



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

PUT CAPTIVE CERVIDAE UNDER DEPARTMENT OF AGRICULTURE

House Bills 4427, 4428, 4429

Sponsor: Rep. Michael Green

**Committee: Agriculture and Resource
Management**

Complete to 4-7-99

A SUMMARY OF HOUSE BILLS 4427, 4428 AND 4429 AS INTRODUCED 3-23-99

The bills would regulate captive cervidae (such as elk and deer) under the Department of Agriculture (House Bill 4427), exempt captive cervidae from regulation as game animals under the Natural Resources and Environmental Protection Act (House Bill 4428), and add captive cervidae to the definition of "meat" in the Michigan Comminuted Meat Law (House Bill 4429).

House Bill 4427 would create a new law, the "Michigan captive cervidae development act," to define, develop, and regulate captive cervidae as a form of agriculture in Michigan and regulated by the Michigan Department of Agriculture (MDA). Currently, wildlife species -- including captive deer, elk, and caribou -- are regulated under the Department of Natural Resources. The bill would specify that captive cervidae operations were "agricultural enterprises" and part of the farming and agricultural industry in Michigan, thereby removing captive cervidae operations from regulation by the Department of Natural Resources and instead put them under regulation by the Department of Agriculture.

Captive cervidae operations. The bill would define "captive cervidae" operation to mean "a farm operation involving the production, growing, propagating, using, harvesting, transporting, importing, exporting, or marketing" of captive cervidae or their by-products.

The bill would use the definition of "captive cervidae" found in the Animal Industry Act of 1987, which refers to "members of the cervidae family including, but not limited to, deer, elk, moose, and caribou living under the husbandry of humans." The bill also would use the definitions of "farm" and "farm operation" found in the Right To Farm Act, which defines "farm" to mean "the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products." The Right To Farm Act defines "farm operation" to mean "the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products." The act lists ten items included under the definition of "farm operation": (1) Marketing produce at roadside stands or farm markets; (2) "the generation of noise, odors, dust, fumes, and other associated conditions"; (3) the operation of machinery and equipment necessary for a farm, including irrigation and drainage systems and pumps and on-farm grain dryers, and the movement

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on roadways of vehicles, machinery, equipment, and farm products and "associated inputs" necessary for farm operations; (4) field preparation and ground and aerial seeding and spraying; (5) the application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides; (6) use of alternative pest management techniques; (7) the fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals; (8) the management, storage, transport, utilization, and application of farm by-products, including manure and agricultural wastes; (9) the conversion from a farm operation activity to other farm operation activities; and (10) the employment and use of labor.

The director of the Department of Agriculture would be required by the bill to assure that captive cervidae operations were afforded all rights, privileges, opportunities, and responsibilities of other agricultural enterprises.

Captive cervidae products lawfully taken, produced, purchased, possessed, or acquired -- whether from within the state or imported into the state -- would be the exclusive and private property of the owner of the captive cervidae. The "harvesting" of captive cervidae from registered captive cervidae operations would be exempt from any restrictions (including possession limits and closed seasons) imposed in the Natural Resources and Environmental Protection Act (NREPA). However, the bill would not give a captive cervidae operator authority to take animals held in trust in violation of the NREPA, unless under a permit issued by the Department of Natural Resources. Finally, any movement, importing, or exporting of captive cervidae would have to comply with the Animal Industry Act of 1987, and a person transporting captive cervidae would have to provide, when asked by a law enforcement officer or the director of the Department of Agriculture, documentation that contained the origin of shipment, registration or permit documentation, documentation demonstrating shipping destination, and any other documentation that might be required under the Animal Industry Act.

Captive cervidae registration. A person couldn't conduct a captive cervidae operation without a "captive cervidae registration" from the Department of Agriculture "or unless otherwise exempt by rule or law." Registration under the bill wouldn't exempt any captive cervidae operation activity from other local, state, or federal regulations. A person registered under the bill would have to keep ("and maintain") records of production, purchases, or imports in order to establish proof of ownership.

At least 60 days before the initiation of a proposed captive cervidae operation, a completed initial application for a registration, along with certain specified fees (see below), would have to be submitted to the Department of Agriculture. Registrations would be issued for one year, beginning on October 1 and ending the following September 30. Applications for registration renewals would have to be submitted annually by October 1. Applications for registration renewals submitted after October 31 would require submission of an initial application and initial registration fee.

Within 30 days after receiving an initial registration application, the director of the department (or his or her designee) would have to inspect the captive cervidae operation. If the

director (or his or her designee) determined that the proposed captive cervidae operation met the standards set by the bill, he or she would be required to issue a registration within 60 days of receiving an application. If an application were denied because it failed to comply with the bill's requirements, the department would be required to notify the applicant of the reasons for the denial within 60 days after receiving the application and to specify the deficiencies that would have to be corrected for a registration to be issued.

The department would be prohibited from issuing an initial captive cervidae registration unless the applicant had demonstrated (1) that the facility had been inspected by the director and that the director had determined that the facility met the standards and requirements of the bill and (2) that there were confined enclosures and barriers in place both to prevent the escape of captive cervidae into public lands and to prevent wild cervidae from entering the enclosures. In the case of elk, exterior fences would have to be at least 10 feet high; in the case of white-tailed deer, exterior fences would have to be at least 8 feet high.

If an application for a registration had been denied, an applicant could request a second inspection after correcting the deficiencies and without filling out a second application. However, the department couldn't make more than two "preregistration inspections" of the same proposed captive cervidae operation. Applicants would be allowed to request a hearing under the Administrative Procedures Act of 1969.

A registration issued by the Department of Agriculture would have to contain the following information:

- (1) The registration number and expiration date;
- (2) The complete name, business name, business address, and telephone number of the holder of the captive cervidae operation registration;
- (3) The complete address of the captive cervidae operation location; and
- (4) The complete name, address, and telephone number of the MDA contact person for captive cervidae.

Registration fees. Initial and renewal application fees for a captive cervidae operation registration would be \$45 plus up to an additional \$150 as follows: \$15 per animal in excess of 500 animals or \$15 per 40-acre plot or portion of a 40-acre plot. If a registration were denied, the department would not be allowed to return any of the registration fee to the applicant.

Departmental powers and duties. The Department of Agriculture would administer the bill if enacted, and the director could promulgate administrative rules he or she considered necessary to implement and enforce the bill's provisions. The department could conduct activities designed to develop and assist the captive cervidae industry as provided by law.

The department, or its duly authorized agent, would have free access at all reasonable hours to any captive cervidae operation to inspect and to determine if the bill's provisions were being violated and to secure samples or specimens of any captive cervidae. All inspections would have to be conducted under "generally recognized practices" designed not to jeopardize the health of the captive cervidae. More specifically, the director could periodically inspect a registered captive cervidae operation to confirm (1) the presence of procedures or barriers designed both to prevent captive cervidae from escaping into public lands and to prevent wild cervidae from entering; and (2) compliance with other requirements of the bill or other laws.

Prohibitions and penalties. The bill would prohibit a person from "knowingly provid[ing] false information in a manner pertaining to this act" and from resisting, impeding, or hindering the director of the Department of Agriculture in discharging his or her duties under the bill.

A person who violated the bill's provisions or a rule promulgated under the bill would be guilty of a misdemeanor punishable by a fine of at least \$300 or 30 days' imprisonment, or both. In addition, the court could allow the department to recover reasonable costs and attorney fees incurred in a prosecution resulting in a conviction for a violation.

In addition, the director of the Department of Agriculture could find that a person had violated any provisions of the bill or a rule promulgated under the bill and could issue a warning, impose an administrative fine of up to \$1,000 for each violation (after notice and an opportunity for a hearing), and issue an appearance ticket in accordance with the minor offenses provisions of the Code of Criminal Procedure. A person aggrieved by an administrative fine issued under the bill could request a hearing under the Administrative Procedures Act of 1969. If any person failed to pay an administrative fine issued under the bill, the director of the Department of Agriculture would be required to notify the attorney general, who then would be required to bring a civil action in a court of competent jurisdiction to recover the fine. Civil penalties collected would be paid to the general fund.

Finally, the director of the Department of Agriculture could bring an action to do either or both of the following:

** Obtain a declaratory judgment that a method, activity, or practice was a violation of the bill's provisions; and

** Obtain an injunction against a person who was engaged in such a method, activity, or practice.

Effective date. The bill would take effect 90 days after it was enacted.

House Bill 4428 would amend the Natural Resources and Environmental Protection Act (MCL 324.40103 et al.) to exempt captive cervidae located on a registered captive cervidae operation (as defined in House Bill 4427) from the act's definition of "game," from management and regulation of taking and killing of fish, game and fur-bearing animals by the Department of

Natural Resources, and from the act's tagging requirements for moving game. The bill also would exempt a person conducting a registered captive cervidae operation from the act's prohibitions on the taking, releasing, transporting, selling, buying, or possession of game or protected animals.

House Bill 4429 would amend the Michigan Comminuted Meat Law (MCL 289.581) to add captive cervidae to the act's definition of "meat."

Tie-bars. House Bill 4427 could not be enacted unless House Bills 4428 and 4429 (both of which are tie-barred to House Bill 4427) and a third, unspecified bill (request number 02151'99 b*) were enacted.

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.