

HOUSE BILL No. 5807

February 11, 2010, Introduced by Reps. Hansen, Booher, Huckleberry, Daley, Haveman, Meekhof, Moore, Stamas, Kurtz, DeShazor, Tyler, Mayes, Sheltroun, Caul, Horn, Espinoza, Terry Brown, Polidori, Pavlov, Wayne Schmidt, Moss, Haines, Denby, Bolger, Calley, Walsh, Lori, Neumann, Proos, Elsenheimer, Schuitmaker, Hildenbrand, Opsommer, Agema, Green, Rogers, Marleau and LeBlanc and referred to the Committee on Government Operations.

A bill to amend 2000 PA 190, entitled
"Privately owned cervidae producers marketing act,"
by amending sections 2, 3, 4, 5, 6, 7, and 10 (MCL 287.952,
287.953, 287.954, 287.955, 287.956, 287.957, and 287.960), as
amended by 2006 PA 561.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

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

1 (c) "Cervidae livestock facility" means a privately owned
2 cervidae livestock operation on privately controlled lands capable
3 of holding cervidae species. **EACH SEPARATE ENCLOSURE ON A SEPARATE**
4 **PARCEL OF LAND IS A SEPARATE CERVIDAE LIVESTOCK FACILITY.**

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

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

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

16 (g) "Department" means the Michigan department of ~~natural~~
17 ~~resources~~ **AGRICULTURE**.

18 (h) "Director" means the director of the Michigan department
19 of ~~natural resources~~ **AGRICULTURE** or his or her designee.

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

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

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

27 (l) "Law enforcement officer" means a person appointed by the

1 state or a local governmental unit who is responsible for the
2 enforcement of the criminal laws of this state.

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

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

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

11 Sec. 3. (1) The department shall administer this act. The
12 ~~departments~~ **DEPARTMENT** of ~~agriculture~~ **NATURAL RESOURCES** and
13 ~~environmental quality~~ **ENVIRONMENT** shall provide consultation.

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

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

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

27 (3) Cervidae products and cervidae species lawfully produced,

1 purchased, possessed, or acquired from within this state or
2 imported into this state are the exclusive and private property of
3 the owner.

4 (4) An owner harvesting privately owned cervidae species from
5 a registered cervidae livestock facility is exempt from possession
6 limits and closed seasons involving cervidae imposed in parts 401,
7 411, and 427 of the natural resources and environmental protection
8 act, 1994 PA 451, MCL 324.40101 to 324.40120, 324.41101 to
9 324.41105, and 324.42701 to 324.42714. This act does not give a
10 cervidae livestock operation authority to take free-ranging animals
11 in violation of the natural resources and environmental protection
12 act, 1994 PA 451, MCL 324.101 to 324.90106, unless under a permit
13 issued by the department.

14 (5) Any movement, importing, or exporting of cervidae species
15 or cervidae products shall be in compliance with the animal
16 industry act, 1988 PA 466, MCL 287.701 to ~~287.745~~ **287.746**.

17 Sec. 5. (1) A person shall not possess cervidae or engage in a
18 cervidae livestock operation unless he or she obtains from the
19 department a cervidae livestock facility registration or unless
20 otherwise exempt by rule or law. **A PERSON SHALL SEPARATELY REGISTER**
21 **EACH ENCLOSURE ENCOMPASSING HIS OR HER CERVIDAE LIVESTOCK OPERATION**
22 **IF THE ENCLOSURES ARE ON SEPARATE PARCELS OF PROPERTY.** If the
23 activity in which the cervidae livestock facility is engaged is
24 ~~required to be regulated~~ under any other ~~act~~ **LAW**, registration
25 under this act does not exempt the person or cervidae livestock
26 facility from requirements imposed under any local, state, or
27 federal regulation. Zoos accredited under the American zoological

1 association or other accreditations or standards determined
2 appropriate by and acceptable to the department are exempt from
3 this act.

4 (2) A person registered under this act shall keep and maintain
5 records of production, purchases, or imports ~~in order to~~ establish
6 proof of ownership and shall keep any other records required under
7 standards incorporated by reference under section 6. A person
8 transporting cervidae species shall produce documentation that
9 contains the origin of shipment, registration or permit copies or
10 documentation, documentation demonstrating shipping destination,
11 and any other proof that may be required under the animal industry
12 act, 1988 PA 466, MCL 287.701 to ~~287.745~~ **287.746**, upon demand of
13 the director or a law enforcement officer.

14 (3) ~~Until July 1, 2008, a cervidae livestock facility~~
15 ~~registered prior to the effective date of the amendatory act that~~
16 ~~added this subsection must comply with the facility standards~~
17 ~~contained in "Operational Standards for Registered Privately Owned~~
18 ~~Cervid Facilities", published by the Michigan department of~~
19 ~~agriculture, (May 2000). A cervidae livestock facility in existence~~
20 ~~on or before the effective date of the amendatory act that added~~
21 ~~this subsection shall be in compliance~~ **COMPLY** ~~with the facility~~
22 ~~standards, by July 1, 2008, which are contained in "Operational~~
23 ~~Standards for Registered Privately Owned Cervidae Facilities"~~
24 ~~published by the Michigan department of natural resources, (revised~~
25 ~~December 2005), adopted by the Michigan commission of agriculture~~
26 ~~on January 9, 2006, and adopted by the~~ **COMMISSION OF** ~~natural~~
27 ~~resources commission on January 12, 2006, and are incorporated by~~

1 reference.

2 Sec. 6. (1) The initial application to construct a cervidae
3 livestock facility shall be accompanied by the application fee
4 described in section 8. The department shall approve, deny, or
5 propose a modification to the completed application within 60 days.
6 The department shall utilize the standards contained in
7 "Operational Standards for Registered Privately Owned Cervidae
8 Facilities", published by the Michigan department of natural
9 resources, (revised December 2005), adopted by the Michigan
10 commission of agriculture on January 9, 2006, and adopted by the
11 **COMMISSION OF** natural resources ~~commission~~ on January 12, 2006, and
12 incorporated by reference, to evaluate the issuance, construction,
13 maintenance, administration, and renewal of a registration issued
14 under this act. The department after consultation with the
15 department of agriculture **NATURAL RESOURCES AND ENVIRONMENT** and
16 with concurrence of the ~~commissions of natural resources and~~
17 **COMMISSION OF** agriculture **AND THE NATURAL RESOURCES COMMISSION** may,
18 by amendment of this act, amend or update the standards adopted in
19 this subsection. **AN INITIAL APPLICATION IS ONLY VALID FOR 3 YEARS**
20 **AFTER THE DATE IT IS RECEIVED BY THE DEPARTMENT, AFTER WHICH TIME**
21 **ANOTHER INITIAL APPLICATION MUST BE COMPLETED AND SUBMITTED TO THE**
22 **DEPARTMENT.** Before issuing any registration under this act, the
23 director shall verify, through written confirmation, both of the
24 following:

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

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

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

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

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

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

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

20 (e) A record-keeping system in compliance with this act and
21 the operational standards incorporated by reference in subsection
22 (1).

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

25 (g) The current zoning of the property proposed as a cervidae
26 livestock facility and whether the local unit or units of
27 government within which the cervidae livestock facility will be

1 located has an ordinance regarding fences **AND WHETHER THE PROPOSED**
2 **FACILITY WOULD BE IN VIOLATION OF THAT ORDINANCE. IF A VARIANCE**
3 **FROM AN ORDINANCE HAS BEEN GRANTED OR IS BEING CONSIDERED, SUCH A**
4 **FACT SHALL BE INCLUDED IN THE APPLICATION.**

5 (h) A disease herd plan in compliance with the operational
6 standards incorporated by reference in subsection (1) to be
7 approved by the state veterinarian under the animal industry act,
8 1988 PA 466, MCL 287.701 to ~~287.745~~**287.746**.

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

11 (3) Upon receipt of an application, the director shall forward
12 1 copy each to the departments ~~DEPARTMENT~~ of agriculture and
13 ~~environmental quality~~ **NATURAL RESOURCES AND ENVIRONMENT**. Upon
14 receipt of an application, the department shall send a written
15 notice to the local unit or units of government within which the
16 proposed cervidae livestock facility will be located unless the
17 department determines, from information provided in the
18 application, that the local unit of government has a zoning
19 ordinance under which the land is zoned agricultural. The local
20 unit or units of government may respond, within 30 days of receipt
21 of the written notice, indicating whether the applicant's cervidae
22 livestock facility would be in violation of ~~any~~ **A CURRENTLY**
23 **EXISTING** ordinance. **IF THE PROPOSED FACILITY WOULD BE IN VIOLATION**
24 **OF ANY ORDINANCE, THE APPLICANT SHALL OBTAIN A VARIANCE FROM THE**
25 **LOCAL UNIT OF GOVERNMENT WITHIN 60 DAYS AFTER THE APPLICATION IS**
26 **SUBMITTED. FAILURE TO DO SO WILL VOID THE APPLICATION.**

27 (4) The department shall not issue an initial cervidae

1 livestock facility registration or modification unless the
2 application demonstrates all of the following:

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

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

14 (c) The applicant has all necessary permits that are required
15 under part 31 regarding water resources protection, part 301
16 regarding inland lakes and streams, and part 303 regarding wetland
17 protection of the natural resources and environmental protection
18 act, 1994 PA 451, MCL 324.3101 to 324.3133, 324.30101 to 324.30113,
19 and 324.30301 to ~~324.30323~~ **324.30329**, and any other permits or
20 authorizations that may be required by law.

21 ~~(5) Beginning the effective date of the amendatory act that~~
22 ~~added this subsection, the~~ **THE** department shall issue an initial
23 registration or modification registration allowing an expansion of
24 an existing facility not later than 120 days after the applicant
25 files a completed application. Renewal applications shall be issued
26 not later than 60 days after the applicant files a completed
27 application. Receipt of the application is considered the date the

1 application is received by the department. If the application is
2 considered incomplete by the department, the department shall
3 notify the applicant in writing, or make the information
4 electronically available, within 30 days after receipt of the
5 incomplete application, describing the deficiency and requesting
6 the additional information. The determination of the completeness
7 of an application does not operate as an approval of the
8 application for the registration and does not confer eligibility
9 upon an applicant determined otherwise ineligible for issuance of a
10 registration. The 120-day period is tolled under any of the
11 following circumstances:

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

15 (b) The time period during which required actions are
16 completed that include, but are not limited to, completion of
17 construction or renovation of the facility; mandated reinspections
18 if by the department; other inspections if required by any state,
19 local, or federal agency; approval by the legislative body of a
20 local unit of government; or other actions mandated by this act or
21 as otherwise mandated by law or local ordinance.

22 (6) If the department fails to issue or deny a registration
23 within the time required by this subsection, the department shall
24 return the registration fee and shall reduce the registration fee
25 for the applicant's next renewal application, if any, by 15%. The
26 failure to issue a registration within the time required under this
27 section does not allow the department to otherwise delay the

1 processing of the application, and that application, upon
2 completion, shall be placed in sequence with other completed
3 applications received at that same time. The department shall not
4 discriminate against an applicant in the processing of the
5 application based upon the fact that the registration fee was
6 refunded or discounted under this subsection.

7 (7) Upon receipt of a denial under this section and without
8 filing a second application, the applicant may request in writing
9 and, if requested, the department shall provide an informal review
10 of the application. The review shall include the applicant, the
11 department, and the ~~departments of agriculture and environmental~~
12 ~~quality~~ **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT**, if
13 applicable. After the informal review, if the director determines
14 that the proposed cervidae livestock facility or cervidae livestock
15 operation complies with the requirements of this act, the director
16 shall issue a registration within 30 days after the applicant
17 notifies the department of completion of the facility. After the
18 informal review, if the director determines that the proposed
19 cervidae livestock facility or cervidae livestock operation does
20 not comply with the requirements of this act, the director shall
21 affirm the denial of the application in writing and specify the
22 deficiencies needed to be addressed or corrected in order for a
23 registration to be issued. The applicant may waive the informal
24 review of the application.

25 (8) As used in this subsection, "completed application" means
26 an application complete on its face and submitted with any
27 applicable registration fees as well as any other information,

1 records, approval, security, or similar item required by law or
2 rule from a local unit of government, a federal agency, or a
3 private entity but not from another department or agency of the
4 state of Michigan.

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

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

1 to be corrected in order for a registration to be issued.

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

7 (4) Upon receipt of a second denial under this section and
8 without filing a second application, the applicant may request in
9 writing and, if requested, the department shall provide an informal
10 review of the application. The review shall include the applicant,
11 the department, and the ~~departments of agriculture and~~
12 ~~environmental quality~~ **DEPARTMENT OF NATURAL RESOURCES AND**
13 **ENVIRONMENT**, if applicable. After the informal review, if the
14 director determines that the proposed cervidae livestock facility
15 complies with the requirements of this act, the director shall
16 issue a registration within 30 days after the informal review.
17 After the informal review, if the director determines that the
18 proposed facility does not comply with the requirements of this
19 act, the director shall affirm the denial of the application in
20 writing and specify the deficiencies needed to be addressed or
21 corrected in order for a registration to be issued. The applicant
22 may waive the informal review of the application.

23 (5) The applicant may request a hearing pursuant to the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
25 24.328, on a denial of a registration or upon any limitations
26 placed upon the issuance of a registration.

27 (6) The department shall not return a registration fee or a

1 portion of a registration fee to an applicant if a registration is
2 denied.

3 Sec. 10. The director shall enter into a memorandum of
4 understanding with the department of ~~agriculture~~ **NATURAL RESOURCES**
5 **AND ENVIRONMENT** for approving disease herd plans and determining
6 compliance by persons engaged in cervidae livestock operations,
7 applicants, and registered cervidae livestock facilities with this
8 act and investigation of violations of this act.