

SENATE BILL No. 384

By Committee on Ways and Means

1-28

1 AN ACT concerning wildlife, parks and tourism; relating to the nongame
2 and endangered species act; amending K.S.A. 32-958, 32-960a and 32-
3 961 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 32-958 is hereby amended to read as follows: 32-
7 958. As used in the nongame and endangered species conservation act:

8 (a) "Conserve," "conserving" and "conservation" mean the use of all
9 methods and procedures for the purposes of increasing the number of
10 individuals within species and populations of wildlife up to the optimum
11 carrying capacity of their habitat and maintaining such numbers. Such
12 methods and procedures include, but are not limited to, all activities
13 associated with scientific resources management such as research, census,
14 law enforcement, habitat acquisition and maintenance, propagation, live
15 trapping, transplantation, regulated taking and, when and where
16 appropriate, the periodic or total protection of species or populations of
17 wildlife. With respect to threatened species and endangered species, the
18 terms mean the use of all methods and procedures, including but not
19 limited to those described above, which are necessary to bring any
20 threatened or endangered species to the point at which the methods,
21 procedures and measures provided for such species pursuant to the
22 nongame and endangered species conservation act are no longer necessary.

23 (b) (1) "Critical habitat" means any specific area within a
24 geographical area occupied by a threatened or endangered species listed
25 in accordance with the provisions of K.S.A. 32-960, and amendments
26 thereto, which contains physical or biological features essential to the
27 conservation of such species and may require special management
28 consideration or protection.

29 (2) "Critical habitat" does not include the entire geographical area
30 which can be occupied by the threatened or endangered species, unless the
31 secretary makes a determination that specific areas outside the
32 geographical area occupied by the species at the time it is listed in
33 accordance with K.S.A. 32-960, and amendments thereto, are essential for
34 the conservation of the species.

35 (b) (c) "Ecosystem" means a system of living organisms and their
36 environment, each influencing the existence of the other and both

1 necessary for the maintenance of life.

2 (e) (d) "Endangered species" means any species of wildlife whose
3 continued existence as a viable component of the state's wild fauna is
4 determined to be in jeopardy. That term also includes any species of
5 wildlife determined to be an endangered species pursuant to Pub. L. No.
6 93-205 (December 28, 1973), the endangered species act of 1973, and
7 amendments thereto.

8 (f) (e) "Nongame species" means any species of wildlife not legally
9 classified a game species, furbearer, threatened species or an endangered
10 species by statute or by rule and regulation adopted pursuant to statute.

11 (g) (f) "Optimum carrying capacity" means that point at which a
12 given habitat can support healthy populations of wildlife species, having
13 regard to the total ecosystem, without diminishing the ability of the habitat
14 to continue that function.

15 (h) (g) "Threatened species" means any species of wildlife which
16 appears likely, within the foreseeable future, to become an endangered
17 species. That term also includes any species of wildlife determined to be a
18 threatened species pursuant to Pub. L. No. 93-205 (December 28, 1973),
19 the endangered species act of 1973, and amendments thereto.

20 (i) (h) "Wildlife" means any member of the animal kingdom,
21 including, without limitation, any mammal, fish, bird, amphibian, reptile,
22 mollusk, crustacean, arthropod or other invertebrate, and includes any part,
23 product, egg or offspring thereof, or the dead body or parts thereof.

24 Sec. 2. K.S.A. 32-960a is hereby amended to read as follows: 32-
25 960a. (a) On or before January 1, 1998, the secretary shall adopt, in
26 accordance with K.S.A. 32-805, and amendments thereto, rules and
27 regulations establishing procedures for developing and implementing
28 recovery plans for all species listed as in need of conservation, threatened
29 or endangered. The secretary shall give priority to development of
30 recovery plans for particular species based on a cumulative assessment of
31 the scientific evidence available. Based on the priority ranking, the
32 secretary shall develop and begin implementation of recovery plans for at
33 least two listed species on or before January 1, 1999.

34 (b) Whenever a species is added to the list of threatened or
35 endangered species, the secretary shall establish a volunteer local advisory
36 committee composed of members broadly representative of the area
37 affected by the addition of the species to the list. Members shall include
38 representatives of specialists from academic institutions, agribusiness and
39 other trade organizations, state environmental and conservation
40 organizations and other interested organizations and individuals. In
41 addition, the membership shall include, if appropriate, landowners and
42 public officials representing state, local and tribal governments. To the
43 maximum extent possible, committee membership shall evenly balance the

1 interests of all potentially affected groups and institutions.

2 (c) The advisory committee shall: (1) Work with the secretary to
3 adapt the listing of the species and the recovery plan for the species to the
4 social and economic conditions of the affected area; and (2) disseminate
5 information to the public about the scientific basis of the decision to list
6 the species, the regulatory process and incentives available to landowners
7 pursuant to this act.

8 (d) If a species in need of conservation receives a priority ranking to
9 develop and begin implementation of a recovery plan, the secretary shall
10 establish a volunteer local advisory committee in the same manner as
11 provided by subsection (b) to work with the secretary to adapt the recovery
12 plan and disseminate information to the public.

13 (e) In implementing a recovery plan for a species, the secretary shall
14 consider any data, recommendations and information provided by the
15 advisory committee.

16 (f) *The secretary shall cause each developed and implemented*
17 *recovery plan to be published and maintained on the official website of the*
18 *department of wildlife, parks and tourism.*

19 Sec. 3. K.S.A. 32-961 is hereby amended to read as follows: 32-961.

20 (a) Whenever any species is listed as a threatened species pursuant to
21 K.S.A. 32-960, *and amendments thereto*, the secretary shall adopt such
22 rules and regulations pursuant to K.S.A. 32-963, *and amendments thereto*,
23 as the secretary deems necessary and advisable to provide for the
24 conservation of such species. *The secretary shall not adopt rules and*
25 *regulations: (1) Pertaining to any habitat other than a critical habitat of a*
26 *species of wildlife designated as a threatened or endangered species*
27 *pursuant to K.S.A. 32-960, and amendments thereto; or (2) designating a*
28 *critical habitat for a specific species of wildlife designated as a threatened*
29 *or endangered species pursuant to K.S.A. 32-960, and amendments*
30 *thereto, until a recovery plan has been completed for the species in*
31 *accordance with K.S.A. 32-960a, and amendments thereto.* By rules and
32 regulations adopted pursuant to K.S.A. 32-963, *and amendments thereto*,
33 the secretary may prohibit with respect to any threatened species included
34 in a list adopted pursuant to K.S.A. 32-960, *and amendments thereto*,
35 *except as provided in subsection (c)*, any act which is prohibited under
36 subsection (b) ~~with respect to any endangered species included in a list~~
37 ~~adopted pursuant to K.S.A. 32-960.~~

38 (b) Except as otherwise specifically provided by this section or rules
39 and regulations adopted pursuant to this section, a special permit is
40 required for any person subject to the jurisdiction of this state to:

41 (1) Export from this state any endangered species included in a list
42 adopted pursuant to K.S.A. 32-960, *and amendments thereto*;

43 (2) possess, process, sell, offer for sale, deliver, carry, transport or

1 ship, by any means whatsoever, any such endangered species; or

2 (3) act in a manner contrary to any rule and regulation adopted by the
3 secretary pursuant to authority provided by K.S.A. 32-957 through 32-963
4 and 32-1009 through 32-1012, *and amendments thereto*, which pertains to
5 such endangered species or to any threatened species of wildlife included
6 in a list adopted pursuant to K.S.A. 32-960, *and amendments thereto*.

7 (c) *The provisions of subsection (b)(3) shall not apply to:*

8 (1) *Normal farming and ranching practices, unless a permit is*
9 *required by Pub. L. 93-205 (the endangered species act of 1973), and*
10 *amendments thereto, or such practices involve an intentional taking of a*
11 *threatened species under K.S.A. 32-1010, and amendments thereto, or*
12 *involve an intentional taking of an endangered species under K.S.A. 32-*
13 *1011, and amendments thereto;*

14 (2) *development of residential and commercial property on privately*
15 *owned property financed with private, nonpublic funds unless a permit is*
16 *required by Pub. L. 93-205 (the endangered species act of 1973), and*
17 *amendments thereto, or the development involves an intentional taking of*
18 *a threatened species under K.S.A. 32-1010, and amendments thereto, or*
19 *involve an intentional taking of an endangered species under K.S.A. 32-*
20 *1011, and amendments thereto;*

21 (3) *activities for which a person has obtained a scientific,*
22 *educational or exhibition permit, as provided by K.S.A. 32-952, and*
23 *amendments thereto; and*

24 (4) *any publicly funded action, a state or federally assisted action, or*
25 *an action requiring a permit from another state or federal agency when*
26 *the public funding, state or federal assistance, or permit from another*
27 *state or federal government agency is provided to the recipient in*
28 *accordance with applicable state and federal law after the completion of*
29 *the action.*

30 (d) ~~Subsection (b) does~~ *shall not apply to any endangered species*
31 *listed pursuant to K.S.A. 32-960, and amendments thereto, and any species*
32 *of wildlife determined to be an endangered species pursuant to Pub. L. 93-*
33 *205 (December 28, 1973), the endangered species act of 1973, and*
34 *amendments thereto, entering the state from another state or from a point*
35 *outside the territorial limits of the United States and being transported to a*
36 *point within or beyond the state in accordance with the terms of any*
37 *federal permit or permit issued under the laws or regulations of another*
38 *state.*

39 ~~(d)~~(e) *The secretary may issue special permits to authorize, under*
40 *such terms and conditions as the secretary prescribes, any act described in*
41 *subsection (b) or any act which is otherwise prohibited by rules and*
42 *regulations adopted pursuant to subsection (a), for scientific purposes or to*
43 *enhance the propagation or survival of the affected species. Application for*

1 such permit shall be made to the secretary or the secretary's designee and
2 shall be accompanied by the fee prescribed pursuant to K.S.A. 32-988,
3 *and amendments thereto*. The secretary shall maintain a list of permit
4 applications under this subsection. Where such applications have been
5 approved and special permits have been issued, the secretary shall
6 maintain a list of such permits, including therein the name and address of
7 the permittee and the terms and conditions prescribed for each such
8 permit. The secretary shall keep such lists current and shall file copies
9 thereof, along with any additions or amendments, with the secretary of the
10 interior of the federal government.

11 ~~(e)~~(f) Threatened or endangered species included in a list adopted
12 pursuant to K.S.A. 32-960, *and amendments thereto*, may be captured or
13 destroyed without a permit by any person in an emergency situation
14 involving an immediate and demonstrable threat to human life.

15 (g) *Except in the case of an intentional taking of a threatened species*
16 *under K.S.A. 32-1010, and amendments thereto, or an intentional taking of*
17 *an endangered species under K.S.A. 32-1011, and amendments thereto,*
18 *any rules and regulations adopted pursuant to this act shall have no force*
19 *and effect with regard to a specific species of wildlife designated as*
20 *threatened or endangered until 30 days after the publication of the*
21 *recovery plan for such species on the official website of the department of*
22 *wildlife, parks and tourism pursuant to K.S.A. 32-960a, and amendments*
23 *thereto.*

24 Sec. 4. K.S.A. 32-958, 32-960a and 32-961 are hereby repealed.

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