

SESSION OF 2005

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2253

As Amended by Senate Committee of the Whole

Brief*

HB 2253 would create new fines and penalties, in addition to the current penalty of a class C misdemeanor, for repeat violations of the wildlife laws as follows:

- for a second conviction a minimum fine of \$250;
- for a third conviction a minimum fine of \$300; and
- for a fourth and any subsequent convictions a minimum fine of \$400 and imprisonment in the county jail for not less than 7 days.

No conviction occurring prior to July 1, 2005, would be considered for purpose of the new fines and penalties.

In addition, fines and penalties for violations of wildlife and parks laws dealing with big game or turkey permits and game tags; taking big game or wild turkey during a closed season; taking big game or wild turkey using an unlawful method as outlined by the bill; possessing any wildlife unlawfully killed outside the state; causing the shipment within, from, or into the state of any illegally taken or possessed wildlife; or taking big game or wild turkey on posted land would be increased as follows:

- for a first or second conviction, a minimum fine of \$500 and a maximum of \$1,000 or imprisonment for not more than 6 months, or both;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- for a third conviction, a minimum fine of \$1,000 and imprisonment for not less than 30 days (a class B nonperson misdemeanor);
- for a fourth conviction, a minimum fine of \$1,000 and imprisonment for not less than 60 days (a class A nonperson misdemeanor);
- for a fifth conviction or subsequent convictions, a minimum of \$1,000 and be imprisoned for not less than 90 days (a class A nonperson misdemeanor).

Convictions prior to the effective date of the bill would be subject to current law penalties for big game or wild turkey permits and game tags.

Another section of the bill would modify current law with respect to forfeiture of hunting privileges. Specifically, the bill would add violating the requirements to have and possess the proper license, or permit or other document issued by the Department as well as the illegal possession or shipment of unlawfully taken wildlife to the list of violations which would subject a person to forfeiture of hunting privileges. In regard to forfeiture, the bill would allow the court to order forfeiture upon first conviction, rather than mandate forfeiture upon first conviction.

The bill would provide penalties for violation of wildlife laws for: failure to have or possess the proper license or issue of the Department; the unlawful possession or shipment of illegally taken wildlife, big game, or wild turkey; hunting, fishing, or furharvesting, possessing, purchasing, or selling wildlife; taking game from a vehicle; providing information on location of game using a mechanical device; using chemicals, explosives, spotlighting, or poisoning; or violating landowners' rights.

These penalties would be a class C misdemeanor (KSA 32-1031), except for the penalties provided for violations of big game or wild turkey and game tags discussed earlier in this brief.

Finally, the bill would allow county or district attorneys to enter into diversion agreements in lieu of criminal proceedings on a complaint for violation of Wildlife and Parks laws (Article 10 of Chapter 32) if the diversion carries the same penalties as the conviction for the corre-

sponding violation. If the defendant has previously participated in one or more diversions then each subsequent diversion would carry the same penalties as the conviction for the corresponding violation.

Background

Representatives from the Kansas Department of Wildlife and Parks, the Kansas Wildlife Federation, and the Attorney General's Office testified as proponents of the bill. A representative from the District Attorney's Association testified in opposition to the bill. He said that KSA 22-2907(2) and KSA 22-2908(a) authorizes the county and district attorney to consider a number of factors in deciding to allow a diversion, whereas the bill would allow a first-time diversion.

The House Committee amended the bill to increase the fines and penalties for violations of wildlife and parks laws dealing with big game and turkey permits and violations of other wildlife and parks laws. The Committee also amended the bill to strike language that was opposed by the District Attorney's Association.

The Senate Committee on Natural Resources amended the bill to:

- ! Add violations of laws dealing with taking big game or wild turkey during a closed season, taking big game or wild turkey in violation of the lawful methods of taking statute, taking big game or wild turkey in violation of the subsection dealing with unlawful possession of wildlife unlawfully taken outside the state, and shipment of unlawfully taken wildlife, to the section which provides for increased penalties based on the number of convictions;
- ! Add violations of not having or possessing the proper license or issue of the Department and the illegal possession or shipment of unlawfully taken wildlife to the statute providing for licensure forfeiture upon conviction of wildlife statutes;
- ! Allow, rather than mandate, the court to order forfeiture of a persons' hunting privileges for the first conviction of a wildlife statute;

- ! Delete a portion of the bill that would have required the fines not be less than the appearance fee bond for each violation as provided for under current law;
- ! Delete provisions which provided that all charges arising from the same set of circumstances would constitute one conviction;
- ! Provide penalties for violation of wildlife laws for failure to have or possess the proper license or issue of the Department; the unlawful possession or shipment of illegally taken wildlife, big game, or wild turkey; hunting, fishing, or furharvesting, possessing, purchasing, or selling wildlife; taking game from a vehicle; providing information on location of game using a mechanical device; using chemicals, explosives, spotlighting, or poisoning; or violating the landowners' rights. These penalties would be a class C misdemeanor (KSA 32-1031), except for the penalties provided for violations of big game or wild turkey and game tags discussed earlier in the brief portion of this note.

The Senate Committee of the Whole added the amendment which would make the penalties for diversion, the same as those for conviction of the Wildlife and Parks laws (Article 10, Chapter 32).

The Division of Budget's fiscal note indicates that passage of this bill may increase state revenue, but states that it would be impossible to calculate.