

MAR 3 2003
Agriculture

Withdrawn
3/24/03

HOUSE FILE 376
BY MERTZ
Substituted for HF 483
(COMPANION TO LSB 2435SS
BY FRAISE)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act regulating farm deer, providing for penalties, and
2 providing an effective date.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 376

1 Section 1. Section 10.1, subsection 14, Code 2003, is
2 amended to read as follows:

3 14. "Livestock" means an animal belonging to the bovine,
4 caprine, equine, ovine, or porcine species, ostriches, rheas,
5 emus, farm deer as defined in section ~~481A.1~~ 170.1, or
6 poultry.

7 Sec. 2. Section 169A.1, subsection 1, Code 2003, is
8 amended to read as follows:

9 1. "Animal" means a creature belonging to the bovine,
10 caprine, equine, ovine, or porcine species; ostriches, rheas,
11 or emus; farm deer as defined in section ~~481A.1~~ 170.1; or
12 poultry.

13 Sec. 3. Section 169C.1, subsection 3, Code 2003, is
14 amended to read as follows:

15 3. "Livestock" means an animal belonging to the bovine,
16 caprine, equine, ovine, or porcine species; ostriches, rheas,
17 or emus; farm deer as defined in section ~~481A.1~~ 170.1; or
18 poultry.

19 Sec. 4. NEW SECTION. 170.1 DEFINITIONS.

20 As used in this chapter, unless the context otherwise
21 requires:

22 1. "Board" means the whitetail enclosure certification
23 board established pursuant to section 170.2.

24 2. "Department" means the department of agriculture and
25 land stewardship.

26 3. "Farm deer" means an animal belonging to the cervidae
27 family and classified as part of the dama species of the dama
28 genus, commonly referred to as fallow deer; part of the
29 elaphus species of the cervus genus, commonly referred to as
30 red deer or elk; part of the virginianus species of the
31 odocioleus genus, commonly referred to as whitetail; part of
32 the hemionus species of the odocioleus genus, commonly
33 referred to as mule deer; or part of the nippon species of the
34 cervus genus, commonly referred to as sika. However, a farm
35 deer does not include any unmarked free-ranging elk,

1 whitetail, or mule deer.

2 4. "Landowner" means a person who holds an interest in
3 land, including a titleholder or tenant.

4 Sec. 5. NEW SECTION. 170.2 WHITETAIL ENCLOSURE
5 CERTIFICATION BOARD.

6 1. A whitetail enclosure certification board is
7 established within the department. The board shall consist of
8 not more than seven members who shall be appointed by the
9 secretary of agriculture. All members must be actively
10 engaged in the production of farm deer and at least four
11 members must be actively engaged in the production of
12 whitetail as farm deer.

13 2. The members of the board shall serve staggered terms of
14 two years, except that the initial board members shall serve
15 terms of unequal length. A person appointed to fill a vacancy
16 for a member shall serve only for the unexpired portion of the
17 term. A member is eligible for reappointment for three
18 successive terms.

19 3. The board shall elect a chairperson and meet according
20 to rules adopted by the board. A majority of the board
21 constitutes a quorum and an affirmative vote of a majority of
22 members is necessary for substantive action taken by the
23 board. The majority shall not include any member who has a
24 conflict of interest and a statement by a member of a conflict
25 of interest shall be conclusive for this purpose. A vacancy
26 in the membership does not impair the right of a quorum to
27 exercise all rights and perform all duties of the board.

28 4. A member of the board is not entitled to receive
29 expenses incurred in the discharge of the member's duties on
30 the board. A member is also not entitled to receive
31 compensation as otherwise provided in section 7E.6.

32 Sec. 6. NEW SECTION. 170.3 JURISDICTION OF THE
33 DEPARTMENT OF NATURAL RESOURCES -- COOPERATION WITH THE
34 DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP.

35 1. Except as provided in this chapter, farm deer are

1 livestock as provided in this title and are not subject to
2 regulation by the department of natural resources. The
3 department of natural resources shall not require that the
4 landowner be issued a license or permit for keeping farm deer
5 or for the construction of a fence for keeping farm deer.

6 2. The department of agriculture and land stewardship and
7 the department of natural resources shall cooperate in
8 administering and enforcing this chapter.

9 Sec. 7. NEW SECTION. 170.4 REQUIREMENTS FOR KEEPING
10 WHITETAIL -- BOARD CERTIFICATION.

11 A landowner shall not keep whitetail as farm deer, unless
12 the whitetail is kept on land which is enclosed by a fence.
13 The fence must be constructed and maintained as prescribed by
14 rules adopted by the department upon approval by the board. A
15 landowner shall not keep the whitetail unless the fence is
16 certified by the board in a manner and according to procedures
17 required by the board. The board may require that it inspect
18 the fence prior to certification.

19 Sec. 8. NEW SECTION. 170.5 REQUIREMENTS FOR RELEASING
20 WHITETAIL -- PROPERTY INTERESTS.

21 A person shall not release whitetail kept as farm deer onto
22 land unless the landowner complies with all of the following:

23 1. The landowner must notify the department of natural
24 resources at least thirty days prior to first releasing the
25 whitetail on the land. The notice shall be provided in a
26 manner required by the department. The notice must at least
27 provide all of the following:

28 a. A statement verifying that the fence which encloses the
29 land is certified by the board pursuant to section 170.4.

30 b. The landowner's name.

31 c. The location of the land enclosed by the fence.

32 2. The landowner must provide access to land by the
33 department of natural resources for one or more days as
34 required by that department to remove any whitetail from the
35 enclosed land. Any whitetail that is removed from the

1 enclosed land shall be deemed to be state property. However,
2 after the thirtieth day following receipt of notice, the state
3 shall relinquish its property interest in any remaining
4 whitetail existing at that time on the enclosed land and any
5 progeny of the whitetail, which shall become property of the
6 landowner.

7 Sec. 9. NEW SECTION. 170.6 DISCIPLINARY PROCEEDINGS.

8 1. The board may suspend or revoke a certification issued
9 pursuant to section 170.4 if the board determines that a
10 landowner has done any of the following:

11 a. Provided false information to the board in an
12 application for certification pursuant to section 170.4.

13 b. Failed to provide notice or access to the department of
14 natural resources as required by section 170.5.

15 c. Failed to maintain a fence enclosing the land where a
16 whitetail is kept as required in section 170.4.

17 d. Forces or lures a whitetail that is property of the
18 state onto the enclosed land.

19 e. Restrains or inhibits a whitetail that is property of
20 the state from leaving the enclosed land.

21 f. Takes a whitetail that is property of the state which
22 is enclosed on the property in violation of a chapter in Title
23 XI, subtitle 6.

24 2. If the board suspends a landowner's certification, the
25 landowner shall not release additional whitetail onto the
26 enclosed land, unless otherwise provided in the board's order
27 for suspension. If the board revokes a landowner's
28 certification under this section, the board may provide for
29 any of the following:

30 a. The removal of all or a portion of the gates to the
31 fence enclosing the land. The landowner shall not restrain or
32 inhibit the movement of whitetail leaving the enclosed land
33 for a period provided in the board's order for revocation.

34 The removal of all or a portion of the gates shall be
35 supervised by the sheriff in the county in which the land is

1 located.

2 b. The removal of all or a percentage of whitetail from
3 the enclosed land by the department of natural resources, if
4 the department of natural resources consents to removing the
5 whitetail. However, the department of natural resources must
6 remove the whitetail within thirty days after receiving notice
7 by the board.

8 3. The disciplinary proceedings shall comply with rules
9 adopted by the department which shall to every extent
10 practicable comply with requirements for contested case
11 proceedings provided under chapter 17A. However, a decision
12 by the board shall be deemed final agency action as provided
13 in chapter 17A.

14 Sec. 10. NEW SECTION. 170.7 DEPARTMENT OF NATURAL
15 RESOURCES -- INVESTIGATIONS.

16 This chapter does not prevent the department of natural
17 resources from conducting an investigation of a violation of
18 fish and game laws, including but not limited to a provision
19 of Title XI, subtitle 6. The department of natural resources
20 may obtain a warrant to search the enclosed land pursuant to
21 chapter 808.

22 Sec. 11. NEW SECTION. 170.8 PENALTIES.

23 A person is guilty of taking a whitetail in violation of
24 section 481A.48 if the whitetail is on the land enclosed by a
25 fence required to be certified as provided in section 170.4
26 and the person does any of the following:

27 1. Forces or lures a whitetail that is property of the
28 state onto the enclosed land.

29 2. Restrains or inhibits a whitetail that is property of
30 the state from leaving the enclosed land.

31 3. Takes a whitetail that is property of the state that is
32 within the enclosure in violation of a chapter in Title XI,
33 subtitle 6.

34 Sec. 12. Section 189A.2, subsection 6A, Code 2003, is
35 amended by striking the subsection and inserting in lieu

1 thereof the following:

2 6A. "Farm deer" means the same as defined in section
3 170.1.

4 Sec. 13. Section 190C.1, subsection 12, Code 2003, is
5 amended to read as follows:

6 12. "Livestock" means an animal belonging to the bovine,
7 caprine, equine, ovine, or porcine species; ostriches, rheas,
8 or emus; farm deer as defined in section ~~481A.1~~ 170.1; or
9 poultry.

10 Sec. 14. Section 481A.1, Code 2003, is amended by adding
11 the following new subsection:

12 NEW SUBSECTION. 16A. "Farm deer" means the same as
13 defined in section 170.1.

14 Sec. 15. Section 481A.1, subsection 20, paragraph h, Code
15 2001, is amended to read as follows:

16 h. The Cervidae: such as elk or deer, other than farm
17 deer. ~~As-used-in-this-paragraph,-"farm-deer"-means-an-animal~~
18 ~~belonging-to-the-cervidae-family-and-classified-as-part-of-the~~
19 ~~dama-species-of-the-dama-genus,-commonly-referred-to-as-fallow~~
20 ~~deer,-part-of-the-elaphus-species-of-the-cervus-genus,-~~
21 ~~commonly-referred-to-as-red-deer-or-elk,-or-part-of-the-nippon~~
22 ~~species-of-the-cervus-genus,-commonly-referred-to-as-sika-~~
23 ~~However,-a-farm-deer-does-not-include-any-unmarked-free-~~
24 ~~ranging-elk-~~

25 Sec. 16. Section 481A.1, Code 2003, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 33A. "Whitetail" means an animal
28 belonging to the cervidae family and classified as part of the
29 virginianus species of the odocioleus genus, commonly referred
30 to as whitetail.

31 Sec. 17. Section 481A.124, subsection 2, Code 2003, is
32 amended to read as follows:

33 2. This section only applies to ~~deer-of-the-species~~
34 whitetail only, other than farm deer, that is kept as provided
35 in chapter 170.

1 Sec. 18. Section 481A.130, Code 2003, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 3. This section does not apply to a
4 person who fails to exclude an ungulate that is property of
5 the state from becoming part of a hunting preserve licensed
6 under chapter 484B if the person acts in compliance with
7 section 484B.5.

8 Sec. 19. Section 484B.3, Code 2003, is amended by adding
9 the following new unnumbered paragraph:

10 NEW UNNUMBERED PARAGRAPH. The chapter does not apply to
11 keeping farm deer as defined in section 170.1.

12 Sec. 20. Section 717.1, subsection 2, Code 2003, is
13 amended to read as follows:

14 2. "Livestock" means an animal belonging to the bovine,
15 caprine, equine, ovine, or porcine species, ostriches, rheas,
16 emus; farm deer, as defined in section ~~481A.1~~ 170.1; or
17 poultry.

18 Sec. 21. HUNTING PRESERVES AND GAME BREEDERS -- AUTOMATIC
19 CERTIFICATION. Any farm deer kept on land which is owned by a
20 person licensed pursuant to section 484B.5 or 481A.61 and
21 which is enclosed with a fence on the effective date of this
22 Act shall be deemed to comply with construction requirements
23 of section 170.4 and shall be automatically certified by the
24 board without submitting an application. The landowner is not
25 required to notify the department of natural resources
26 concerning removal of whitetail as otherwise required pursuant
27 to section 170.5.

28 Sec. 22. EFFECTIVE DATE. This Act, being deemed of
29 immediate importance, takes effect upon enactment.

30 EXPLANATION

31 This bill relates to farm deer, which is an animal
32 generally classified as belonging to the cervidae family that
33 is more narrowly referred to in common use as fallow deer, red
34 deer, elk, or sika. A farm deer does not include any unmarked
35 free-ranging elk. These types of cervidae are considered

1 livestock under a number of provisions throughout the Code,
2 including branding regulations under Code chapter 169A,
3 trespassing livestock under Code chapter 169C, meat and
4 poultry inspection under Code chapter 189A, organic
5 agricultural production under Code chapter 190C, exemptions
6 from sales tax for inputs under Code section 422.45, and
7 livestock neglect and abuse under Code chapter 717.

8 Farm deer are generally excluded from provisions referring
9 to game in chapters administered by the department of natural
10 resources providing for wildlife conservation and hunting
11 regulations (see Code section 481A.1).

12 The bill adds whitetail and mule deer to the definition of
13 farm deer, but excludes such deer that are free-ranging.

14 The bill amends a number of provisions referring to the
15 definition of "farm deer" that currently exist in the Code in
16 order to provide for uniformity.

17 The bill establishes a new Code chapter 170 under the
18 jurisdiction of the department of agriculture and land
19 stewardship (department). The bill establishes a whitetail
20 enclosure certification board (board) within the department.
21 The board consists of members actively engaged in the
22 production of farm deer. The bill prohibits a landowner from
23 keeping whitetail as farm deer, unless the whitetail is kept
24 on land which is enclosed by a fence as prescribed by rules
25 adopted by the department upon approval by the board. In
26 addition, the fence must be certified by the board. According
27 to the bill, after the fence is constructed and certified, the
28 department of natural resources has 30 days to remove any
29 whitetail from the enclosed land. However, after the
30 thirtieth day, any remaining whitetail and its progeny become
31 property of the landowner.

32 The bill provides that a person keeping farm deer who is
33 licensed to maintain a hunting preserve or as a game breeder
34 by the department of natural resources on the effective date
35 of the bill is automatically certified. The bill provides

1 that the board may suspend or revoke a certification for
2 fraud, failure to provide access to the department of natural
3 resources, failure to maintain a proper fence, luring
4 whitetail that are property of the state into the enclosure,
5 or restraining them from leaving.

6 The bill provides that the department of natural resources
7 may conduct an investigation of a violation of fish and game
8 laws and may obtain a warrant to search the enclosed land.

9 If a person lures whitetail which are property of the state
10 into the enclosure or keeps them in the enclosure, the person
11 is guilty of taking a deer out of season as prohibited in Code
12 section 481A.48 as enforced by the department of natural
13 resources. According to Code section 481A.130, a person who
14 takes a deer in violation of Code section 481A.48 is subject
15 to a civil penalty of \$1,500. However, for taking an antlered
16 deer during September, October, November, or December before
17 the regular gun season, the civil penalty is \$2,000 and 80
18 hours of community service or, in lieu of the community
19 service, a total of \$4,000. The person is also subject to a
20 scheduled violation under Code section 805.8B, which is \$100.

21 The bill takes effect upon enactment.

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