

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1979

By: Mass

COMMITTEE SUBSTITUTE

An Act relating to game and fish; providing for assessment of administrative penalties; providing for notice and hearing; specifying procedures; authorizing emergency provisions; providing for hearing officers; providing for penalty; providing considerations; providing for deposit of penalties; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-103.1 of Title 29, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other powers and duties of the Commission, the Commission shall have the authority to assess, after notice and hearing, administrative penalties for violations of the Oklahoma Wildlife Code or any rules promulgated thereto.

B. If upon inspection, investigation or complaint, or whenever the Department determines that there are reasonable grounds to believe that a violation of the Oklahoma Wildlife Code or of any rule promulgated pursuant thereto has occurred, the Department shall give written notice to the alleged violator specifying the cause of complaint. Such notice shall require that the matters complained of be corrected immediately or that the alleged violator appear before the Commission at a time and place specified in the notice and answer the charges. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection E of this section.

C. The Commission shall afford the alleged violator an opportunity for a fair hearing in accordance with the provisions of subsection F of this section within fifteen (15) days of receipt of the notice provided for in subsection B of this section. On the basis of the evidence produced at the hearing, the Commission shall make findings of fact and conclusions of law and enter an order thereon. The Commission shall give written notice of the order to the alleged violator and to any other persons who appeared at the hearing and made written request for notice of the order. If the hearing is held before a hearing officer as provided for in subsection F of this section, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Commission which shall thereupon enter its order. The Commission may enter its order on the basis of such record or, before issuing its order, require additional hearings or further evidence to be presented. The order of the Commission shall become final and binding on all parties unless appealed to the district court pursuant to Article II of the Administrative Procedures Act, within thirty (30) days after notice has been sent to the parties.

D. Whenever the Department finds that as a result of a violation of the Oklahoma Wildlife Code or any rule promulgated thereto an emergency exists requiring immediate action to protect the public health or welfare, the Department may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with the order immediately but on application to the Commission shall be afforded a hearing within ten (10) days of receipt of said notice. On the basis of such hearing, the Commission shall continue the order in effect, revoke it or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the county in which said person resides, or in which his business is located, within thirty (30) days of the Commission's action. Such appeal when

docketed shall have priority over all cases pending on said docket, except criminal cases.

E. Except as otherwise expressly provided by law, any notice, order or other instrument issued by or pursuant to authority of the Commission may be served on any person affected thereby personally, by publication or by mailing a copy of the notice, order or other instrument by registered mail directed to the person affected at his last-known post office address as shown by the files or records of the Board. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing. Such proof of service shall be filed in the office of the Commission.

Every certificate or affidavit of service made and filed as provided for in this subsection shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

F. The hearings authorized by this section may be conducted by the Commission. The Commission may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Commission at any time and place. Such hearings shall be conducted in conformity with and records made thereof pursuant to Article II of the Administrative Procedures Act.

G. Any person who has been determined by the Commission to have violated any provisions of the Oklahoma Wildlife Code or any rule, or order issued pursuant to the provisions of the Oklahoma Wildlife Code shall be liable for an administrative penalty of not more than Five Hundred Dollars (\$500.00) per violation with a maximum administrative penalty not to exceed Three Thousand Dollars (\$3,000.00) for any related series of violations.

H. The amount of the penalty shall be assessed by the Commission pursuant to the provisions of subsection G of this section, after notice and hearing. In determining the amount of the penalty, the Commission shall include but not be limited to consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed

the violation, the degree of culpability, and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Wildlife Code.

I. All penalties collected pursuant to the provisions of this section shall be deposited in the Wildlife Conservation Fund.

SECTION 2. This act shall become effective September 1, 1994.

44-2-9135

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