

Act No. 561
Public Acts of 2006
Approved by the Governor
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STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Reps. Casperson, Hildenbrand, Shaffer, Hoogendyk, Emmons, Nitz, Marleau, Proos, Huizenga, Booher, Moore, Pastor and Farhat

ENROLLED HOUSE BILL No. 6245

AN ACT to amend 2000 PA 190, entitled "An act to define, develop, and regulate privately owned cervidae as an agricultural enterprise in this state; to provide power and duties of certain state agencies and departments; and to provide for certain penalties and remedies," by amending sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 17, and 18 (MCL 287.952, 287.953, 287.954, 287.955, 287.956, 287.957, 287.958, 287.959, 287.960, 287.961, 287.964, 287.966, 287.967, and 287.968); and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

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

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

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

(d) "Cervidae livestock operation" means an operation that contains 1 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.

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

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

(g) "Department" means the Michigan department of natural resources.

(h) "Director" means the director of the Michigan department of natural resources or his or her designee.

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

(j) "Flush" or "flushed" means to move or chase from a cervidae livestock facility.

(k) "Identify" means any documentable system or process that allows a person to recognize as separate or different an individual animal.

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

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

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

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

Sec. 3. (1) The department shall administer this act. The departments of agriculture and environmental quality shall provide consultation.

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

Sec. 4. (1) A cervidae livestock operation is an agricultural enterprise and is considered to be part of the farming and agricultural industry of this state. The director of the department of agriculture shall assure that cervidae livestock operations are afforded all rights, privileges, opportunities, and responsibilities of other agricultural enterprises.

(2) Cervidae livestock operations are a form of agriculture. Cervidae livestock facilities and their equipment are considered to be agricultural facilities and equipment. Uses related to the farming of cervidae are considered agricultural uses.

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

(4) An owner harvesting privately owned cervidae species from a registered cervidae livestock facility is exempt from possession limits and closed seasons involving cervidae imposed in parts 401, 411, and 427 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40101 to 324.40120, 324.41101 to 324.41105, and 324.42701 to 324.42714. This act does not give a cervidae livestock operation authority to take free-ranging animals in violation of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, unless under a permit issued by the department.

(5) Any movement, importing, or exporting of cervidae species or cervidae products shall be in compliance with the animal industry act, 1988 PA 466, MCL 287.701 to 287.745.

Sec. 5. (1) A person shall not possess cervidae or engage in a cervidae livestock operation unless he or she obtains from the department a cervidae livestock facility registration or unless otherwise exempt by rule or law. If the activity in which the cervidae livestock facility is engaged is required to be regulated under any other act, registration under this act does 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 and acceptable to the department are exempt from this act.

(2) A person registered under this act shall keep and maintain records of production, purchases, or imports in order to establish proof of ownership and shall keep any other records required under standards incorporated by reference under section 6. A person transporting cervidae species shall produce documentation that contains the origin of shipment, registration or permit copies or documentation, documentation demonstrating shipping destination, and any other proof that may be required under the animal industry act, 1988 PA 466, MCL 287.701 to 287.745, upon demand of the director or a law enforcement officer.

(3) Until July 1, 2008, a cervidae livestock facility registered prior to the effective date of the amendatory act that added this subsection must comply with the facility standards contained in "Operational Standards for Registered Privately Owned Cervid Facilities", published by the Michigan department of agriculture, (May 2000). A cervidae livestock facility in existence on or before the effective date of the amendatory act that added this subsection shall be in compliance with the facility standards by July 1, 2008, which are contained in "Operational Standards for Registered Privately Owned Cervidae Facilities" published by the Michigan department of natural resources, (revised December 2005), adopted by the Michigan commission of agriculture on January 9, 2006, and adopted by the natural resources commission on January 12, 2006, and are incorporated by reference.

Sec. 6. (1) The initial application to construct a cervidae livestock facility shall be accompanied by the application fee described in section 8. The department shall approve, deny, or propose a modification to the completed application within 60 days. The department shall utilize the standards contained in "Operational Standards for Registered Privately Owned Cervidae Facilities", published by the Michigan department of natural resources, (revised December 2005), adopted by the Michigan commission of agriculture on January 9, 2006, and adopted by the natural resources commission on January 12, 2006, and incorporated by reference, to evaluate the issuance, construction, maintenance, administration, and renewal of a registration issued under this act. The department after consultation with the department of agriculture and with concurrence of the commissions of natural resources and agriculture may, by

amendment of this act, amend or update the standards adopted in this subsection. Before issuing any registration under this act, the director shall verify, through written confirmation, both of the following:

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

(b) The department has determined that the size and location of the facility will not place unreasonable stress on wildlife habitat or migration corridors.

(2) As part of the initial application or the application to modify a cervidae livestock facility, the applicant for registration shall submit a business plan complying with the standards established under this section that includes all of the following:

(a) The complete address of the proposed cervidae livestock facility and the size of, the location of, and a legal description of the lands on which the cervidae livestock operation will be conducted.

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

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

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

(e) A record-keeping system in compliance with this act and the operational standards incorporated by reference in subsection (1).

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

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

(h) A disease herd plan in compliance with the operational standards incorporated by reference in subsection (1) to be approved by the state veterinarian under the animal industry act, 1988 PA 466, MCL 287.701 to 287.745.

(i) Any other information considered necessary by the department.

(3) Upon receipt of an application, the director shall forward 1 copy each to the departments of agriculture and environmental quality. Upon receipt of an application, the department shall send a written notice to the local unit or units of government within which the proposed cervidae livestock facility will be located unless the department determines, from information provided in the application, that the local unit of government has a zoning ordinance under which the land is zoned agricultural. The local unit or units of government may respond, within 30 days of receipt of the written notice, indicating whether the applicant's cervidae livestock facility would be in violation of any ordinance.

(4) The department shall not issue an initial cervidae livestock facility registration or modification unless the application demonstrates all of the following:

(a) The cervidae livestock facility has been inspected by the director and he or she has determined that the cervidae livestock facility meets the standards and requirements prescribed by and adopted under this act, complies with the business plan submitted to the department, and determines that there are barriers in place to prevent the escape of cervidae species and prevent the entry of wild cervidae species. A renewal or initial applicant must provide a perimeter fence in compliance with the operational standards incorporated by reference under subsection (1).

(b) The method for individual animal identification complies with the standards incorporated by reference under this section.

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

(5) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial registration or modification registration allowing an expansion of an existing facility not later than 120 days after the applicant files a completed application. Renewal applications shall be issued not later than 60 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by the department. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The determination of the completeness of an application does not operate as an approval of the application for the registration and does not confer eligibility upon an applicant determined otherwise ineligible for issuance of a registration. The 120-day period is tolled under any of the following circumstances:

(a) Notice sent by the department of a deficiency in the application until the date all of the requested information is received by the department.

(b) The time period during which required actions are completed that include, but are not limited to, completion of construction or renovation of the facility; mandated reinspections if by the department; other inspections if required by

any state, local, or federal agency; approval by the legislative body of a local unit of government; or other actions mandated by this act or as otherwise mandated by law or local ordinance.

(6) If the department fails to issue or deny a registration within the time required by this subsection, the department shall return the registration fee and shall reduce the registration fee for the applicant's next renewal application, if any, by 15%. The failure to issue a registration within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the registration fee was refunded or discounted under this subsection.

(7) Upon receipt of a denial under this section and without filing a second application, the applicant may request in writing and, if requested, the department shall provide an informal review of the application. The review shall include the applicant, the department, and the departments of agriculture and environmental quality, if applicable. After the informal review, if the director determines that the proposed cervidae livestock facility or cervidae livestock operation complies with the requirements of this act, the director shall issue a registration within 30 days after the applicant notifies the department of completion of the facility. After the informal review, if the director determines that the proposed cervidae livestock facility or cervidae livestock operation does not comply with the requirements of this act, the director shall affirm the denial of the application in writing and specify the deficiencies needed to be addressed or corrected in order for a registration to be issued. The applicant may waive the informal review of the application.

(8) As used in this subsection, "completed application" means an application complete on its face and submitted with any applicable registration fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

Sec. 7. (1) At the time the construction of the cervidae livestock facility is completed, the applicant shall notify the department in writing. That written notice shall certify that, to the best of the applicant's knowledge, the cervidae livestock facility has been constructed in compliance with the requirements of this act and in compliance with the standards for cervidae livestock facilities. Within 30 days after notification of the completion of the cervidae livestock facility, the director shall inspect the cervidae livestock facility. If the director determines that the proposed cervidae livestock facility conforms to standards prescribed by and adopted under this act, the director shall issue a registration within 30 days after completion of an inspection finding that the cervidae livestock facility conforms to this act. The time periods described in this subsection may be extended by the department only if the department is unable to verify the removal of wild cervidae species, for an act of God, or in accordance with section 6(5)(a) or (b).

(2) If the director determines that a proposed cervidae livestock facility does not comply with the requirements of this act, the director shall deny the application for registration. The department shall notify in writing an applicant of the reasons for a registration denial within 60 days after receipt of the completed application. The notice shall specify in writing the deficiencies to be corrected in order for a registration to be issued.

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

(4) Upon receipt of a second denial under this section and without filing a second application, the applicant may request in writing and, if requested, the department shall provide an informal review of the application. The review shall include the applicant, the department, and the departments of agriculture and environmental quality, if applicable. After the informal review, if the director determines that the proposed cervidae livestock facility complies with the requirements of this act, the director shall issue a registration within 30 days after the informal review. After the informal review, if the director determines that the proposed facility does not comply with the requirements of this act, the director shall affirm the denial of the application in writing and specify the deficiencies needed to be addressed or corrected in order for a registration to be issued. The applicant may waive the informal review of the application.

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

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

Sec. 8. (1) A registration issued by the department is issued for 3 years and shall contain the following information:

(a) The registration number, class, date of issuance, and expiration date.

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

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

(d) The complete address of the cervidae livestock facility location, including the county, township, and section, and shall also include the size of the facility.

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

(f) Any other information provided in the application.

(2) The department shall issue to a person meeting the requirements of this act a registration to operate a cervidae livestock facility. The department may provide limited registration classes. Beginning the effective date of the amendatory act that added this sentence, the department shall not issue an initial registration for a class I (hobby) but may renew the registration of any class I (hobby) that is in existence on the effective date of that amendatory act.

(3) The department shall charge a nonrefundable application fee of \$250.00 for an initial application and the following initial inspection fees:

(a) For facilities containing 40 acres or less..... \$ 250.00.

(b) For facilities greater than 40 acres \$ 500.00.

(4) The fee for a second inspection of a cervidae livestock facility conducted under section 7(3) is \$100.00.

(5) The department shall charge the following fees for initial and renewal applications for cervidae facilities:

(a) Class I (hobby) renewal \$ 450.00.

(b) Class II (exhibition)..... \$ 450.00.

(c) Class III (ranch) \$ 750.00.

(d) Full registration \$ 750.00.

(6) Application for renewal of a registration shall be submitted not later than 60 days before expiration of the current registration. Each renewal registration shall be issued for a period of 3 years from the expiration date of the previous registration.

(7) Failure of the department to process a renewal application that was submitted in a timely and complete manner operates to extend the current registration until such time as the department completes the processing.

(8) Unless otherwise indicated in writing by the department at the time the department sends a registered facility its renewal application, there is a presumption that the department shall renew the registration upon timely submission of the completed renewal application and registration fee.

Sec. 9. (1) A registered cervidae livestock facility shall apply for a modification of the cervidae livestock facility registration if any changes to the information on the registration have occurred or will occur. Except for registrations approved under subsection (2)(a), expiration dates shall not change for approved modifications.

(2) A completed modification application shall be submitted and approved by the department before any of the following changes occur:

(a) A change in registration class.

(b) A modification to the size of a cervidae livestock facility.

(3) A modification application submitted under subsection (2)(a) shall include the appropriate fee for the new class. If approved by the department, the registration expires 3 years from the new date of issuance.

(4) A modification application submitted under subsection (2)(b) shall include the submission of a modification application fee of \$100.00.

(5) A modification application shall be submitted within 30 days after any of the following changes have occurred:

(a) A change to the complete name, business name, business address, or telephone number of the current cervidae livestock facility registration holder.

(b) A change to the complete address of the cervidae livestock facility location.

(c) A sale or transfer of ownership of a cervidae livestock facility. The modification application shall include a written statement signed by the new and previous owner verifying the sale or transfer of ownership.

(d) The introduction of new species into a cervidae livestock facility.

(6) A registrant may request decommissioning of a cervidae livestock facility. The decommissioning of a cervidae livestock facility shall be in compliance with the operational standards incorporated by reference under section 6(1) and upon approval by the department, unless there is a risk to the environment and to the health of other free-ranging animals in the area in the removal of fencing and other barriers.

Sec. 10. The director shall enter into a memorandum of understanding with the department of agriculture for approving disease herd plans and determining compliance by persons engaged in cervidae livestock operations, applicants, and registered cervidae livestock facilities with this act and investigation of violations of this act.

Sec. 11. After flushing cervidae species in an approved manner, any cervidae species remaining in the cervidae livestock facility must be killed by or under the authority of the registrant pursuant to an appropriate permit issued by the department. A person shall reimburse the state of Michigan \$250.00 per individual cervid that must be killed under the appropriately issued permit to meet the requirements of this section.

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

(2) In addition to the provisions contained in subsection (1), the department may deny the issuance of a registration, modification, or an application for decommission or may suspend or revoke a registration if the department, in consultation with the department of agriculture or the department of environmental quality, or both, determines that based upon substantial scientific evidence, the issuance of a registration or approval of decommission will cause, or is likely to cause, an unreasonable or adverse effect upon the environment or upon wildlife which cannot be remedied by, or is not addressed by, the existing standards under this act.

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

Sec. 16. Except as otherwise provided in section 17, a person who violates this act or the operational standards incorporated by reference under this act is guilty of a misdemeanor punishable by a fine of not less than \$300.00 or more than \$1,000.00 or imprisonment for not less than 30 days or more than 90 days, or both.

Sec. 17. (1) A person shall not release or allow the release of any cervidae species from a cervidae livestock facility. This section does not prohibit the sale, breeding, marketing, exhibition, or other approved uses of cervidae species in the manner provided for by law. An animal that escapes from a facility is considered to be public property if the operator of a cervidae livestock facility does not notify the department in compliance with the standards established under this act.

(2) An owner shall not abandon a registered cervidae livestock facility without first notifying the department and the Michigan department of agriculture in compliance with the standards established under this act.

(3) A person shall not intentionally or knowingly do either or both of the following:

(a) Cause the ingress of free-ranging cervidae species into a registered cervidae livestock facility.

(b) Release or allow the release of any cervidae species from a cervidae livestock facility.

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

(5) A person intentionally or knowingly violating subsection (3) or violating subsection (2) is guilty of a felony.

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

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

(a) Issue a warning.

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

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

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

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

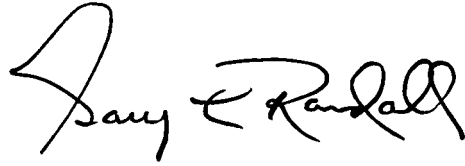
(a) Obtain a declaratory judgment that a method, activity, or practice is a violation of this act.

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

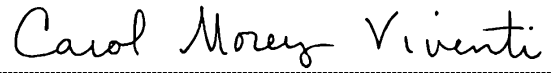
(5) The remedies under this act are cumulative and use of 1 remedy does not bar the use of another unless otherwise prohibited by law.

Enacting section 1. Section 15 of the privately owned cervidae producers marketing act, 2000 PA 190, MCL 287.965, is repealed.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor