

Representative Mah moved to amend **HB 2466** to change the effective date to January 1, 2006, seconded by Representative Holmes.

Motion carried.

Representative Mah moved to pass **HB 2466** favorably as amended, seconded by Representative Ohara.

Motion carried.

Chairman Myers asked Representative Ohara to carry the bill.

Chairman Myers adjourned the Committee at 5:15.

Next meeting scheduled for Wednesday, March 2, 2005.

Lisa Montgomery

Session of 2005

House Wildlife, Parks and Tourism

HOUSE RESOLUTION No. 6016

By Committee on Wildlife, Parks and Tourism

2-9

9 A RESOLUTION urging the Kansas Congressional delegation to spon-
10 sor the Flint Hills National Heritage Area.

11
12 WHEREAS, The Flint Hills are a unique and traditional native range-
13 land ranching area with a rich heritage of limestone construction and rural
14 communities; and

15 WHEREAS, The Flint Hills encompass such historical features as the
16 Santa Fe Trail, the Oregon Trail and Pony Express historical sites; and

17 ~~WHEREAS, Development of rural areas into industrial areas threat-~~
18 ~~ens the prairie landscapes, including tallgrass prairies and prairie life; and~~

19 WHEREAS, Kansans are increasingly interested in preserving cultural
20 traditions and heritage epitomized by the Flint Hills; Now, therefor,

21 *Be it resolved by the House of Representatives of the State of Kan-*
22 *sas:* That the Kansas Congressional delegation support the designation
23 of the Flint Hills as a National Heritage Area; and

24 *Be it further resolved:* That the Chief Clerk of the House of Repre-
25 sentatives provide an enrolled copy of this resolution to each member of
26 the Kansas Congressional Delegation.

See attachment

, including the areas within the Flint Hills that are supported by the respective board of county commissioners and local communities that are appropriate for designation as a part of the National heritage Area

WHEREAS, In 1967 the Kansas Legislature passed a bill establishing the Prairie Parkway extending from the Pony Express Station in Washington County south through the Flint Hills to the historic cattle town of Elgin in Chautauqua County to highlight the pastoral scenes, ranchland stewardship and rural communities along this route; and

WHEREAS, Six states (Minnesota, Iowa, Missouri, Kansas, Oklahoma and Texas) with support from the Federal Highway Administration and leadership in Kansas provided by the Kansas Department of Transportation, have formed a partnership to establish the Prairie Passage, designating highways from Mexico to Canada to showcase the cultural and natural heritage within the tallgrass prairie region, with two routes in Kansas with one featuring the Flint Hills region from Emporia to Arkansas City and the other including the adjacent Chautauqua Hills; and

WHEREAS, The scenic, cultural, natural and historic importance of the Flint Hills have been recognized by the State of Kansas through its designation of K-177 from Council Grove to Cassoday as a Kansas Scenic Byway to preserve, promote and enhance the byway corridor for residents and visitors to enjoy both now and in the future; and

WHEREAS, The Congress of the United States established the 10,894 acre Tallgrass Prairie National Preserve in 1996 and it is being developed as a unit of the National Park Service system of preserves, with additional dimensions of interpretative programs on the historical ranchstead and country school and history of early settlement and ranching, elements that would allow the facility to serve as one of several flagship attractions for a Flint Hills NHA; and

WHEREAS, Many communities within the Flint Hills, from Sedan to Cottonwood Falls, Council Grove, Alma, Manhattan, Waterville and Marysville are actively enhancing cultural and historical features to interest of Kansas residents and visitors from throughout the country and world; and

WHEREAS, The Kansas Turnpike Authority offers millions of travelers a glimpse of the impressive Flint Hills landscape, features displays on the area at service areas and with a publication on Kansas tallgrass prairie plants and wildlife, and provides a gateway to the many attractions that are in close proximity to this interstate; and

WHEREAS, Individuals within the region have developed opportunities for experiential travel including involvement with traditional ranching operations, wagon train trips, camping in a prairie landscape, nature appreciation, fishing, hunting and other activities on public and private land; and

WHEREAS, The Kansas Department of Transportation and the Kansas Division of Tourism are working with Audubon of Kansas to establish a Tallgrass "Prairie Parkway" Birding and Natural Heritage Trail to serve as a guide for residents and travelers to visit approximately 150 sites within the Flint Hills and Chautauqua Hills that have scenic vistas, trails and outdoor recreational opportunities, along with habitats to observe, photograph and enjoy birds and other wildlife, wildflowers and native grasses; and

WHEREAS, The Flint Hills possesses sites and historic structures important in recognition of the culture of Native Americans; and

Lisa Montgomery

Session of 2005

Balloon #1

HOUSE BILL No. 2253

By Committee on Wildlife, Parks and Tourism

2-2

9 AN ACT concerning wildlife; relating to wildlife violations; amending
10 K.S.A. 22-2908 and 32-1031 and K.S.A. 2004 Supp. 32-1032 and re-
11 pealing the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 22-2908 is hereby amended to read as follows: 22-
15 2908. (a) In determining whether diversion of a defendant is in the in-
16 terests of justice and of benefit to the defendant and the community, the
17 county or district attorney shall consider at least the following factors
18 among all factors considered:

19 (1) The nature of the crime charged and the circumstances surround-
20 ing it;

21 (2) any special characteristics or circumstances of the defendant;

22 (3) whether the defendant is a first-time offender and if the defend-
23 ant has previously participated in diversion, according to the certification
24 of the Kansas bureau of investigation or the division of vehicles of the
25 department of revenue;

26 (4) whether there is a probability that the defendant will cooperate
27 with and benefit from diversion;

28 (5) whether the available diversion program is appropriate to the
29 needs of the defendant;

30 (6) the impact of the diversion of the defendant upon the community;

31 (7) recommendations, if any, of the involved law enforcement agency;

32 (8) recommendations, if any, of the victim;

33 (9) provisions for restitution; and

34 (10) any mitigating circumstances.

35 (b) A county or district attorney shall not enter into a diversion agree-
36 ment in lieu of further criminal proceedings on a complaint if:

37 (1) The complaint alleges a violation of K.S.A. 8-1567 and amend-
38 ments thereto and the defendant: (A) Has previously participated in di-
39 version upon a complaint alleging a violation of that statute or an ordi-
40 nance of a city in this state which prohibits the acts prohibited by that
41 statute; (B) has previously been convicted of or pleaded *nolo contendere*
42 to a violation of that statute or a violation of a law of another state or of
43 a political subdivision of this or any other state, which law prohibits the

Committee on Wildlife, Parks and
Tourism
2/21/05
Attachment 2

1 acts prohibited by that statute; or (C) during the time of the alleged
2 violation was involved in a motor vehicle accident or collision resulting in
3 personal injury or death: ~~or~~

4 (2) *The complaint alleges a violation of article 10 of section 32 of the*
5 *Kansas Statutes Annotated, and amendments thereto, and the defendant:*
6 *(A) Has previously participated in diversion upon a complaint alleging*
7 *a violation of article 10 of section 32 of Kansas Statutes Annotated, and*
8 *amendments thereto; or (B) has previously been convicted of or pleaded*
9 *nolo contendere to a violation of article 10 of section 32 of Kansas Statutes*
10 *Annotated, and amendments thereto, or a violation of a law of another*
11 *state or of a political subdivision of this or any other state, which law*
12 *prohibits the acts prohibited by that article 10 of section 32 of Kansas*
13 *Statute Annotated, and amendments thereto; or*

14 ~~(2)~~ (3) the complaint alleges that the defendant committed a class A
15 or B felony or for crimes committed on or after July 1, 1993, an off-grid
16 crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity
17 level 1 or 2 felony for drug crimes.

18 Sec. 2. K.S.A. 32-1031 is hereby amended to read as follows: 32-
19 1031. (a) Unless otherwise provided by law or rules and regulations of
20 the secretary, violation of any provision of the wildlife and parks laws of
21 this state or rules and regulations adopted thereunder is a class C
22 misdemeanor.

23 (b) Upon a second conviction of a wildlife violation that is a class C
24 misdemeanor, a fine of not less than \$250 shall be imposed.

(1)

25 (c) Upon a third conviction of a wildlife violation that is a Class C
26 misdemeanor, a fine of not less than \$300 shall be imposed.

(2)

27 (d) Upon a fourth conviction of a wildlife violation that is a class c
28 misdemeanor, a fine of not less than \$400 shall be imposed and a minimum
29 of not less than 7 days in the county jail shall be served.

(3)

and any further convictions

30 Sec. 3. K.S.A. 2004 Supp. 32-1032 is hereby amended to read as
31 follows: 32-1032. (a) Violation of any provision of the wildlife and parks
32 laws of this state or rules and regulations of the secretary relating to big
33 game or wild turkey permits and game tags is a misdemeanor, subject to
34 the provisions of subsection (b), punishable by a fine of not less than \$250
35 ~~nor more than \$1,000~~ or by imprisonment in the county jail for ~~not more~~
36 ~~than six months~~, or by both.

All charges arising from the same set of circumstances shall constitute one conviction for the purposes of this section.

(b) Any conviction for a wildlife violation that is a class C misdemeanor that occurs before July 1, 2005, shall not be considered for purposes of this section.

37 (1) Upon a first or second conviction for a violation of the wildlife
38 and parks laws of this state or the rules and regulations of the secretary
39 relating to big game or wild turkey permits and game tags, the violator
40 shall not be fined less than \$250 nor more than \$1,000 or be imprisoned
41 in the county jail for not more than six months, or both.

\$500

42 (2) Upon a third conviction for a violation of the wildlife and parks
43 laws of this state or the rules and regulations of the secretary relating to

1 *big game or wild turkey permits and game tags, the violator shall not be*
2 *fined less than \$500 or be imprisoned in the county jail for less than 30*
3 *days, or both.*

4 (3) *Upon a fourth conviction for a violation of the wildlife and parks*
5 *laws of this state or the rules and regulations of the secretary relating to*
6 *big game or wild turkey permits and game tags, the violator shall not be*
7 *fined less than \$500 or be imprisoned in the county jail for less than 60*
8 *days, or both.*

9 (4) *Upon the fifth conviction for a violation of the wildlife and parks*
10 *laws of the state or the rules and regulations of the secretary relating to*
11 *big game or wild turkey permits and game tags, the violator shall not be*
12 *fined less than \$500 or be imprisoned in the county jail for less than 90*
13 *days, or both.*

or any further convictions

14 (b) (1) *In addition to any other penalty prescribed by law, the unlaw-*
15 *ful intentional taking of a trophy big game animal shall be punishable by*
16 *a fine of \$5,000.*

All charges arising from the same set of circumstances shall constitute one conviction for the purposes of this subsection. Any conviction for a wildlife violation that occurs before July 1, 2005, shall not be considered for purposes of this subsection.

17 (2) *A trophy big game animal shall include any animal meeting the*
18 *following criteria:*

19 (A) *An antlered whitetail deer having an inside spread measurement*
20 *of at least 17 inches;*

21 (B) *an antlered mule deer having an inside spread measurement of*
22 *at least 22 inches;*

23 (C) *an antlered elk having at least six points on one antler: or*

24 (D) *an antelope having at least one horn greater than 14 inches in*
25 *length.*

26 (3) *The secretary may adopt, in accordance with K.S.A. 32-805, and*
27 *amendments thereto, such rules and regulations that the secretary deems*
28 *necessary to implement and define the terms of this section.*

29 (c) *In addition to any other penalty imposed by the convicting court,*
30 *if a person is convicted of a violation of K.S.A. 32-1002, 32-1003 or 32-*
31 *1013, and amendments thereto, that involves taking of a big game animal*
32 *or wild turkey, or if a person is convicted of a violation of K.S.A. 32-1005,*
33 *and amendments thereto, that involves commercialization of a big game*
34 *animal or wild turkey, the court shall order:*

35 (1) *Upon the first such conviction, forfeiture of the person's hunting*
36 *privileges for one year from the date of conviction and: (A) Revocation*
37 *of the person's hunting license, unless such license is a lifetime hunting*
38 *license; or (B) if the person possesses a lifetime hunting license, suspen-*
39 *sion of such license for one year from the date of conviction.*

40 (2) *Upon the second such conviction, forfeiture of the person's hunt-*
41 *ing privileges for three years from the date of conviction and: (A) Revo-*
42 *cation of the person's hunting license, unless such license is a lifetime*
43 *hunting license; or (B) if the person possesses a lifetime hunting license,*

1 suspension of such license for three years from the date of conviction.

2 (3) Upon the third or a subsequent such conviction, forfeiture of the
3 person's hunting privileges for five years from the date of conviction and:

4 (A) Revocation of the person's hunting license, unless such license is a
5 lifetime hunting license; or (B) if the person possesses a lifetime hunting
6 license, suspension of such license for five years from the date of
7 conviction.

8 (d) If a person convicted of a violation described in subsection (c) has
9 been issued a combination hunting and fishing license or a combination
10 lifetime license, only the hunting portion of such license shall be revoked
11 or suspended pursuant to subsection (c).

12 (e) Nothing in this section shall be construed to prevent a convicting
13 court from suspending a person's hunting privileges or ordering the for-
14 feiture or suspension of the person's license, permit, stamp or other issue
15 of the department for a period longer than provided in this section, if
16 such forfeiture or suspension is otherwise provided for by law.

17 New Sec. 4. Upon a conviction for a wildlife violation described in
18 subsection (b) of K.S.A. 32-1050, and amendments thereto, the fines for
19 such violation shall not be less than the appearance fee bond for that
20 violation.

21 Sec. 5. K.S.A. 22-2908 and 32-1031 and K.S.A. 2004 Supp. 32-1032
22 are hereby repealed.

23 Sec. 6. This act shall take effect and be in force from and after its
24 publication in the statute book.

Lisa Montgomery

Session of 2005

Balloon #2

HOUSE BILL No. 2253

By Committee on Wildlife, Parks and Tourism

2-2

9 AN ACT concerning wildlife; relating to wildlife violations; amending
10 K.S.A. 22-2908 and 32-1031 and K.S.A. 2004 Supp. 32-1032 and re-
11 pealing the existing sections.

32-1002, 32-1003, 32-1013

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. ~~K.S.A. 22-2908 is hereby amended to read as follows: 22-~~
15 ~~2908. (a) In determining whether diversion of a defendant is in the in-~~
16 ~~terests of justice and of benefit to the defendant and the community, the~~
17 ~~county or district attorney shall consider at least the following factors~~
18 ~~among all factors considered:~~

19 (1) ~~The nature of the crime charged and the circumstances surround-~~
20 ~~ing it.~~

21 (2) ~~any special characteristics or circumstances of the defendant.~~

22 (3) ~~whether the defendant is a first time offender and if the defend-~~
23 ~~ant has previously participated in diversion, according to the certification~~
24 ~~of the Kansas bureau of investigation or the division of vehicles of the~~
25 ~~department of revenue;~~

26 (4) ~~whether there is a probability that the defendant will cooperate~~
27 ~~with and benefit from diversion;~~

28 (5) ~~whether the available diversion program is appropriate to the~~
29 ~~needs of the defendant;~~

30 (6) ~~the impact of the diversion of the defendant upon the community;~~

31 (7) ~~recommendations, if any, of the involved law enforcement agency;~~

32 (8) ~~recommendations, if any, of the victim;~~

33 (9) ~~provisions for restitution; and~~

34 (10) ~~any mitigating circumstances.~~

35 (b) ~~A county or district attorney shall not enter into a diversion agree-~~
36 ~~ment in lieu of further criminal proceedings on a complaint if:~~

37 (1) ~~The complaint alleges a violation of K.S.A. 8-1567 and amend-~~
38 ~~ments thereto and the defendant: (A) Has previously participated in di-~~
39 ~~version upon a complaint alleging a violation of that statute or an ordi-~~
40 ~~nance of a city in this state which prohibits the acts prohibited by that~~
41 ~~statute. (B) has previously been convicted of or pleaded *nolo contendere*~~
42 ~~to a violation of that statute or a violation of a law of another state or of~~
43 ~~a political subdivision of this or any other state, which law prohibits the~~

1 ~~acts prohibited by that statute, or (C) during the time of the alleged~~
 2 ~~violation was involved in a motor vehicle accident or collision resulting in~~
 3 ~~personal injury or death; or~~
 4 ~~(2) The complaint alleges a violation of article 10 of section 32 of the~~
 5 ~~Kansas Statutes Annotated, and amendments thereto, and the defendant~~
 6 ~~(A) Has previously participated in diversion upon a complaint alleging~~
 7 ~~a violation of article 10 of section 32 of Kansas Statutes Annotated, and~~
 8 ~~amendments thereto; or (B) has previously been convicted of or pleaded~~
 9 ~~nolo contendere to a violation of article 10 of section 32 of Kansas Statutes~~
 10 ~~Annotated, and amendments thereto, or a violation of a law of another~~
 11 ~~state or of a political subdivision of this or any other state, which law~~
 12 ~~prohibits the acts prohibited by that article 10 of section 32 of Kansas~~
 13 ~~Statute Annotated, and amendments thereto; or~~
 14 ~~(2) (3) the complaint alleges that the defendant committed a class A~~
 15 ~~or B felony or for crimes committed on or after July 1, 1993, an off grid~~
 16 ~~crime; a severity level 1, 2 or 3 felony for nondrug crimes or drug severity~~
 17 ~~level 1 or 2 felony for drug crimes.~~

Section 1.

18 **Sec. 2.** K.S.A. 32-1031 is hereby amended to read as follows: 32-
 19 1031. (a) Unless otherwise provided by law or rules and regulations of
 20 the secretary, violation of any provision of the wildlife and parks laws of
 21 this state or rules and regulations adopted thereunder is a class C
 22 misdemeanor.
 23 (b) Upon a second conviction of a wildlife violation that is a class C
 24 misdemeanor, a fine of not less than \$250 shall be imposed.
 25 (c) Upon a third conviction of a wildlife violation that is a Class C
 26 misdemeanor, a fine of not less than \$300 shall be imposed.
 27 (d) Upon a fourth conviction of a wildlife violation that is a class c
 28 misdemeanor, a fine of not less than \$400 shall be imposed and a minimum
 29 of not less than 7 days in the county jail shall be served.

30 **Sec. 3.** K.S.A. 2004 Supp. 32-1032 is hereby amended to read as
 31 follows: 32-1032. (a) Violation of any provision of the wildlife and parks
 32 laws of this state or rules and regulations of the secretary relating to big
 33 game or wild turkey permits and game tags is a misdemeanor, subject to
 34 the provisions of subsection (b), punishable by a fine of not less than \$250
 35 nor more than \$1,000 or by imprisonment in the county jail for not more
 36 than six months, or by both.

2

37 (1) Upon a first or second conviction for a violation of the wildlife
 38 and parks laws of this state or the rules and regulations of the secretary
 39 relating to big game or wild turkey permits and game tags, the violator
 40 shall not be fined less than \$250 nor more than \$1,000 or be imprisoned
 41 in the county jail for not more than six months, or both.

42 (2) Upon a third conviction for a violation of the wildlife and parks
 43 laws of this state or the rules and regulations of the secretary relating to

1 big game or wild turkey permits and game tags, the violator shall not be
2 fined less than \$500 or be imprisoned in the county jail for less than 30
3 days, or both.

\$1,000 and

4 (3) Upon a fourth conviction for a violation of the wildlife and parks
5 laws of this state or the rules and regulations of the secretary relating to
6 big game or wild turkey permits and game tags, the violator shall not be
7 fined less than \$500 or be imprisoned in the county jail for less than 60
8 days, or both.

A third conviction shall be a class B nonperson misdemeanor.

\$1,000 and

9 (4) Upon the fifth conviction for a violation of the wildlife and parks
10 laws of the state or the rules and regulations of the secretary relating to
11 big game or wild turkey permits and game tags, the violator shall not be
12 fined less than \$500 or be imprisoned in the county jail for less than 90
13 days, or both.

A fourth conviction shall be a class A nonperson misdemeanor.

or subsequent

\$1,000 and

14 (b) (1) In addition to any other penalty prescribed by law, the unlaw-
15 ful intentional taking of a trophy big game animal shall be punishable by
16 a fine of \$5,000.

A fifth or subsequent conviction shall be a class A nonperson
misdemeanor.

17 (2) A trophy big game animal shall include any animal meeting the
18 following criteria:

19 (A) An antlered whitetail deer having an inside spread measurement
20 of at least 17 inches;

21 (B) an antlered mule deer having an inside spread measurement of
22 at least 22 inches;

23 (C) an antlered elk having at least six points on one antler; or

24 (D) an antelope having at least one horn greater than 14 inches in
25 length.

26 (3) The secretary may adopt, in accordance with K.S.A. 32-805, and
27 amendments thereto, such rules and regulations that the secretary deems
28 necessary to implement and define the terms of this section.

29 (c) In addition to any other penalty imposed by the convicting court,
30 if a person is convicted of a violation of K.S.A. 32-1002, 32-1003 or 32-
31 1013, and amendments thereto, that involves taking of a big game animal
32 or wild turkey, or if a person is convicted of a violation of K.S.A. 32-1005,
33 and amendments thereto, that involves commercialization of a big game
34 animal or wild turkey, the court shall order:

35 (1) Upon the first such conviction, forfeiture of the person's hunting
36 privileges for one year from the date of conviction and: (A) Revocation
37 of the person's hunting license, unless such license is a lifetime hunting
38 license; or (B) if the person possesses a lifetime hunting license, suspen-
39 sion of such license for one year from the date of conviction.

40 (2) Upon the second such conviction, forfeiture of the person's hunt-
41 ing privileges for three years from the date of conviction and: (A) Revo-
42 cation of the person's hunting license, unless such license is a lifetime
43 hunting license; or (B) if the person possesses a lifetime hunting license,

1 suspension of such license for three years from the date of conviction.

2 (3) Upon the third or a subsequent such conviction, forfeiture of the
3 person's hunting privileges for five years from the date of conviction and:

4 (A) Revocation of the person's hunting license, unless such license is a
5 lifetime hunting license; or (B) if the person possesses a lifetime hunting
6 license, suspension of such license for five years from the date of
7 conviction.

8 (d) If a person convicted of a violation described in subsection (c) has
9 been issued a combination hunting and fishing license or a combination
10 lifetime license, only the hunting portion of such license shall be revoked
11 or suspended pursuant to subsection (c).

12 (e) Nothing in this section shall be construed to prevent a convicting
13 court from suspending a person's hunting privileges or ordering the for-
14 feiture or suspension of the person's license, permit, stamp or other issue
15 of the department for a period longer than provided in this section, if
16 such forfeiture or suspension is otherwise provided for by law.

17 New Sec. 4. Upon a conviction for a wildlife violation described in
18 subsection (b) of K.S.A. 32-1050, and amendments thereto, the fines for
19 such violation shall not be less than the appearance fee bond for that
20 violation.

21 Sec. 5. K.S.A. 22-2908 and 32-1031 and K.S.A. 2004 Supp. 32-1032
22 are hereby repealed.

23 Sec. 6. This act shall take effect and be in force from and after its
24 publication in the statute book.

3

See attachments
Renumber sections accordingly

, 32-1002, 32-1003, 32-1013

Sec. 4. K.S.A. 32-1002 is hereby amended to read as follows: 32-1002.

(a) Unless and except as permitted by law or rules and regulations adopted by the secretary in accordance with K.S.A. 32-805 and amendments thereto, it is unlawful for any person to:

(1) Hunt, fish, furharvest or take any wildlife in this state by any means or manner;

(2) possess, any wildlife, dead or alive, at any time or in any number, in this state;

(3) purchase, sell, exchange, ship or offer for sale, exchange or shipment any wildlife in this state;

(4) take any wildlife in this state for sale, exchange or other commercial purposes;

(5) possess any seine, trammel net, hoop net, fyke net, fish gig, fish spear, fish trap or other device, contrivance or material for the purpose of taking wildlife; or

(6) take or use, at any time or in any manner, any game bird, game animal, coyote or furbearing animal, whether pen-raised or wild, in any field trial or for training dogs.

(b) The provisions of subsections (a)(2) and (a)(3) do not apply to animals sold in surplus property disposal sales of department exhibit herds or animals legally taken outside this state, except the provisions of subsection (a)(3) shall apply to:

(1) The meat of game animals legally taken outside this state; and

(2) other restrictions as provided by rule and regulation of the secretary.

(c) The provisions of this section shall not be construed to prevent:

(1) Any person from taking starlings or English and European sparrows;
or

(2) owners or legal occupants of land from killing any animals when found in or near buildings on their premises or when destroying property, subject to the following: (A) The provisions of all federal laws and regulations governing protected species and the provisions of K.S.A. 32-957 through 32-963, and rules and regulations adopted thereunder; (B) it is unlawful to use, or possess with intent to use, any such animal so killed unless authorized by rules and regulations of the secretary; and (C) such owners or legal occupants shall make reasonable efforts to alleviate their problems with any such animals before killing them.

(d) A second conviction under the provisions of this section shall be class B nonperson misdemeanor. A third or subsequent conviction under the provisions of this section shall be a class A nonperson misdemeanor.

Sec. 5. K.S.A. 32-1003 is hereby amended to read as follows: 32-1003. It is unlawful for any person, unless authorized by law or rules and regulations of the secretary, to:

(a) Take any game animal or furbearing animal from a motorboat, airplane, motor vehicle or other water, air or land vehicle unless such person holds a valid handicapped hunting and fishing permit issued to such person pursuant to K.S.A. 32-931 and amendments thereto; (1)

(b) provide or receive information concerning the location of any game animal or furbearing animal by radio or other mechanical device for purposes of taking such bird or animal; (2)

(c) use sodium fluoroacetate, commonly called formula 1080, except as permitted by rules and regulations of the secretary; (3)

(d) use poison, poisonous gas, smoke or ferrets, or any smoke gun or other device for forcing smoke or any other asphyxiating or deadly gas or liquid into the holes, dens, runways or houses of wildlife, except as permitted by rules and regulations of the secretary; (4)

(e) fish by placing in or upon any lake, pond, river, creek, stream or any other water, bordering on or within the state of Kansas, any (5)

deleterious substance or fishberries;

(f) place or explode any dynamite, giant powder, lime, nitroglycerine or any other explosive of any character or kind in any waters of the state of Kansas with the intent to take or stun fish; (6)

(g) throw or cast the rays of a spotlight, headlight or other artificial light on any highway, roadway, field, grassland, woodland or forest for the purpose of spotting, locating or taking any wildlife while having in possession or control, either singly or as one of a group of persons, any rifle, pistol, shotgun, bow or other implement whereby wildlife could be taken, except that nothing in this subsection shall be construed to prohibit a person from carrying a weapon while using artificial light for conducting surveillance, actively caring for agricultural equipment or livestock or conducting activities described in subsection (c)(2) of K.S.A. 32-1002 and amendments thereto, when on land under the person's control, if the person owns such land, is in lawful possession of such land or is regularly employed for purposes of livestock or agricultural production or management on such land. (7)

(b) A second conviction under the provisions of this section shall be class B nonperson misdemeanor. A third or subsequent conviction under the provisions of this section shall be a class A nonperson misdemeanor.

Sec. 6. K.S.A. 32-1013 is hereby amended to read as follows: 32-1013.

(a) Any landowner or person in lawful possession of any land may post such land with signs stating that hunting, trapping or fishing on such land shall be by written permission only. It is unlawful for any person to take wildlife on land which is posted as provided in this subsection, without having in the person's possession the written permission of the owner or person in lawful possession thereof.

(b) Instead of posting land as provided in subsection (a), any landowner or person in lawful possession of any land may post such land by placing identifying purple paint marks on trees or posts around the area to be posted. Each paint mark shall be a vertical line of at least eight inches in length and the bottom of the mark shall be no less than three feet nor more than five feet high. Such paint marks shall be readily visible to any person approaching the land. Land posted as provided in this subsection shall be considered to be posted by written permission only as provided in subsection (a).

(c) A person licensed to hunt or furharvest who is following or pursuing a wounded animal on land as provided in this section posted without written permission of the landowner or person in lawful possession thereof shall not be in violation of this section while in such pursuit, except that the provisions of this subsection shall not authorize a person to remain on such land if instructed to leave by the owner or person in lawful possession of the land. Any person who fails to leave such land when instructed is subject to the provisions of subsection (b) of K.S.A. 21-3728, and amendments thereto.

(d) A second conviction under the provisions of this section shall be class B nonperson misdemeanor. A third or subsequent conviction under the provisions of this section shall be a class A nonperson misdemeanor.

Lisa Montgomery

Session of 2005

Balloon #3

HOUSE BILL No. 2253

By Committee on Wildlife, Parks and Tourism

2-2

9 AN ACT concerning wildlife; relating to wildlife violations; amending
10 K.S.A. 22-2908 and 32-1031 and K.S.A. 2004 Supp. 32-1032 and re-
11 pealing the existing sections.
12

, 32-1002, 32-1003, 32-1013

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

14 ~~Section 1. K.S.A. 22-2908 is hereby amended to read as follows: 22-~~
15 ~~2908. (a) In determining whether diversion of a defendant is in the in-~~
16 ~~terests of justice and of benefit to the defendant and the community, the~~
17 ~~county or district attorney shall consider at least the following factors~~
18 ~~among all factors considered:~~

19 ~~(1) The nature of the crime charged and the circumstances surround-~~
20 ~~ing it;~~

21 ~~(2) any special characteristics or circumstances of the defendant;~~

22 ~~(3) whether the defendant is a first time offender and if the defend-~~
23 ~~ant has previously participated in diversion, according to the certification~~
24 ~~of the Kansas bureau of investigation or the division of vehicles of the~~
25 ~~department of revenue;~~

26 ~~(4) whether there is a probability that the defendant will cooperate~~
27 ~~with and benefit from diversion;~~

28 ~~(5) whether the available diversion program is appropriate to the~~
29 ~~needs of the defendant;~~

30 ~~(6) the impact of the diversion of the defendant upon the community;~~

31 ~~(7) recommendations, if any, of the involved law enforcement agency;~~

32 ~~(8) recommendations, if any, of the victim;~~

33 ~~(9) provisions for restitution; and~~

34 ~~(10) any mitigating circumstances.~~

35 ~~(b) A county or district attorney shall not enter into a diversion agree-~~
36 ~~ment in lieu of further criminal proceedings on a complaint if:~~

37 ~~(1) The complaint alleges a violation of K.S.A. 8-1567 and amend-~~
38 ~~ments thereto and the defendant: (A) Has previously participated in di-~~
39 ~~version upon a complaint alleging a violation of that statute or an ordi-~~
40 ~~nance of a city in this state which prohibits the acts prohibited by that~~
41 ~~statute; (B) has previously been convicted of or pleaded *nolo contendere*~~
42 ~~to a violation of that statute or a violation of a law of another state or of~~
43 ~~a political subdivision of this or any other state, which law prohibits the~~

1 acts prohibited by that statute; or (C) during the time of the alleged
2 violation was involved in a motor vehicle accident or collision resulting in
3 personal injury or death; or

4 ~~(2) The complaint alleges a violation of article 10 of section 32 of the
5 Kansas Statutes Annotated, and amendments thereto, and the defendant:~~

6 ~~(A) Has previously participated in diversion upon a complaint alleging
7 a violation of article 10 of section 32 of Kansas Statutes Annotated, and
8 amendments thereto; or (B) has previously been convicted of or pleaded
9 nolo contendere to a violation of article 10 of section 32 of Kansas Statutes
10 Annotated, and amendments thereto, or a violation of a law of another
11 state or of a political subdivision of this or any other state, which law
12 prohibits the acts prohibited by that article 10 of section 32 of Kansas
13 Statute Annotated, and amendments thereto; or~~

14 ~~(2) (3) the complaint alleges that the defendant committed a class A
15 or B felony or for crimes committed on or after July 1, 2003, an off grid
16 crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity
17 level 1 or 2 felony for drug crimes.~~

18 ~~Sec. 2~~ K.S.A. 32-1031 is hereby amended to read as follows: 32-
19 1031. (a) Unless otherwise provided by law or rules and regulations of
20 the secretary, violation of any provision of the wildlife and parks laws of
21 this state or rules and regulations adopted thereunder is a class C
22 misdemeanor.

23 ~~(b) Upon a second conviction of a wildlife violation that is a class C
24 misdemeanor, a fine of not less than \$250 shall be imposed.~~

25 ~~(c) Upon a third conviction of a wildlife violation that is a Class C
26 misdemeanor, a fine of not less than \$300 shall be imposed.~~

27 ~~(d) Upon a fourth conviction of a wildlife violation that is a class c
28 misdemeanor, a fine of not less than \$400 shall be imposed and a minimum
29 of not less than 7 days in the county jail shall be served.~~

30 Sec. 3 K.S.A. 2004 Supp. 32-1032 is hereby amended to read as
31 follows: 32-1032. (a) Violation of any provision of the wildlife and parks
32 laws of this state or rules and regulations of the secretary relating to big
33 game or wild turkey permits and game tags is a misdemeanor, subject to
34 the provisions of subsection (b), punishable by a fine of not less than \$250
35 nor more than \$1,000 or by imprisonment in the county jail for not more
36 than six months, or by both.

37 (1) Upon a first or second conviction for a violation of the wildlife
38 and parks laws of this state or the rules and regulations of the secretary
39 relating to big game or wild turkey permits and game tags, the violator
40 shall not be fined less than \$250 nor more than \$1,000 or be imprisoned
41 in the county jail for not more than six months, or both.

42 (2) Upon a third conviction for a violation of the wildlife and parks
43 laws of this state or the rules and regulations of the secretary relating to

Section 1.

(1)

(2)

(3)

and any further convictions

2

All charges arising from the same set of circumstances shall constitute one conviction for the purposes of this section.

(b) Any conviction for a wildlife violation that is a class C misdemeanor that occurs before July 1, 2005, shall not be considered for purposes of this section.

\$500

1 big game or wild turkey permits and game tags, the violator shall not be
2 fined less than \$500 or be imprisoned in the county jail for less than 30
3 days, or both.

\$1,000 and

A third conviction shall be a class B nonperson misdemeanor.

4 (3) Upon a fourth conviction for a violation of the wildlife and parks
5 laws of this state or the rules and regulations of the secretary relating to
6 big game or wild turkey permits and game tags, the violator shall not be
7 fined less than \$500 or be imprisoned in the county jail for less than 60
8 days, or both.

\$1,000 and

A fourth conviction shall be a class A nonperson misdemeanor.

or subsequent

or any further convictions

9 (4) Upon the fifth conviction for a violation of the wildlife and parks
10 laws of the state or the rules and regulations of the secretary relating to
11 big game or wild turkey permits and game tags, the violator shall not be
12 fined less than \$500 or be imprisoned in the county jail for less than 90
13 days, or both.

\$1,000 and

A fifth or subsequent conviction shall be a class A nonperson
misdemeanor.

14 (b) (1) In addition to any other penalty prescribed by law, the unlaw-
15 ful intentional taking of a trophy big game animal shall be punishable by
16 a fine of \$5,000.

All charges arising from the same set of circumstances shall
constitute one conviction for the purposes of this subsection.
Any conviction for a wildlife violation that occurs before July 1,
2005, shall not be considered for purposes of this subsection.

17 (2) A trophy big game animal shall include any animal meeting the
18 following criteria:

19 (A) An antlered whitetail deer having an inside spread measurement
20 of at least 17 inches;

21 (B) an antlered mule deer having an inside spread measurement of
22 at least 22 inches;

23 (C) an antlered elk having at least six points on one antler; or

24 (D) an antelope having at least one horn greater than 14 inches in
25 length.

26 (3) The secretary may adopt, in accordance with K.S.A. 32-805, and
27 amendments thereto, such rules and regulations that the secretary deems
28 necessary to implement and define the terms of this section.

29 (c) In addition to any other penalty imposed by the convicting court,
30 if a person is convicted of a violation of K.S.A. 32-1002, 32-1003 or 32-
31 1013, and amendments thereto, that involves taking of a big game animal
32 or wild turkey, or if a person is convicted of a violation of K.S.A. 32-1005,
33 and amendments thereto, that involves commercialization of a big game
34 animal or wild turkey, the court shall order:

35 (1) Upon the first such conviction, forfeiture of the person's hunting
36 privileges for one year from the date of conviction and: (A) Revocation
37 of the person's hunting license, unless such license is a lifetime hunting
38 license; or (B) if the person possesses a lifetime hunting license, suspen-
39 sion of such license for one year from the date of conviction.

40 (2) Upon the second such conviction, forfeiture of the person's hunt-
41 ing privileges for three years from the date of conviction and: (A) Revo-
42 cation of the person's hunting license, unless such license is a lifetime
43 hunting license; or (B) if the person possesses a lifetime hunting license,

1 suspension of such license for three years from the date of conviction.

2 (3) Upon the third or a subsequent such conviction, forfeiture of the
3 person's hunting privileges for five years from the date of conviction and:

4 (A) Revocation of the person's hunting license, unless such license is a
5 lifetime hunting license; or (B) if the person possesses a lifetime hunting
6 license, suspension of such license for five years from the date of
7 conviction.

8 (d) If a person convicted of a violation described in subsection (c) has
9 been issued a combination hunting and fishing license or a combination
10 lifetime license, only the hunting portion of such license shall be revoked
11 or suspended pursuant to subsection (c).

12 (e) Nothing in this section shall be construed to prevent a convicting
13 court from suspending a person's hunting privileges or ordering the for-
14 feiture or suspension of the person's license, permit, stamp or other issue
15 of the department for a period longer than provided in this section, if
16 such forfeiture or suspension is otherwise provided for by law.

17 New Sec. ~~4~~ Upon a conviction for a wildlife violation described in
18 subsection (b) of K.S.A. 32-1050, and amendments thereto, the fines for
19 such violation shall not be less than the appearance fee bond for that
20 violation.

21 Sec. 5. K.S.A. 22-2908 and 32-1031 and K.S.A. 2004 Supp. 32-1032
22 are hereby repealed.

23 Sec. 6. This act shall take effect and be in force from and after its
24 publication in the statute book.

3

See attachments
Renumber sections accordingly

, 32-1002, 32-1003, 32-1013

Sec. 4. K.S.A. 32-1002 is hereby amended to read as follows: 32-1002.

(a) Unless and except as permitted by law or rules and regulations adopted by the secretary in accordance with K.S.A. 32-805 and amendments thereto, it is unlawful for any person to:

(1) Hunt, fish, furharvest or take any wildlife in this state by any means or manner;

(2) possess, any wildlife, dead or alive, at any time or in any number, in this state;

(3) purchase, sell, exchange, ship or offer for sale, exchange or shipment any wildlife in this state;

(4) take any wildlife in this state for sale, exchange or other commercial purposes;

(5) possess any seine, trammel net, hoop net, fyke net, fish gig, fish spear, fish trap or other device, contrivance or material for the purpose of taking wildlife; or

(6) take or use, at any time or in any manner, any game bird, game animal, coyote or furbearing animal, whether pen-raised or wild, in any field trial or for training dogs.

(b) The provisions of subsections (a)(2) and (a)(3) do not apply to animals sold in surplus property disposal sales of department exhibit herds or animals legally taken outside this state, except the provisions of subsection (a)(3) shall apply to:

(1) The meat of game animals legally taken outside this state; and

(2) other restrictions as provided by rule and regulation of the secretary.

(c) The provisions of this section shall not be construed to prevent:

(1) Any person from taking starlings or English and European sparrows;
or

(2) owners or legal occupants of land from killing any animals when found in or near buildings on their premises or when destroying property, subject to the following: (A) The provisions of all federal laws and regulations governing protected species and the provisions of K.S.A. 32-957 through 32-963, and rules and regulations adopted thereunder; (B) it is unlawful to use, or possess with intent to use, any such animal so killed unless authorized by rules and regulations of the secretary; and (C) such owners or legal occupants shall make reasonable efforts to alleviate their problems with any such animals before killing them.

(d) A second conviction under the provisions of this section shall be class B nonperson misdemeanor. A third or subsequent conviction under the provisions of this section shall be a class A nonperson misdemeanor.

Sec. 5. K.S.A. 32-1003 is hereby amended to read as follows: 32-1003. It is unlawful for any person, unless authorized by law or rules and regulations of the secretary, to:

(a) Take any game animal or furbearing animal from a motorboat, airplane, motor vehicle or other water, air or land vehicle unless such person holds a valid handicapped hunting and fishing permit issued to such person pursuant to K.S.A. 32-931 and amendments thereto; (1)

(b) provide or receive information concerning the location of any game animal or furbearing animal by radio or other mechanical device for purposes of taking such bird or animal; (2)

(c) use sodium fluoroacetate, commonly called formula 1080, except as permitted by rules and regulations of the secretary; (3)

(d) use poison, poisonous gas, smoke or ferrets, or any smoke gun or other device for forcing smoke or any other asphyxiating or deadly gas or liquid into the holes, dens, runways or houses of wildlife, except as permitted by rules and regulations of the secretary; (4)

(e) fish by placing in or upon any lake, pond, river, creek, stream or any other water, bordering on or within the state of Kansas, any (5)

deleterious substance or fishberries;

(f) place or explode any dynamite, giant powder, lime, nitroglycerine or any other explosive of any character or kind in any waters of the state of Kansas with the intent to take or stun fish; (6)

(g) throw or cast the rays of a spotlight, headlight or other artificial light on any highway, roadway, field, grassland, woodland or forest for the purpose of spotting, locating or taking any wildlife while having in possession or control, either singly or as one of a group of persons, any rifle, pistol, shotgun, bow or other implement whereby wildlife could be taken, except that nothing in this subsection shall be construed to prohibit a person from carrying a weapon while using artificial light for conducting surveillance, actively caring for agricultural equipment or livestock or conducting activities described in subsection (c)(2) of K.S.A. 32-1002 and amendments thereto, when on land under the person's control, if the person owns such land, is in lawful possession of such land or is regularly employed for purposes of livestock or agricultural production or management on such land. (7)

(b) A second conviction under the provisions of this section shall be class B nonperson misdemeanor. A third or subsequent conviction under the provisions of this section shall be a class A nonperson misdemeanor.

Sec. 6. K.S.A. 32-1013 is hereby amended to read as follows: 32-1013.

(a) Any landowner or person in lawful possession of any land may post such land with signs stating that hunting, trapping or fishing on such land shall be by written permission only. It is unlawful for any person to take wildlife on land which is posted as provided in this subsection, without having in the person's possession the written permission of the owner or person in lawful possession thereof.

(b) Instead of posting land as provided in subsection (a), any landowner or person in lawful possession of any land may post such land by placing identifying purple paint marks on trees or posts around the area to be posted. Each paint mark shall be a vertical line of at least eight inches in length and the bottom of the mark shall be no less than three feet nor more than five feet high. Such paint marks shall be readily visible to any person approaching the land. Land posted as provided in this subsection shall be considered to be posted by written permission only as provided in subsection (a).

(c) A person licensed to hunt or furharvest who is following or pursuing a wounded animal on land as provided in this section posted without written permission of the landowner or person in lawful possession thereof shall not be in violation of this section while in such pursuit, except that the provisions of this subsection shall not authorize a person to remain on such land if instructed to leave by the owner or person in lawful possession of the land. Any person who fails to leave such land when instructed is subject to the provisions of subsection (b) of K.S.A. 21-3728, and amendments thereto.

(d) A second conviction under the provisions of this section shall be class B nonperson misdemeanor. A third or subsequent conviction under the provisions of this section shall be a class A nonperson misdemeanor.

Lisa Montgomery

32-964. Commercial guide services; permits; unlawful acts, penalties; information publication. (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 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 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 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 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. 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.

KANSAS

DEPARTMENT OF WILDLIFE & PARKS

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2466 relating to Repealing the State's Authority to Issue Commercial
Guide Permits
To
House Committee on Wildlife, Parks and Tourism**

**By Christopher J. Tymeson
Chief Legal Counsel
Kansas Department of Wildlife and Parks**

21 February 2005

House Bill 22466 seeks to repeal K.S.A. 32-964, which provides authority to the Kansas Department of Wildlife and Parks to issue commercial and associate guide permits. This bill will also amend or repeal other statutory language concerning the issuance of these permits and the provisions contained in this bill would be effective July 1, 2005. The Department stands neutral on this bill.

The requirement for any person who receives compensation for providing guide services for hunting or fishing became law in 1990. At the time of the initial legislation, a number of community-based groups and the Department testified in favor of requiring commercial guide businesses to be permitted by the State. In 1992, several of those groups who had previously testified in favor of permitting, testified before the Legislature that the statutory provisions were too restrictive and sought relief by exempting property owners and tenants, operating on their own lands, from the requirement. Over the course of time other affected groups providing guide services have been exempted as well. At present, only persons who provide guide services, for compensation, for big game and waterfowl hunting are required to hold a guide permit.

The present guide permitting program provides limited services, other than hunting opportunities by virtue of land access, to the big game and waterfowl hunting publics. The Department does provide a list of permitted commercial guides for the public. There are minimum safety related requirements, such as basic first aid and CPR certification, that guides must possess in order to offer commercial services. Criminal convictions of guide permit applicants are considered in the application process. The Department has denied 31 applicants since 2000, while at the same time issuing 2,362 permits. 472 permits are issued annually based on a five-year average.

On the counter side, clients are not provided any assurances or protection in the form of bonding or liability insurance on the part of the guide. Guides do not have to provide proof of actually having legal access to any land for their guiding business.

Committee on Wildlife, Parks and
Tourism
2/21/05
Attachment 6

Office of the Secretary

1020 S Kansas Ave., Ste. 200, Topeka, KS 66612-13
Phone 785-296-2281 Fax 785-296-6953 www.kdwp.sta

There are no requirements that equipment, lodging facilities or meals provided by the guide meet any standards.

The oversight of guide service businesses is more an issue of consumer protection rather than wildlife management. Current provisions do maintain certain minimum requirements, but are short of providing significant assurances to the public. In addition, guide permit requirements no longer apply to fishing, upland game birds, small game, wild turkey or predator hunting. Client complaints concerning failure to provide services or other consumer issues for services not requiring a guide permit are referred to the Attorney General's office of Consumer Protection in the same manner as complaints against permitted guides.

This proposed legislation places the State of Kansas at a cross-road. Passage of this legislation will fiscally impact the revenue to the Department, yet will reduce expenditures currently required to administer and enforce provisions of the program. The consumer of guide services will no longer have assurance that at least minimal safety standards are met by the guide, but presently health and safety standards are not required for lodging, meals or equipment provided. While a guide permit is required for big game or waterfowl hunting, no requirements are necessary for a large number of people providing guide services for upland bird and wild turkey hunting, or fishing.

The Department would suggest one amendment should this legislation move forward. The effective date would be July 1, 2005 and the Department would recommend an effective date of January 1, 2006 instead.

HOUSE COMMITTEE ON WILDLIFE, PARKS AND TOURISM

FEBRUARY 21ST, 2005

TESTIMONY IN FAVOR OF

HOUSE BILL 2466

PROPONENT

KEATON KELSO
OWNER
K&K OUTFITTERS, LLC
NEWTON, KANSAS 67114
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Dear Chairman and Committee Members:

Thank you for the opportunity to speak in favor of House Bill 2466. The guide license legislation started approximately 13 years ago with great intentions of creating a climate of professional businesses that could provide hunting opportunities for non-resident hunters. The license was supported by many in the guide industry, the Department of Wildlife and Parks and the legislature. Since that time, the industry has grown and developed into one of Kansas's most successful tourist attraction.

With no intent of degrading the work of the Department of Wildlife and Parks, I would like to speak to you today about why the guide license process has been a failure to our industry.

1. The license process clearly has become a way of tracking and overseeing current licensed guides. In the inception of the law, it was intended as a tool to prevent unlicensed guiding in Kansas. In the past few years, it has become evident to the industry that the Department of Wildlife and Parks is not using the law to prevent illegal guiding, but rather as a tool to monitor licensed guides. In the past 4 years, I and many others in our industry have given names of individuals that are guiding without a license to Wildlife and Parks. In all cases, nothing has been done. Why should the people complying with the laws be the ones scrutinized while others who disregard the law have no consequences?

In addition to illegal guiding, those individuals without licenses do not report information to Wildlife and Parks. Information requested by Wildlife and Parks includes: name and address of hunter, date of hunt, license number, animal taken, department lands used. In this past year, Wildlife and Parks has written tickets to law abiding businesses because of incorrect dates on their report. Is that the intent of the regulation or rather, should the intent be to catch and prosecute those that are guiding without licenses or illegally hunting?

2. (As Written In Wildlife Parks Regulations) "According to the law, 'commercial guide services' means providing, offering to provide, arranging for or assisting with hunting activities for others on a commercial basis. This can include providing pack or riding livestock, transportation other than commercial carrier, or equipment or facilities, if these things are provided in conjunction with hunting." Currently, I have a 65 year old mother and my wife that cook for my hunters, I have two young boys that clean birds for clients and I also rent a church camp facility for lodging. Under current regulations, my mother, my wife, the two young boys and the church are breaking the law. They should all have to know all the hunting regulations, pass the test, have CPR and First Aid and have hunters safety even though they never step foot in the field with a hunter.

In addition, the regulation requires me to hire employees and get them certified before the hunting season. As a business owner I do not have the flexibility to find new employees during the hunting season even in the case of additional clients or of an emergency for one of my guides. Furthermore, this past year I had three individuals take the guide's test and pass on September 10, 2004. The Department of Wildlife and Parks required them to have renewal documents, notarized with my signature, by September 15, 2004. The Department only gave us three working days due to the weekend. Because my employees are scattered across the state, we could not comply with the regulation. Thus, I have three employees that must go through the whole testing process again in 2005. As you can see, the regulation is not functional for businesses that are trying to comply with the law.

3. I want to recognize the Department of Wildlife and Parks for their management of our renewable resources. Without their years of hard work, Kansas would not be known for the great hunting destination it is. In regards to this, I would like the committee to recognize that the Department is made up of great biologists; however, it is not made up of individuals with great business backgrounds. Currently, one of the state's largest tourist industries is being regulated by a department with a lack of knowledge of the guide business. Furthermore, I believe there are some in the Department that are not supportive of the guiding industry as a whole. In the past 13 years, Wildlife and Parks has not provided one piece of legislation or regulation that supports the guide industry. In contrary, all regulations that have been created weaken or restrict the industry. In addition, in the past 13 years, the Department has not collaborated with or asked for input from guides to evaluate regulations that better serve the department or the guiding industry. How can a business thrive when the department that oversees it restricts the industry's efforts to grow? Let the Department make the regulations in regards to game management, which is their expertise. Please allow the guide industry to develop without restrictive regulations.

I again want to thank the chairmen and committee members for giving me the opportunity to speak. Your favorable consideration of this bill would be greatly appreciated.

Keaton Kelso
Owner
K&K Outfitters
www.duckandbuck.com

To: The House Wildlife, Parks and Tourism Committee

From: Keith Houghton, operator of Ringneck Ranch, Inc., Tipton, Kansas
and President of the Kansas Sport Hunting Association

Presented by Ken Corbet

Date: Monday, February 21, 2005

Dear Legislators:

Please accept my apologies for not personally attending this hearing. The short notice in scheduling this meeting did not give me the opportunity to modify my schedule as an airline pilot.

I am addressing you as a hunting service provider that operates a controlled shooting area primarily for upland gamebirds. Established in 1983, we are presently completing our fifth consecutive season of hosting approximately 2000 hunter-days that create over 50 seasonal jobs in the communities of Tipton and Hunter in North Central Kansas. Those 50+ jobs annually generate a payroll in excess of \$250,000 and sales tax revenue in excess of \$50,000 per year.

I am also currently the president of the Kansas Sport Hunting Association, which represents and supports some 220+ member organizations consisting of hunting service providers, gamebird producers, and supporting industries.

Please consider that hunting is a cornerstone to the governor's agritourism effort. I was a proponent of the original guide certification statute that would be repealed by HB2466. The original statute initiated under Secretary Minion in the early 90's provided a baseline of professionalism for what was becoming a new aspect of our Kansas hunting heritage. It now appears that the original statute was written so broadly, that with regulatory evolution and literal interpretation, the commercial guide requirement and certification has now become quite problematic.

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Tourism
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Attachment 8

The certification requirement is so broad that anyone advertising or providing services even associated with a hunt (meal service or accommodations) is required to be a certified guide...something akin to being a rated pilot in order to buy an airline ticket.

Re: A) Commissioner Warner's question and statements at the January 23, 2003 Wildlife & Parks commission meeting.

B) Wildlife and Park's letter to Cabela's Outdoor Adventures advising that by advertising hunts in Kansas they were in violation of the commercial guide requirement.

The recent evolution of the guide certification requirements now demands that guides complete the certification process by September for the following year. This situation makes staffing by hunting service providers more difficult than ever, if not impossible. The annual licensing fee was recently increased to the full legislatively authorized limit, which resulted in an immediate 500% increase.

Two years ago an amendment was passed in the house that exempted several species from the requirement for a certified guide. It was hoped that this action would initiate a change in the application of and certification for commercial guides. This law has become so cumbersome that law-abiding landowners are electing to bypass its requirement in growing their supplemental businesses.

Due to literal interpretation and without moderation of the commercial guide statute we at the Kansas Sport Hunting Association would ask for your support of HB2466 which would repeal the hunting guide certification requirement.

Thank you for your consideration.

Keith Houghton

Wes Traul
Kansas Legislature Testimony on HB2466
(February 21, 2005)

My name is Wes Traul and my family and I are livestock and forage producers in Southeast Kansas (Anderson County). In 1997 in an effort to maximize our investment in agriculture, we began a small agri-tourism business on our farm and grasslands. We provide a destination for whitetail, upland birds, and turkey clients.

Since we began our business due to the demand in the past two years we have expanded our operation twice. After careful review of the operating environment we chose the neighboring states of Nebraska and Missouri for our expansion. One factor in favor of these locations is neither have a guide license requirement, thus, we eliminated the guide license and the burden of the reports. The sad result of this decision is we have taken revenue out of our community and moved it to another state which has welcomed us with open arms.

The normal tools of an outfitter include pack animals, deckers, canvas wall tents and quality optics; but in Kansas the tools of an outfitter are mops, dish cloths, spatulas and toilet brushes. In conversation with a field agent last November he stated that anyone mopping floors, scrubbing pots, cooking meals or cleaning toilets for hunters could be required to have a guide license. I do not believe that cleaning crews and inn keepers fall under the definition of guide or outfitter.

Last year this legislature took major steps in promoting rural tourism. Committees were formed, workshops set up and tax credits granted for liability insurance. New people have been encouraged to enter the market. Part of these new operators will begin hunting destinations and as these new operations begin offering hunts on their farms, their father's farms, their neighboring farms they are going to run a muck of the guide regulations and KDWP. These new operators are not guides and outfitters, but farmers and ranchers trying to survive in rural Kansas.

You have already done away with the guide regulations for upland hunting operations. Please continue the positive work you have begun in stimulating rural tourism and end the guide regulations for the farmers and ranchers of Kansas who are trying to build rural tourism businesses in their communities.