

Withdrawn

4/16/03

HF 624 substituted

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421

SENATE FILE

BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SF 248)

Passed Senate, Date _____ Passed House, 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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SF 421

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 ~~48A.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 ~~48A.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 ~~48A.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. "Chronic wasting disease" means the animal disease
23 afflicting deer and elk that is a transmissible disease of the
24 nervous system resulting in distinctive lesions in the brain
25 and that belongs to the group of diseases that is known as
26 transmissible spongiform encephalopathies (TSE).

27 2. "Council" means the farm deer council established
28 pursuant to section 170.2.

29 3. "Department" means the department of agriculture and
30 land stewardship.

31 4. "Farm deer" means an animal belonging to the cervidae
32 family and classified as part of the dama species of the dama
33 genus, commonly referred to as fallow deer; part of the
34 elaphus species of the cervus genus, commonly referred to as
35 red deer or elk; part of the virginianus species of the

1 odocioleus genus, commonly referred to as whitetail; part of
2 the hemionus species of the odocioleus genus, commonly
3 referred to as mule deer; or part of the nippon species of the
4 cervus genus, commonly referred to as sika. However, a farm
5 deer does not include any unmarked free-ranging elk,
6 whitetail, or mule deer.

7 5. "Landowner" means a person who holds an interest in
8 land, including a titleholder or tenant.

9 Sec. 5. NEW SECTION. 170.2 FARM DEER COUNCIL.

10 1. A farm deer council is established within the
11 department.

12 a. The council shall consist of not more than seven
13 members who shall be appointed by the secretary of
14 agriculture. All members must be actively engaged in the
15 production of farm deer and at least four members must be
16 actively engaged in the production of whitetail as farm deer.

17 b. The members of the council shall serve staggered terms
18 of two years, except that the initial council members shall
19 serve terms of unequal length. A person appointed to fill a
20 vacancy for a member shall serve only for the unexpired
21 portion of the term. A member is eligible for reappointment
22 for three successive terms.

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

33 d. A member of the council is not entitled to receive
34 expenses incurred in the discharge of the member's duties on
35 the council. A member is also not entitled to receive

1 compensation as otherwise provided in section 7E.6.

2 2. The council shall do all of the following:

3 a. Monitor conditions relating to the production of farm
4 deer, the processing of farm deer products, and the marketing
5 of such products. The council shall advise the department
6 about health issues affecting farm deer, including but not
7 limited to chronic wasting disease, and related regulations or
8 practices.

9 b. Advise the department about the administration and
10 enforcement of this chapter, including but not limited to
11 consulting with the department regarding the rules adopted
12 under this chapter, the certification of fences, and
13 disciplinary actions. However, the council shall not control
14 policy decisions or direct the administration or enforcement
15 of this chapter.

16 Sec. 6. NEW SECTION. 170.3 JURISDICTION OF THE
17 DEPARTMENT OF NATURAL RESOURCES -- COOPERATION WITH THE
18 DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP.

19 1. Except as provided in this chapter, farm deer are
20 livestock as provided in this title and are not subject to
21 regulation by the department of natural resources. The
22 department of natural resources shall not require that the
23 landowner be issued a license or permit for keeping farm deer
24 or for the construction of a fence for keeping farm deer.

25 2. The department of agriculture and land stewardship and
26 the department of natural resources shall cooperate in
27 administering and enforcing this chapter.

28 Sec. 7. NEW SECTION. 170.4 REQUIREMENTS FOR KEEPING
29 WHITETAIL -- CERTIFICATION.

30 A landowner shall not keep whitetail as farm deer, unless
31 the whitetail is kept on land which is enclosed by a fence.
32 The fence must be constructed and maintained as prescribed by
33 rules adopted by the department. A landowner shall not keep
34 the whitetail unless the fence is certified in a manner and
35 according to procedures required by the department. The

1 department may require that the fence is inspected and
2 approved prior to certification.

3 Sec. 8. NEW SECTION. 170.5 REQUIREMENTS FOR RELEASING
4 WHITETAIL -- PROPERTY INTERESTS.

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

7 1. The landowner must notify the department of natural
8 resources at least thirty days prior to first releasing the
9 whitetail on the land. The notice shall be provided in a
10 manner required by that department. The notice must at least
11 provide all of the following:

12 a. A statement verifying that the fence which encloses the
13 land is certified by the department pursuant to section 170.4.

14 b. The landowner's name.

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

16 2. The landowner must provide access to land by the
17 department of natural resources for one or more days as
18 required by that department to remove any whitetail from the
19 enclosed land. Any whitetail that is removed from the
20 enclosed land shall be deemed to be state property. However,
21 after the thirtieth day following receipt of notice, the state
22 shall relinquish its property interest in any remaining
23 whitetail existing at that time on the enclosed land and any
24 progeny of the whitetail, which shall become property of the
25 landowner.

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

27 1. The department may suspend or revoke a certification
28 issued pursuant to section 170.4 if the department determines
29 that a landowner has done any of the following:

30 a. Provided false information to the department in an
31 application for certification pursuant to section 170.4.

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

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

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

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

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

8 2. If the department suspends a landowner's certification,
9 the landowner shall not release additional whitetail onto the
10 enclosed land, unless otherwise provided in the department's
11 order for suspension. If the department revokes a landowner's
12 certification under this section, the department may provide
13 for any of the following:

14 a. The removal of all or a portion of the gates to the
15 fence enclosing the land. The landowner shall not restrain or
16 inhibit the movement of whitetail leaving the enclosed land
17 for a period provided in the department's order for
18 revocation. The removal of all or a portion of the gates
19 shall be supervised by the sheriff in the county in which the
20 land is located.

21 b. The removal of all or a percentage of whitetail from
22 the enclosed land by the department of natural resources, if
23 the department of natural resources consents to removing the
24 whitetail. However, the department of natural resources must
25 remove the whitetail within thirty days after receiving notice
26 by the department of agriculture and land stewardship.

27 Sec. 10. NEW SECTION. 170.7 DEPARTMENT OF NATURAL
28 RESOURCES -- INVESTIGATIONS.

29 This chapter does not prevent the department of natural
30 resources from conducting an investigation of a violation of
31 fish and game laws, including but not limited to a provision
32 of Title XI, subtitle 6. The department of natural resources
33 may obtain a warrant to search the enclosed land pursuant to
34 chapter 808.

35 Sec. 11. NEW SECTION. 170.8 PENALTIES.

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

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

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

9 3. Takes a whitetail that is property of the state that is
10 within the enclosure in violation of a chapter in Title XI,
11 subtitle 6.

12 Sec. 12. Section 189A.2, subsection 6A, Code 2003, is
13 amended by striking the subsection and inserting in lieu
14 thereof the following:

15 6A. "Farm deer" means the same as defined in section
16 170.1.

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

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

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

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

27 Sec. 15. Section 481A.1, subsection 20, paragraph h, Code
28 2003, is amended to read as follows:

29 h. The Cervidae: such as elk or deer, other than farm
30 deer. ~~As-used-in-this-paragraph, "farm-deer" means an animal~~
31 ~~belonging to the cervidae family and classified as part of the~~
32 ~~dama species of the dama genus, commonly referred to as fallow~~
33 ~~deer, part of the elaphus species of the cervus genus,~~
34 ~~commonly referred to as red deer or elk, or part of the nippon~~
35 ~~species of the cervus genus, commonly referred to as sika.~~

1 However, ~~a farm deer does not include any unmarked free-~~
2 ~~ranging elk.~~

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

5 NEW SUBSECTION. 33A. "Whitetail" means an animal
6 belonging to the cervidae family and classified as part of the
7 virginianus species of the odocioleus genus, commonly referred
8 to as whitetail.

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

11 2. This section only applies to ~~deer of the species~~
12 whitetail only, other than farm deer, that is kept as provided
13 in chapter 170.

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

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

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

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

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

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

31 Sec. 21. HUNTING PRESERVES AND GAME BREEDERS -- AUTOMATIC
32 CERTIFICATION. Any farm deer kept on land which is owned by a
33 person licensed pursuant to section 484B.5 or 481A.61 and
34 which is enclosed with a fence on the effective date of this
35 Act shall be deemed to comply with construction requirements

1 of section 170.4 and shall be automatically certified by the
2 department of agriculture and land stewardship without
3 submitting an application. The landowner is not required to
4 notify the department of natural resources concerning removal
5 of whitetail as otherwise required pursuant to section 170.5.

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

8 EXPLANATION

9 This bill relates to farm deer, which is an animal
10 generally classified as belonging to the cervidae family that
11 is more narrowly referred to in common use as fallow deer, red
12 deer, elk, or sika. A farm deer does not include any unmarked
13 free-ranging elk. These types of cervidae are considered
14 livestock under a number of provisions throughout the Code,
15 including branding regulations under Code chapter 169A,
16 trespassing livestock under Code chapter 169C, meat and
17 poultry inspection under Code chapter 189A, organic
18 agricultural production under Code chapter 190C, exemptions
19 from sales tax for inputs under Code section 422.45, and
20 livestock neglect and abuse under Code chapter 717.

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

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

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

30 The bill establishes a new Code chapter 170 under the
31 jurisdiction of the department of agriculture and land
32 stewardship (department). The bill establishes a farm deer
33 council to advise the department relating to farm deer,
34 including issues involving health and regulations. The
35 council consists of members actively engaged in the production

1 of farm deer. The bill prohibits a landowner from keeping
2 whitetail as farm deer, unless the whitetail is kept on land
3 which is enclosed by a fence as prescribed by rules adopted by
4 the department. In addition, the fence must be certified by
5 the department. According to the bill, after the fence is
6 constructed and certified, the department of natural resources
7 has 30 days to remove any whitetail from the enclosed land.
8 However, after the thirtieth day, any remaining whitetail and
9 its progeny become property of the landowner.

10 The bill provides that a person keeping farm deer who is
11 licensed to maintain a hunting preserve or as a game breeder
12 by the department of natural resources on the effective date
13 of the bill is automatically certified. The bill provides
14 that the department may suspend or revoke a certification for
15 fraud, failure to provide access to the department of natural
16 resources, failure to maintain a proper fence, luring
17 whitetail that are property of the state into the enclosure,
18 or restraining them from leaving.

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

22 If a person lures whitetail which are property of the state
23 into the enclosure or keeps them in the enclosure, the person
24 is guilty of taking a deer out of season as prohibited in Code
25 section 481A.48 as enforced by the department of natural
26 resources. According to Code section 481A.130, a person who
27 takes a deer in violation of Code section 481A.48 is subject
28 to a civil penalty of \$1,500. However, for taking an antlered
29 deer during September, October, November, or December before
30 the regular gun season, the civil penalty is \$2,000 and 80
31 hours of community service or, in lieu of the community
32 service, a total of \$4,000. The person is also subject to a
33 scheduled violation under Code section 805.8B, which is \$100.

34 The bill takes effect upon enactment.

35

Description

Senate File 421 provides several policy changes to the Department of Agriculture and Land Stewardship, including but not limited to the following:

- Creates Chapter 170, Code of Iowa, regarding regulation of farm deer and adds white tail deer and mule deer to the definitions of "farm deer" and "livestock."
- Establishes the Farm Deer Council consisting of seven members that are appointed by the Secretary of Agriculture.
- Requires the Department to certify farm deer operators and specifies farm deer are maintained in an enclosed area with fencing approved by the Department.
- Allows farm deer operators to release farm deer after notification to the Department of Natural Resources.
- Specifies process for revoking a farm deer operator's certification.
- Allows the Department of Natural Resources to investigate violations related to fish and game laws.
- Specifies the fines and penalties related to farm deer.
- Specifies hunting preserve and game breeders are automatically certified if animals are maintained in an approved fenced area.

Assumptions

By adding white tail deer and mule deer to the State definition of "livestock," the Meat and Poultry Inspection Bureau will be required to perform post mortem inspections on farm deer if the resulting meat is sold for food in Iowa. As white tail deer and mule deer are not included in the federal definition of "livestock," the inspections will have to be paid with State funds.

Fiscal Impact

The annual fiscal impact of SF 421 is an increase in General Fund expenditures of approximately \$175,000 to the Department of Agriculture and Land Stewardship. Revenue associated with the collection of fines is expected to be minimal. The breakdown of the estimated expenditures is as follows:

	<u>FY 2004</u>	<u>FY 2005</u>
Expenditures:		
Salaries	\$ 145,000	\$ 148,000
Miscellaneous Expense	1,000	1,000
Travel Expenditures	9,000	9,000
Equipment	4,000	0
Vehicle	15,000	0
Depreciation	0	15,000
Total Expenditures	<u>\$ 174,000</u>	<u>\$ 173,000</u>

Sources

Department of Agriculture and Land Stewardship
Department of Human Rights, Criminal and Juvenile Justice Planning Division
Judicial Branch

/s/ Dennis C Prouty

March 20, 2003