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**SFA**



**BILL ANALYSIS**

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House Bill 4427 (Substitute H-3 as passed by the House)  
House Bill 4428 (Substitute H-2 as passed by the House)  
Sponsor: Representative Michael Green  
House Committee: Agriculture and Resource Management  
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 5-16-00

## CONTENT

**House Bill 4427 (H-3)** would create the “Privately Owned Cervidae Producers Marketing Act” to prohibit a person from engaging in a cervidae livestock operation without obtaining a cervidae livestock facility registration from the Michigan Department of Agriculture (MDA). The bill also would provide for the issuance, renewal, and revocation of a registration; establish application fees; establish criminal penalties for violations of the bill; and provide for declaratory and injunctive remedies.

**House Bill 4428 (H-2)** would amend the Natural Resources and Environmental Protection Act (NREPA) to exempt from the NREPA privately owned cervidae species located in a registered cervidae livestock facility under the proposed Privately Owned Cervidae Producers Marketing Act.

The bills are tie-barred to each other and would take effect 90 days after enactment.

A more detailed description of the bills follows.

### House Bill 4427 (H-3)

#### Cervidae Livestock Operations

The bill states that a cervidae livestock operation would be an agricultural enterprise and considered to be part of the farming and agricultural industry of the State. The MDA Director or his or her designee would have to assure that cervidae livestock operations were afforded all rights, privileges, opportunities, and responsibilities of other agricultural enterprises.

“Cervidae livestock operation” would mean an operation that contained one or more privately owned cervidae species involving the producing, growing, propagating, using, harvesting, transporting,

exporting, importing, or marketing of cervidae species or cervidae products under an appropriate registration. “Cervidae species” would mean members of the cervidae family including deer, elk, moose, reindeer, and caribou. “Cervidae products” would mean any products, co-products, or by-products of cervidae, including antler, antler velvet, meat, or any part of the animal.)

The bill specifies that cervidae livestock operations would be a form of agriculture, and the cervidae livestock facilities and their equipment would be considered to be agricultural facilities and equipment. (“Cervidae livestock facility” would mean a privately owned cervidae livestock operation on privately controlled lands capable of holding cervidae species.) Uses related to the farming of cervidae would be considered agricultural uses. Cervidae products and cervidae species lawfully produced, purchased, possessed, or acquired from within the State or imported into the State would be the exclusive and private property of the owner.

An owner harvesting privately owned cervidae species from a registered cervidae livestock facility would be exempt from possession limits and closed seasons involving cervidae imposed in Part 401 (Wildlife Conservation), Part 411 (Protection and Preservation of Fish, Game, and Birds), and Part 427 (Breeders and Dealers) of the NREPA. The bill specifies that it would not give a cervidae livestock operation authority to take free-ranging animals in violation of the NREPA, unless under a permit issued by the Department of Natural Resources (DNR). Any movement, importing, or exporting of cervidae species or products would have to comply with the Animal Industry Act.

#### Registration Requirement

A person could not engage in a cervidae livestock operation unless he or she obtained from the MDA a cervidae livestock facility registration or unless

otherwise exempt by rule or law. If the activity in which the facility was engaged were required to be regulated under any other act, registration under the bill would not exempt the person or cervidae livestock facility from requirements imposed under any local, State, or Federal regulation. Zoos accredited under the American Zoological Association or other accreditations or standards determined appropriate by an acceptable to the Department would be exempt from the bill.

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 and would have to keep any other records required under standards incorporated by reference under the bill. A person transporting cervidae species would have to produce documentation that contained the origin of shipment, registration or permit copies or documentation, documentation demonstrating shipping destination, and any other proof that could be required under the Animal Industry Act, upon demand of the Director or a law enforcement officer.

A cervidae livestock facility that existed on or before the bill's effective date would be required to obtain a registration under the bill by January 1, 2003, to continue engaging in a cervidae livestock operation after the bill's effective date. A person licensed by the DNR to maintain cervidae species in captivity under Part 427 (Breeders and Dealers) of the NREPA, however, would have to obtain a registration under the bill upon the expiration of his or her license or by January 1, 2003, whichever was earlier, to continue to maintain privately owned cervidae species in captivity.

#### Registration Application

A completed initial application for a registration would have to be submitted to the MDA at least 60 days before the construction of a cervidae livestock facility. The Department, through adoption by the Agriculture Commission, would have to use the standards contained in "Operational Standards for Registered Privately Owned Cervid Facilities", published by the MDA (May 2000), and incorporated by reference, to evaluate the issuance, maintenance, and renewal of a registration issued under the bill. After consulting with the DNR and with the concurrence of the Agriculture Commission, the MDA could, by amendment of the proposed Act or promulgation of a rule, amend, update, or supplement the standards adopted in this provision.

As part of the application, the applicant would have to submit a business plan complying with the standards established under the bill that included all of the following: the complete address and a description of the size and location of the proposed

cervidae livestock facility; the number of cervidae species included in the proposed facility; biosecurity measures to be used, including methods of fencing and appropriate animal identification; the proposed method of flushing wild cervidae species from the enclosure, if applicable; the proposed record-keeping system; the method of verification that all free-ranging cervidae species had been removed; the current zoning of the property proposed as a cervidae livestock facility and whether the local unit or units of government within which the facility would be located had an ordinance regarding fences; and, any other information considered necessary by the Department. ("Business plan" would mean a written document of intent that a person submitted to the MDA that defined the methods, protocols, or procedures that the person intended on implementing to comply with the bill. "Biosecurity" would mean measures, actions, or precautions taken to prevent the transmission of disease in, among, or between free-ranging and privately owned cervidae species.)

Upon receiving an application, the Director would have to forward one copy each to the DNR and the Department of Environmental Quality (DEQ). Upon receiving the application, the MDA would have to send a written notice to the local unit of government within which the proposed cervidae livestock facility would be located if the Department determined, from information provided in the application, that the land was not zoned agricultural. The local government could respond, within 30 days of receiving the written notice, indicating whether the facility would violate any ordinance.

The MDA could not issue an initial cervidae livestock facility registration or modification unless the application demonstrated all of the following:

- The facility had been inspected by the Director who determined that it met the standards and requirements prescribed by and adopted under the bill and complied with the business plan submitted to the MDA, and determined that there were barriers in place to prevent the escape of cervidae species and prevent the entry of wild cervidae species. A perimeter fence would have to be constructed as prescribed in the bill.
- Individual animals were identified appropriately in compliance with the standards established under the bill.
- The applicant had all necessary permits that were required in the NREPA under Part 31 regarding water resources protection, Part 301 regarding inland lakes and streams, and Part 303 regarding wetland protection, and any other permits or authorizations required by law.

Upon receiving a denial and without filing a second

application, the applicant could request in writing and, if requested, the MDA would have to provide an informal Department review of the application. The review would have to include the applicant, the MDA, and the DNR and the DEQ, if applicable. After the informal review, if the Director determined that the proposed cervidae livestock facility or operation complied with the bill, he or she would have to issue a registration within 30 days after the applicant notified the MDA of completion of the facility. If the Director determined after the informal review that the proposed facility or operation did not comply with the bill, he or she would have to affirm the application's denial in writing and specify the deficiencies needed to be addressed or corrected in order for a registration to be issued.

#### Facility Inspection

At the time the construction of a cervidae livestock facility was completed, the applicant would have to notify the Department in writing. Within 30 days after notification, the Director would have to inspect the facility. If the Director determined that the proposed facility conformed to the standards prescribed by and adopted under the bill, he or she would have to issue a registration within 30 days after completing an inspection that found that the facility conformed to the bill. The MDA could extend these time periods only if it were unable to verify the removal of wild cervidae species or for an act of God.

If the Director determined that a proposed facility did not comply with the bill, he or she would have to deny the registration application. The MDA would have to give the applicant written notice of the reasons for a denial within 60 days after receiving the completed application. The notice would have to specify the deficiencies to be corrected in order for a registration to be issued. Without filing a second application, an applicant could request a second inspection after the specified deficiencies had been corrected. The MDA would not be required to make more than two preregistration inspections of the same proposed facility per application.

Upon receiving a second denial and without filing a second application, the applicant could request in writing and, if requested, the Department would have to provide an informal review of the application. The review would be subject to the same requirements as described above. The applicant could waive the informal review of the application.

The applicant could request a hearing pursuant to the Administrative Procedures Act on a denial of a registration or upon any limitations placed upon the issuance of a registration. The Department could not return a registration fee or a portion of a registration fee to an applicant if a registration were denied.

#### Issuance of Registration

A registration issued by the Department would have to contain the following information: the registration number and expiration date; the cervidae species involved in the cervidae livestock facility; the complete name, business name and address, and telephone number of the cervidae livestock facility registration holder; the complete address of the facility's location; and, the complete name, address, and telephone number of the MDA contact person regarding cervidae livestock operations.

The Department would have to issue to a person meeting the bill's requirements a registration to operate a cervidae livestock facility. The Department could provide limited registration classes.

The MDA would have to charge the following fees for initial and renewal applications for cervidae facilities: \$45 for Class I (hobby); \$75 for Class II (exhibition); \$500 for Class III (ranch); and, \$150 for full registration.

#### Registration Renewal

Application for renewal of a registration would have to be submitted at least 60 days before the current registration expired. Each registration issued would have to be for three years from the date of issuance. A renewal submitted later than 60 days before the current registration expired would require the submission of an initial application. The MDA's failure to process a renewal application that had been submitted in a timely and complete manner would operate to extend that current registration until such time as the Department completed the processing.

Unless otherwise indicated in writing by the Department at the time it sent a registered facility its renewal application, there would be a presumption that the MDA would renew the registration upon timely submission of the completed renewal application and registration fee.

A sale or transfer of ownership of a cervidae livestock facility would require the new owner or the transferee to notify the MDA in writing. The Department would have to require a new registration for a transfer occurring within six months of the expiration of the current registration.

A registered facility would have to apply for a modification of its registration before any change in the registration class of activities for which the registration was issued.

#### MDA-DNR Memorandum of Understanding

The Director would have to enter into a memorandum

of understanding with the DNR for determining compliance by persons engaged in cervidae livestock operations, applicants, and registered cervidae livestock facilities with the bill and investigation of violations of the bill.

Subject to the memorandum of understanding, the Director would have to verify both of the following through written confirmation from the DNR before issuing any registration under the bill:

- The DNR had approved the method used to flush any free-ranging cervidae species from the facility, if applicable, and all free-ranging cervidae species had actually been flushed.
- The DNR had determined that the size and location of the facility would not place unreasonable stress on wildlife habitat or migration corridors. Any facility that possessed a valid permit to maintain wildlife in captivity issued by the DNR would be considered to meet the requirements of these provisions for purposes of issuing a registration under the bill.

After cervidae species were flushed in an approved manner, any cervidae species remaining in the facility would have to be killed or tranquilized and removed by or under the authority of the registrant pursuant to an appropriate permit issued by the DNR. A person would have to reimburse the State \$250 per individual cervid that had to be killed under the appropriately issued permit to meet these requirements.

#### Inspections

The MDA or its authorized agent would have to have access at all reasonable hours to any cervidae livestock facility to inspect and to determine if the bill was being violated and to secure samples or specimens of any cervidae species. An inspection would have to be conducted under practices designed not to jeopardize the health of the cervidae species.

The Director could periodically inspect a registered facility for confirmation that there were in place procedures or barriers designed to prevent the escape of cervidae species, for confirmation that all specimens were accounted for, and for confirmation of compliance with other requirements as set forth in the bill or as required by law.

#### Registration Sanctions

After an opportunity for an administrative hearing, the MDA could deny, suspend, revoke, or limit a registration if the applicant or registrant failed to comply with the bill, standards adopted or established under the bill, orders issued by the Director as a result of an administrative action or

informal departmental review conducted under the bill, or rules promulgated under the bill.

In addition, the Department could deny the issuance of a registration or suspend or revoke a registration if it, in consultation with the DNR and/or the DEQ, determined that based upon substantial scientific evidence, the issuance of a registration would cause, or was likely to cause, an unreasonable or adverse effect upon the environment or upon wildlife that could not be remedied by, or was not addressed by, the existing standards under the bill.

Except in the case of an informal departmental review, the MDA would have to conduct an administrative proceeding under the bill pursuant to the Administrative Procedures Act.

#### Violations

Except as provided below, a person who violated the bill or a rule promulgated under it would be guilty of a misdemeanor punishable by a fine of not less than \$300 and not more than \$1,000 and/or imprisonment for at least 30 days but not more than 90 days.

A person could not release or allow the release of any cervidae species from a cervidae livestock facility. The bill specifies that this provision would not prohibit the sale, breeding, marketing, exhibition, or other approved uses of cervidae species in the manner provided by law. An animal that escaped from a facility would be considered to be public property if the operator of a cervidae livestock facility did not notify the Department in compliance with the standards established under the bill.

An owner could not abandon a registered facility without first notifying the MDA in compliance with the standards established under the bill. A person could not intentionally or knowingly cause the ingress of free-ranging cervidae species into a registered cervidae livestock facility.

A person who released any cervidae species or abandoned a facility would be guilty of a misdemeanor punishable by a maximum fine of \$300 and/or imprisonment for up to 90 days for a first offense, or a maximum fine of \$1,000 and/or imprisonment for up to one year for a second or subsequent offense. Notwithstanding these provisions, a person who intentionally or knowingly violating provisions on the release of cervidae species, the abandonment of a facility, or the ingress of free-ranging cervidae species would be guilty of a felony.

A court could allow the Department to recover reasonable costs and attorney fees incurred in a prosecution resulting in a conviction for a violation of the bill or a rule promulgated under it. Upon finding

that a person had violated any provisions of the bill, an order issued by the Director as a result of an informal administrative hearing, or a rule promulgated under the bill, the Director could do any of the following: issue a warning; issue an appearance ticket as described and authorized in the Code of Criminal Procedure; or, impose an administrative fine of up to \$1,000 plus the costs of investigation for each violation after notice and an opportunity for a hearing. A person aggrieved by an administrative fine could request a hearing pursuant to the Administrative Procedures Act.

The Director would have to advise the Attorney General of a person's failure to pay an administrative fine imposed under this provision. The Attorney General could bring a civil action in a court of competent jurisdiction to recover the fine. Civil penalties collected would have to be paid to the General Fund.

Notwithstanding any other provisions of the bill, the Director 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; and/or obtain an injunction against a person who was engaging in a method, activity, or practice that violated the bill.

The bill specifies that the remedies under it would be cumulative and use of one remedy would not bar the use of another unless otherwise prohibited by law.

#### Other Provisions

A person could not knowingly provide false information in a matter pertaining to the bill and could not resist, impede, or hinder the Director in the discharge of his or her duties under the bill.

The Director could promulgate rules considered necessary to implement and enforce the bill, pursuant to the Administrative Procedures Act.

#### **House Bill 4428 (H-2)**

The NREPA authorizes the DNR to taking and killing of game and fur-bearing animals. The bill specifies that this provision would not apply to privately owned cervidae species located on a registered cervidae livestock facility under the proposed Privately Owned Cervidae Producers Marketing Act.

The NREPA also requires the DNR to issue licenses to authorize the possession for propagation and for dealing in and selling game. The bill would permit the Department to issue licenses and would exempt from licensure a person registered under the proposed Privately Owned Cervidae Producers Marketing Act.

The bill also would revise the definition of "game" to exclude cervidae species located on a registered privately owned cervidae facility as that term would be defined in the proposed act.

In addition, the bill would repeal the December 31, 2004, sunset date on Public Act 66 of 1999, which added Section 40111a to the NREPA to require the Natural Resources Commission to issue an order banning deer and elk feeding in the Lower Peninsula except for recreational viewing, and establishing criteria for deer feeding in the Upper Peninsula; and to permit the Commission to issue an order prohibiting deer and elk feeding in all or part of the State. Public Act 66 also amended applicable definitions in Sections 40102 and 40103. Under the bill, only Section 40111a would be repealed on December 31, 2004.

MCL 324.40103 et al. (H.B. 4428)

Legislative Analyst: L. Arasim

#### **FISCAL IMPACT**

The fiscal impact on State government is indeterminate. The bills would result in additional State administrative costs to the Departments of Agriculture, Natural Resources, and Environmental Quality associated with the registration, inspection, and monitoring of captive cervid operations. The bills also would increase State revenues resulting from the collection of registration fees. The amount of State revenue would be contingent on the number and type of each operation registered. Based on departmental figures, the bills would generate between \$50,000 and \$75,000 in State revenues annually. Presumably these revenue are designed to cover the administrative costs of the Department of Agriculture.

The bills also would have an indeterminate fiscal impact on State and local government for costs of incarceration. There are no data available to determine how many people would be convicted of allowing cervidae livestock to escape or abandoning a registered facility without notification. These would be misdemeanors meaning that local units of government would receive fine revenues or incur the costs of incarceration. If an offender intentionally committed the above acts, the result would be a felony charge with a maximum penalty of up to four years' imprisonment.

Fiscal Analyst: C. Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.