

**{As Amended by House Committee of the Whole}**

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*Session of 2012*

**Substitute for HOUSE BILL No. 2709**

By Committee on Agriculture and Natural Resources

3-13

1 AN ACT concerning {recreational uses of land; relating to} hunting;  
2 relating to big game hunting violations and restitution; relating to  
3 trespassing; amending K.S.A. 2011 Supp. 21-5808, 21-5810, 32-1005,  
4 32-1013 and 32-1032 and repealing the existing section.  
5

6 *Be it enacted by the Legislature of the State of Kansas:*  
7     **{New Section 1. Nothing in the provisions of K.S.A. 58-3201 et**  
8 **seq., and amendments thereto, shall be construed as the granting of an**  
9 **easement over such land by the owner thereof, nor as the granting of**  
10 **an easement over such land by adverse possession.}**

11     Section 1.—{Sec. 2. On and after January 1, 2013,} K.S.A. 2011  
12 Supp. 21-5808 is hereby amended to read as follows: 21-5808. (a)  
13 Criminal trespass is entering or remaining upon or in any:

14       (1) Land, nonnavigable body of water, structure, vehicle, aircraft or  
15 watercraft by a person who knows such person is not authorized or  
16 privileged to do so, and:

17           (A) Such person enters or remains therein in defiance of an order not  
18 to enter or to leave such premises or property personally communicated to  
19 such person by the owner thereof or other authorized person;

20           (B) such premises or property are posted ~~in a~~ as provided in K.S.A.  
21 32-1013, and amendments thereto, or in any other manner reasonably  
22 likely to come to the attention of intruders, or are locked or fenced or  
23 otherwise enclosed, or shut or secured against passage or entry; or

24           (C) such person enters or remains therein in defiance of a restraining  
25 order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106, 60-3107, 60-  
26 31a05 or 60-31a06 or K.S.A. 2011 Supp. 38-2243, 38-2244 or 38-2255,  
27 and amendments thereto, and the restraining order has been personally  
28 served upon the person so restrained; or

29       (2) public or private land or structure in a manner that interferes with  
30 access to or from any health care facility by a person who knows such  
31 person is not authorized or privileged to do so and such person enters or  
32 remains thereon or therein in defiance of an order not to enter or to leave  
33 such land or structure personally communicated to such person by the  
34 owner of the health care facility or other authorized person.

35       (b) Criminal trespass is a class B nonperson misdemeanor. Upon a  
36 conviction of a violation of subsection (a)(1)(C), a person shall be

1 sentenced to not less than 48 consecutive hours of imprisonment which  
2 shall be served either before or as a condition of any grant of probation or  
3 suspension, reduction of sentence or parole.

4 (c) As used in this section:

5 (1) "Health care facility" means any licensed medical care facility,  
6 certificated health maintenance organization, licensed mental health center  
7 or mental health clinic, licensed psychiatric hospital or other facility or  
8 office where services of a health care provider are provided directly to  
9 patients; and

10 (2) "health care provider" means any person:

- 11 (A) Licensed to practice a branch of the healing arts;
- 12 (B) licensed to practice psychology;
- 13 (C) licensed to practice professional or practical nursing;
- 14 (D) licensed to practice dentistry;
- 15 (E) licensed to practice optometry;
- 16 (F) licensed to practice pharmacy;
- 17 (G) registered to practice podiatry;
- 18 (H) licensed as a social worker; or
- 19 (I) registered to practice physical therapy.

20 (d) This section shall not apply to:

21 (1) A land surveyor, licensed pursuant to article 70 of chapter 74 of  
22 the Kansas Statutes Annotated, and amendments thereto, and such  
23 surveyor's authorized agents and employees who enter upon lands, waters  
24 and other premises in the making of a survey; or

25 (2) railroad property as defined in K.S.A. 2011 Supp. 21-5809, and  
26 amendments thereto, or nuclear generating facility as defined in K.S.A.  
27 2011 Supp. 66-2302, and amendments thereto.

28 See 2. ~~K.S.A. 2011 Supp. 21-5810 is hereby amended to read as~~  
29 follows: ~~21-5810.~~ (a) Criminal hunting is knowingly hunting, shooting, fur  
30 harvesting, pursuing any bird or animal, or fishing:

31 ~~(1) Upon any land or nonnavigable body of water of another, without~~  
32 ~~having first obtained permission of the owner or person in possession of~~  
33 ~~such premises;~~

34 ~~(2) upon or from any public road, public road right-of-way or railroad-~~  
35 ~~right-of-way that adjoins occupied or improved premises, without having~~  
36 ~~first obtained permission of the owner or person in possession of such-~~  
37 ~~premises; or~~

38 ~~(3) upon any land or nonnavigable body of water of another by a person~~  
39 ~~who knows such person is not authorized or privileged to do so, and:~~

40 ~~(A) By a person who knows such person is not authorized or privileged~~  
41 ~~to do so and such person remains therein and continues to hunt, shoot, fur-~~  
42 ~~harvest, pursue any bird or animal or fish in defiance of an order not to~~  
43 ~~enter or to leave such premises or property personally communicated to~~

1 such person by the owner thereof or other authorized person; or  
2 (B) by a person, without the written permission of the landowner or  
3 person in lawful possession of such land, with no requirement of a  
4 culpable mental state, if such premises or property are posted in a manner  
5 consistent with K.S.A. 32-1013, and amendments thereto.

6 (b) Criminal hunting as defined in:

7 (1) Subsection (a)(1) or (a)(2) is a class C misdemeanor. Upon the first  
8 conviction of subsection (a)(1) or (a)(2), in addition to any authorized  
9 sentence imposed by the court, such court may require the forfeiture of the  
10 convicted person's hunting, fishing or fur harvesting license, or all, or, in  
11 any case where such person has a combination license, the court may  
12 require forfeiture of a part or all of such license and the court may order  
13 such person to refrain from hunting, fishing or fur harvesting, or all, for up  
14 to one year from the date of such conviction. Upon a second or subsequent  
15 conviction of subsection (a)(1) or (a)(2), in addition to any authorized  
16 sentence imposed by the court, such court shall require the forfeiture of the  
17 convicted person's hunting, fishing or fur harvesting license, or all, or, in  
18 any case where such person has a combination license, the court shall  
19 require the forfeiture of a part or all of such license and the court shall  
20 order such person to refrain from hunting, fishing or fur harvesting, or all,  
21 for one year from the date of such conviction. A person licensed to hunt  
22 and following or pursuing a wounded game bird or animal upon any land  
23 of another without permission of the landowner or person in lawful  
24 possession thereof shall not be deemed to be in violation of this provision  
25 while in such pursuit, except that this provision shall not authorize a  
26 person to remain on such land if instructed to leave by the owner thereof  
27 or other authorized person. For the purpose of determining whether a  
28 conviction is a first, second or subsequent conviction of subsection (a)(1)  
29 or (a)(2), "conviction" or "convicted" includes being convicted of a  
30 violation of subsection (a) of K.S.A. 21-3728, prior to its repeal, or  
31 subsection (a)(1) or (a)(2); and

32 (2) subsection (a)(3) is a class B misdemeanor. Upon the first conviction  
33 or a diversion agreement of subsection (a)(3), in addition to any authorized  
34 sentence imposed by the court, the court shall require forfeiture of such  
35 person's hunting, fishing or fur harvesting license, or all, or in the case  
36 where such person has a combination license, the court shall require  
37 forfeiture of a part or all of such license for six months. Upon the second  
38 conviction of subsection (a)(3), in addition to any authorized sentence  
39 imposed by the court, such court shall require the forfeiture of the  
40 convicted person's hunting, fishing or fur harvesting license, or all, or in  
41 the case where such person has a combination license, the court shall  
42 require forfeiture of a part or all of such license for one year. Upon the  
43 third or subsequent conviction of subsection (a)(3), in addition to any

1 authorized sentence imposed by the court, such court shall require  
2 forfeiture of the convicted person's hunting, fishing or fur harvesting  
3 license, or all, or in the case where such person has a combination license,  
4 the court shall require forfeiture of a part or all of such license for five  
5 years. For the purpose of determining whether a conviction is a first,  
6 second, third or subsequent conviction of subsection (a)(3), "conviction"  
7 or "convicted" includes being convicted of a violation of subsection (b) of  
8 K.S.A. 21-3728, prior to its repeal, or subsection (a)(3).  
9 (e) The court shall notify the Kansas department of wildlife and parks,  
10 parks and tourism of any conviction or diversion for a violation of this  
11 section.

12 {**(d)** Nothing in this section shall preclude a landowner, tenant or  
13 employee thereof from shooting from a public road or right-of-way  
14 with the intent to protect such landowner or tenant's agricultural  
15 activity on such landowner or tenant's farmland from damage caused  
16 by wildlife grazing. As used in this section the terms "agricultural  
17 activity" and "farmland" have the same meaning as defined in K.S.A.  
18 2-3203, and amendments thereto.}

19 Sec. 3. {**3. On and after January 1, 2013,**} K.S.A. 2011 Supp. 32-  
20 1005 is hereby amended to read as follows: 32-1005. (a) Commercialization of wildlife is knowingly committing any of the  
21 following, except as permitted by statute or rules and regulations:

22 (1) Capturing, killing or possessing, for profit or commercial  
23 purposes, all or any part of any wildlife protected by this section;

24 (2) selling, bartering, purchasing or offering to sell, barter or  
25 purchase, for profit or commercial purposes, all or any part of any wildlife  
26 protected by this section;

27 (3) shipping, exporting, importing, transporting or carrying; causing  
28 to be shipped, exported, imported, transported or carried; or delivering or  
29 receiving for shipping, exporting, importing, transporting or carrying all or  
30 any part of any wildlife protected by this section, for profit or commercial  
31 purposes; or

32 (4) purchasing, for personal use or consumption, all or any part of  
33 any wildlife protected by this section.

34 (b) The wildlife protected by this section and the minimum value  
35 thereof are as follows:

36 (1) Eagles, \$1,000;

37 (2) deer or antelope, \$1,000;

38 (3) elk or buffalo, \$1,500;

39 (4) furbearing animals, except bobcats, \$25;

40 (5) bobcats, \$200;

41 (6) wild turkey, \$200;

42 (7) owls, hawks, falcons, kites, harriers or ospreys, \$500;

(8) game birds, migratory game birds, resident and migratory nongame birds, game animals and nongame animals, \$50 unless a higher amount is specified above;

(9) fish and mussels, the value for which shall be no less than the value listed for the appropriate fish or mussels species in the monetary values of freshwater fish or mussels and fish kill counting guidelines of the American fisheries society, special publication number 30;

(10) turtles, \$25 each for unprocessed turtles or \$16 per pound or fraction of a pound for processed turtle parts;

(11) bullfrogs, \$4, whether dressed or not dressed;

(12) any wildlife classified as threatened or endangered, \$500 unless a higher amount is specified above; and

(13) any other wildlife not listed above, \$25.

(c) Possession of wildlife, in whole or in part, captured or killed in violation of law and having an aggregate value of \$1,000 or more, as specified in subsection (b), is prima facie evidence of possession for profit or commercial purposes.

(d) Commercialization of wildlife having an aggregate value of \$1,000 or more, as specified in subsection (b), is a severity level 10, nonperson felony. Commercialization of wildlife having an aggregate value of less than \$1,000, as specified in subsection (b), is a class A nonperson misdemeanor.

(e) In addition to any other penalty provided by law, a court convicting a person of the crime of commercialization of wildlife may:

(1) Confiscate all equipment used in the commission of the crime and may revoke for a period of up to 10 years ~~the lifetime of the convicted person, or any other period of time,~~ {a period of up to 20 years} all licenses and permits issued to the convicted person by the Kansas department of wildlife and parks, parks and tourism; and

(2) order restitution to be paid to the Kansas department of wildlife and parks for the wildlife taken, which restitution shall be in an amount not less than the aggregate value of the wildlife, as specified in subsection (b).

(f) The provisions of this section shall apply only to wildlife illegally harvested and possessed by any person having actual knowledge that such wildlife was illegally harvested.

Sec. 4. {4. On and after January 1, 2013,} K.S.A. 2011 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

1 possession thereof.

2       (b) Instead of posting land as provided in subsection (a), any  
3 landowner or person in lawful possession of any land may post such land  
4 by placing identifying ~~purple~~ *purple or* *bright orange* paint marks on  
5 trees or posts around the area to be posted. **{All persons posting land**  
6 **under this subsection shall use bright orange paint exclusively on and**  
7 **after July 1, 2015.}** Each paint mark shall be a vertical line of at least  
8 eight inches in length and the bottom of the mark shall be no less than  
9 three feet nor more than five feet high. Such paint marks shall be readily  
10 visible to any person approaching the land. Land posted as provided in this  
11 subsection shall be considered to be posted by written permission only as  
12 provided in subsection (a).

13       (c) A person licensed to hunt or furharvest who is following or  
14 pursuing a wounded animal on land as provided in this section posted  
15 without written permission of the landowner or person in lawful  
16 possession thereof shall not be in violation of this section while in such  
17 pursuit, except that the provisions of this subsection shall not authorize a  
18 person to remain on such land if instructed to leave by the owner or person  
19 in lawful possession of the land. Any person who fails to leave such land  
20 when instructed is subject to the provisions of subsection (b) of K.S.A.  
21 2011 Supp. 21-5810, and amendments thereto.

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

26       Sec. ~~5.~~ **{5. On and after January 1, 2013,}** K.S.A. 2011 Supp. 32-1032  
27 is hereby amended to read as follows: 32-1032. (a) Violation of any  
28 provision of the wildlife and parks laws of this state or rules and  
29 regulations of the secretary relating to big game or wild turkey permits and  
30 game tags, taking big game or wild turkey during a closed season, taking  
31 big game or wild turkey in violation of subsections (a)(1), (2) or (7) of  
32 K.S.A. 32-1003, and amendments thereto, or taking big game or wild  
33 turkey in violation of subsection (a)(2) or (3) of K.S.A. 32-1004, and  
34 amendments thereto, or taking big game or wild turkey in violation of  
35 K.S.A. 32-1013, and amendments thereto, is a misdemeanor, subject to the  
36 provisions of subsection (b), punishable by a fine or by imprisonment in  
37 the county jail, or by both.

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

43       (2) Upon a third conviction for a violation of the wildlife and parks

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

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

10     (4) Upon the fifth or subsequent convictions for a violation of the  
11 wildlife and parks laws of the state or the rules and regulations of the  
12 secretary relating to this section, the violator shall not be fined less than  
13 \$1,000 and shall be imprisoned in the county jail for not less than 90 days.  
14 A fifth or subsequent conviction shall be a class A nonperson  
15 misdemeanor.

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

18     (b) (1) In addition to any other penalty prescribed by law, the  
19 unlawful intentional taking of a trophy big game animal shall be  
20 punishable by a fine of *not less than \$5,000*.

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

23       (A) An antlered whitetail deer having an inside spread measurement  
24 of at least ~~47~~ 16 inches;

25       (B) an antlered mule deer having an inside spread measurement of at  
26 least ~~22~~ 20 inches;

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

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

30     (3) *In addition to any other penalty prescribed by law, the defendant  
31 shall pay the restitution value of any deer, elk or antelope taken in  
32 violation of K.S.A. 32-1001, 32-1002, 32-1003, 32-1004, 32-1005 or 32-  
33 1013, and amendments thereto, with a gross score of more than 125 inches  
34 for deer, 250 inches for elk and 75 inches for antelope. Such restitution  
35 value shall be in an amount not less than the value prescribed for such  
36 animal in K.S.A. 32-1005, and amendments thereto. The restitution value  
37 for deer shall equal: (gross score - 100)<sup>2</sup> x \$2. The restitution value for elk  
38 shall equal: (gross score - 200)<sup>2</sup> x \$2. The restitution value for antelope  
39 shall equal: (gross score - 40)<sup>2</sup> x \$2. The gross score shall be determined  
40 by taking measurements as provided by rules and regulations of the  
41 secretary, which shall be made to the nearest 1/8 of an inch using a 1/4  
42 inch wide flexible steel tape. All restitution collected pursuant to this  
43 subparagraph shall be paid into the state treasury and shall be credited to*

the wildlife fee fund created by K.S.A. 32-990, and amendments thereto.

(4) Antlers or horns may be measured pursuant to the manner described in subsection (b)(3) at any time; no drying time is required.

(5) 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.-6. {6. On and after January 1, 2013,} K.S.A. 2011 Supp. 21-5808, 21-5810, 32-1005, 32-1013 and 32-1032 are hereby repealed.

Sec.-7. {7.} This act shall take effect and be in force from and after January 1, 2013, and its publication in the statute book.