



Ohio Legislative Service Commission

Bill Analysis

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BILL SUMMARY

- States that the Department of Agriculture, in cooperation with the Department of Natural Resources, has authority to regulate monitored captive deer and monitored captive deer with status, and defines those terms.
- Creates an annual monitored captive deer propagating license under the Department of Agriculture, and establishes procedures and requirements for obtaining such a license.
- Establishes requirements governing licensees who hold annual monitored captive deer propagating licenses, including testing for brucellosis and tuberculosis and testing of deer that die for chronic wasting disease.
- Prohibits a person from taking a white-tailed deer from the wild into an enclosure that houses monitored captive deer or monitored captive deer with status, and prohibits a person from knowingly releasing or knowingly failing to prevent the escape of a monitored captive deer or monitored captive deer with status from an enclosure.
- Prohibits a licensee from failing to notify the Director of Agriculture and the Chief of the Division of Wildlife in the Department of Natural Resources within 24 hours of discovering that a monitored captive deer or monitored captive deer with status has escaped an authorized enclosure.
- Authorizes the Director of Agriculture or the Director's authorized representative to enter at reasonable times on the premises of monitored captive deer propagating licensees to conduct investigations and inspections.

- Requires the Director of Agriculture to adopt rules necessary to implement the bill, including disease testing requirements and requirements governing the designation of monitored captive deer with status.
- Specifies that a person who wishes to propagate nonmonitored captive deer must obtain a commercial propagating license under current law from the Division of Wildlife.
- Specifies that a person who wishes to operate a hunting preserve on which captive deer are released and hunted must obtain a wild animal hunting preserve license under current law from the Division of Wildlife.
- Requires nonmonitored captive deer propagating licensees and hunting preserve licensees who operate a hunting preserve on which captive deer are released and hunted to have deer that die tested for chronic wasting disease.
- Includes monitored captive deer and monitored captive deer with status, by inclusion in definitions, in the statutes governing specified offenses involving agricultural products or equipment, inspection of meat processing establishments, and exemption from licensure of livestock dealers.

CONTENT AND OPERATION

Authority of the Department of Agriculture to regulate deer

Current law states that the Division of Wildlife in the Department of Natural Resources does not have authority to regulate domestic deer, which must be regulated as agricultural animals by the Department of Agriculture (R.C. 1531.081, not in the bill). "Domestic deer" means nonnative deer that have been legally acquired or their offspring and that are held in private ownership for primarily agricultural purposes (R.C. 1531.01(ZZ), not in the bill).

The bill states that the Department of Agriculture, in cooperation with the Department of Natural Resources, also has authority to regulate monitored captive deer and monitored captive deer with status (R.C. 943.21). The bill defines "monitored captive deer" as captive white-tailed deer that have been legally acquired or their offspring, are part of a herd that is tested for brucellosis and tuberculosis in accordance with the bill and tested for chronic wasting disease¹ in accordance with the bill (see **"Monitored captive deer propagating license; Requirements governing licensees,"**

¹ "Chronic wasting disease" has the same meaning as in 9 C.F.R. 55.1, which defines it as a transmissible spongiform encephalopathy of cervids (R.C. 943.20(B) and 1533.70(E)).

below), and are privately owned primarily for the purposes of agriculture, propagation, or providing captive deer to a hunting preserve (R.C. 943.20(D)). It defines "monitored captive deer with status" as captive white-tailed deer that have been legally acquired or their offspring, are part of a herd that has been tested for brucellosis and tuberculosis in accordance with the bill and tested for chronic wasting disease for at least five consecutive years in accordance with the bill (see below), are privately owned primarily for the purposes of agriculture, propagation, or providing deer to a hunting preserve, and are designated "with status" in accordance with rules adopted under the bill (see "**Monitored captive deer propagating license; Issuance,**" below) (R.C. 943.20(E)). Finally, the bill defines "hunting preserve" as an area of land where captive deer, monitored captive deer, or monitored captive deer with status are released and hunted as authorized by a wild animal hunting preserve license obtained from the Division of Wildlife under the Hunting and Fishing Law (see "**Division of Wildlife licenses,**" below) (R.C. 943.20(C)).

Monitored captive deer propagating license

Issuance

Currently, any person desiring to engage in the business of raising and selling game birds, game quadrupeds, which to include white-tailed deer,² reptiles, amphibians, or fur-bearing animals in a wholly enclosed preserve of which the person is the owner or lessee, or to have game birds, game quadrupeds, reptiles, amphibians, or fur-bearing animals in captivity, must apply in writing to the Division of Wildlife in the Department of Natural Resources for a license to do so (R.C. 1533.71, not in the bill). Additionally, no person may operate a wild animal hunting preserve without first obtaining a wild animal hunting preserve license issued by the Chief of the Division of Wildlife in consultation with the Animal and Plant Health Inspection Service in the U.S. Department of Agriculture, the Department of Agriculture, and representatives of the cervid industry in Ohio (R.C. 1533.721, not in the bill).

The bill revises the current licensing structure by creating a new propagating license under the Department of Agriculture. It requires a person who wishes to propagate monitored captive deer or monitored captive deer with status to obtain an annual monitored captive deer propagating license from the Director of Agriculture. Prior to applying for the license, the person must construct an authorized enclosure that is surrounded by a fence that is eight feet in height with a minimal deviation not to exceed 4%, is constructed in a manner that prevents ingress and egress of deer, and is

² "Game quadrupeds" includes cottontail rabbits, gray squirrels, black squirrels, fox squirrels, red squirrels, flying squirrels, chipmunks, groundhogs or woodchucks, white-tailed deer, wild boar, and black bears (R.C. 1531.01(V), not in the bill).

constructed of materials that are approved by the Chief of the Division of Wildlife in consultation with the Animal and Plant Health Inspection Service in the U.S. Department of Agriculture, the Department of Agriculture, and representatives of the cervid industry in Ohio (R.C. 943.22(A)). The bill defines "authorized enclosure" as an area of land that is surrounded by a fence that complies with those requirements (R.C. 943.20(A)).

After constructing such an authorized enclosure, the person must submit an application in accordance with rules adopted by the Director (see "**Rules**," below) for an annual monitored captive deer propagating license to the Director. The application must contain the information specified in rules and must be accompanied by an application fee in an amount specified in rules. (R.C. 943.22(B).)

Following submission of the application, a representative from the Division of Wildlife who is accompanied by a representative from the Department of Agriculture must inspect the authorized enclosure during the month of January or February, unless a different time period has been requested by the applicant and approved by the Chief of the Division of Wildlife and the Director of Agriculture, to ensure compliance with the bill's fencing requirements and rules. If the applicant is in compliance with all of the fencing requirements, the representative of the Division of Wildlife must notify the Director of Agriculture. If the applicant is not in compliance with the requirements, the representative of the Division must inform the applicant in writing of the deficiencies and specify a date by which they may be corrected. If the applicant corrects the deficiencies, the applicant must request a reinspection. The reinspection must be conducted in accordance with the above requirements (R.C. 943.22(C)).

If the Director is notified that the applicant's authorized enclosure complies with all of the fencing requirements, the Director must review the application and must issue or deny the license. If the Director denies the license, the Director must return the application to the applicant with an explanation of the reasons for denial. The applicant may correct the deficiencies in the application and submit a corrected application. The Director must review the application and must issue or deny the license as provided in the bill. (R.C. 943.22(D).)

The bill authorizes the licensee, upon issuance of the initial license, to place a captive white-tailed deer herd in the authorized enclosure. Following introduction of the herd, a representative or designee of the Department of Agriculture must test each deer in the herd for brucellosis and tuberculosis if the licensee is unable to produce written documentation that each captive deer in the herd has been so tested as required by the Director in accordance with rules. The person thereafter must comply with the bill's requirements governing licensees (see "**Requirements governing licensees**," below). (R.C. 943.22(E).)

A person who has been issued a monitored captive deer propagating license and who wishes to continue to propagate monitored captive deer or monitored captive deer with status must submit an application for a new license prior to the expiration of the person's existing license (R.C. 943.22(F)).

Under the bill, if the Director designates a licensee's monitored captive deer as monitored captive deer with status in accordance with rules adopted under the bill (see below), the Director must revise the licensee's license or issue a new license to the licensee indicating that the licensee's deer are monitored captive deer with status. Thereafter, each annual license issued to the licensee under the bill must indicate that the licensee's deer are monitored captive deer with status unless the licensee's deer fail to retain that designation. (R.C. 943.22(G).)

A person who holds a commercial propagating license from the Division of Wildlife under current law, as discussed above, at the time that the person applies for a license under the bill is not required to comply with the bill's requirements regarding initial construction and inspection of an authorized enclosure (R.C. 943.22(H)).

Requirements governing licensees

The bill requires a person who has been issued a monitored captive deer propagating license to have each monitored captive deer in the licensee's herd tested annually for brucellosis and tuberculosis in accordance with rules adopted under the bill for the first two years after issuance of the initial license. Thereafter, a licensee must have each monitored captive deer or monitored captive deer with status in the licensee's herd tested triennially for brucellosis and tuberculosis in accordance with rules. Additionally, each monitored captive deer in the herd that dies and is 12 months of age or older must be tested for chronic wasting disease in accordance with rules adopted under the bill. If the Director of Agriculture is notified of a positive result from such a chronic wasting disease test, the Director must take actions that the Director determines are necessary to mitigate or eliminate the presence of chronic wasting disease. (R.C. 943.23(A).)

A person who has been issued a monitored captive deer propagating license must comply with the above requirements and the requirements governing such a license established in rules adopted under the bill. The Director may suspend or revoke a monitored captive deer propagating license if the licensee fails to comply with those requirements. (R.C. 943.23(B).)

Prohibitions

The bill prohibits a person from doing either of the following:

(1) Taking a white-tailed deer from the wild into an enclosure that houses monitored captive deer or monitored captive deer with status; or

(2) Knowingly releasing or knowingly failing to prevent the escape of monitored captive deer or monitored captive deer with status from an enclosure or other holding area that is owned or leased by a monitored captive deer propagating licensee (R.C. 943.25(A)).

Additionally, the bill prohibits any person who holds a monitored captive deer propagating license from failing to notify the Director of Agriculture and the Chief of the Division of Wildlife within 24 hours of discovering that a monitored captive deer or a monitored captive deer with status has escaped an authorized enclosure. Upon receipt of the notification, the Chief must take actions that the Chief determines are necessary to remedy the escape of the deer. If the Director determines that a monitored captive deer propagating licensee is not in compliance with the notification requirement, the Director may suspend or revoke the license. (R.C. 943.25(B).)

Investigations and inspections

Under the bill, the Director of Agriculture or the Director's authorized representative may enter at reasonable times on the premises of monitored captive deer propagating licensees to conduct investigations and inspections or to otherwise execute duties that are necessary for the administration and enforcement of the bill (R.C. 943.26(A)).

Additionally, if the Chief of the Division of Wildlife wishes to enter on the premises of a monitored captive deer propagating licensee, the Chief must submit a written request to the Director of Agriculture for permission to enter on the premises at reasonable times. The Director may grant permission to the Chief to enter on the premises. If the Director grants permission, the Director must notify the Chief whether the Chief is required to provide written notice to the licensee prior to entering on the premises. If the Director requires the Chief to provide written notice, the written notice must be issued by the Department of Natural Resources, and a copy of the notice must be provided to the Director. When the Chief enters on the premises of a licensee in accordance with the bill, the Chief must be accompanied by the Director of Agriculture or the Director's authorized representative. (R.C. 943.26(B).)

Monitored Captive Deer Fund

The bill creates the Monitored Captive Deer Fund in the state treasury consisting of money credited to it under the bill. The Director of Agriculture must use money in the fund to administer the bill. (R.C. 943.27.)

Rules

The bill requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that do all of the following:

- (1) Establish requirements governing chronic wasting disease, brucellosis, and tuberculosis testing of monitored captive deer and monitored captive deer with status;
- (2) Prescribe the application form and establish the information to be included in an application for a monitored captive deer propagating license;
- (3) Establish the application fee for a monitored captive deer propagating license;
- (4) Establish requirements governing a monitored captive deer propagating licensee;
- (5) Establish requirements governing the designation of monitored captive deer with status;
- (6) Establish any other requirements and procedures that are necessary to administer and enforce the bill's provisions governing monitored captive deer propagating licenses;
- (7) Establish requirements governing chronic wasting disease testing of nonmonitored captive deer that are propagated in accordance with a commercial propagating license that is issued under current law by the Division of Wildlife (see "**Division of Wildlife licenses**," below);
- (8) Establish requirements governing chronic wasting disease testing of captive deer that are maintained in a wild animal hunting preserve in accordance with a wild animal hunting preserve license that is issued under current law by the Division of Wildlife (see below); and
- (9) Establish requirements and procedures governing the testing of monitored captive deer, nonmonitored captive deer, or both for additional infectious diseases that the Department of Agriculture determines should be monitored.

Division of Wildlife licenses

The bill specifies that a person who wishes to propagate nonmonitored captive deer must obtain a commercial propagating license under current law from the Division of Wildlife (R.C. 1533.711). The bill defines "nonmonitored captive deer" as captive white-tailed deer that have been legally acquired or their offspring, are part of a herd

that is tested for chronic wasting disease in accordance with rules adopted under the bill (see above), and are privately owned primarily for the purposes of propagation or the operation of a wild animal hunting preserve (R.C. 1533.70(D)). Additionally, the bill specifies that a person who wishes to operate a hunting preserve on which captive deer are released and hunted must obtain a wild animal hunting preserve license under current law from the Division (R.C. 1533.722(A)).

The bill then creates identical captive deer testing requirements for both types of licensees. If a commercial propagating licensee's herd of nonmonitored captive deer or a wild animal hunting preserve licensee's herd of captive deer consists of fewer than 35 deer, all of the licensee's deer that are 12 months of age or older and that have died must be tested for chronic wasting disease in accordance with rules adopted by the Director of Agriculture under the bill (see above). If a licensee's herd consists of 35 or more nonmonitored captive deer or captive deer, as applicable, 30% of all of the licensee's deer that are 12 months of age or older and that have died or 30 such deer, whichever is less, must be tested for chronic wasting disease in accordance with the Director's rules. If the Director of Agriculture and the Chief are notified of a positive result from such a chronic wasting disease test, the Director must take actions that the Director determines are necessary to mitigate or eliminate the presence of chronic wasting disease. (R.C. 1533.711(B) and 1533.722(B).)

Miscellaneous

Current law generally prohibits any person from committing a specified offense involving any agricultural product or equipment with the intent to intimidate or coerce a civilian population, influence the policy of any government by intimidation or coercion, affect the conduct of any government, or interrupt or interfere with agricultural production, agricultural research, or equipment for purposes of disrupting or influencing, through intimidation or other means, consumer confidence or agricultural production methods (R.C. 901.511(B)). "Specified offense" means aggravated arson, arson, vandalism, criminal damaging or endangering, criminal mischief, breaking and entering, criminal trespass, theft, tampering with records, or the unauthorized use of property or of computer, cable, or telecommunication property or service or an attempt to commit, complicity in committing, or a conspiracy to commit one of those offenses (R.C. 901.511(A)(5)). "Agricultural product" means specified agricultural animals and products that are produced for testing or research in the context of a product development program in conjunction or coordination with a private research facility, a university, or any federal, state, or local governmental agency or that are produced for personal, commercial, pharmaceutical, or educational purposes. The bill includes monitored captive deer and monitored captive deer with status in that definition of "agricultural product." (R.C. 901.511(A)(1).)

The existing Meat and Poultry Inspection Law establishes requirements governing meat slaughtering and processing establishments (meat establishments).³ Included in those requirements is the requirement, in conformity with federal law, that meat establishments be licensed by the Department of Agriculture in order to operate in this state. The Meat and Poultry Inspection Law also requires meat establishments to be inspected and establishes enforcement procedures when violations are discovered. (R.C. 918.01 to 918.11, not in the bill.)

In addition, current law establishes a voluntary inspection program for certain other meat establishments. A meat establishment that slaughters or otherwise prepares meat of bison, cervidea, other bovidea, camelidae and hybrids thereof, ratites, domestic rabbits, domestic deer, as defined in the Division of Wildlife Law, or other animals determined by the Director of Agriculture by rule, for human food purposes may receive voluntary state inspection if the establishment complies with the meat inspection provisions of the Meat and Poultry Inspection Law and the rules adopted under those provisions for establishments that slaughter or otherwise prepare for food purposes other animals and if the establishment pays the inspection costs and complies with rules adopted by the Director regarding those inspections. The bill includes meat establishments that slaughter or otherwise prepare monitored captive deer or monitored captive deer with status in the meat establishments that may participate in the voluntary meat inspection program. (R.C. 918.12.)

The existing Livestock Dealers Law establishes requirements governing persons acting as livestock dealers and brokers. Under that Law, a person is prohibited from acting as a dealer or broker without being licensed by the Director of Agriculture. (R.C. 943.02(A), not in the bill.) "Dealer" or "broker" means any person found by the Department of Agriculture buying, receiving, selling, slaughtering, with the exception of those persons who slaughter or prepare animals for their own consumption as specified by the Meat and Poultry Inspection Law, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any animals in an amount of more than 250 head of cattle, horses, or other equidae or 500 head of sheep, goats, or other bovidae, swine and other suidae, poultry, alpacas, or llamas during any one year (R.C. 943.01(B)). For purposes of the definition of "dealer" or "broker," current law defines "animals" or "livestock" to mean horses, mules, and other equidae, cattle, sheep, and goats and other bovidae, swine and other suidae, alpacas, and llamas (R.C. 943.01(A)).

³ Under the existing meat inspection provisions of the Meat and Poultry Inspection Law, "establishment" means all premises in the state where animals are slaughtered or otherwise prepared for food purposes, meat canneries, sausage factories, smoking or curing operations, and similar places (R.C. 918.01(C), not in the bill).

Existing law then exempts the following persons from the definition of "dealer" or "broker":

(1) Any railroad or other carrier transporting animals either interstate or intrastate;

(2) Any person who by dispersal sale is permanently discontinuing the business of farming, dairying, breeding, raising, or feeding animals;

(3) Any person who sells livestock that has been raised from birth on the premises of the person;

(4) Any person who buys or receives animals for grazing or feeding purposes at a premises owned or controlled by the person and sells or disposes of the animals after the minimum grazing or feeding period of 30 days; and

(5) Any person who places livestock in facilities other than the person's own pursuant to a written agreement for feeding or finishing, provided that the person retains legal and equitable title to the livestock during the term of the agreement (R.C. 943.01(B)).

The bill exempts from the definition of "dealer" or "broker" any person who has been issued a monitored captive deer propagating license under the bill (R.C. 943.01).

HISTORY

ACTION	DATE
Introduced	01-14-10

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