

SUBSTITUTE FOR
HOUSE BILL NO. 4427

A bill to define, develop, and regulate privately owned cervidae as an agricultural enterprise in this state; to provide powers and duties of certain state agencies and departments; and to provide for certain penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "privately owned cervidae producers marketing act".

3 Sec. 2. As used in this act:

4 (a) "Business plan" means a written document of intent that
5 a person submits to the department that defines the methods, pro-
6 tocols, or procedures that the person intends on implementing to
7 be in compliance with this act.

8 (b) "Biosecurity" means measures, actions, or precautions
9 taken to prevent the transmission of disease in, among, or
10 between free-ranging and privately owned cervidae species.

1 (c) "Cervidae livestock facility" means a privately owned
2 cervidae livestock operation on privately controlled lands
3 capable of holding cervidae species.

4 (d) "Cervidae livestock operation" means an operation that
5 contains 1 or more privately owned cervidae species involving the
6 producing, growing, propagating, using, harvesting, transporting,
7 exporting, importing, or marketing of cervidae species or cervi-
8 dae products under an appropriate registration.

9 (e) "Cervidae products" means any products, co-products, or
10 by-products of cervidae, including antler, antler velvet, meat,
11 or any part of the animal.

12 (f) "Cervidae species" means members of the cervidae family
13 including, but not limited to, deer, elk, moose, reindeer, and
14 caribou.

15 (g) "Department" means the Michigan department of
16 agriculture.

17 (h) "Director" means the director of the Michigan department
18 of agriculture or his or her designee.

19 (i) "Farm" or "farm operation" means those terms as defined
20 in the Michigan right to farm act, 1981 PA 93, MCL 286.471 to
21 286.474.

22 (j) "Flush" or "flushed" means to move or chase from a cer-
23 vidae livestock facility.

24 (k) "Identify" means any documentable system or process that
25 allows a person to recognize as separate or different an individ-
26 ual animal.

1 (l) "Law enforcement officer" means a person appointed by
2 the state or a local governmental unit who is responsible for the
3 enforcement of the criminal laws of this state.

4 (m) "Owner" means the person who owns or is responsible for
5 a cervidae livestock operation.

6 (n) "Person" means an individual, corporation, limited
7 liability corporation, partnership, association, joint venture,
8 or other legal entity.

9 (o) "Release" means to cause an animal to become located
10 outside the perimeter fence of a cervidae livestock facility not
11 under the direct control of the owner.

12 Sec. 3. (1) The department shall administer this act. The
13 departments of natural resources and environmental quality shall
14 provide consultation.

15 (2) The department may conduct activities designed to
16 develop and assist the cervidae industry in the manner provided
17 for by law.

18 Sec. 4. (1) A cervidae livestock operation is an agricul-
19 tural enterprise and is considered to be part of the farming and
20 agricultural industry of this state. The director shall assure
21 that cervidae livestock operations are afforded all rights, priv-
22 ileges, opportunities, and responsibilities of other agricultural
23 enterprises.

24 (2) Cervidae livestock operations are a form of
25 agriculture. Cervidae livestock facilities and their equipment
26 are considered to be agricultural facilities and equipment. Uses

1 related to the farming of cervidae are considered agricultural
2 uses.

3 (3) Cervidae products and cervidae species lawfully
4 produced, purchased, possessed, or acquired from within this
5 state or imported into this state are the exclusive and private
6 property of the owner.

7 (4) An owner harvesting privately owned cervidae species
8 from a registered cervidae livestock facility is exempt from pos-
9 session limits and closed seasons involving cervidae imposed in
10 parts 401, 411, and 427 of the natural resources and environmen-
11 tal protection act, 1994 PA 451, MCL 324.40101 to 324.40119,
12 324.41101 to 324.41105, and 324.42701 to 324.42714. This act
13 does not give a cervidae livestock operation authority to take
14 free-ranging animals in violation of the natural resources and
15 environmental protection act, 1994 PA 451, MCL 324.101 to
16 324.90106, unless under a permit issued by the department of nat-
17 ural resources.

18 (5) Any movement, importing, or exporting of cervidae spe-
19 cies or cervidae products shall be in compliance with the animal
20 industry act of 1987, 1988 PA 466, MCL 287.701 to 287.747.

21 Sec. 5. (1) A person shall not engage in a cervidae live-
22 stock operation unless he or she obtains from the department a
23 cervidae livestock facility registration or unless otherwise
24 exempt by rule or law. If the activity in which the cervidae
25 livestock facility is engaged is required to be regulated under
26 any other act, registration under this act does not exempt the
27 person or cervidae livestock facility from requirements imposed

1 under any local, state, or federal regulation. Zoos accredited
2 under the American zoological association or other accreditations
3 or standards determined appropriate by and acceptable to the
4 department are exempt from this act.

5 (2) A person registered under this act shall keep and main-
6 tain records of production, purchases, or imports in order to
7 establish proof of ownership and shall keep any other records
8 required under standards incorporated by reference under
9 section 6. A person transporting cervidae species shall produce
10 documentation that contains the origin of shipment, registration
11 or permit copies or documentation, documentation demonstrating
12 shipping destination, and any other proof that may be required
13 under the animal industry act of 1987, 1988 PA 466, MCL 287.701
14 to 287.747, upon demand of the director or a law enforcement
15 officer.

16 (3) A cervidae livestock facility in existence on or before
17 the effective date of this act is required to obtain a registra-
18 tion under this act not later than January 1, 2003 in order to
19 continue engaging in a cervidae livestock operation after the
20 effective date of this act, subject to subsection (4).

21 (4) A person licensed by the department of natural resources
22 to maintain cervidae species in captivity under part 427 of the
23 natural resources and environmental protection act, 1994 PA 451,
24 MCL 324.42701 to 324.42714, must obtain a registration under this
25 act upon the expiration of his or her license or by January 1,
26 2003, whichever is earlier, in order to continue to maintain
27 privately owned cervidae species in captivity.

1 Sec. 6. (1) A completed initial application for a
2 registration shall be submitted to the department not less than
3 60 days before the construction of the cervidae livestock
4 facility. The department through adoption by the commission of
5 agriculture shall utilize the standards contained in "Operational
6 Standards for Registered Privately Owned Cervid Facilities", pub-
7 lished by the Michigan department of agriculture, (May 2000), and
8 incorporated by reference, to evaluate the issuance, maintenance,
9 and renewal of a registration issued under this act. The depart-
10 ment after consultation with the department of natural resources
11 and with concurrence of the commission of agriculture may, by
12 amendment of this act or promulgation of a rule, amend, update,
13 or supplement the standards adopted in this subsection.

14 (2) As part of the application, the applicant for registra-
15 tion shall submit a business plan complying with the standards
16 established under this section that includes all of the
17 following:

18 (a) The complete address and a description of the size and
19 location of the proposed cervidae livestock facility.

20 (b) The number of cervidae species included in the proposed
21 facility.

22 (c) Biosecurity measures to be utilized, including, but not
23 limited to, methods of fencing and appropriate animal
24 identification.

25 (d) The proposed method of flushing wild cervidae species
26 from the enclosure, if applicable.

1 (e) The proposed record-keeping system.

2 (f) The method of verification that all free-ranging
3 cervidae species have been removed.

4 (g) The current zoning of the property proposed as a cervi-
5 dae livestock facility and whether the local unit or units of
6 government within which the cervidae livestock facility will be
7 located has an ordinance regarding fences.

8 (h) Any other information considered necessary by the
9 department.

10 (3) Upon receipt of an application, the director shall for-
11 ward 1 copy each to the departments of natural resource and envi-
12 ronmental quality. Upon receipt of an application, the depart-
13 ment shall send a written notice to the local unit or units of
14 government within which the proposed cervidae livestock facility
15 will be located if the department determines, from information
16 provided in the application, that the land is not zoned
17 agricultural. The local unit or units of government may respond,
18 within 30 days of receipt of the written notice, indicating
19 whether the applicant's cervidae livestock facility would be in
20 violation of any ordinance.

21 (4) The department shall not issue an initial cervidae live-
22 stock facility registration or modification unless the applica-
23 tion demonstrates all of the following:

24 (a) The cervidae livestock facility has been inspected by
25 the director and the director has determined that the cervidae
26 livestock facility meets the standards and requirements
27 prescribed by and adopted under this act, complies with the

1 business plan submitted to the department, and determines that
2 there are barriers in place to prevent the escape of cervidae
3 species and prevent the entry of wild cervidae species. In the
4 case of elk, a perimeter fence shall be constructed of woven wire
5 and be at least 8 feet high and, in the case of white-tailed
6 deer, a perimeter fence shall be constructed of woven wire and be
7 at least 10 feet high. For other cervidae species, the perimeter
8 fence height shall be determined by standards and requirements
9 prescribed by and adopted under this act.

10 (b) Individual animals are appropriately identified in com-
11 pliance with the standards established under this section.

12 (c) The applicant has all necessary permits that are
13 required under part 31 regarding water resources protection, part
14 301 regarding inland lakes and streams, and part 303 regarding
15 wetland protection of the natural resources and environmental
16 protection act, 1994 PA 451, MCL 324.3101 to 324.3133, 324.30101
17 to 324.30113, and 324.30301 to 324.30323, and any other permits
18 or authorizations that may be required by law.

19 (5) Upon receipt of a denial under this section and without
20 filing a second application, the applicant may request in writing
21 and, if requested, the department shall provide an informal
22 department review of the application. The review shall include
23 the applicant, the department, and the departments of natural
24 resources and environmental quality, if applicable. After the
25 informal department review, if the director determines that the
26 proposed cervidae livestock facility or cervidae livestock
27 operation complies with the requirements of this act, the

1 director shall issue a registration within 30 days after the
2 applicant notifies the department of completion of the facility.
3 After the informal department review, if the director determines
4 that the proposed cervidae livestock facility or cervidae live-
5 stock operation does not comply with the requirements of this
6 act, the director shall affirm the denial of the application in
7 writing and specify the deficiencies needed to be addressed or
8 corrected in order for a registration to be issued. The appli-
9 cant may waive the informal department review of the
10 application.

11 Sec. 7. (1) At the time the construction of the cervidae
12 livestock facility is completed, the applicant shall notify the
13 department in writing. Within 30 days after notification of the
14 completion of the cervidae livestock facility, the director shall
15 inspect the cervidae livestock facility. If the director deter-
16 mines that the proposed cervidae livestock facility conforms to
17 standards prescribed by and adopted under this act, the director
18 shall issue a registration within 30 days after completion of an
19 inspection finding that the cervidae livestock facility conforms
20 to this act. The time periods described in this subsection may
21 be extended by the department only if the department is unable to
22 verify the removal of wild cervidae species or for an act of
23 God.

24 (2) If the director determines that a proposed cervidae
25 livestock facility does not comply with the requirements of this
26 act, the director shall deny the application for registration.
27 The department shall notify in writing an applicant of the

1 reasons for a registration denial within 60 days after receipt of
2 the completed application. The notice shall specify in writing
3 the deficiencies to be corrected in order for a registration to
4 be issued.

5 (3) Without filing a second application under this section,
6 an applicant may request a second inspection after the specified
7 deficiencies have been corrected. The department is not required
8 to make more than 2 preregistration inspections of the same pro-
9 posed cervidae livestock facility per application.

10 (4) Upon receipt of a second denial under this section and
11 without filing a second application, the applicant may request in
12 writing and, if requested, the department shall provide an infor-
13 mal department review of the application. The review shall
14 include the applicant, the department, and the departments of
15 natural resources and environmental quality, if applicable.
16 After the informal department review, if the director determines
17 that the proposed cervidae livestock facility complies with the
18 requirements of this act, the director shall issue a registration
19 within 30 days after the informal department review. After the
20 informal department review, if the director determines that the
21 proposed facility does not comply with the requirements of this
22 act, the director shall affirm the denial of the application in
23 writing and specify the deficiencies needed to be addressed or
24 corrected in order for a registration to be issued. The appli-
25 cant may waive the informal department review of the
26 application.

1 (5) The applicant may request a hearing pursuant to the
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
3 24.328, on a denial of a registration or upon any limitations
4 placed upon the issuance of a registration.

5 (6) The department shall not return a registration fee or a
6 portion of a registration fee to an applicant if a registration
7 is denied.

8 Sec. 8. (1) A registration issued by the department shall
9 contain the following information:

10 (a) The registration number and expiration date.

11 (b) The cervidae species involved in the cervidae livestock
12 facility.

13 (c) The complete name, business name, business address, and
14 telephone number of the cervidae livestock facility registration
15 holder.

16 (d) The complete address of the cervidae livestock facility
17 location.

18 (e) The complete name, address, and telephone number of the
19 department contact person regarding cervidae livestock
20 operations.

21 (2) The department shall issue to a person meeting the
22 requirements of this act a registration to operate a cervidae
23 livestock facility. The department may provide limited registra-
24 tion classes.

25 (3) The department shall charge the following fees for ini-
26 tial and renewal applications for cervidae facilities:

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1 (a) Class I (hobby)..... \$ 45.00.

2 (b) Class II (exhibition)..... \$ 75.00.

3 (c) Class III (ranch)..... \$500.00.

4 (d) Full registration..... \$150.00.

5 (4) Application for renewal of a registration shall be sub-
6 mitted not later than 60 days before expiration of the current
7 registration. Each registration issued shall be for a period of
8 3 years from the date of issuance.

9 (5) A renewal submitted later than 60 days before expiration
10 of the current registration shall require submission of an ini-
11 tial application. Failure of the department to process a renewal
12 application that was submitted in a timely and complete manner
13 operates to extend the current registration until such time as
14 the department completes the processing.

15 (6) Unless otherwise indicated in writing by the department
16 at the time the department sends a registered facility its
17 renewal application, there is a presumption that the department
18 shall renew the registration upon timely submission of the com-
19 pleted renewal application and registration fee.

20 (7) A sale or transfer of ownership of a cervidae livestock
21 facility requires the new owner or the transferee to notify the
22 department in writing. The department shall require a new regis-
23 tration for a transfer occurring within 6 months of the expira-
24 tion of the current registration.

25 Sec. 9. A registered cervidae livestock facility shall
26 apply for a modification of the cervidae livestock facility

1 registration before any change in the registration class of
2 activities for which the registration is issued.

3 Sec. 10. (1) The director shall enter into a memorandum of
4 understanding with the department of natural resources for deter-
5 mining compliance by persons engaged in cervidae livestock opera-
6 tions, applicants, and registered cervidae livestock facilities
7 with this act and investigation of violations of this act.

8 (2) Subject to the memorandum of understanding, the director
9 shall verify both of the following through written confirmation
10 from the department of natural resources before issuing any reg-
11 istration under this act:

12 (a) The department of natural resources has approved the
13 method used to flush any free-ranging cervidae species from the
14 facility, if applicable, and all free-ranging cervidae species
15 have actually been flushed.

16 (b) The department of natural resources has determined that
17 the size and location of the facility will not place unreasonable
18 stress on wildlife habitat or migration corridors. Any facility
19 that possesses a valid permit to maintain wildlife in captivity
20 issued by the department of natural resources shall be considered
21 to meet the requirements of this section for purposes of issuing
22 a registration under this act.

23 Sec. 11. After flushing cervidae species in an approved
24 manner, any cervidae species remaining in the cervidae livestock
25 facility must be killed or tranquilized and removed by or under
26 the authority of the registrant pursuant to an appropriate permit
27 issued by the department of natural resources. A person shall

1 reimburse the state of Michigan \$250.00 per individual cervid
2 that must be killed under the appropriately issued permit to meet
3 the requirements of this section.

4 Sec. 12. (1) The department or its duly authorized agent
5 shall have access at all reasonable hours to any cervidae live-
6 stock facility to inspect and to determine if this act is being
7 violated and to secure samples or specimens of any cervidae
8 species. An inspection shall be conducted under practices
9 designed not to jeopardize the health of the cervidae species.

10 (2) The director may periodically inspect a registered cer-
11 vidae livestock facility for confirmation that there are in place
12 procedures or barriers designed to prevent the escape of cervidae
13 species, for confirmation that all specimens are accounted for,
14 and for confirmation of compliance with other requirements as set
15 forth in this act or as required by law.

16 Sec. 13. A person shall not knowingly provide false infor-
17 mation in a matter pertaining to this act and shall not resist,
18 impede, or hinder the director in the discharge of his or her
19 duties under this act.

20 Sec. 14. (1) After an opportunity for an administrative
21 hearing, the department may deny, suspend, revoke, or limit a
22 registration if the applicant or registrant fails to comply with
23 this act, standards adopted or established under this act, orders
24 issued by the director as a result of an administrative action or
25 informal departmental review conducted under this act, or rules
26 promulgated under this act.

1 (2) In addition to the provisions contained in
2 subsection (1), the department may deny the issuance of a
3 registration or suspend or revoke a registration if the depart-
4 ment, in consultation with the department of natural resources or
5 the department of environmental quality, or both, determines that
6 based upon substantial scientific evidence, the issuance of a
7 registration will cause, or is likely to cause, an unreasonable
8 or adverse effect upon the environment or upon wildlife which
9 cannot be remedied by, or is not addressed by, the existing stan-
10 dards under this act.

11 (3) Except in the case of an informal departmental review,
12 the department shall conduct an administrative proceeding under
13 this act pursuant to the administrative procedures act of 1969,
14 1969 PA 306, MCL 24.201 to 24.328.

15 Sec. 15. The director may promulgate rules considered nec-
16 essary to implement and enforce this act, pursuant to the admin-
17 istrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
18 24.328.

19 Sec. 16. Except as otherwise provided in section 17, a
20 person who violates this act or a rule promulgated under this act
21 is guilty of a misdemeanor punishable by a fine of not less than
22 \$300.00 or more than \$1,000.00 or imprisonment for not less than
23 30 days or more than 90 days, or both.

24 Sec. 17. (1) A person shall not release or allow the
25 release of any cervidae species from a cervidae livestock
26 facility. This section does not prohibit the sale, breeding,
27 marketing, exhibition, or other approved uses of cervidae species

1 in the manner provided for by law. An animal that escapes from a
2 facility is considered to be public property if the operator of a
3 cervidae livestock facility does not notify the department in
4 compliance with the standards established under this act.

5 (2) An owner shall not abandon a registered cervidae live-
6 stock facility without first notifying the department in compli-
7 ance with the standards established under this act.

8 (3) A person shall not intentionally or knowingly cause the
9 ingress of free-ranging cervidae species into a registered cervi-
10 dae livestock facility.

11 (4) A person violating subsection (1) or (2) is guilty of a
12 misdemeanor punishable by a fine of not more than \$300.00 or
13 imprisonment of not more than 90 days, or both, for a first
14 offense and is guilty of a misdemeanor punishable by a fine of
15 not more than \$1,000.00, or imprisonment for not more than 1
16 year, or both, for a second or subsequent offense.

17 (5) Notwithstanding subsection (4), a person intentionally
18 or knowingly violating subsection (1) or (2) or violating subsec-
19 tion (3) is guilty of a felony.

20 Sec. 18. (1) A court may allow the department to recover
21 reasonable costs and attorney fees incurred in a prosecution
22 resulting in a conviction for a violation of section 16 or 17.

23 (2) The director, upon finding that a person has violated
24 any provisions of this act, an order issued by the director as a
25 result of an informal or administrative hearing, or a rule
26 promulgated under this act, may do any of the following:

1 (a) Issue a warning.

2 (b) Impose an administrative fine of not more than
3 \$1,000.00, plus the costs of investigation, for each violation
4 after notice and an opportunity for a hearing. A person
5 aggrieved by an administrative fine issued under this section may
6 request a hearing pursuant to the administrative procedures act
7 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

8 (c) Issue an appearance ticket as described and authorized
9 by sections 9a to 9g of chapter 4 of the code of criminal proce-
10 dure, 1927 PA 175, MCL 764.9a to 764.9g.

11 (3) The director shall advise the attorney general of the
12 failure of any person to pay an administrative fine imposed under
13 this section. The attorney general shall bring a civil action in
14 a court of competent jurisdiction to recover the fine. Civil
15 penalties collected shall be paid to the general fund.

16 (4) Notwithstanding any other provisions of this act, the
17 director may bring an action to do either or both of the
18 following:

19 (a) Obtain a declaratory judgment that a method, activity,
20 or practice is a violation of this act.

21 (b) Obtain an injunction against a person who is engaging in
22 a method, activity, or practice that violates this act.

23 (5) The remedies under this act are cumulative and use of 1
24 remedy does not bar the use of another unless otherwise prohib-
25 ited by law.

26 Sec. 19. This act takes effect 90 days after the date of
27 its enactment.

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1 Enacting section 1. This act does not take effect unless
2 House Bill No. 4428 of the 90th Legislature is enacted into law.