

## HOUSE BILL No. 2311

By Committee on Agriculture and Natural Resources

1-31

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9 AN ACT concerning threatened and endangered species; repealing the  
10 nongame and endangered species conservation act; amending K.S.A.  
11 77-415 and K.S.A. 2006 Supp. 32-988, 32-1002, 32-1005 and 82a-2001  
12 and repealing the existing sections; also repealing K.S.A. 32-957, 32-  
13 958, 32-959, 32-960, 32-960a, 32-960b, 32-961, 32-962, 32-963, 32-  
14 1010, 32-1011, 32-1012, 32-1033 and 79-32,203 and K.S.A. 2006 Supp.  
15 32-1009.

16

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

18 Section 1. K.S.A. 2006 Supp. 32-988 is hereby amended to read as  
19 follows: 32-988. (a) The secretary is authorized to adopt, in accordance  
20 with K.S.A. 32-805 and amendments thereto, rules and regulations fixing  
21 the amount of fees for the following items, subject to the following lim-  
22 itations and subject to the requirement that no such rules and regulations  
23 shall be adopted as temporary rules and regulations:

24 Big game permits

25 Resident (other than elk permit): maximum \$100

26 Nonresident (other than elk permit): maximum \$400

27 Elk permit: maximum \$350

28 Resident big game tag: maximum \$20

29 Nonresident big game tag: maximum \$30

30 Nonresident applications: maximum \$25

31 Combination hunting and fishing licenses

32 Resident: maximum \$50

33 Lifetime: maximum \$1,000; or 8 quarterly payments, each maximum \$150

34 Nonresident: maximum \$200

35 Commercial dog training permits: maximum \$25

36 Commercial guide permit or associate guide permit

37 Resident: maximum \$250

38 Nonresident: maximum \$1,000

39 Commercial harvest or dealer permits: maximum \$200

40 Commercial prairie rattlesnake harvesting permits

41 Resident or nonresident with valid hunting license: maximum \$5

42 Resident or nonresident nonfirearm without valid hunting license: maximum \$20

43 Controlled shooting area operator license: maximum \$400

- 1 Duplicate licenses, permits, stamps and other issues of the department: maximum \$10
- 2 Falconry
- 3     Permits: maximum \$300
- 4     Examinations: maximum \$100
- 5 Field trial permits: maximum \$25
- 6 Fishing licenses
- 7     Resident: maximum \$25
- 8     Lifetime: maximum \$500; or 8 quarterly payments, each maximum \$75
- 9     Nonresident: maximum \$75
- 10     Five-day nonresident: maximum \$25
- 11     Institutional group: maximum \$200
- 12     Special nonprofit group: maximum \$200
- 13     Twenty-four-hour: maximum \$10
- 14 Fur dealer licenses
- 15     Resident: maximum \$200
- 16     Nonresident: maximum \$400
- 17 Furharvester licenses
- 18     Resident: maximum \$25
- 19     Lifetime: maximum \$500; or 8 quarterly payments, each maximum \$75
- 20     Nonresident: maximum \$400
- 21 Game breeder permits: maximum \$15
- 22 Handicapped hunting and fishing permits: maximum \$5
- 23 Hound trainer-breeder running permits: maximum \$25
- 24 Hunting licenses
- 25     Resident: maximum \$25
- 26     Lifetime: maximum \$500; or 8 quarterly payments, each maximum \$75
- 27     Nonresident 16 or more years of age: maximum \$125
- 28     Nonresident under 16 years of age: maximum \$75
- 29     Controlled shooting area: maximum \$25
- 30     Forty-eight-hour waterfowl permits: maximum \$25
- 31 Migratory waterfowl habitat stamps: maximum \$8
- 32 Mussel fishing licenses
- 33     Resident: maximum \$200
- 34     Nonresident: maximum \$1,500
- 35 Rabbit permits
- 36     Live trapping: maximum \$200
- 37     Shipping: maximum \$400
- 38 Raptor propagation permits: maximum \$100
- 39 Rehabilitation permits: maximum \$50
- 40 Scientific, educational or exhibition permits: maximum \$10
- 41 Wildlife damage control permits: maximum \$10
- 42 Wildlife importation permits: maximum \$10
- 43 Wild turkey permits

- 1 Resident: maximum \$100
- 2 Nonresident: maximum \$400
- 3 Resident turkey tag: maximum \$20
- 4 Nonresident turkey tag: maximum \$30
- 5 ~~Special permits under K.S.A. 32-961: maximum \$100~~
- 6 Miscellaneous fees
  - 7 Special events on department land or water: maximum \$200
  - 8 Special departmental services, materials or supplies: no maximum
  - 9 Other issues of department: no maximum
  - 10 Vendor bond: no maximum
- 11 (b) The fee for a landowner-tenant resident big game or wild turkey
- 12 hunting permit shall be an amount equal to ½ the fee for a general res-
- 13 ident big game or wild turkey hunting permit.
- 14 (c) The fee for a furharvester license for a resident under 16 years of
- 15 age shall be an amount equal to ½ the fee for a resident furharvester
- 16 license.
- 17 (d) The secretary may establish, by rules and regulations adopted in
- 18 accordance with K.S.A. 32-805 and amendments thereto, different fees
- 19 for various classes and types of licenses, permits, stamps and other issu-
- 20 ances of the department which may occur within each item as described
- 21 under subsection (a).
- 22 Sec. 2. K.S.A. 2006 Supp. 32-1002 is hereby amended to read as
- 23 follows: 32-1002. (a) Unless and except as permitted by law or rules and
- 24 regulations adopted by the secretary in accordance with K.S.A. 32-805
- 25 and amendments thereto, it is unlawful for any person to:
- 26 (1) Hunt, fish, furharvest or take any wildlife in this state by any
- 27 means or manner;
- 28 (2) possess, any wildlife, dead or alive, at any time or in any number,
- 29 in this state;
- 30 (3) purchase, sell, exchange, ship or offer for sale, exchange or ship-
- 31 ment any wildlife in this state;
- 32 (4) take any wildlife in this state for sale, exchange or other com-
- 33 mercial purposes;
- 34 (5) possess any seine, trammel net, hoop net, fyke net, fish gig, fish
- 35 spear, fish trap or other device, contrivance or material for the purpose
- 36 of taking wildlife; or
- 37 (6) take or use, at any time or in any manner, any game bird, game
- 38 animal, coyote or furbearing animal, whether pen-raised or wild, in any
- 39 field trial or for training dogs.
- 40 (b) The provisions of subsections (a)(2) and (a)(3) do not apply to
- 41 animals sold in surplus property disposal sales of department exhibit herds
- 42 or animals legally taken outside this state, except the provisions of sub-
- 43 section (a)(3) shall apply to:

- 1 (1) The meat of game animals legally taken outside this state; and  
2 (2) other restrictions as provided by rule and regulation of the sec-  
3 retary.
- 4 (c) The provisions of this section shall not be construed to prevent:  
5 (1) Any person from taking starlings or English and European spar-  
6 rows; or  
7 (2) owners or legal occupants of land from killing any animals when  
8 found in or near buildings on their premises or when destroying property,  
9 subject to the following: (A) The provisions of all federal laws and regu-  
10 lations governing protected species ~~and the provisions of K.S.A. 32-957~~  
11 ~~through 32-963, and rules and regulations adopted thereunder;~~ (B) it is  
12 unlawful to use, or possess with intent to use, any such animal so killed  
13 unless authorized by rules and regulations of the secretary; and (C) such  
14 owners or legal occupants shall make reasonable efforts to alleviate their  
15 problems with any such animals before killing them.
- 16 (d) Any person convicted of violating provisions of this section shall  
17 by subject to the penalties prescribed in K.S.A. 32-1031, and amendments  
18 thereto, except as provided in K.S.A. 32-1032, and amendments thereto,  
19 relating to big game and wild turkey.
- 20 Sec. 3. K.S.A. 2006 Supp. 32-1005 is hereby amended to read as  
21 follows: 32-1005. (a) Commercialization of wildlife is knowingly commit-  
22 ting any of the following, except as permitted by statute or rules and  
23 regulations:
- 24 (1) Capturing, killing or possessing, for profit or commercial pur-  
25 poses, all or any part of any wildlife protected by this section;  
26 (2) selling, bartering, purchasing or offering to sell, barter or pur-  
27 chase, for profit or commercial purposes, all or any part of any wildlife  
28 protected by this section;  
29 (3) shipping, exporting, importing, transporting or carrying; causing  
30 to be shipped, exported, imported, transported or carried; or delivering  
31 or receiving for shipping, exporting, importing, transporting or carrying  
32 all or any part of any wildlife protected by this section, for profit or com-  
33 mercial purposes; or  
34 (4) purchasing, for personal use or consumption, all or any part of  
35 any wildlife protected by this section.
- 36 (b) The wildlife protected by this section and the minimum value  
37 thereof are as follows:
- 38 (1) Eagles, \$1,000;  
39 (2) deer or antelope, \$400;  
40 (3) elk or buffalo, \$600;  
41 (4) furbearing animals, \$25;  
42 (5) wild turkey, \$75;  
43 (6) owls, hawks, falcons, kites, harriers or ospreys, \$200;

- 1 (7) game birds, migratory game birds, resident and migratory non-  
2 game birds, game animals and nongame animals, \$20 unless a higher  
3 amount is specified above;
- 4 (8) fish and mussels, the value for which shall be no less than the  
5 value listed for the appropriate fish or mussels species in the monetary  
6 values of freshwater fish or mussels and fish kill counting guidelines of  
7 the American fisheries society, special publication number 30;
- 8 (9) turtles, \$10 each for unprocessed turtles or \$8 per pound or frac-  
9 tion of a pound for processed turtle parts;
- 10 (10) bullfrogs, \$2, whether dressed or not dressed;
- 11 (11) any wildlife classified as threatened or endangered *pursuant to*  
12 *Pub. L. No. 93-205 (December 28, 1973), the endangered species act of*  
13 *1973, and amendments thereto*, \$200 unless a higher amount is specified  
14 above; and
- 15 (12) any other wildlife not listed above, \$10.
- 16 (c) Possession of wildlife, in whole or in part, captured or killed in  
17 violation of law and having an aggregate value of \$1,000 or more, as  
18 specified in subsection (b), is prima facie evidence of possession for profit  
19 or commercial purposes.
- 20 (d) Commercialization of wildlife having an aggregate value of \$1,000  
21 or more, as specified in subsection (b), is a severity level 10, nonperson  
22 felony. Commercialization of wildlife having an aggregate value of less  
23 than \$1,000, as specified in subsection (b), is a class A nonperson mis-  
24 demeanor.
- 25 (e) In addition to any other penalty provided by law, a court convict-  
26 ing a person of the crime of commercialization of wildlife may:
- 27 (1) Confiscate all equipment used in the commission of the crime  
28 and may revoke for a period of up to 10 years all licenses and permits  
29 issued to the convicted person by the Kansas department of wildlife and  
30 parks; and
- 31 (2) order restitution to be paid to the Kansas department of wildlife  
32 and parks for the wildlife taken, which restitution shall be in an amount  
33 not less than the aggregate value of the wildlife, as specified in subsection  
34 (b).
- 35 (f) The provisions of this section shall apply only to wildlife illegally  
36 harvested and possessed by any person having actual knowledge that such  
37 wildlife was illegally harvested.
- 38 Sec. 4. K.S.A. 77-415 is hereby amended to read as follows: 77-415.  
39 As used in K.S.A. 77-415 through 77-437, and amendments thereto, un-  
40 less the context clearly requires otherwise:
- 41 (1) "State agency" means any officer, department, bureau, division,  
42 board, authority, agency, commission or institution of this state, except  
43 the judicial and legislative branches, which is authorized by law to prom-

1 ulgate rules and regulations concerning the administration, enforcement  
2 or interpretation of any law of this state.

3 (2) "Person" means firm, association, organization, partnership, busi-  
4 ness trust, corporation or company.

5 (3) "Board" means the state rules and regulations board established  
6 under the provisions of K.S.A. 77-423 and amendments thereto.

7 (4) "Rule and regulation," "rule," "regulation" and words of like ef-  
8 fect mean a standard, statement of policy or general order, including  
9 amendments or revocations thereof, of general application and having the  
10 effect of law, issued or adopted by a state agency to implement or inter-  
11 pret legislation enforced or administered by such state agency or to gov-  
12 ern the organization or procedure of such state agency. Every rule and  
13 regulation adopted by a state agency to govern its enforcement or ad-  
14 ministration of legislation shall be adopted by the state agency and filed  
15 as a rule and regulation as provided in this act. The fact that a statement  
16 of policy or an interpretation of a statute is made in the decision of a case  
17 or in a state agency decision upon or disposition of a particular matter as  
18 applied to a specific set of facts does not render the same a rule and  
19 regulation within the meaning of the foregoing definition, nor shall it  
20 constitute specific adoption thereof by the state agency so as to be re-  
21 quired to be filed. A rule and regulation as herein defined shall not in-  
22 clude any rule and regulation which: (a) Relates to the internal manage-  
23 ment or organization of the agency and does not affect private rights or  
24 interest; (b) is an order directed to specifically named persons or to a  
25 group which does not constitute a general class and the order is served  
26 on the person or persons to whom it is directed by appropriate means.  
27 The fact that the named person serves a group of unnamed persons who  
28 will be affected does not make such an order a rule and regulation; (c)  
29 relates to the use of highways and is made known to the public by means  
30 of signs or signals; (d) relates to the construction and maintenance of  
31 highways or bridges or the laying out or relocation of a highway other  
32 than bidding procedures or the management and regulation of rest areas;  
33 (e) relates to the curriculum of public educational institutions or to the  
34 administration, conduct, discipline, or graduation of students from such  
35 institutions or relates to parking and traffic regulations of state educa-  
36 tional institutions under the control and supervision of the state board of  
37 regents; (f) relates to the emergency or security procedures of a correc-  
38 tional institution, as defined in subsection (d) of K.S.A. 75-5202 and  
39 amendments thereto; (g) relates to the use of facilities by public libraries;  
40 (h) relates to military or naval affairs other than the use of armories; (i)  
41 relates to the form and content of reports, records or accounts of state,  
42 county or municipal officers, institutions, or agencies; (j) relates to ex-  
43 penditures by state agencies for the purchase of materials, equipment, or

1 supplies by or for state agencies, or for the printing or duplicating of  
2 materials for state agencies; (k) establishes personnel standards, job clas-  
3 sifications, or job ranges for state employees who are in the classified civil  
4 service; (l) fixes or approves rates, prices, or charges, or rates, joint rates,  
5 fares, tolls, charges, rules, regulations, classifications or schedules of com-  
6 mon carriers or public utilities subject to the jurisdiction of the state  
7 corporation commission, except when a statute specifically requires the  
8 same to be fixed by rule and regulation; (m) determines the valuation of  
9 securities held by insurance companies; (n) is a statistical plan relating to  
10 the administration of rate regulation laws applicable to casualty insurance  
11 or to fire and allied lines insurance; (o) is a form, the content or substan-  
12 tive requirements of which are prescribed by rule and regulation or stat-  
13 ute; (p) is a pamphlet or other explanatory material not intended or de-  
14 signed as interpretation of legislation enforced or adopted by a state  
15 agency but is merely informational in nature; (q) establishes seasons and  
16 fixes bag, creel, possession, size or length limits for the taking or posses-  
17 sion of wildlife, if such seasons and limits are made known to the public  
18 by other means; or (r) establishes records retention and disposition sched-  
19 ules for any or all state agencies.

20 (5) “Environmental rule and regulation” means:

21 ~~—(A)—~~a rule and regulation adopted by the secretary of agriculture, the  
22 secretary of health and environment or the state corporation commission,  
23 which has as a primary purpose the protection of the environment; ~~or~~  
24 ~~—(B)—~~a rule and regulation adopted by the secretary of wildlife and  
25 parks concerning threatened or endangered species of wildlife as defined  
26 in K.S.A. 32-958 and amendments thereto.

27 Sec. 5. K.S.A. 2006 Supp. 82a-2001 is hereby amended to read as  
28 follows: 82a-2001. As used in this act:

29 (a) (1) “Classified stream segments” shall include all stream seg-  
30 ments that are waters of the state as defined in subsection (a) of K.S.A.  
31 65-161, and amendments thereto, and waters described in subsection (d)  
32 of K.S.A. 65-171d, and amendments thereto, that:

33 (A) Are indicated on the federal environmental protection agency’s  
34 reach file 1 (RF1) (1982) and have the most recent 10-year median flow  
35 of equal to or in excess of one cubic foot per second based on data col-  
36 lected and evaluated by the United States geological survey or in the  
37 absence of stream segment flow data, calculations of flow conducted by  
38 extrapolation methods provided by the United States geological survey;

39 (B) Have the most recent 10-year median flow of equal to or in excess  
40 of one cubic foot per second based on data collected and evaluated by  
41 the United States geological survey or in the absence of stream segment  
42 flow data, calculations of flow conducted by extrapolation methods pro-  
43 vided by the United States geological survey;

- 1 (C) are actually inhabited by threatened or endangered aquatic spe-  
2 cies listed in rules and regulations promulgated by ~~the Kansas department~~  
3 ~~of wildlife and parks~~ or the United States fish and wildlife service;
- 4 (D) (i) scientific studies conducted by the department show that dur-  
5 ing periods of flow less than one cubic foot per second stream segments  
6 provide important refuges for aquatic life and permit biological recolon-  
7 ization of intermittently flowing segments; and  
8 (ii) a cost/benefit analysis conducted by the department and taking  
9 into account the economic and social impact of classifying the stream  
10 segment indicates that the benefits of classifying the stream segment out-  
11 weigh the costs of classifying the stream segment, as consistent with the  
12 federal clean water act and federal regulations; or
- 13 (E) are at the point of discharge on the stream segment and down-  
14 stream from such point where the department has issued a national pol-  
15 lutant discharge elimination system permit other than a permit for a con-  
16 fined feeding facility, as defined in K.S.A. 65-171d, and amendments  
17 thereto.
- 18 (2) Classified stream segments other than those described in subsec-  
19 tion (a)(1)(E) shall not include ephemeral streams; grass, vegetative or  
20 other waterways; culverts; or ditches.
- 21 (3) Any definition of classified stream or “classified stream segment”  
22 in rules and regulations or law that is inconsistent with this definition is  
23 hereby declared null and void.
- 24 (b) “Department” means the department of health and environment.
- 25 (c) “Designated uses of classified stream segments” shall be defined  
26 as follows:
- 27 (1) “Agricultural water supply use” means the use of a classified  
28 stream segment for agricultural purposes, including the following:
- 29 (A) “Irrigation” means the withdrawal of water from a classified  
30 stream segment for application onto land; or  
31 (B) “livestock watering” means the provision of water from a classi-  
32 fied stream segment to livestock for consumption.
- 33 (2) “Aquatic life support use” means the use of a classified stream  
34 segment for the maintenance of the ecological integrity of streams, lakes  
35 and wetlands, including the sustained growth and propagation of native  
36 aquatic life; naturalized, important, recreational aquatic life; and indige-  
37 nous or migratory semiaquatic or terrestrial wildlife directly or indirectly  
38 dependent on surface water for survival. Categories of aquatic life support  
39 use include:
- 40 (A) “Special aquatic life use waters” means classified stream seg-  
41 ments that contain combinations of habitat types and indigenous biota  
42 not found commonly in the state, or classified stream segments that con-  
43 tain representative populations of threatened or endangered species, that



1 are listed in rules and regulations promulgated by ~~the Kansas department~~  
2 ~~of wildlife and parks or the United States fish and wildlife service.~~

3 (B) “Expected aquatic life use waters” means classified stream seg-  
4 ments containing habitat types and indigenous biota commonly found or  
5 expected in the state.

6 (C) “Restricted aquatic life use waters” means classified stream seg-  
7 ments containing indigenous biota limited in abundance or diversity by  
8 the physical quality or availability of habitat, due to natural deficiencies  
9 or artificial modifications, compared to more suitable habitats in adjacent  
10 waters.

11 (3) “Domestic water supply” means the use of a classified stream  
12 segment, after appropriate treatment, for the production of potable water.

13 (4) “Food procurement use” means the use of a classified stream  
14 segment for the obtaining of edible forms of aquatic or semiaquatic life  
15 for human consumption.

16 (5) “Groundwater recharge use” means the use of a classified stream  
17 segment for the replenishing of fresh or usable groundwater resources.  
18 This use may involve the infiltration and percolation of surface water  
19 through sediments and soils or the direct injection of surface water into  
20 underground aquifers.

21 (6) “Industrial water supply use” means the use of a classified stream  
22 segment for nonpotable purposes by industry, including withdrawals for  
23 cooling or process water.

24 (7) (A) “Recreational use” means:

25 (i) Primary contact recreational use is use of a classified stream seg-  
26 ment for recreation during the period from April 1 through October 31  
27 of each year, provided such classified stream segment is capable of sup-  
28 porting the recreational activities of swimming, skin diving, water skiing,  
29 wind surfing, kayaking or mussel harvesting where the body is intended  
30 to be immersed in surface water to the extent that some inadvertent  
31 ingestion of water is probable.

32 (a) Primary contact recreational use-Class A: Use of a classified  
33 stream segment for recreation during the period from April 1 through  
34 October 31 of each year, and the classified stream segment is a designated  
35 public swimming area. Water quality criterion for bacterial indicator or-  
36 ganisms applied to Class A waters shall be set at an illness rate of eight  
37 or more per 1000 swimmers. The classified stream segment shall only be  
38 considered impaired for primary contact recreational use-Class A if the  
39 calculated geometric mean of at least five samples collected in separate  
40 24-hour periods within a 30-day period exceeds the corresponding water  
41 quality criterion. The water quality criterion for primary contact recrea-  
42 tional use-Class A waters during the period November 1 through March  
43 31 of each year shall be equal to the criterion applied to secondary contact

1 recreational use-Class A waters.

2 (b) Primary contact recreational use-Class B: Use of a classified  
3 stream segment for recreation, where moderate full body contact recre-  
4 ation is expected, during the period from April 1 through October 31 of  
5 each year, and the classified stream segment is by law or written permis-  
6 sion of the landowner open to and accessible by the public. Water quality  
7 criterion for bacterial indicator organisms applied to Class B waters shall  
8 be set at an illness rate of 10 or more per 1000 swimmers. The classified  
9 stream segment shall only be considered impaired for primary contact  
10 recreational use-Class B if the calculated geometric mean of at least five  
11 samples collected in separate 24-hour periods within a 30-day period ex-  
12 ceeds the corresponding water quality criterion. The water quality crite-  
13 rion for primary contact recreational use-Class B waters during the period  
14 November 1 through March 31 of each year shall be equal to the criterion  
15 applied to secondary contact recreational use-Class A waters.

16 (c) Primary contact recreational use-Class C: Use of a classified  
17 stream segment for recreation, where full body contact recreation is in-  
18 frequent during the period from April 1 through October 31 of each year,  
19 and is not open to and accessible by the public under Kansas law and is  
20 capable of supporting the recreational activities of swimming, skin diving,  
21 water-skiing, wind surfing, boating, mussel harvesting, wading or fishing.  
22 Water quality criterion for bacterial indicator organisms applied to Class  
23 C waters shall be set at an illness rate of 12 or more per 1000 swimmers.  
24 The classified stream segment shall only be considered impaired for pri-  
25 mary contact recreational use-Class C if the calculated geometric mean  
26 of at least five samples collected in separate 24-hour periods within a 30-  
27 day period exceeds the corresponding water quality criterion. The water  
28 quality criterion for primary contact recreational use-Class C waters dur-  
29 ing the period November 1 through March 31 of each year shall be equal  
30 to the criterion applied to secondary contact recreational use-Class B  
31 waters.

32 (ii) Secondary contact recreational use is use of a classified stream  
33 segment for recreation, provided such classified stream segment is ca-  
34 pable of supporting the recreational activities of wading, fishing, canoeing,  
35 motor boating, rafting or other types of boating where the body is not  
36 intended to be immersed and where ingestion of surface water is not  
37 probable.

38 (a) Secondary contact recreational use-Class A: Use of a classified  
39 stream segment for recreation capable of supporting the recreational ac-  
40 tivities of wading or fishing and the classified stream segment is by law  
41 or written permission of the landowner open to and accessible by the  
42 public. Water quality criterion for bacterial indicator organisms applied  
43 to secondary contact recreational use-Class A waters shall be nine times

1 the criterion applied to primary contact recreational use-Class B waters.  
2 The classified stream segment shall only be considered impaired for sec-  
3 ondary contact recreational use-Class A if the calculated geometric mean  
4 of at least five samples collected in separate 24-hour periods within a 30-  
5 day period exceeds the corresponding water quality criterion.

6 (b) Secondary contact recreational use-Class B: Use of a classified  
7 stream segment for recreation capable of supporting the recreational ac-  
8 tivities of wading or fishing and the classified stream segment is not open  
9 to and accessible by the public under Kansas law. Water quality criterion  
10 for bacterial indicator organisms applied to secondary contact recreational  
11 use- Class B waters shall be nine times the criterion applied to primary  
12 contact recreational-Class C use waters. The classified stream segment  
13 shall only be considered impaired for secondary contact recreational use-  
14 Class B if the calculated geometric mean of at least five samples collected  
15 in separate 24-hour periods within a 30-day period exceeds the corre-  
16 sponding water quality criterion.

17 (B) If opposite sides of a classified stream segment would have dif-  
18 ferent designated recreational uses due to differences in public access,  
19 the designated use of the entire classified stream segment may be the  
20 higher attainable use, notwithstanding that such designation does not  
21 grant the public access to both sides of such segment.

22 (C) Recreational use designations shall not apply to stream segments  
23 where the natural, ephemeral, intermittent or low flow conditions or wa-  
24 ter levels prevent recreational activities.

25 (d) "Ephemeral stream" means streams that flow only in response to  
26 precipitation and whose channel is at all times above the water table.

27 (e) "Secretary" means the secretary of health and environment.

28 Sec. 6. K.S.A. 32-957, 32-958, 32-959, 32-960, 32-960a, 32-960b, 32-  
29 961, 32-962, 32-963, 32-1010, 32-1011, 32-1012, 32-1033, 77-415 and 79-  
30 32,203 and K.S.A. 2006 Supp. 32-988, 32-1002, 32-1005, 32-1009 and  
31 82a-2001 are hereby repealed.

32 Sec. 7. This act shall take effect and be in force from and after its  
33 publication in the statute book.