



# Ohio Legislative Service Commission

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## Bill Analysis

Jeff Grim

### **S.B. 225**

128th General Assembly  
(As Introduced)

**Sens.** Gibbs, Wagoner, Seitz, Patton, Stewart, Schaffer

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### **BILL SUMMARY**

- States that the Department of Agriculture has the sole authority to regulate commercial deer, and defines "commercial deer."
- Generally requires a person engaging in the business of propagating and selling commercial deer to apply for an annual license to do so, and establishes an annual \$300 license fee.
- Establishes enclosure and acquisition and transfer requirements for commercial deer propagating licensees.
- Requires such a licensee to tag each commercial deer raised by the licensee and to contact the Director of Agriculture when a commercial deer escapes or is missing from the licensee's authorized enclosure.
- Establishes requirements for commercial deer propagating licensees governing tissue testing of commercial deer for chronic wasting disease and disposal of commercial deer that die of a dangerously contagious or infectious disease.
- Requires such a licensee to maintain and keep certain information on the licensee's premises, including records regarding acquisition, transfer, and health of the licensee's commercial deer.
- Prohibits a person from hunting or offering for hunting any commercial deer except in a licensed commercial deer hunting preserve, and prohibits a person from owning or operating a commercial deer hunting preserve without a license from the Director.

- Requires an applicant for an annual commercial deer hunting preserve license to include with an application a \$300 license fee and specified information, including a description of the land that constitutes or will constitute the preserve.
- Authorizes the Director to issue a commercial deer hunting preserve license to an applicant if specified conditions are met.
- Establishes requirements governing commercial deer hunting preserves, including requirements governing enclosures, specifying deer that may be hunted, and stating that authorized hunters must be allowed to hunt without regard to sex, bag limit, or hunting season.
- Requires the Director to adopt specified rules, including rules that compile a list of materials that must be used to construct fences that enclose commercial deer.
- Prohibits any person from taking a white-tailed deer from the wild into an authorized enclosure that houses commercial deer or knowingly releasing or knowingly failing to prevent the escape of commercial deer from an authorized enclosure or other holding area that is owned or leased by a commercial deer propagating licensee or commercial deer hunting preserve licensee.
- Authorizes the Director or the Director's authorized representative to enter on the premises of commercial deer propagating licensees and commercial deer hunting preserve licensees to conduct investigations and inspections for purposes of administration and enforcement of the bill.
- Allows the Director to require corrective actions and, after taking specified actions, to assess civil penalties against a commercial deer propagating licensee or commercial deer hunting preserve licensee if the Director or the Director's authorized representative determines that the licensee is not in compliance with the bill, terms and conditions of the applicable license, or rules.
- Creates the Commercial Deer Fund consisting of all fees collected and civil penalties assessed under the bill, and requires the Director to use money in the Fund to administer the bill.
- Includes commercial deer, 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.

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## CONTENT AND OPERATION

### Authority of the Department of Agriculture to regulate commercial 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 has the sole authority to regulate commercial deer (R.C. 943.21). "Commercial deer" means captive deer that have been legally acquired or their offspring and that are privately owned primarily for the purposes of agriculture, propagation, or the operation of a hunting preserve (R.C. 943.20(C)). For that purpose, "hunting preserve" means an area of land where commercial deer are released and hunted as authorized by a commercial deer hunting preserve license obtained under the bill (see "**Commercial deer hunting preserve license**," below) (R.C. 943.02(D)).

### Commercial deer propagating license

#### Issuance

The bill requires a person desiring to engage in the business of propagating and selling commercial deer in an authorized enclosure that is owned or leased by the person to apply in writing to the Director of Agriculture for a license to do so except as otherwise provided by rules adopted by the Director under the bill (see "**Rules**," below)

(R.C. 943.22(A)). "Authorized enclosure" means an area of land that is surrounded by a fence that complies with the requirements governing commercial deer propagating licensees established by the bill (see "**Requirements governing licensees**," below) (R.C. 943.02(A)).

Under the bill, the Director may issue a commercial deer propagating license to the applicant if all of the following conditions are satisfied:

(1) The application is made in good faith;

(2) The applicant complies with or, in the case of an application for an initial license, has demonstrated to the Director's satisfaction that the applicant will comply with requirements governing commercial deer propagating licensees established by the bill; and

(3) The applicant pays a license fee of \$300 (R.C. 943.22(B)(1)). The money collected from the fee must be credited to the Commercial Deer Fund created by the bill (see "**Commercial Deer Fund**," below) (R.C. 943.22(D)).

The bill authorizes the Director to establish terms and conditions of a license. A commercial deer propagating licensee may do all of the following:

(1) Propagate commercial deer in an authorized enclosure that is specified in the license application;

(2) Sell commercial deer and ship them alive within and outside the state at any time; and

(3) In the case of the licensee and the licensee's employees, kill commercial deer and sell the carcasses for food in accordance with the Meat Inspection Law. (R.C. 943.22(B)(2).)

The bill specifies that a commercial deer propagating license expires on March 15 of each year. A licensee wishing to continue to propagate and sell commercial deer must apply for a new license and must include with the application specified information that is required by the bill (see below). (R.C. 943.22(C).)

### **Requirements governing licensees**

Under the bill, a commercial deer propagating licensee must keep commercial deer in 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 constructed of materials that are approved by the Director in rules (see "**Rules**," below). A person who is raising and selling commercial

deer on the bill's effective date must comply with the fence requirements not later than one year after the Director has adopted rules under the bill. (R.C. 943.23(A).)

A commercial deer propagating licensee only must purchase or acquire commercial deer from, or sell or otherwise transfer commercial deer to, another such licensee or from a herd that is monitored by the United States Department of Agriculture for chronic wasting disease or any other animal disease (R.C. 943.23(B)). "Chronic wasting disease" means a transmissible spongiform encephalopathy of cervids (R.C. 943.20(B), by reference to 9 C.F.R. 55.1).

Under the bill, each commercial deer that is raised by a licensee and held in an authorized enclosure that is owned or leased by the licensee must be identified with a tag that has a symbol identifying the licensee and a distinctive number for that deer. If a commercial deer escapes or is missing from an authorized enclosure that is owned or leased by a licensee, the licensee must notify by telephone the Director within a reasonable amount of time after the licensee determines that the commercial deer has escaped or is missing. (R.C. 943.23(C) and (D).)

A licensee must submit animal tissue from 10% of all of the licensee's commercial deer that are 12 months of age or older and that have died or 30 such deer, whichever is less, to the Animal Disease Diagnostic Laboratory in the Department of Agriculture for chronic wasting disease testing. The Director must send the results of the testing to the licensee. If the results of the testing indicate that a commercial deer had chronic wasting disease, the Director must take appropriate actions as provided in the Animal Diseases Law. (R.C. 943.23(E).)

A licensee must dispose of the body of a commercial deer that dies of a dangerously contagious or infectious disease, as defined in the Animal Diseases Law, in accordance with the provisions of that Law governing disposal of dead animals (R.C. 943.23(F)). "Dangerously contagious or infectious disease" means any disease, including any foreign animal disease, or vector, that the Director of Agriculture, in his sound discretion, determines to be of harmful effect on the animal or poultry industry or the public health and to be capable of transmission by any means from a carrier animal to a human or to another animal (R.C. 941.01(A), not in the bill).

The bill requires a licensee to maintain and keep all of the following on the premises of the licensee:

(1) Records of all commercial deer that are held, purchased or otherwise acquired, sold or otherwise transferred, or killed in an authorized enclosure that is owned or leased by the licensee. The records must include the distinctive number that is assigned to each commercial deer.

(2) The name and address of a recipient or consignee of any commercial deer that is raised by the licensee and the date on which the person received or was consigned the commercial deer;

(3) Records that verify that each commercial deer that is raised and sold by the licensee was purchased or otherwise acquired from another commercial deer propagating licensee or from a herd that is monitored by the United States Department of Agriculture for chronic wasting disease or any other animal disease; and

(4) Herd and individual animal health certificates, including certificates of veterinary inspection, and the results of any tests performed by the Animal Disease Diagnostic Laboratory in the Department of Agriculture as required by the bill. (R.C. 943.23(G)(2).)

The bill also requires a licensee to file with a license renewal application, on a form provided by the Director, a complete and accurate report signed by the licensee showing the total number of commercial deer that have been held by the licensee in the previous 12 months. If the licensee fails to file the inventory report with the renewal application, the Director must not renew the license. (R.C. 943.23(G)(1).)

The bill prohibits a commercial deer propagating licensee from failing to comply with the above requirements (R.C. 943.23(H)).

## **Commercial deer hunting preserve license**

### **Issuance**

The bill prohibits a person, except as otherwise provided by rules adopted by the Director (see "**Rules**," below), from hunting or offering for hunting any commercial deer except in a licensed commercial deer hunting preserve. In addition, it prohibits a person from owning or operating a commercial deer hunting preserve without first obtaining a license to do so issued by the Director under the bill. (R.C. 943.24(A).)

Under the bill, application for a commercial deer hunting preserve license must be made on a form prescribed by the Director and must be accompanied by an annual license fee of \$300. The money collected from the fee must be credited to the Commercial Deer Fund created by the bill (see "**Commercial Deer Fund**," below) (R.C. 943.24(F)). The application must contain a description of the lands that constitute or will constitute the preserve and any other information that is required by the Director in rules. (R.C. 943.24(B).)

Except as otherwise provided in the bill (see below), the Director, upon payment of the license fee, may issue to an applicant a commercial deer hunting preserve license if both of the following conditions are met:

(1) The commercial deer hunting preserve complies with or, in the case of an application for an initial license, the applicant has demonstrated to the Director's satisfaction that the proposed preserve will comply with the requirements governing commercial deer hunting preserve licensees established by the bill (see "**Requirements governing licensees**," below); and

(2) The applicant is the owner or lessee of the land described in the application and the applicant certifies that the applicant will remain the owner or lessee of the land until the license expires.

The bill authorizes the Director to establish terms and conditions of a license. (R.C. 943.24(C).) It prohibits the Director from issuing a commercial deer hunting preserve license to an applicant that owns or leases an authorized enclosure that is not in compliance with the requirements regarding authorized enclosures established by the bill (R.C. 943.24(E)).

A commercial deer hunting preserve license issued under the bill expires on March 15 of each year. A licensee wishing to continue to own or operate a commercial deer hunting preserve must apply for a new license. (R.C. 943.24(H).)

### **Requirements governing licensees**

Under the bill, a licensed commercial deer hunting preserve cannot be less than 80 acres in area. A hunting preserve must be located in one continuous block of land, except that the block of land may be intersected by highways or roads if the hunting preserve was in operation prior to the bill's effective date. (R.C. 943.25(A).)

Except for a hunting preserve that was in operation prior to the bill's effective date, a commercial deer hunting preserve licensee must maintain or keep commercial deer in an authorized enclosure. The owner or lessee of a hunting preserve that was in operation prior to the bill's effective date that wishes to operate in accordance with a commercial deer hunting preserve license issued under the bill must comply with the fence requirements established for authorized enclosures not later than one year after the Director has adopted rules concerning authorized enclosures (see "**Rules**," below). (R.C. 943.25(B).)

Under the bill, a licensee only can release and allow to be hunted within the confines of the licensee's commercial deer hunting preserve either or both of the following:

(1) Deer that have been propagated by a person who holds a commercial deer propagating license issued under the bill;

(2) Deer that have been purchased from a herd that is monitored by the United States Department of Agriculture for chronic wasting disease or any other animal disease or that has had animal tissue from 10% of all of the herd's commercial deer that are 12 months of age or older and that have died or 30 such deer, whichever is less, submitted to the Animal Disease Diagnostic Laboratory in the Department of Agriculture for chronic wasting disease.<sup>1</sup>

A licensee must allow to be hunted within the confines of the licensee's commercial deer hunting preserve commercial deer, without regard to sex, bag limit, or hunting season, by hunters who have been authorized by the licensee to hunt on the preserve. (R.C. 943.25(C).)

If a commercial deer escapes or is missing from an enclosure that is owned or leased by a licensee, the bill requires a licensee to notify by telephone the Director within a reasonable amount of time after the licensee determines that the commercial deer has escaped or is missing (R.C. 943.25(D)). A licensee must dispose of the body of a commercial deer that dies of a dangerously contagious or infectious disease, as defined in the Animal Diseases Law, in accordance with the provisions of that Law governing disposal of dead animals (R.C. 943.25(E)).

The bill prohibits a commercial deer hunting preserve licensee from failing to comply with the above requirements (R.C. 943.25(F)).

## Rules

Under the bill, the Director must adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Compile a list of materials that must be used to construct fences for authorized enclosures for the purposes of the bill's requirements governing commercial deer propagating licensees and commercial deer hunting preserve licensees. In adopting the rules, the Director must consult with the Animal and Plant Health Inspection Service in the United States Department of Agriculture, the Department of Natural Resources, and representatives of the Ohio cervid industry.

(2) Establish information that must be included in an application for a license to own or operate a commercial deer hunting preserve;

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<sup>1</sup> Presumably "testing" is intended here.



(3) Establish the amount of civil penalties that may be assessed by the Director under the bill (see "**Enforcement**," below) for violation of the bill; and

(4) Any other requirements and procedures that are necessary to administer and enforce the bill. (R.C. 943.26.)

## **Enforcement**

### **Additional prohibitions**

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

(1) Taking a white-tailed deer from the wild into an authorized enclosure that houses commercial deer; or

(2) Knowingly releasing or knowingly failing to prevent the escape of commercial deer from an authorized enclosure or other holding area that is owned or leased by a commercial deer propagating licensee or a commercial deer hunting preserve licensee (R.C. 943.27).

### **Investigative authority of the Department of Agriculture**

Under the bill, the Director or the Director's authorized representative may enter at reasonable times on the premises of commercial deer propagating licensees and commercial deer hunting preserve licensees to conduct investigations and inspections or to otherwise execute duties that are necessary for the administration and enforcement of the bill. If refused entry, the Director or the Director's authorized representative may apply for and the court of common pleas having jurisdiction may issue an appropriate warrant. With regard to commercial deer propagating licensees, the Director or the Director's authorized representative may examine and copy at reasonable times any records that are required to be kept and maintained by the bill. (R.C. 943.28.)

### **Corrective actions and civil penalties**

The bill authorizes the Director to propose to require corrective actions and assess a civil penalty against a commercial deer propagating licensee or a commercial deer hunting preserve licensee if the Director or the Director's authorized representative determines that the licensee is not in compliance with the bill, the terms and conditions of the commercial deer propagating license or commercial deer hunting preserve license, as applicable, or rules. However, the Director may impose a civil penalty only if all of the following occur:

(1) The licensee is notified in writing of the deficiencies resulting in noncompliance, the actions that the licensee must take to correct the deficiencies, and the time period within which the licensee must correct the deficiencies and attain compliance;

(2) After the time period that is specified in the notice has elapsed, the Director or the Director's authorized representative has inspected the authorized enclosure that is owned or leased by the licensee, determined that the licensee is still not in compliance, and issued a notice of an adjudication hearing; and

(3) The Director affords the licensee an opportunity for an adjudication hearing under the Administrative Procedure Act regarding the Director's determination that the licensee is not in compliance or the imposition of the civil penalty, or both. However, the licensee may waive the right to an adjudication hearing. (R.C. 943.29(A).)

Under the bill, if the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation has occurred or is occurring, the Director may issue an order requiring compliance and assess a civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with the appeals provisions of the Administrative Procedure Act. A civil penalty assessed by the Director must be in an amount established in rules. Each 30-day period during which a violation continues constitutes a separate violation. However, for a violation of the bill's provisions governing commercial deer propagating licenses and commercial deer hunting preserve licenses and prohibitions regarding authorized enclosures, each seven-day period during which a violation continues constitutes a separate violation. (R.C. 943.29(B).) All money collected from civil penalties must be credited to the Commercial Deer Fund created by the bill (see "**Commercial Deer Fund**," below) (R.C. 943.29(D)).

If after the assessment of a civil penalty a licensee continues to be in violation of the bill, the terms and conditions of a license, or rules, the Director may conduct an adjudication hearing under the Administrative Procedure Act to suspend or revoke the licensee's license (R.C. 943.29(C)).

## **Commercial Deer Fund**

The bill creates the Commercial Deer Fund in the state treasury consisting of money credited to it under the bill. The Director must use money in the Fund to administer the bill. (R.C. 943.30.)

## 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 commercial deer 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).<sup>2</sup> 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

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<sup>2</sup> 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).

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 commercial deer 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).) "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)).

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 includes commercial deer in the definition of "livestock" and exempts from the definition of "dealer" or "broker" any person who has been issued a



commercial deer propagating license or a commercial deer hunting preserve license under the bill (R.C. 943.01(A) and (B) and 943.02(A)).

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## HISTORY

ACTION	DATE
Introduced	01-19-10

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