

CHAPTER 182
HOUSE BILL No. 2253

AN ACT concerning wildlife; relating to wildlife violations; amending K.S.A. 22-2908, 32-1002, 32-1003 and 32-1031 and K.S.A. 2004 Supp. 32-1001, 32-1004, 32-1013 and 32-1032 and repealing the existing sections.

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

Section 1. K.S.A. 32-1031 is hereby amended to read as follows: 32-1031. (a) Unless otherwise provided by law or rules and regulations of the secretary, violation of any provision of the wildlife and parks laws of this state or rules and regulations adopted thereunder is a class C misdemeanor.

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

(2) *Upon a third conviction of a wildlife violation that is a class C misdemeanor, a fine of not less than \$300 shall be imposed.*

(3) *Upon a fourth and any subsequent convictions of a wildlife violation that is a class C misdemeanor, a fine of not less than \$400 shall be imposed and a minimum of not less than 7 days in the county jail shall be served.*

(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.*

Sec. 2. K.S.A. 2004 Supp. 32-1032 is hereby amended to read as follows: 32-1032. (a) Violation of any provision of the wildlife and parks laws of this state or rules and regulations of the secretary relating to big game or wild turkey permits and game tags *taking big game or wild turkey during a closed season, taking big game or wild turkey in violation of subsections (a)(1), (2) or (7) of K.S.A. 32-1003, and amendments thereto, or taking big game or wild turkey in violation of subsection (a)(2) or (3) of K.S.A. 32-1004, and amendments thereto, or taking big game or wild turkey in violation of K.S.A. 32-1013, and amendments thereto,* is a misdemeanor, subject to the provisions of subsection (b), punishable by a fine of not less than \$250 nor more than \$1,000 or by imprisonment in the county jail for not more than six months, or by both.

(1) *Upon a first or second conviction for a violation of the wildlife and parks laws of this state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$500 nor more than \$1,000 or be imprisoned in the county jail for not more than six months, or both.*

(2) *Upon a third conviction for a violation of the wildlife and parks laws of this state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$1,000 and shall be imprisoned in the county jail for not less than 30 days. A third conviction shall be a class B nonperson misdemeanor.*

(3) *Upon a fourth conviction for a violation of the wildlife and parks laws of this state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$1,000 and shall be imprisoned in the county jail for not less than 60 days. A fourth conviction shall be a class A nonperson misdemeanor.*

(4) *Upon the fifth or subsequent convictions for a violation of the wildlife and parks laws of the state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$1,000 and shall be imprisoned in the county jail for not less than 90 days. A fifth or subsequent conviction shall be a class A nonperson misdemeanor.*

Any conviction for a wildlife violation that occurs before July 1, 2005, shall not be considered for purposes of this subsection.

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

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

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

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

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

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

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

(c) In addition to any other penalty imposed by the convicting court, if a person is convicted of a violation of K.S.A. 32-1001, 32-1002, 32-1003, 32-1004 or 32-1013, and amendments thereto, that involves taking of a big game animal or wild turkey, or if a person is convicted of a violation of K.S.A. 32-1005, and amendments thereto, that involves commercialization of a big game animal or wild turkey:

(1) Upon the first such conviction, *the court may order* forfeiture of the person's hunting privileges for one year from the date of conviction and: (A) Revocation of the person's hunting license, unless such license is a lifetime hunting license; or (B) if the person possesses a lifetime hunting license, suspension of such license for one year from the date of conviction.

(2) Upon the second such conviction, *the court shall order* forfeiture of the person's hunting privileges for three years from the date of conviction and: (A) Revocation of the person's hunting license, unless such license is a lifetime hunting license; or (B) if the person possesses a lifetime hunting license, suspension of such license for three years from the date of conviction.

(3) Upon the third or a subsequent such conviction, *the court shall order* forfeiture of the person's hunting privileges for five years from the date of conviction and: (A) Revocation of the person's hunting license, unless such license is a lifetime hunting license; or (B) if the person possesses a lifetime hunting license, suspension of such license for five years from the date of conviction.

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

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

Sec. 3. 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) Any person convicted of violating provisions of this section shall be subject to the penalties prescribed in K.S.A. 32-1031, and amendments thereto, except as provided in K.S.A. 32-1032, and amendments thereto, relating to big game and wild turkey.

Sec. 4. K.S.A. 32-1003 is hereby amended to read as follows: 32-1003. (a) It is unlawful for any person, unless authorized by law or rules and regulations of the secretary, to:

~~(a)~~ (1) 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;

~~(b)~~ (2) 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;

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

~~(d)~~ (4) 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;

~~(e)~~ (5) 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 deleterious substance or fishberries;

~~(f)~~ (6) 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;

~~(g)~~ (7) 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.

(b) Any person convicted of violating provisions of this section shall be subject to the penalties prescribed in K.S.A. 32-1031, and amendments thereto, except as provided in K.S.A. 32-1032, and amendments thereto, relating to big game and wild turkey.

Sec. 5. K.S.A. 2004 Supp. 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) Any person convicted of violating provisions of this section shall be subject to the penalties prescribed in K.S.A. 32-1031, and amendments thereto, except as provided in K.S.A. 32-1032, and amendments thereto, relating to big game and wild turkey.

Sec. 6. K.S.A. 2004 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.

(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.

(e) any person convicted of violating provisions of this section shall be subject to the penalties prescribed in K.S.A. 32-1031, and amendments thereto, except as provided in K.S.A. 32-1032, and amendments thereto, relating to big game and wild turkey.

Sec. 7. K.S.A. 2004 Supp. 32-1004 is hereby amended to read as follows: 32-1004. (a) It is unlawful for any person to:

(1) Possess a carcass of a big game animal or wild turkey, taken within this state, unless a game tag issued by the secretary is attached to it, and a check station tag is attached to it if required by the secretary, or refuse to make such carcass available for inspection by any officer authorized to enforce the laws of this state or rules and regulations of the secretary;

(2) possess any wildlife unlawfully killed or otherwise unlawfully taken outside this state;

(3) cause to be shipped within, from or into this state any illegally taken or possessed wildlife;

(4) intentionally import into this state, or possess or release in this state, any species of wildlife prohibited pursuant to K.S.A. 32-956 and amendments thereto;

(5) refuse to allow any conservation officer or deputy conservation officer or any law enforcement officer to inspect and count any wildlife in such person's possession; or

(6) refuse to allow any conservation officer or deputy conservation officer or any law enforcement officer to inspect any devices or facilities of such person which are used in taking, possessing, transporting, storing or processing any wildlife subject to the wildlife and parks laws of this state or rules and regulations of the secretary.

(b) The provisions of subsection (a)(1) do not apply to animals sold in surplus property disposal sales of department exhibit herds or animals legally taken outside this state.

(c) Any person convicted of violating provisions of this section shall be subject to the penalties prescribed in K.S.A. 32-1031, and amendments thereto, except as provided in K.S.A. 32-1032, and amendments thereto, relating to big game and wild turkey.

Sec. 8. K.S.A. 22-2908 is hereby amended to read as follows: 22-2908. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

(1) The nature of the crime charged and the circumstances surrounding it;

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

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

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

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

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

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

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

(9) provisions for restitution; and

(10) any mitigating circumstances.

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

(1) The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded *nolo contendere* to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death; or

(2) the complaint alleges that the defendant committed a class A or

B felony or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.

(c) A county or district attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations.

Sec. 9. K.S.A. 22-2908, 32-1002, 32-1003 and 32-1031 and K.S.A. 2004 Supp. 32-1001, 32-1004, 32-1013 and 32-1032 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 9, 2005.
