Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
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CHAPTER 238

HOUSE BILL 2129

AN ACT

AMENDING SECTIONS 8-207 AND 13-907, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-2927; AMENDING SECTIONS 17-101, 17-309, 17-314, 17-315 AND 17-340, ARIZONA REVISED STATUTES; RELATING TO GAME AND FISH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 8-207, Arizona Revised Statutes, is amended to read:

8-207. Order of adjudication; noncriminal; use as evidence

A. Except as provided by section 13-904, subsection H, section 13-2921.01, SECTION 17-340 or sections 28-3304, 28-3306 and 28-3320, an order of the juvenile court in proceedings under this chapter shall not be deemed a conviction of crime, impose any civil disabilities ordinarily resulting from a conviction or operate to disqualify the juvenile in any civil service application or appointment.

B. The disposition of a juvenile in the juvenile court may not be used against the juvenile in any case or proceeding other than a criminal or juvenile case in any court, whether before or after reaching majority, except as provided by section 13-2921.01, SECTION 17-340 or sections 28-3304, 28-3306 and 28-3320.

Sec. 2. Section 13-907, Arizona Revised Statutes, is amended to read:

13-907. Setting aside judgment of convicted person on discharge; application; release from disabilities; exceptions

A. Except as OTHERWISE provided in ~~subsection B of~~ this section, every person convicted of a criminal offense, on fulfillment of the conditions of probation or sentence and discharge by the court, may apply to the judge, justice of the peace or magistrate who pronounced sentence or imposed probation or such judge, justice of the peace or magistrate's successor in office to have the judgment of guilt set aside. The convicted person shall be informed of this right at the time of discharge.

B. The application to set aside the judgment may be made by the convicted person or by the convicted person's attorney or probation officer authorized in writing.

C. If the judge, justice of the peace or magistrate grants the application, the judge, justice of the peace or magistrate shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction other than those imposed by:

1. The department of transportation pursuant to section 28-3304, 28-3306, 28-3307, 28-3308 or 28-3319, except that the conviction may be used as a conviction if such conviction would be admissible had it not been set aside and may be pleaded and proved in any subsequent prosecution of such person by the state or any of its subdivisions for any offense or used by the department of transportation in enforcing section 28-3304, 28-3306, 28-3307, 28-3308 or 28-3319 as if the judgment of guilt had not been set aside.

2. THE GAME AND FISH COMMISSION PURSUANT TO SECTION 17-314 OR 17-340.

~~B.~~ D. This section does not apply to a person convicted of a criminal offense:

1. Involving the infliction of serious physical injury.

2. Involving the use or exhibition of a deadly weapon or dangerous instrument.

3. For which the person is required or ordered by the court to register pursuant to section 13-3821.

4. For which there has been a finding of sexual motivation pursuant to section 13-118.

5. In which the victim is a minor under fifteen years of age.

6. In violation of section 28-3473, any local ordinance relating to stopping, standing or operation of a vehicle or title 28, chapter 3, except a violation of section 28-693 or any local ordinance relating to the same subject matter as section 28-693.

Sec. 3. Title 13, chapter 29, Arizona Revised Statutes, is amended by adding section 13-2927, to read:

13-2927. Unlawful feeding of wildlife; classification

A. A PERSON COMMITS UNLAWFUL FEEDING OF WILDLIFE BY INTENTIONALLY, KNOWINGLY OR RECKLESSLY FEEDING, ATTRACTING OR OTHERWISE ENTICING WILDLIFE INTO AN AREA, EXCEPT FOR:

1. PERSONS LAWFULLY TAKING OR HOLDING WILDLIFE PURSUANT TO TITLE 17 OR PURSUANT TO RULES OR ORDERS OF THE ARIZONA GAME AND FISH COMMISSION.

2. PUBLIC EMPLOYEES OR AUTHORIZED AGENTS ACTING WITHIN THE SCOPE OF THEIR AUTHORITY FOR PUBLIC SAFETY OR FOR WILDLIFE MANAGEMENT PURPOSES.

3. NORMAL AGRICULTURAL OR LIVESTOCK OPERATIONAL PRACTICES.

4. TREE SQUIRRELS OR BIRDS.

B. THIS SECTION APPLIES IN A COUNTY WITH A POPULATION OF MORE THAN TWO HUNDRED EIGHTY THOUSAND PERSONS.

C. UNLAWFUL FEEDING OF WILDLIFE IS A PETTY OFFENSE.

Sec. 4. Section 17-101, Arizona Revised Statutes, is amended to read:

17-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Angling" means the taking of fish by one line and not to exceed two hooks, ~~or~~ by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.

2. "Bag limit" means the maximum limit, in number or amount, of wildlife which may lawfully be taken by any one person during a specified period of time.

3. "Closed season" means the time during which wildlife may not be lawfully taken.

4. "Commission" means the Arizona game and fish commission.

5. "Department" means the Arizona game and fish department.

6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.

7. "Falconry" means the sport of hunting or taking quarry with a trained raptor.

8. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.

9. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.

10. "Guide" means a person who, for pay, aids or assists any person in taking wildlife.

11. "License year" means the twelve-month period between January 1 and December 31, inclusive.

12. "Nonresident" means a citizen of the United States or an alien who has not been a bona fide resident of the state of Arizona for six months immediately preceding the date of application for a license.

13. "Open season" means the time during which wildlife may be lawfully taken.

14. "Possession limit" means the maximum limit, in number or amount of wildlife, which may be possessed at one time by any one person.

15. "Resident" means a person who has been a bona fide resident of the state of Arizona for six months immediately preceding the date of application for a license, or a member of the armed forces who has been stationed in Arizona for a period of thirty days immediately preceding the date of application for a license.

16. "Road" means any maintained right-of-way for public conveyance.

17. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.

18. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.

19. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.

20. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.

21. "Wild" means, in reference to mammals and birds, those species which are normally found in a state of nature.

22. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans, and fish, including their eggs or spawn.

23. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

B. The following definitions of wildlife shall apply:

1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.

2. Game mammals are deer, elk, bear, PRONGHORN (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.

3. Big game are wild turkey, deer, elk, PRONGHORN (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.

4. "TROPHY" MEANS:

(a) A MULE DEER BUCK WITH AT LEAST FOUR POINTS ON ONE ANTLER, NOT INCLUDING THE EYE-GUARD POINT.

(b) A WHITETAIL DEER BUCK WITH AT LEAST THREE POINTS ON ONE ANTLER, NOT INCLUDING THE EYE-GUARD POINT.

(c) A BULL ELK WITH AT LEAST SIX POINTS ON ONE ANTLER, INCLUDING THE EYE GUARD POINT AND THE BROW TINE POINT.

(d) A PRONGHORN (ANTELOPE) BUCK WITH AT LEAST ONE HORN EXCEEDING OR EQUAL TO FOURTEEN INCHES IN TOTAL LENGTH.

(e) ANY BIGHORN SHEEP.

(f) ANY BISON (BUFFALO).

~~4.~~ 5. Small game are cottontail rabbits, tree squirrels, upland game birds and migratory game birds.

~~5.~~ 6. Fur-bearing animals are muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.

~~6.~~ 7. Predatory animals are foxes, skunks, coyotes and bobcats.

~~7.~~ 8. Nongame animals are all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.

~~8.~~ 9. Upland game birds are quail, partridge, grouse and pheasants.

~~9.~~ 10. Migratory game birds are wild waterfowl, including ducks, geese and swans; sandhill cranes; all coots, all gallinules, common snipe, wild doves and bandtail pigeons.

~~10.~~ 11. Nongame birds are all birds except upland game birds and migratory game birds.

~~11.~~ 12. Raptors are birds that are members of the order of falconiformes or strigiformes and include falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.

~~12.~~ 13. Game fish are trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.

~~13.~~ 14. Nongame fish are all the species of fish except game fish.

~~14.~~ 15. Trout means all species of the family salmonidae, including grayling.

Sec. 5. Section 17-309, Arizona Revised Statutes, is amended to read:

17-309. <u>Violations; classification</u>

A. Unless otherwise prescribed by this title, it is unlawful for a person to:

1. Violate any provision of this title or ~~a~~ ANY rule ~~prescribed under the provisions of~~ ADOPTED PURSUANT TO this title.

2. Take, possess, transport, buy, sell or offer or expose for sale wildlife except as expressly permitted by this title.

3. Destroy, injure or molest livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, trapping or fishing.

4. Discharge a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident.

5. Take a game bird, game mammal or game fish and knowingly permit an edible portion thereof to go to waste, except as provided in section 17-302.

6. Take big game, except bear or mountain lion, with the aid of dogs.

7. Make more than one use of a shipping permit or coupon issued by the commission.

8. Obtain a license or take wildlife during the period for which the person's license has been revoked or suspended or the person has been denied a license.

9. Litter hunting and fishing areas while taking wildlife.

10. Possess while hunting any contrivance designed to silence, muffle or minimize the report of a firearm.

11. Take wildlife during the closed season.

12. Take wildlife in an area closed to the taking of that wildlife.

13. Take wildlife with an unlawful device.

14. Take wildlife by an unlawful method.

15. Take wildlife in excess of the bag limit.

16. Possess wildlife in excess of the possession limit.

17. Possess or transport any wildlife or parts of the wildlife which was unlawfully taken.

18. Possess or transport the carcass of big game without a valid tag being attached.

19. Use the edible parts of any game mammal or any part of any game bird or nongame bird as bait.

20. Possess or transport the carcass or parts of a carcass of any wildlife which cannot be identified as to species and legality.

21. Take game animals, game birds and game fish with an explosive compound, poison or any other deleterious substances.

22. Import into this state or export from this state the carcass or parts of a carcass of any wildlife unlawfully taken or possessed.

B. Unless a different or other penalty or punishment is specifically prescribed a person who violates any provision of this title, or who violates or fails to comply with a lawful order or rule of the commission, is guilty of a class 2 misdemeanor.

C. A person who knowingly takes any big game during a closed season or who knowingly possesses, transports or buys any big game which was unlawfully taken during a closed season is guilty of a class 1 misdemeanor.

D. A person is guilty of a class 6 felony who knowingly:

1. Barters, sells or offers for sale any big game or parts of big game taken unlawfully.

2. Barters, sells or offers for sale any wildlife or parts of wildlife unlawfully taken during a closed season.

3. Barters, sells or offers for sale any wildlife or parts of wildlife imported or purchased in violation of this title or a lawful rule of the commission.

4. Assists another person for monetary gain with the unlawful taking of big game.

5. TAKES OR POSSESSES WILDLIFE WHILE UNDER PERMANENT REVOCATION UNDER SECTION 17-340, SUBSECTION B.

E. A peace officer who knowingly fails to enforce a lawful rule of the commission or this title is guilty of a class 2 misdemeanor.

Sec. 6. Section 17-314, Arizona Revised Statutes, is amended to read:

17-314. Civil liability for illegally taking or wounding wildlife; recovery of damages

A. The commission or any officer charged with enforcement of the laws relating to game and fish, if so directed by the commission, may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of, any of the following wildlife, or part thereof, and seek to recover the following minimum sums as damage:

1.	FOR each turkey or javelina	~~$150.00~~ $500.00
~~2.~~	~~Each bear, mountain lion, antelope or deer~~	~~450.00~~
~~3.~~	~~Each buffalo, elk, bighorn sheep, eagle or endangered species~~	~~750.00~~
~~4.~~	~~Each beaver~~	~~75.00~~
~~5.~~	~~Each goose or raptor~~	~~40.00~~
~~6.~~	~~Each duck, small game animal or small game bird~~	~~15.00~~
~~7.~~	~~Each nongame bird or game fish~~	~~10.00~~
2.	FOR EACH BEAR, MOUNTAIN LION, ANTELOPE OR DEER, OTHER THAN TROPHY	$1,500.00
3.	FOR EACH ELK OR EAGLE, OTHER THAN TROPHY OR ENDANGERED SPECIES	$2,500.00
4.	FOR EACH PREDATORY, FUR-BEARING OR NONGAME ANIMAL	$ 250.00
5.	FOR EACH SMALL GAME OR AQUATIC WILDLIFE ANIMAL	$ 50.00
6.	FOR EACH TROPHY OR ENDANGERED SPECIES ANIMAL	$8,000.00

B. No verdict or judgment recovered by the state in such action shall be for less than the sum fixed in this section. THE MINIMUM SUM THAT THE COMMISSION MAY SEEK TO RECOVER AS DAMAGES FROM A PERSON PURSUANT TO THIS SECTION MAY BE DOUBLED FOR A SECOND VERDICT OR JUDGMENT AND TRIPLED FOR A THIRD VERDICT OR JUDGMENT. The action for damages may be joined with an action for possession, and recovery had for the possession as well as the damages.

C. The pendency or determination of an action for damages or payment of a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

D. All ~~funds~~ MONIES recovered pursuant to this section shall be placed in the wildlife theft prevention fund.

Sec. 7. Section 17-315, Arizona Revised Statutes, is amended to read:

17-315. Wildlife theft prevention fund; authorized expenditures

A. ~~There shall be~~ A wildlife theft prevention fund ~~which shall consist~~ IS ESTABLISHED CONSISTING of:

1. Monies received from damage assessments pursuant to section 17-314.

2. Money received from donations to the fund.

3. Monies appropriated by the legislature for the purposes provided in this article.

4. Monies received as fines, forfeitures and penalties collected for violations of this title.

B. ~~Funds from~~ MONIES IN the wildlife theft prevention fund shall be expended only for the following purposes:

1. The financing of reward payments to persons, other than peace officers, game and fish department personnel and members of their immediate families, responsible for information leading to the arrest of any person for unlawfully taking, wounding or killing, possessing, transporting or selling wildlife and attendant acts of vandalism. The commission shall establish the schedule of rewards to be paid for information received and payment shall be made from ~~funds~~ MONIES available for this purpose.

2. The financing of a statewide telephone reporting system under the name of "operation game thief", which shall be established by the director under the guidance of the commission.

3. The promotion of the public recognition and awareness of the wildlife theft prevention program.

4. Investigations of the unlawful commercial use of wildlife.

C. The wildlife theft prevention fund shall be expended in conformity with the laws governing state financial operations~~, except that any balance in excess of fifty thousand dollars shall revert to the game and fish fund~~. Balances remaining at the end of the fiscal year ~~shall be~~ ARE exempt from the provisions of section 35-190~~,~~ relating to lapsing of appropriations.

Sec. 8. Section 17-340, Arizona Revised Statutes, is amended to read:

17-340. Revocation, suspension and denial of privilege of taking wildlife; notice; violation; classification

A. Upon conviction OR AFTER ADJUDICATION AS A DELINQUENT JUVENILE AS DEFINED IN SECTION 8-201 and in addition to other penalties prescribed by this title, the commission, after a public hearing, may revoke or suspend a license issued to any person under this title and deny the person the right

to secure another license to take OR POSSESS wildlife for a period of not to exceed five years for:

1. Unlawful taking, UNLAWFUL SELLING, UNLAWFUL OFFERING FOR SALE, UNLAWFUL BARTERING or unlawful possession of wildlife.

2. Careless use of firearms which has resulted in the injury or death of any person.

3. Destroying, injuring or molesting livestock, or damaging or destroying growing crops, personal property, notices or signboards, or other improvements while hunting, trapping or fishing.

4. Littering public hunting or fishing areas while taking wildlife.

5. Knowingly allowing another person to use the person's big game tag, except as provided by section 17-332, subsection D.

6. A violation of section 17-303, 17-304 or 17-341.

7. A VIOLATION OF SECTION 17-309, SUBSECTION A, PARAGRAPH 1 INVOLVING ANY UNLAWFUL USE OF AIRCRAFT TO TAKE, ASSIST IN TAKING, HARASS, CHASE, DRIVE, LOCATE OR ASSIST IN LOCATING WILDLIFE.

B. ON CONVICTION OR AFTER ADJUDICATION AS A DELINQUENT JUVENILE AND IN ADDITION TO ANY OTHER PENALTIES PRESCRIBED BY THIS TITLE:

1. FOR A FIRST CONVICTION OR A FIRST ADJUDICATION AS A DELINQUENT JUVENILE, FOR UNLAWFULLY TAKING OR WOUNDING WILDLIFE AT ANY TIME OR PLACE, THE COMMISSION, AFTER A PUBLIC HEARING, MAY REVOKE, SUSPEND OR DENY A PERSON'S PRIVILEGE TO TAKE WILDLIFE FOR A PERIOD OF UP TO FIVE YEARS.

2. FOR A SECOND CONVICTION OR A SECOND ADJUDICATION AS A DELINQUENT JUVENILE, FOR UNLAWFULLY TAKING OR WOUNDING WILDLIFE AT ANY TIME OR PLACE, THE COMMISSION, AFTER A PUBLIC HEARING, MAY REVOKE, SUSPEND OR DENY A PERSON'S PRIVILEGE TO TAKE WILDLIFE FOR A PERIOD OF UP TO TEN YEARS.

3. FOR A THIRD CONVICTION OR A THIRD ADJUDICATION AS A DELINQUENT JUVENILE, FOR UNLAWFULLY TAKING OR WOUNDING WILDLIFE AT ANY TIME OR PLACE, THE COMMISSION, AFTER A PUBLIC HEARING, MAY REVOKE, SUSPEND OR DENY A PERSON'S PRIVILEGE TO TAKE WILDLIFE PERMANENTLY.

~~B.~~ C. IN ACCORDANCE WITH TITLE 41, CHAPTER 6, ARTICLE 10 AND notwithstanding subsection A of this section, any person who is assessed civil damages under section 17-314 for the unlawful taking or possession of wildlife may be denied the right to secure a license to take wildlife until damages have been paid in full.

~~C.~~ D. On receiving a report from the licensing authority of a state which is a party to the wildlife violator compact, adopted under chapter 5 of this title, that a resident of this state has failed to comply with the terms of a wildlife citation, the commission, after a public hearing, may suspend any license issued under this title to take wildlife until the licensing authority furnishes satisfactory evidence of compliance with the terms of the wildlife citation.

~~D.~~ E. In carrying out the provisions of this section the director shall notify the licensee, within one hundred eighty days after conviction, to appear and show cause why the license should not be revoked, suspended or

denied. The notice may be served personally or by certified mail sent to the address appearing on the license.

~~E.~~ F. The commission shall furnish to license dealers the names and addresses of persons whose licenses have been revoked or suspended, and the periods for which they have been denied the right to secure licenses.

~~F.~~ G. The commission may use the services of the office of administrative hearings to conduct hearings and to make recommendations to the commission pursuant to this section.

~~G.~~ H. EXCEPT FOR A PERSON WHO TAKES OR POSSESSES WILDLIFE WHILE UNDER PERMANENT REVOCATION, a person who takes wildlife in this state, or attempts to obtain a license to take wildlife, at a time when the person's privilege to do so is suspended, revoked or denied under this section is guilty of a class 1 misdemeanor. ~~On receipt of notice of conviction under this subsection, the commission may extend the period for which the license is suspended or revoked, or the right to secure another license is denied, for an additional period not to exceed an additional five years.~~

APPROVED BY THE GOVERNOR MAY 1, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2006.