

Substitute for HOUSE BILL No. 2709

By Committee on Agriculture and Natural Resources

3-13

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

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

7 Section 1. K.S.A. 2011 Supp. 21-5808 is hereby amended to read as
8 follows: 21-5808. (a) Criminal trespass is entering or remaining
9 upon or in any:

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

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

16 (B) such premises or property are posted ~~in a~~ *as provided in K.S.A.*
17 *32-1013, and amendments thereto, or in any other manner* reasonably
18 likely to come to the attention of intruders, or are locked or fenced or
19 otherwise enclosed, or shut or secured against passage or entry; or

20 (C) such person enters or remains therein in defiance of a restraining
21 order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106, 60-3107, 60-
22 31a05 or 60-31a06 or K.S.A. 2011 Supp. 38-2243, 38-2244 or 38-2255,
23 and amendments thereto, and the restraining order has been personally
24 served upon the person so restrained; or

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

31 (b) Criminal trespass is a class B nonperson misdemeanor. Upon a
32 conviction of a violation of subsection (a)(1)(C), a person shall be
33 sentenced to not less than 48 consecutive hours of imprisonment which
34 shall be served either before or as a condition of any grant of probation or
35 suspension, reduction of sentence or parole.

36 (c) As used in this section:

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

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

7 (A) Licensed to practice a branch of the healing arts;

8 (B) licensed to practice psychology;

9 (C) licensed to practice professional or practical nursing;

10 (D) licensed to practice dentistry;

11 (E) licensed to practice optometry;

12 (F) licensed to practice pharmacy;

13 (G) registered to practice podiatry;

14 (H) licensed as a social worker; or

15 (I) registered to practice physical therapy.

16 (d) This section shall not apply to:

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

21 (2) railroad property as defined in K.S.A. 2011 Supp. 21-5809, and
22 amendments thereto, or nuclear generating facility as defined in K.S.A.
23 2011 Supp. 66-2302, and amendments thereto.

24 Sec. 2. K.S.A. 2011 Supp. 21-5810 is hereby amended to read as
25 follows: 21-5810. (a) Criminal hunting is knowingly hunting, shooting, fur
26 harvesting, pursuing any bird or animal, or fishing:

27 (1) Upon any land or nonnavigable body of water of another, without
28 having first obtained permission of the owner or person in possession of
29 such premises;

30 (2) upon or from any public road, public road right-of-way or railroad
31 right-of-way that adjoins occupied or improved premises, without having
32 first obtained permission of the owner or person in possession of such
33 premises; or

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

37 (A) *By a person who knows such person is not authorized or*
38 *privileged to do so and such person remains therein and continues to hunt,*
39 *shoot, fur harvest, pursue any bird or animal or fish in defiance of an order*
40 *not to enter or to leave such premises or property personally*
41 *communicated to such person by the owner thereof or other authorized*
42 *person; or*

43 (B) *by a person, without the written permission of the landowner or*

1 *person in lawful possession of such land, with no requirement of a*
2 *culpable mental state, if such premises or property are posted in a manner*
3 *consistent with K.S.A. 32-1013, and amendments thereto.*

4 (b) Criminal hunting as defined in:

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

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

1 license, or all, or in the case where such person has a combination license,
2 the court shall require forfeiture of a part or all of such license for five
3 years. For the purpose of determining whether a conviction is a first,
4 second, third or subsequent conviction of subsection (a)(3), "conviction"
5 or "convicted" includes being convicted of a violation of subsection (b) of
6 K.S.A. 21-3728, prior to its repeal, or subsection (a)(3).

7 (c) The court shall notify the *Kansas* department of wildlife ~~and~~
8 ~~parks, parks and tourism~~ of any conviction or diversion for a violation of
9 this section.

10 Sec. 3. K.S.A. 2011 Supp. 32-1005 is hereby amended to read as
11 follows: 32-1005. (a) Commercialization of wildlife is knowingly
12 committing any of the following, except as permitted by statute or rules
13 and regulations:

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

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

19 (3) shipping, exporting, importing, transporting or carrying; causing
20 to be shipped, exported, imported, transported or carried; or delivering or
21 receiving for shipping, exporting, importing, transporting or carrying all or
22 any part of any wildlife protected by this section, for profit or commercial
23 purposes; or

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

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

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

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

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

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

32 (5) bobcats, \$200;

33 (6) wild turkey, \$200;

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

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

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

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

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

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

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

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

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

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

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

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

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

28 Sec. 4. K.S.A. 2011 Supp. 32-1013 is hereby amended to read as
29 follows: 32-1013. (a) Any landowner or person in lawful possession of any
30 land may post such land with signs stating that hunting, trapping or fishing
31 on such land shall be by written permission only. It is unlawful for any
32 person to take wildlife on land which is posted as provided in this
33 subsection, without having in the person's possession the written
34 permission of the owner or person in lawful possession thereof.

35 (b) Instead of posting land as provided in subsection (a), any
36 landowner or person in lawful possession of any land may post such land
37 by placing identifying ~~purple~~ *bright orange* paint marks on trees or posts
38 around the area to be posted. Each paint mark shall be a vertical line of at
39 least eight inches in length and the bottom of the mark shall be no less than
40 three feet nor more than five feet high. Such paint marks shall be readily
41 visible to any person approaching the land. Land posted as provided in this
42 subsection shall be considered to be posted by written permission only as
43 provided in subsection (a).

1 (c) A person licensed to hunt or furharvest who is following or
2 pursuing a wounded animal on land as provided in this section posted
3 without written permission of the landowner or person in lawful
4 possession thereof shall not be in violation of this section while in such
5 pursuit, except that the provisions of this subsection shall not authorize a
6 person to remain on such land if instructed to leave by the owner or person
7 in lawful possession of the land. Any person who fails to leave such land
8 when instructed is subject to the provisions of subsection (b) of K.S.A.
9 2011 Supp. 21-5810, and amendments thereto.

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

14 Sec. 5. K.S.A. 2011 Supp. 32-1032 is hereby amended to read as
15 follows: 32-1032. (a) Violation of any provision of the wildlife and parks
16 laws of this state or rules and regulations of the secretary relating to big
17 game or wild turkey permits and game tags, taking big game or wild
18 turkey during a closed season, taking big game or wild turkey in violation
19 of subsections (a)(1), (2) or (7) of K.S.A. 32-1003, and amendments
20 thereto, or taking big game or wild turkey in violation of subsection (a)(2)
21 or (3) of K.S.A. 32-1004, and amendments thereto, or taking big game or
22 wild turkey in violation of K.S.A. 32-1013, and amendments thereto, is a
23 misdemeanor, subject to the provisions of subsection (b), punishable by a
24 fine or by imprisonment in the county jail, or by both.

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

30 (2) Upon a third conviction for a violation of the wildlife and parks
31 laws of this state or the rules and regulations of the secretary relating to
32 this section, the violator shall not be fined less than \$1,000 and shall be
33 imprisoned in the county jail for not less than 30 days. A third conviction
34 shall be a class B nonperson misdemeanor.

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

40 (4) Upon the fifth or subsequent convictions for a violation of the
41 wildlife and parks laws of the state or the rules and regulations of the
42 secretary relating to this section, the violator shall not be fined less than
43 \$1,000 and shall be imprisoned in the county jail for not less than 90 days.

1 A fifth or subsequent conviction shall be a class A nonperson
2 misdemeanor.

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

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

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

10 (A) An antlered whitetail deer having an inside spread measurement
11 of at least ~~17~~ 16 inches;

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

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

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

17 (3) *In addition to any other penalty prescribed by law, the defendant*
18 *shall pay the restitution value of any deer, elk or antelope taken in*
19 *violation of K.S.A. 32-1001, 32-1002, 32-1003, 32-1004, 32-1005 or 32-*
20 *1013, and amendments thereto, with a gross score of more than 125 inches*
21 *for deer, 250 inches for elk and 75 inches for antelope. Such restitution*
22 *value shall be in an amount not less than the value prescribed for such*
23 *animal in K.S.A. 32-1005, and amendments thereto. The restitution value*
24 *for deer shall equal: (gross score - 100)² x \$2. The restitution value for elk*
25 *shall equal: (gross score - 200)² x \$2. The restitution value for antelope*
26 *shall equal: (gross score - 40)² x \$2. The gross score shall be determined*
27 *by taking measurements as provided by rules and regulations of the*
28 *secretary, which shall be made to the nearest 1/8 of an inch using a 1/4 inch*
29 *wide flexible steel tape. All restitution collected pursuant to this*
30 *subparagraph shall be paid into the state treasury and shall be credited to*
31 *the wildlife fee fund created by K.S.A. 32-990, and amendments thereto.*

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

34 (5) The secretary may adopt, in accordance with K.S.A. 32-805, and
35 amendments thereto, such rules and regulations that the secretary deems
36 necessary to implement and define the terms of this section.

37 (c) In addition to any other penalty imposed by the convicting court,
38 if a person is convicted of a violation of K.S.A. 32-1001, 32-1002, 32-
39 1003, 32-1004 or 32-1013, and amendments thereto, that involves taking
40 of a big game animal or wild turkey, or if a person is convicted of a
41 violation of K.S.A. 32-1005, and amendments thereto, that involves
42 commercialization of a big game animal or wild turkey:

43 (1) Upon the first such conviction, the court may order forfeiture of

1 the person's hunting privileges for one year from the date of conviction
2 and: (A) Revocation of the person's hunting license, unless such license is
3 a lifetime hunting license; or (B) if the person possesses a lifetime hunting
4 license, suspension of such license for one year from the date of
5 conviction.

6 (2) Upon the second such conviction, the court shall order forfeiture
7 of the person's hunting privileges for three years from the date of
8 conviction and: (A) Revocation of the person's hunting license, unless such
9 license is a lifetime hunting license; or (B) if the person possesses a
10 lifetime hunting license, suspension of such license for three years from
11 the date of conviction.

12 (3) Upon the third or a subsequent such conviction, the court shall
13 order forfeiture of the person's hunting privileges for five years from the
14 date of conviction and: (A) Revocation of the person's hunting license,
15 unless such license is a lifetime hunting license; or (B) if the person
16 possesses a lifetime hunting license, suspension of such license for five
17 years from the date of conviction.

18 (d) If a person convicted of a violation described in subsection (c) has
19 been issued a combination hunting and fishing license or a combination
20 lifetime license, only the hunting portion of such license shall be revoked
21 or suspended pursuant to subsection (c).

22 (e) Nothing in this section shall be construed to prevent a convicting
23 court from suspending a person's hunting privileges or ordering the
24 forfeiture or suspension of the person's license, permit, stamp or other
25 issue of the department for a period longer than provided in this section, if
26 such forfeiture or suspension is otherwise provided for by law.

27 Sec. 6. K.S.A. 2011 Supp. 21-5808, 21-5810, 32-1005, 32-1013 and
28 32-1032 are hereby repealed.

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

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