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House Bill 5710 (Substitute H-2 as reported without amendment)  
Sponsor: Representative Larry DeVuyst  
House Committee: Conservation and Outdoor Recreation  
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 11-20-00

### **RATIONALE**

Ballot Proposal G of 1996 amended the Natural Resources and Environmental Protection Act to give the Natural Resources Commission (NRC) exclusive authority to regulate the taking of game in the State, using principles of sound scientific management. As a result, the NRC issues orders reflecting its wildlife management policies, which are effective statewide. Sometimes the wildlife conservation regulations in the Act reiterate the NRC's orders regulating the taking of game. Apparently, there has been some confusion as to whether the penalties that apply to violations of the Act can be enforced, because the penalty provisions refer to violations of orders of the Department of Natural Resources. Some people believe that the penalties specified in the Act should clearly apply to violations of both the Act and the orders issued by the NRC.

### **CONTENT**

**The bill would amend Part 401 (Wildlife Conservation) of the Natural Resources and Environmental Protection Act to provide that the penalties for unlawful possession or taking of game would apply to violations of an order or interim order issued under Part 401, rather than an order or interim order of the Department of Natural Resources (DNR), as currently provided.** (The bill therefore would extend the penalties to violations of orders or interim orders issued by the Natural Resources Commission as well as the DNR.)

Currently, a violation of Part 401, an order or interim order issued by the DNR, or a condition of a permit issued under Part 401, except for the violations described below, is a misdemeanor punishable by up to 90 days' imprisonment and/or a fine of at least \$50 but not more than \$500, and the costs of prosecution. In addition, a permit issued by the DNR must be revoked under the Administrative Procedures Act.

The Act also provides for the following penalties:

- A violation of Part 401 or a DNR order or interim order regarding the possession or taking of any game except deer, bear, wild turkey, moose, or elk is a misdemeanor, punishable by up to 90 days' imprisonment and/or a fine of at least \$100 but not more than \$1,000, and the costs of prosecution.
- A violation of Part 401 or a DNR order or interim order regarding the possession or taking of deer, bear, or wild turkey is a misdemeanor, punishable by at least five days' but not more than 90 days' imprisonment, a fine of at least \$200 but not more than \$1,000, and the costs of prosecution.
- A violation of Part 401 or a DNR order or interim order regarding the possession or taking of elk is a misdemeanor, punishable by at least 30 days' but not more than 180 days' imprisonment and/or a fine of at least \$500 but not more than \$2,000, and the costs of prosecution.
- A violation of Part 401 or a DNR order or interim order regarding the possession or taking of moose is a misdemeanor, punishable by at least 90 days' but not more than one year's imprisonment, a fine of at least \$1,000 but not more than \$5,000, and the costs of prosecution.
- A violation of Part 401 or a DNR order or interim order regarding the taking or possession of an animal that has been designated by the Department to be a protected animal is a misdemeanor punishable by up to 90 days' imprisonment and/or a fine of at least \$100 but not more than \$1,000, and the costs of prosecution.
- A violation of Part 401 or a DNR order or interim order regarding the buying or selling game or a protected animal is a misdemeanor punishable by up to 90 days' imprisonment and/or a fine of up to \$1,000, and is a felony for each subsequent offense.

In addition, the Act provides that if a person is convicted of a violation of Part 401 or a DNR order or interim order and it is alleged in the complaint, and proved or admitted at trial or ascertained by the court after conviction that the person had been previously convicted two times within the preceding five years for a violation of Part 401 or a DNR order or interim order, the person is guilty of a misdemeanor punishable by at least 10 days' but not more than 180 days' imprisonment, and a fine of at least \$500 but not more than \$2,000, and costs of prosecution. The bill would refer to an order or interim order issued under Part 401, instead of DNR order or interim order.

The Act also provides that in a prosecution for a violation of Part 401 or a DNR order or interim order, the possession of the parts of any game or protected animal, except when the taking is permitted, is prima facie evidence that the animal was taken in violation of Part 401 by the person possessing the animal. (Prima facie evidence is evidence sufficient to establish a given fact unless rebutted.) The bill would refer to an order or interim order issued under Part 401, instead of a DNR order or interim order.

MCL 324.40117 & 324.40118

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would make it clear that violations of the Act or an order or interim order issued by the NRC could be enforced and that the specified penalties would apply in both cases. This would enable the Commission and the Department to adopt enforceable policies for the management of the State's wildlife resources, since the NRC's orders would have the same force and effect as the statutory provisions.

Legislative Analyst: N. Nagata

## **FISCAL IMPACT**

House Bill 5710 (H-2) would have no fiscal impact on the State or local units of government.

There are no data available to indicate how many people take game in violation of the various sections of this Act. To the extent that the misdemeanor penalties for violations would not be changed, the costs of incarceration incurred and the fine revenues received by local units of government would remain constant.

### **H9900\5710a**

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.