

HOUSE BILL No. 6384

August 19, 2010, Introduced by Reps. Bolger, Crawford, Tyler, Lahti, Lindberg, Wayne Schmidt, Ball, Hansen, Horn, Booher, Meekhof, Lund, Denby and Kowall and referred to the Committee on Tourism, Outdoor Recreation and Natural Resources.

A bill to define, develop, and regulate raising of pigs as an agricultural enterprise in this state; to provide powers and duties of certain state agencies and departments; and to provide for certain penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "sporting swine marketing act".

3 Sec. 3. As used in this act:

4 (a) "Business plan" means a written document of intent that a
5 person submits to the department to define the methods, protocols,
6 or procedures that the person intends to implement for operations
7 that are in compliance with this act.

8 (b) "Biosecurity" means measures, actions, or precautions
9 taken to prevent the transmission of disease in, among, or between

1 privately owned swine species.

2 (c) "Cervidae livestock facility" means that term as defined
3 in section 2 of the privately owned cervidae producers marketing
4 act, 2000 PA 190, MCL 287.952.

5 (d) "Department" means the department of agriculture.

6 (e) "Director" means the director of the department or his or
7 her designee.

8 (f) "Farm operation" means that term as defined in the
9 Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

10 (g) "Flush" or "flushed" means to move or chase wildlife from
11 the sporting swine livestock operation (Class II).

12 (h) "Identification" means any documentable system or process
13 that allows a person to recognize as separate or different an
14 individual animal.

15 (i) "Law enforcement officer" means a person appointed by the
16 state or a local governmental unit who is responsible for the
17 enforcement of the criminal laws of this state.

18 (j) "Owner" means the person who owns or is responsible for a
19 sporting swine livestock operation (Class II).

20 (k) "Person" means an individual, corporation, limited
21 liability corporation, partnership, association, joint venture, or
22 other legal entity.

23 (l) "Release" means to allow an animal to become located
24 outside the perimeter fence of a sporting swine estate (Class I)
25 not under the direct control of the owner.

26 (m) "Sporting swine estate (Class I)" means a privately owned
27 sporting swine operation on privately controlled lands capable of

1 holding and containing sporting swine species for the purpose of
2 hunting.

3 (n) "Sporting swine livestock operation (Class II)" means an
4 operation that contains 1 or more privately owned sporting swine
5 species involving the producing, growing, propagating, using,
6 harvesting, transporting, exporting, importing, or marketing of
7 sporting swine species or sporting swine products under an
8 appropriate license.

9 (o) "Sporting swine products" means any products, coproducts,
10 or by-products of sporting swine, including tusks, capes, hides,
11 meat, or any part of the animal.

12 (p) "Sporting swine species" means members of the swine
13 family.

14 Sec. 5. (1) The department shall administer this act. The
15 department of natural resources and environment shall provide
16 consultation.

17 (2) The department may conduct activities designed to develop
18 and assist the sporting swine industry in the manner provided for
19 by law.

20 Sec. 7. (1) A sporting swine livestock estate (Class I) is an
21 agricultural enterprise and is considered to be part of the farming
22 and agricultural industry of this state. The director shall assure
23 that sporting swine livestock operations (Class II) are afforded
24 all rights, privileges, opportunities, and responsibilities of
25 other agricultural enterprises.

26 (2) Sporting swine livestock operations (Class II) are a form
27 of agriculture. Sporting swine estates (Class I) and their

1 equipment are considered to be agricultural facilities and
2 equipment. Uses related to the farming of sporting swine species
3 are considered agricultural uses.

4 (3) Sporting swine products and sporting swine species
5 lawfully produced, purchased, possessed, or acquired from within
6 this state or imported into this state are the exclusive and
7 private property of the owner.

8 (4) Any movement, importing, or exporting of sporting swine
9 species or sporting swine products shall be in compliance with the
10 animal industry act, 1988 PA 466, MCL 287.701 to 287.746.

11 Sec. 9. (1) A person shall not engage in a sporting swine
12 livestock operation (Class II) unless he or she obtains from the
13 department a sporting swine estate (Class I) license or unless
14 otherwise exempt by rule or law. If the activity in which the
15 sporting swine estate (Class I) is engaged is required to be
16 regulated under any other act, licensure under this act does not
17 exempt the person or sporting swine estate (Class I) from
18 requirements imposed under any local, state, or federal regulation.
19 Zoos accredited under the American zoological association or other
20 accreditations or standards determined appropriate by and
21 acceptable to the department are exempt from this act.

22 (2) A person licensed under this act shall keep and maintain
23 records of production, purchases, or imports in order to establish
24 proof of ownership and shall keep any other records required under
25 section 11. A person transporting sporting swine species shall
26 produce documentation that contains the origin of shipment,
27 registration or permit copies or documentation, documentation

1 demonstrating shipping destination, and any other proof that may be
2 required under the animal industry act, 1988 PA 466, MCL 287.701 to
3 287.746, upon demand of the director or a law enforcement officer.

4 (3) A sporting swine estate (Class I) in existence on or
5 before the effective date of this act is required to obtain a
6 license under this act not later than January 1, 2011, in order to
7 continue engaging in a sporting swine livestock operation (Class
8 II) after the effective date of this act, subject to subsection
9 (4).

10 (4) A sporting swine livestock operation (Class II) must be
11 maintained to prevent captive sporting swine species from escaping.
12 Fencing must be a minimum of 10 feet high, a high-tensile game
13 fence, and cannot contain holes larger than 6 inches by 6 inches
14 below 4.5 feet. Fencing shall be approved by the department.

15 Sec. 11. (1) All imported and exported sporting swine must
16 have clearly visible individual official identification as defined
17 in the animal industry act, 1988 PA 466, MCL 287.701 to 287.746.

18 (2) Sporting swine must be cared for and managed as livestock.

19 (3) All sporting swine shall have a negative pseudorabies test
20 within 30 days before entering the sporting swine estate (Class I)
21 or must originate from a qualified negative PRV herd. The
22 department may require other appropriate tests after giving at
23 least a 30-day notice to all licensed sporting swine estates (Class
24 I).

25 (4) An owner shall keep records of all purchases and sporting
26 swine species harvested, including dates of sale and the names and
27 addresses of purchasers. Records shall be kept by the owner for a

1 minimum of 7 years and shall be available upon request of the
2 department.

3 (5) The owner or owner's designee shall conduct and complete a
4 weekly inspection of fencing and produce documentation verifying
5 the weekly inspection. The inspection documentation shall be
6 submitted annually to the department.

7 (6) As determined by the herd management plan, a blood sample
8 of hunter-killed swine must be drawn and sent to a department-
9 approved laboratory, at the expense of the owner, and tested for
10 pseudorabies, brucellosis, and any other disease the department
11 considers necessary. Results of all tests shall be sent to the
12 owner and to the department.

13 (7) Viscera and other body parts shall be disposed of in
14 accordance with 1982 PA 239, MCL 287.651 to 287.683.

15 (8) If a sporting swine is found to be positive for
16 psuedorabies or brucellosis, herd testing protocol established by
17 the department under the animal industry act, 1988 PA 466, MCL
18 287.701 to 287.746, must be followed. If the herd testing protocol
19 determines that the herd is positive, the director shall order the
20 depopulation of the herd. A new herd management plan must be
21 written, approved by the department, and implemented before
22 repopulation may occur.

23 (9) Indemnity may be allowed using the current fair market
24 value of sporting swine rate in the manner provided for under the
25 animal industry act, 1988 PA 466, MCL 287.701 to 287.746.

26 Sec. 13. (1) A completed initial application for a licensure
27 shall be submitted to the department not less than 60 days before

1 the construction of the sporting swine estate (Class I).

2 (2) As part of the application, the license applicant shall
3 submit a business plan complying with the standards established
4 under this section that includes all of the following:

5 (a) The complete address of the proposed sporting swine estate
6 (Class I) and the size, location, and legal description of the land
7 upon which the sporting swine estate (Class I) will be conducted.

8 (b) The number of sporting swine species included in the
9 proposed sporting swine estate (Class I).

10 (c) Biosecurity measures to be utilized, including, but not
11 limited to, methods of fencing and appropriate animal
12 identification.

13 (d) The proposed method of flushing wild cervidae species from
14 the enclosure, unless the sporting swine estate (Class I) is
15 currently registered as a cervidae livestock facility.

16 (e) The proposed record-keeping system.

17 (f) The current zoning of the property proposed as a sporting
18 swine estate (Class I) and whether the local unit or units of
19 government within which the sporting swine estate (Class I) will be
20 located have an ordinance regarding fences, unless the same
21 property is currently registered as a cervidae livestock facility.

22 (3) Upon receipt of an application, the director shall forward
23 1 copy each to the department of natural resources and environment.
24 Upon receipt of an application, the department shall send a written
25 notice to the local unit or units of government within which the
26 proposed sporting swine estate (Class I) will be located unless the
27 department determines, from information provided in the

1 application, that the local unit of government has a zoning
2 ordinance under which the land is zoned agricultural. The local
3 unit or units of government may respond, within 30 days after
4 receipt of the written notice, indicating whether the applicant's
5 sporting swine livestock operation (Class II) would be in violation
6 of any ordinance. The requirement of the department to send a
7 written notice to local units of government does not apply if the
8 proposed sporting swine estate (Class I) is registered as a
9 cervidae livestock operation.

10 (4) The department shall not issue an initial sporting swine
11 livestock operation (Class II) registration or modification unless
12 the application demonstrates all of the following:

13 (a) The sporting swine estate (Class I) has been inspected by
14 the director and the director has determined that the sporting
15 swine estate (Class I) meets the standards and requirements
16 prescribed by and adopted under this act, complies with the
17 business plan submitted to the department, and determines that
18 there are barriers in place to prevent the escape of sporting swine
19 species and prevent the entry of sporting swine species.

20 (b) Individual animals are appropriately identified in
21 compliance with the standards established under this section.

22 (c) The applicant has all necessary permits that are required
23 under part 31 regarding water resources protection, part 301
24 regarding inland lakes and streams, and part 303 regarding wetland
25 protection of the natural resources and environmental protection
26 act, 1994 PA 451, MCL 324.3101 to 324.3133, 324.30101 to 324.30113,
27 and 324.30301 to 324.30329, and any other permits or authorizations

1 that may be required by law. The department shall consider this
2 subdivision to be fulfilled if the applicant is registered as a
3 cervidae livestock facility.

4 (5) Upon receipt of a denial under this section and without
5 filing a second application, the applicant may request in writing
6 and, if requested, the department shall provide an informal
7 department review of the application. The review shall include the
8 applicant, the department, and the department of natural resources
9 and environment, if applicable. After the informal department
10 review, if the director determines that the proposed sporting swine
11 estate (Class I) or sporting swine livestock operation (Class II)
12 complies with the requirements of this act, the director shall
13 issue a license within 30 days after the applicant notifies the
14 department of completion of the sporting swine estate (Class I).
15 After the informal department review, if the director determines
16 that the proposed sporting swine estate (Class I) or sporting swine
17 livestock operation (Class II) does not comply with the
18 requirements of this act, the director shall affirm the denial of
19 the application in writing and specify the deficiencies needed to
20 be addressed or corrected in order for a license to be issued. The
21 applicant may waive the informal department review of the
22 application.

23 (6) An application shall only be considered valid for a period
24 of 6 months from the date of approval.

25 Sec. 15. (1) At the time the construction of the sporting
26 swine estate (Class I) is completed, the applicant shall notify the
27 department in writing. Within 30 days after notification of the

1 completion of the sporting swine estate (Class I), the director
2 shall inspect the sporting swine estate (Class I). If the director
3 determines that the proposed sporting swine estate (Class I)
4 conforms to standards prescribed by and adopted under this act, the
5 director shall issue a license within 30 days after completion of
6 an inspection finding that the sporting swine estate (Class I)
7 conforms to this act.

8 (2) If the director determines that a proposed sporting swine
9 estate (Class I) does not comply with the requirements of this act,
10 the director shall deny the issuance of a license. The department
11 shall notify in writing an applicant of the reasons for a license
12 denial within 60 days after receipt of the completed application.
13 The notice shall specify in writing the deficiencies to be
14 corrected in order for a license to be issued.

15 (3) Without filing a second application under this section, an
16 applicant may request a second inspection after the specified
17 deficiencies have been corrected. The department is not required to
18 make more than 2 prelicensure inspections of the same proposed
19 sporting swine estate (Class I) per application. The department may
20 charge actual inspection costs for second and subsequent
21 prelicensure inspections.

22 (4) Upon receipt of a second denial under this section and
23 without filing a second application, the applicant may request in
24 writing and, if requested, the department shall provide an informal
25 department review of the application. The review shall include the
26 applicant, the department, and the department of natural resources
27 and environment, if applicable. After the informal department

1 review, if the director determines that the proposed sporting swine
2 estate complies with the requirements of this act, the director
3 shall issue a license within 30 days after the informal department
4 review. After the informal department review, if the director
5 determines that the proposed sporting swine estate (Class I) does
6 not comply with the requirements of this act, the director shall
7 affirm the denial of the application in writing and specify the
8 deficiencies needed to be addressed or corrected in order for a
9 license to be issued. The applicant may waive the informal
10 department review of the application.

11 (5) The applicant may request a hearing pursuant to the
12 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
13 24.328, on a denial of a license or upon any limitations placed
14 upon the issuance of a license.

15 (6) The department shall not return a license fee or a portion
16 of a license fee to an applicant if a license is denied.

17 Sec. 17. (1) A license issued by the department shall contain
18 the following information:

19 (a) The license number and expiration date.

20 (b) The complete name, business name, business address, and
21 telephone number of the sporting swine estate (Class I) license
22 holder.

23 (d) The complete address of the sporting swine estate (Class
24 I) location.

25 (e) The complete name, address, and telephone number of the
26 department contact person regarding sporting swine livestock
27 operations (Class II).

1 (2) The department shall issue to a person meeting the
2 requirements of this act a license to operate a sporting swine
3 estate (Class I). The department may provide limited license
4 classes.

5 (3) The department shall charge the following fees for initial
6 and renewal applications for sporting swine estates:

7 (a) Sporting swine estate (Class I), estate hunting,
8 \$1,000.00.

9 (b) Sporting swine livestock operation (Class II), breeding
10 only, \$750.00.

11 (4) Application for renewal of a license shall be submitted
12 not later than 60 days before expiration of the current license.
13 Each license issued shall be for a period of 3 years from the date
14 of issuance.

15 (5) A renewal submitted later than 60 days before expiration
16 of the current license shall require submission of an initial
17 application. Failure of the department to process a renewal
18 application that was submitted in a timely and complete manner
19 operates to extend the current license until such time as the
20 department completes the processing.

21 (6) Unless otherwise indicated in writing by the department at
22 the time the department sends a licensed sporting swine estate
23 (Class I) its renewal application, there is a presumption that the
24 department shall renew the license upon timely submission of the
25 completed renewal application and license fee.

26 (7) A sale or transfer of ownership of a sporting swine estate
27 (Class I) requires the new owner or the transferee to notify the

1 department in writing. The department shall require a new license
2 for a transfer occurring within 3 months after the expiration of
3 the current license.

4 Sec. 19. A licensed sporting swine estate (Class I) shall
5 apply for a modification of the sporting swine estate (Class I)
6 license before any change in the license class of activities for
7 which the license is issued.

8 Sec. 21. (1) The director shall enter into a memorandum of
9 understanding with the department of natural resources and
10 environment for determining compliance by persons engaged in
11 sporting swine livestock operations (Class II) with this act and
12 investigation of violations of this act.

13 (2) Subject to the memorandum of understanding, the director
14 shall verify, through written confirmation from the department of
15 natural resources and environment before issuing any license under
16 this act, that the department of natural resources and environment
17 has determined that the size and location of the facility will not
18 place unreasonable stress on wildlife habitat or migration
19 corridors. Any facility that possesses a valid permit to maintain
20 wildlife in captivity issued by the department of natural resources
21 and environment shall be considered to meet the requirements of
22 this section for purposes of issuing a license under this act.

23 Sec. 23. (1) The department or its duly authorized agent shall
24 have access at all reasonable hours to any sporting swine estate
25 (Class I) to inspect and to determine if this act is being violated
26 and to secure samples or specimens of any sporting swine species.
27 An inspection shall be conducted under practices designed not to

1 jeopardize the health of the sporting swine species.

2 (2) The director may annually inspect a licensed sporting
3 swine estate (Class I) for confirmation that there are in place
4 procedures or barriers designed to prevent the escape of sporting
5 swine species and for confirmation of compliance with other
6 requirements as set forth in this act or as otherwise required by
7 law.

8 Sec. 25. A person shall not knowingly provide false
9 information in a matter pertaining to this act and shall not
10 resist, impede, or hinder the director in the discharge of his or
11 her duties under this act.

12 Sec. 27. (1) After an opportunity for an administrative
13 hearing, the department may deny, suspend, revoke, or limit a
14 license if the applicant or licensee fails to comply with this act,
15 standards adopted or established under this act, orders issued by
16 the director as a result of an administrative action or informal
17 departmental review conducted under this act, or rules promulgated
18 under this act.

19 (2) In addition to the provisions contained in subsection (1),
20 the department may deny the issuance of a license or suspend or
21 revoke a license if the department, in consultation with the
22 department of natural resources and environment, determines that
23 based upon substantial scientific evidence, the issuance of a
24 license will cause, or is likely to cause, an unreasonable or
25 adverse effect upon the environment or upon wildlife which cannot
26 be remedied by, or is not addressed by, the existing standards
27 under this act.

1 (3) Except in the case of an informal departmental review, the
2 department shall conduct an administrative proceeding under this
3 act pursuant to the administrative procedures act of 1969, 1969 PA
4 306, MCL 24.201 to 24.328.

5 Sec. 29. The director may promulgate rules considered
6 necessary to implement and enforce this act, pursuant to the
7 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
8 24.328.

9 Sec. 31. Except as otherwise provided in section 33, a person
10 who violates this act or a rule promulgated under this act is
11 guilty of a misdemeanor punishable by a fine of not less than
12 \$300.00 or more than \$1,000.00 or imprisonment for not less than 30
13 days or more than 90 days, or both.

14 Sec. 33. (1) A person shall not release or allow the release
15 of any sporting swine species from a sporting swine estate (Class
16 I). This section does not prohibit the sale, breeding, marketing,
17 exhibition, or other approved uses of sporting swine species in the
18 manner provided for by law. An animal that escapes from a facility
19 is considered to be public property if the operator of a sporting
20 swine estate (Class I) does not notify the department in compliance
21 with the standards established under this act.

22 (2) An owner shall not abandon a licensed sporting swine
23 estate (Class I) without first notifying the department in
24 compliance with the standards established under this act.

25 (3) A person shall not intentionally or knowingly cause the
26 ingress of feral swine species into a licensed sporting swine
27 estate (Class I).

1 (4) A person violating subsection (1) or (2) is guilty of a
2 misdemeanor punishable by a fine of not more than \$300.00 or
3 imprisonment for not more than 90 days, or both, for a first
4 offense and is guilty of a misdemeanor punishable by a fine of not
5 more than \$1,000.00, or imprisonment for not more than 1 year, or
6 both, for a second or subsequent offense.

7 (5) Notwithstanding subsection (4), a person intentionally or
8 knowingly violating subsection (1) or (2) or violating subsection
9 (3) is guilty of a felony.

10 Sec. 35. (1) A court may allow the department to recover
11 reasonable costs and attorney fees incurred in a prosecution
12 resulting in a conviction for a violation of section 31 or 33.

13 (2) The director, upon finding that a person has violated any
14 provisions of this act, an order issued by the director as a result
15 of an informal or administrative hearing, or a rule promulgated
16 under this act, may do any of the following:

17 (a) Issue a warning.

18 (b) Impose an administrative fine of not more than \$1,000.00
19 per day, plus the costs of investigation, for each violation after
20 notice and an opportunity for a hearing. A person aggrieved by an
21 administrative fine issued under this section may request a hearing
22 pursuant to the administrative procedures act of 1969, 1969 PA 306,
23 MCL 24.201 to 24.328.

24 (c) Issue an appearance ticket as described and authorized by
25 sections 9a to 9g of chapter 4 of the code of criminal procedure,
26 1927 PA 175, MCL 764.9a to 764.9g.

27 (d) Place a quarantine upon the sporting swine estate (Class

1 I) disallowing any movement of animals, dead or alive, until
2 certain requirements imposed by the director are met.

3 (3) The director shall advise the attorney general of the
4 failure of any person to pay an administrative fine imposed under
5 this section. The attorney general shall bring a civil action in a
6 court of competent jurisdiction to recover the fine. Administrative
7 fines collected shall be paid to the general fund.

8 (4) Notwithstanding any other provision of this act, the
9 director may bring an action to do either or both of the following:

10 (a) Obtain a declaratory judgment that a method, activity, or
11 practice is a violation of this act.

12 (b) Obtain an injunction against a person who is engaging in a
13 method, activity, or practice that violates this act.

14 (5) The remedies under this act are cumulative and use of 1
15 remedy does not bar the use of another unless otherwise prohibited
16 by law.

17 Sec. 37. This act takes effect January 1, 2011.

18 Sec. 39. This act does not take effect unless all of the
19 following bills of the 95th Legislature are enacted into law:

20 (a) Senate Bill No. ___ or House Bill No. 6385(request no.
21 06053'10 a).

22 (b) Senate Bill No. ___ or House Bill No. 6386(request no.
23 06053'10 b).