

SESSION OF 2012

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 314**

As Agreed to May 11, 2012

Brief*

SB 314 would amend existing law: regarding hunting and fishing license fees for resident seniors; to require the Secretary of Wildlife, Parks and Tourism to develop and implement a pre-rut antlerless deer rifle season by deer management units and allow for crossbow use during an archery big game season by anyone issued a big game permit; and impacting trespassing and big game hunting.

Hunting and Fishing Licenses for Resident Seniors

The bill would amend existing law regarding hunting and fishing license fees for resident seniors. Specifically, the bill would:

- Increase the age of a person exempt from purchasing hunting or fishing licenses from 65 or more years of age to 75 or more years of age;
- Create a resident senior hunting and fishing pass ("senior pass") for those 65 years old or older, at a cost that does not exceed one-eighth of the fee for a general combination lifetime hunting and fishing license;
- Establish an annual hunting or fishing license fee for residents who are 65 to 74 years of age at a

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cost of an amount equal to one-half the fee for a general annual hunting or fishing license;

- Establish an annual combination hunting and fishing license for residents who are age 65 to 74 that would cost an amount equal to one-half the fee for a general annual combination hunting and fishing license;
- Sunset the provisions of the "senior pass" and the annual hunting, fishing, and combination license fees on June 30, 2020; and
- Provide authority to the Secretary of the Kansas Department of Wildlife, Parks and Tourism (Secretary) to establish rules and regulations for various classes and types of licenses, permits, stamps, and other agency issuances.

Pre-rut Antlerless Deer Rifle Season; Crossbow Use

The bill would require the Secretary to develop and implement a pre-rut antlerless deer rifle season by deer management units prior to April 30, 2013. Provisions authorizing the pre-rut antlerless deer rifle season would sunset on July 1, 2015. The bill also would require the Secretary to develop and implement a combination antlered and antlerless deer permit prior to April 30, 2013, through the adoption of rules and regulations.

In addition, the bill would require the Secretary to develop and implement a deer crossbow hunting pilot project, which could be implemented in no more than four deer management units. The Secretary would be required to study the effects of the pilot project on the state's deer population and the number of crossbow users in each deer management unit where the pilot project is conducted. A report with these findings would be required to be submitted to the House Committee on Agriculture and Natural Resources and the

Senate Committee on Natural Resources by January 31, 2014. The provisions authorizing the pilot project would sunset on January 31, 2014.

The bill also would allow any person who has been issued a big game permit to use a crossbow during an archery big game season.

Trespassing and Big Game Hunting

The bill would make amendments to current law impacting trespassing and big game hunting. Among those changes are the following:

- Clarify that nothing in the provisions of KSA 58-3201 *et seq.*, and amendments thereto, shall be construed as granting an easement over land by the landowner or over land by adverse possession;
- Provide that if premises or property are posted as provided by provisions in the statutes dealing with wildlife and parks that individuals could be guilty of criminal trespass;
- Permit a court convicting a person of the crime of commercialization of wildlife to not only confiscate all equipment used in the commission of the crime (current law), but to revoke all licenses and permits issued to the convicted person by the Kansas Department of Wildlife, Parks and Tourism (KDWPT) for a period of up to 20 years;
- Modify the penalty for the unlawful intentional taking of a trophy big game animal from \$5,000 to not less than \$5,000;
- Create restitution values for deer, elk, and antelope if taken in violation of certain statutes relating to KDWPT by using a gross score for each;

- Provide that the Secretary establish rules and regulations to determine gross scores by taking measurements (more than 125 inches for deer, more than 250 inches for elk, and more than 75 inches for antelope);
- Establish formulas governing calculation of the restitution value for each species;
- Provide that no drying time be required for the measurement to occur; and
- Require that moneys collected from restitution penalties be dedicated to the Wildlife Fee Fund.

Conference Committee Action

The Conference Committee agreed to the House version of SB 314, and further agreed to several amendments, including the pre-rut antlerless deer rifle season that would sunset on July 1, 2015; implementation of a deer crossbow hunting pilot project that would sunset on January 31, 2014; and require the KDWP to provide a report to the Legislature on the state's deer population and the number of crossbow hunters resulting from implementation of the pilot project.

In addition, the Conference Committee agreed to delete a section in the bill that would have required the Secretary to verify proof of ownership or tenancy of no less than 25.0 percent of all landowner-tenant resident big game or wild turkey hunting permit applicants in each calendar year.

The Conference Committee also added provisions of Sub. for HB 2709, but deleted provisions of the bill dealing with a landowner, tenant, or employee shooting from a public road or right-of-way with the intent to protect the agricultural activity on the landowner's or tenant's farmland from damage caused by wildlife grazing. The Conference Committee also

deleted provisions that would have changed the color of paint marks for posting land from purple to bright orange.

The Conference Committee also approved various technical amendments to the bill as a whole.

Background

SB 314, as recommended by the Conference Committee, contains provisions from three bills: SB 314; HB 2295; and Sub. for HB 2709. A review of each of these bills follows below.

Review of SB 314

SB 314 was introduced by the Senate Committee on Natural Resources at the request of the KDWPT.

At the Senate Committee hearing, the Secretary of Wildlife, Parks and Tourism provided testimony in favor of the bill, stating the cost of a license for those age 65 and older is minimal in comparison with the costs associated with hunting or fishing. Secondly, the Secretary stated the bill is not about taking anything away from the state's seniors, but it is about passing on Kansas outdoor traditions to Kansas children and grandchildren.

The Secretary also provided information to the Senate Committee stating the exemption age for hunters and anglers was 70 years old until 1971, when the Legislature reduced the age to 65, as life expectancy in 1971 was 71 years old, while today it is 78.5 years. The Secretary also clarified that any revenue received from removing the exemption would be used to continue the wildlife programs within the agency, per federal law, as well as to move towards making the agency self-sufficient. A member of the public also provided testimony in favor of the bill, stating those over 65 years old continue to pay excise taxes on all hunting and fishing equipment; thus,

hunting and fishing license fees are very small in proportion to the overall costs of participating in outdoor activities.

Opponents that provided testimony on the bill included a representative of the Kansas State Rifle Association; the Speaker Pro Tem for the Kansas Silverhaired Legislature; a representative of the Kansas Area Agencies on Aging Association (KAAAA); and two members of the public. The Kansas State Rifle Association presented its member survey regarding the original version of the bill. Of the survey respondents, 84.3 percent were not in favor of repealing the license fee exemptions for seniors.

The Speaker Pro Tem for the Kansas Silverhaired Legislature provided testimony stating that asking a senior to pay a license fee when the senior is on a fixed income is not the right thing to do and will have a negative consequence on the number of seniors who will enjoy the outdoors in the future. The KAAAA provided testimony stating a query of U.S. Census Bureau data indicates the mean retirement income of Kansas seniors was \$18,381 in the past 12 months. In addition, the KAAAA stated the 376,116 seniors living in Kansas, as of 2010, are from earlier generations and do not yet include the "Baby Boomer" generation, about which KDWPT is concerned. The KAAAA stated "Baby Boomers" began turning age 65 only in January 2011. The members of the public also shared their sentiments regarding fixed incomes and the burden of paying a license fee on a fixed income.

The Senate Committee made several amendments to the bill, which included:

- Authorizing the KDWPT to offer a resident senior hunting and fishing pass to Kansas residents age 65 years or older. The fee for the pass would be an amount not exceeding one-eighth of the fee for a general combination lifetime hunting and fishing license;

- Authorizing the KDWPT to offer an annual resident hunting or fishing license for those residents 65 to 74 years old for an amount equal to one-half the fee for a general annual hunting or fishing license;
- Authorizing the KDWPT to offer an annual combination hunting and fishing license for residents 65 to 74 years old at an amount equal to one-half the fee for a general annual combination hunting and fishing license;
- Exempting persons who are 75 years old or older from having to purchase hunting or fishing licenses; and
- Providing for the sunset of the provisions of the bill on June 30, 2020.

The Senate Committee of the Whole amended the bill to correct a technical error and to make inmates in an honor camp operated by the Secretary of Corrections ineligible for the exception from acquiring a fishing license.

The House Committee on Agriculture and Natural Resources amended the provisions of HB 2295, as amended by the House Committee of the Whole, into the provisions of SB 314, as amended by the Senate Committee of the Whole.

The fiscal note provided by the Division of the Budget on the original version of SB 314 states passage of the bill would increase fee revenues in FY 2013 by \$702,999. Of this amount, \$477,000 would be from actual fees paid for hunting and fishing licenses and \$225,999 would come from the increase in federal matching funds based on the number of hunting and fishing licenses sold. Because fees for hunting and fishing licenses are based on the calendar year instead of the fiscal year, the revenue increase for FY 2014 is expected to be twice that of FY 2013, or \$1.4 million. Any fiscal effect associated with the bill is not reflected in *The FY 2013 Governor's Budget Report*.

Review of HB 2295

The original HB 2295 was considered during the 2011 Legislative Session. The House Committee on Agriculture and Natural Resources held hearings on the bill during the 2012 Legislative Session. The first proponent to appear was an individual from Hays who advocated for the portion of the bill allowing crossbows during archery season. The second proponent was Representative Joe Seiwert who indicated that even though there had been efforts to control the deer population, there needed to be additional efforts including the use of crossbows during archery season, the extension of the antlerless deer season during January, and a mechanism implemented to allow out-of-state permit holders to take a doe as well as a buck. Opponents of the bill included a spokesperson for KDWPT and a spokesperson for the Kansas Bowhunter's Association. The House Committee received two pieces of testimony in opposition to the proposed provisions relating to allowing the use of crossbows during the archery season.

The House Committee considered the original bill and decided to make two additions to current statute. These additions are reflected in the substitute bill which the House Committee adopted.

The House Committee of the Whole amended the bill to require the Secretary to verify proof of ownership or tenancy of not less than 25.0 percent of all landowner-tenant resident big game or wild turkey hunting permits in each calendar year. In addition, the House Committee of the Whole amended the bill to allow the use of crossbows in any archery big game season when the person has been issued a big game permit.

The fiscal note on the original bill (introduced in the 2011 Session) states KDWPT believes passage of HB 2295 would cause significant reductions to the agency's revenues. Although the agency is unable to estimate the amount of the expected loss in revenue, it was able to provide some

examples of how the revenues would be affected. While there would be some increase in revenue from increases in the fees for non-resident big game and mule deer permits and non-resident big game applications, many of the people who would have purchased these permits would be exempt upon passage of the bill because they also would be non-resident relatives of landowners or tenants.

Exemptions in statute for certain constituents also would erode revenues for the Fish and Wildlife program, which is fee-funded. These exemptions could initially increase the number of participants. However, because they also reduce revenues, they reduce the agency's ability to provide services to the increased number of participants, including those who are not exempt and continue to pay full price for licenses. Eventually, this reduction of services could result in decreasing numbers of participants who pay full price.

Another example of the original bill leading to reduced revenues relates to the requirement that anyone purchasing a deer permit also pay \$2 to the Kansas Hunters Feeding the Hungry (KHFH) program. This requirement would result in a loss of federal funds and possible ineligibility for future federal funds as, under the agreement between the agency and the U.S. Fish and Wildlife Service, collecting this fee and delivering it to the KHFH program would be considered a diversion of funds. Any fiscal effect associated with HB 2295 was not reflected in *The FY 2012 Governor's Budget Report*.

Review of Sub. for HB 2709

The original HB 2709 was introduced at the request of Representative Peggy Mast. At the hearing on the bill, Representative Mast indicated there was a need to enhance penalties for those who poach deer for the purpose of obtaining a trophy rack. Several other individuals appeared in support of the original bill, indicating that attempted poaching had resulted in the death of a young man in the Emporia area. A representative of the Quality Deer Management

Association appeared in support of the bill. Other written proponent testimony was provided by a member of the Quality Deer Management Association, a representative of the Kansas Bowhunter's Association, Mossy Oak Properties, and several other individuals.

Also at the hearing on the bill, a spokesperson from KDWPT appeared in opposition to the original bill for a variety of reasons including the requirement that the agency bring civil actions, the lack of direction for where restitution moneys would be deposited, the lack of provisions for other big game species in the state, and the complexity of the statutory changes. Written testimony in opposition to the bill was provided by the Kansas Wildlife Federation. This testimony indicated the Federation would support the bill if certain changes were made.

After the hearing on the bill, the Chairperson of the Agriculture and Natural Resources Committee appointed a subcommittee to further consider the various issues addressed by the bill and the conferees. The subcommittee recommended the substitute bill.

The fiscal note on the original bill indicated that in 2011, the KDWPT had 304 criminal wildlife cases involving deer. According to the fiscal note, the cost to the agency to file 300 civil cases would be approximately \$275,500 annually. This estimate includes \$30,000 in district court filing fees for 300 civil cases (\$100 per case X 300 cases); \$148,000 for two attorneys who would travel and file cases statewide (two attorneys X \$74,000 each for salaries and benefits); \$20,000 for startup costs to equip the attorneys with computers, office space, office furniture, and other necessities; \$37,500 for annual travel for the attorneys (\$125 per day X 150 cases per year); and \$40,000 for two vehicles, gas, and maintenance.

While KDWPT assumes there would be some revenue resulting from the civil cases, it is unable to estimate an amount and states that it appears from the bill that all of the revenue would go to the State General Fund. The agency

indicates its lack of control over civil restitution funds could result in diversion and potentially jeopardize federal funding for the KDWPT. Any fiscal effect associated with HB 2709 is not reflected in *The FY 2013 Governor's Budget Report*. The original fiscal note would no longer be applicable because of the adoption of the substitute bill.

Kansas Department of Wildlife, Parks and Tourism; hunting licenses; fishing licenses; senior licenses; deer hunting; crossbow hunting; big game hunting; criminal trespass; poaching restitution

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