

Legislative Analysis



SPORTING SWINE MARKETING ACT

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 4503 (H-6), 4506 (H-2), and 4699 (H-1)
Sponsor: Rep. Ed McBroom

House Bills 4504 (H-3) and 4505 (H-2)
Sponsor: Rep. Sharon Tyler
Committee: Agriculture

Complete to 8-31-11

A SUMMARY OF HOUSE BILLS 4503-4506 & 4699 AS PASSED BY THE HOUSE JUNE 30, 2011

House Bill 4503 (Substitute H-6) would create a new act, "the Sporting Swine Marketing Act," which would require a person operating a sporting swine livestock operation to obtain a three year registration from the Department of Natural Resources (DNR). The DNR could conduct activities to develop and assist the sporting swine industry and would have to administer the act in consultation with the Department of Agriculture and Rural Development (MDARD).

The term "sporting swine livestock operation" encompasses breeding operations and shooting operations. Shooting operations involve hunting on privately controlled land that is capable of holding and containing sporting swine for hunting purposes.

[This new act would resemble, in part, the Privately Owned Cervidae Producers Marketing Act, referred to as the Cervidae Act, which authorizes and regulates the commercial raising of cervids -- that is, various species of animals in the deer family, such as deer, elk, moose, caribou, and reindeer.]

House Bill 4504 (Substitute H-3) would amend the Natural Resources and Environmental Protection Act to exclude sporting swine species from the definition of "game." It would also exclude sporting swine in sporting swine operations from provisions that allow the Department of Natural Resources to regulate the taking or killing of all fish, game and fur-bearing animals, and game birds. (These exemptions are similar to those provided to privately owned Cervidae.) Additionally, it would prohibit the Natural Resources Commission from listing sporting swine regulated under the Sporting Swine Marketing Act as a prohibited or restricted species.

House Bill 4505 (Substitute H-2) would amend the Cervidae Act (Public Act 190 of 2000) to allow a Cervidae livestock operation to be operated as both a Cervidae livestock operation and a sporting swine livestock operation provided the owner meets the requirements of both the Cervidae Act and the Sporting Swine Marketing Act. Additionally, a Cervidae livestock operation that is also registered as a sporting swine

livestock operation would not be subject to the fees under the Cervidae Act as long as it has paid all fees associated with the Sporting Swine Marketing Act.

House Bill 4506 (Substitute H-2) would amend the Code of Criminal Procedure to put felony penalties contained in the Sporting Swine Marketing Act into sentencing guidelines. (It would also rewrite some existing descriptions of felonies.)

House Bill 4699 (Substitute H-1) would amend the Animal Industry Act to prohibit indemnification payments from being made for sporting swine on a sporting swine livestock operation. However, if a disease eradication effort is ordered by the director for a sporting swine operation, the department would be required to develop a herd depopulation plan.

House Bill 4503 (H-6) is tie barred to HB 4504, HB 4505, HB 4506, and HB 4699.
House Bill 4504 (H-3) is tie barred to HB 4503, HB 4505, HB 4506, and HB 4699.
House Bill 4505 (H-2) is tie barred to HB 4503, HB 4504, HB 4506, and HB 4699.
House Bill 4506 (H-2) is tie barred to HB 4503, HB 4504, HB 4505, and HB 4699.
House Bill 4699 (H-1) is tie barred to HB 4503, HB 4504, HB 4505, and HB 4506.

Note that House Bill 4699 was not part of the original bill package introduced March 24, 2011; it was introduced separately on May 31, 2011. In addition, House Bill 4507, a bill to amend the Cervidae Act to transfer administration of the act from the DNR to the MDARD, was part of the original bill package but has not been passed by the House.

The following are the major provisions of **House Bill 4503**.

Sporting Swine Livestock Operations as Agricultural Enterprises

- A registered sporting swine livestock operation would be considered an agricultural enterprise and part of the farming and agricultural industry of the state. The DNR would have to ensure that such operations are afforded all rights, privileges, opportunities, and responsibilities of other agricultural enterprises. The bill also specifies that these operations are a form of agriculture and the operations and their equipment would be considered agricultural facilities and equipment. Such an operation would be considered an agricultural use.
- Sporting swine products and species lawfully produced, purchased, possessed, or acquired from within the state or imported into the state would be the exclusive and private property of the owner. (These products include tusks, capes, hides, meat, or any part of the animal, among other things.) The movement, importing, or exporting of sporting swine species would have to comply with the Animal Industry Act (MCL 287.701).

Registration Requirements

- Sporting swine livestock operations would need to obtain a registration from the DNR (unless exempt under statute or rule). Zoos would be exempt. An operation in existence when the new act took effect would have 60 days to apply for registration.
- Applications for registration would have to be accompanied by a business plan that contains elements listed in the bill, including the complete address of the proposed operation, the proposed site of the operation and the size and location of each enclosure; whether the operation was for breeding or shooting or both; biosecurity measures to be used; methods of flushing animals from enclosures; the proposed record-keeping system; the current zoning of the property, whether the local unit of government has ordinances regarding fences, whether the operation meets those ordinances, and whether any variances from local ordinances have been granted. An application for registration is good for three years. If the applicant requests to have both a swine operation and a cervidae operation at the same swine operation, the DNR must issue each enclosure a unique registration number but cannot require additional fees.
- Upon receiving an application, the DNR would have to forward a copy to the Department of Agriculture and Rural Development and send a written notice to the appropriate local units of government. (Local units would not need to be notified if the proposed operation was already registered as a cervidae livestock facility or if the department determined that the land is zoned agricultural under a local zoning ordinance.) Local units would have 30 days to respond, indicating whether the proposed operation would violate an existing ordinance. If it would, the applicant would have to obtain a variance from the local unit. Failure to do so would void the application. The department will process applications in the order they are received. An operation that was in existence on the effective date of the new act may continue operations during the application process until the department makes a decision on an application.
- Applications must include a place where an applicant can check a box acknowledging that he or she carries liability coverage for bodily harm or property damage in an amount not less than \$1 million per occurrence exclusive of legal defense costs for bodily injury and property damage to third parties caused by the release of sporting swine from a sporting swine livestock operation. In lieu of insurance, a person may acknowledge that he or she maintains a financial mechanism that will provide the same level of financial responsibility as an insurance policy. The individual must provide proof of insurance or other financial responsibility, upon request.
- The DNR would review the site plan for an application for an operation on a proposed site of 200 acres or larger. Within 30 days, the department would approve the plan if it determines the size and location of enclosures would not

place unreasonable stress on wildlife habitat or migration corridors. Otherwise it would disapprove the plan and give the reasons. The DNR would provide written notice of its decision to the Agriculture Department. The Agriculture Department would have to enter into a memorandum of understanding with the DNR containing a process for reviewing the siting of new operations, determining compliance, and conducting investigations.

Application Fees/Sporting Livestock Fund

- The department would charge the following non-refundable fees for sporting swine livestock operations:
 - ** A \$2,500 annual registration fee.
 - ** A \$1,000 pre-registration inspection fee. The inspection fees charged in each of the second and third years of a three-year registration would be \$1,000.
 - **A \$500 fee for a second pre-registration inspection.
- Fees would be deposited into a newly created Sporting Livestock Fund, with the proceeds only to be used for the administration of the new act and the Cervidae Act.

Registration and Inspection

- The department would be required to approve an application for registration within 60 days of receiving it as long as all of the following conditions are met:
 - The owner agrees to meet the requirements of this act.
 - The disease surveillance plan includes the ongoing testing for pseudorabies virus and brucellosis using a 95/10 sampling methodology and testing to maintain qualified pseudorabies negative herd status and validated swine brucellosis free herd status.
 - The property of the operation is not located within Deer Management Unit 452 (as found in the DNR's 2010 Deer Management Unit map).
 - The property of the operation is not under quarantine under the Animal Industry Act.
 - A site plan has been approved (when applicable) under this act.
 - There are fewer than 65 operations with approved application or registration.
- If an application is denied the applicant can request an informal department review of the application, which would involve input from the applicant and the two state departments. Within 30 days of receiving a request for review the department has to determine whether the proposed operation complies with the requirements of this act. The department would be required to specifically address the deficiencies in an application it denies for a second time. Applicants

that are denied under this section cannot resubmit another application under this act for at least four years.

- An approved application is valid for three years and authorizes the construction of a sporting swine livestock operation, but for operations not in existence on the effective date of this act, it does not authorize the sporting swine livestock operation to be populated with sporting swine.
- Within six months after the effective date of this act, a sporting swine livestock operation that was in existence on the effective date would be required to submit to the DNR, in writing, a request for inspection. For an operation that was not in existence on the effective date, following construction of the operation in compliance with an approved application, the applicant has to submit a written request for an inspection. Within 30 days the department would be required to conduct an inspection of the operation. If the operation is in compliance, the department has 30 days to issue a registration. If the operation is not in compliance, the registration will be denied and the applicant will receive a written explanation within 30 days. The department is not required to make more than two pre-registration inspections of the same operation.
- An applicant could request a hearing under the Administrative Procedures Act when denied a registration.
- The department would be required to establish an expedited registration renewal process whereby an operation would submit an application not later than 60 days before the expiration of a registration and the department would then make a decision within 30 days. The bill specifies that there would be a general presumption that the department would renew a registration upon timely submission of a renewal application and application fee.
- If an operation is sold or transferred, the owner would have to provide written notice to the department. The proposed transfer notice would have to be accompanied by a \$250 transfer fee. Within 30 days the department has to review whether the proposed transferee is eligible to receive a registration. The term of the registration could not be extended from the term provided in the registration being transferred.
- The owner of an operation could submit a request for the decommissioning of an operation. The department would approve the request if it could be conducted in a manner that does not create a risk to the environment, other free-ranging animals, and domestic livestock.

Sporting Swine as Livestock/Testing/Documentation

- Sporting swine would have to be cared for and managed as livestock.

- All sporting swine must have a clearly visible permanent individual official identification before reaching 50 pounds and must have a second identification, which may be an electronic identification tag, a tattoo, or a freeze brand. Facilities that are currently operating have one year after a registration is issued to be in compliance with these requirements.
- Feral swine could not be captured and used in sporting swine operations.
- Persons registered under the act would have to keep and maintain records of production, purchases, and imports so as to be able to establish proof of ownership. A person transporting swine would need to be able to produce documentation containing the origin of shipment and other kinds of documentation required under the Animal Industry Act. An owner would have to keep records of all disease tests, sporting swine species harvested, and all purchases of sporting swine. Records would have to be kept for seven years and be available at the department's request. Records of the number of animals bought, sold, killed on an operation, or that died a natural death must be sent to the department quarterly.
- Viscera and other body parts from an operation would have to be disposed of in accordance with Public Act 239 of 1982, which deals with the bodies of dead animals.

Escaping/Fencing

- An operation would have to be maintained so as to prevent captive sporting swine species from escaping. Fencing would have to be approved by the DNR and comply with requirements specified in the bill. For example, fencing would need to be at least 10 feet high for enclosures at sporting swine operations and 8 feet high at breeding operations. Fencing would have to be anchored to the ground, contain skirting of at least 1.5 feet, be buried at least 12 inches, or contain an operational electric wire. A minimum of 6 to 12 feet clear of trees would have to be maintained on each side of the fence, depending on when the operation came into existence. Fences would also have to meet the gate requirements as specified in the bill. Fencing would have to be inspected weekly and the inspection documented.

Enforcement/Inspection/Penalties

- An operation's owner would have to grant the DNR or its authorized agent access at all reasonable hours to inspect and determine if the act was being violated and to secure samples and specimens of sporting swine species. Inspections would have to be conducted so as to not jeopardize the health of the swine.
- A sporting swine livestock operation must be inspected annually. The department could contract with persons it has trained to conduct inspections during the second

and third years of a registration to confirm escape prevention measures exist and to confirm compliance with the act generally.

- If it discovered a violation, the department could (1) issue a warning; (2) impose an administrative fine up to \$1,000 plus the costs of investigation for each violation, after a notice and an opportunity for a hearing; (3) issue an appearance ticket; or (4) place a quarantine on the operation disallowing movement of animals until certain requirements were met. A person aggrieved by a fine could request a hearing under the Administrative Procedures Act. The attorney general could bring a civil action to recover any fine a person had failed to pay. Fines would go to the new Sporting Livestock Fund.
- The DNR could also (1) obtain a declaratory judgment that a method, activity, or practice was a violation of the act and/or (2) obtain an injunction against a person engaging in a method, activity, or practice in violation of the act.
- Remedies under the act would be cumulative and the use of one remedy would not bar the use of another unless specifically prohibited.
- The department could, after an opportunity for an administrative hearing, deny, suspend, revoke, or limit a registration for the failure to comply with the act.
- Generally, a violation of the act would be a misdemeanor punishable by a fine of not less than \$300 or more than \$1,000 and/or imprisonment for not less than 30 days or more than 90 days.
- A person who releases or allows the release of a sporting swine species or who abandons a sporting swine livestock operation without notifying the DNR would be guilty of a misdemeanor. A first offense would be punishable by a fine of not more than \$500 and/or imprisonment for not more than 90 days. A second or subsequent offense would be punishable by a fine of not more than \$2,000 and/or imprisonment for not more than one year.
- However, a person who intentionally allows the release of sporting swine or abandons an operation, or who intentionally and knowingly causes the ingress of feral swine into a sporting swine operation would be guilty of a felony punishable by imprisonment for up to four years and/or a fine of up to \$50,000.

FISCAL IMPACT:

House Bill 4503 would create a new act, "the Sporting Swine Marketing Act" to authorize and regulate the raising of "sporting swine" as an agricultural enterprise in the state. The proposed act would be similar to the act that authorizes and regulates the commercial raising of cervids (i.e. various species of animals in the deer family, such as deer, elk, moose, caribou, and reindeer), the Privately Owned Cervidae Producers Marketing Act.

We note, however, that the bill directs the department, i.e. the DNR, to ensure sporting swine livestock operations are "*afforded all rights, privileges, opportunities, and responsibilities of other agricultural enterprises.*" Under the Cervidae Act, the MDARD is directed to ensure that cervidae livestock operations are "*afforded all rights, privileges, opportunities, and responsibilities of other agricultural enterprises.*"

The bill would establish a licensing and regulatory program for "sporting swine livestock operations," and provides for various registration and inspection fees. Revenue generated from these fees would be credited to a new "Sporting Livestock Fund" the use of which would be restricted; money in the fund could only be expended, upon appropriation, to administer the new act and the Privately Owned Cervidae Producers Marketing Act.

To the extent that the bill creates a new state regulatory program, it would result in additional state costs. The additional state costs, and the restricted revenue generated by the proposed registration and licensing fees in **House Bill 4503 (H-6)** can only be roughly estimated at this time.

The cost to the state would be dependent on several factors including the number of applicants and the extent of the regulatory activity.

The bill indicates that "a sporting swine operation shall be inspected annually."

The bill would allow the owner of a sporting swine operation to contract with individuals certified by the DNR to conduct second and third year inspections. To the extent that contract inspectors were paid by owners, and not by the state of Michigan, there would be a reduction in state costs. However, it is not clear to what extent contract inspectors would have legal authority or incentive to enforce provisions of the bill.

The amount of fee revenue generated would depend primarily on the number of applicants. Fee revenue for the "Sporting Livestock Fund" would also be affected by the number of swine facilities that were also registered as cervid facilities under the Privately Owned Cervidae Producers Marketing Act—under provisions of House Bill 4505 (H-2) a cervidae livestock operation that was also registered as a sporting swine livestock operation would not be subject to the fees under the Cervidae Act as long as it had paid all fees associated with the Sporting Swine Marketing Act.

House Bill 4503 (H-6) would require an annual \$2,500 registration fee, an initial \$1,000 inspection fee, and \$1,000 annual inspection fees for the second and third year of the three-year registration period – in effect, annual total fee costs to registrants of \$3,500. Assuming 65 registrants, this fee structure would generate total fee revenue of \$227,500. The bill also provides for a second preregistration fee of \$500; however, although not explicitly stated in the bill, it appears that this fee would be assessed only if applicants failed the initial inspection and a second pre-registration inspection was required.

The DNR estimates that of the approximately 65 swine hunting facilities in Michigan, approximately 50 are also cervid hunting facilities. To the extent that House Bill 4505

(H-2) would exempt cervid operations that were also licensed as sporting swine operations from cervid licensing fees there would be an effective annual loss of \$12,500 in cervid fee revenue. As a result, net annual fee revenue for credit to the Sporting Livestock Fund under the bills would be \$215,000 (\$227,500 sporting swine fee revenue less \$12,500 decrease in Cervid Act licensing fees). Again, this estimate is based on 65 sporting swine applicants, of whom, 50 were also registered cervid facilities.

In October 2010, the Michigan Department of Natural Resources estimated the on-going annual costs of a sporting swine regulatory program—application review, site plan review, on-site inspection activities—to be approximately \$265,000, exclusive of additional costs related to field enforcement activities.

In February 2011, the Michigan Department of Agriculture and Rural Development estimated costs related to the swine shooting industry program disease surveillance and monitoring to be approximately \$315,000. The department indicated that some of these costs could be absorbed by existing Animal Industry appropriations, including General Fund appropriations, but that an additional \$190,000 in baseline funding would be required annually.

In addition to routine and on-going costs, the state could experience event-driven costs, in the same way that the costs of the cervid regulatory program increased significantly after the confirmation in August 2008 of Chronic Wasting Disease (CWD) in a deer held on a privately-owned cervid facility in Kent County.

If regulatory fee revenue generated by fees established under the proposed "Sporting Swine Marketing Act" did not cover the costs of activities mandated under the act, the additional costs would be borne by the state General Fund, to the extent that such funds were available and appropriated. Fees currently established under the Cervidae Act have not covered the costs of the state regulatory program established under that act and the shortfall has been made up with state General Fund revenue.

Under the bill, a sporting swine livestock operation would be considered an agricultural enterprise and part of the farming and agricultural industry of the state. The bill would attempt to convey benefits on the sporting swine industry enjoyed by traditional agricultural enterprises—protection under the Right to Farm Act, shelter from certain property taxes under the General Property Tax Act and the Michigan Natural Resources and Environmental Protection Act, and reduced vehicle registration taxes under the Michigan Vehicle Code.

Note that under the bill package as first introduced, owners of sporting swine would have been entitled to indemnification for diseased animals killed under the authority of the Animal Industry Act. House Bill 4699, introduced subsequent to the introduction of the original bill package, would amend the Animal Industry Act to prohibit indemnification payments from being made for sporting swine on a sporting swine livestock operation.

For a detailed analysis related to these issues, see House Fiscal Agency memo dated October 5, 2010, *The Treatment of Game Animals as Livestock in Michigan: Fiscal and Regulatory Issues*.

[http://www.house.mi.gov/hfa/PDFs/animal_industry\(pub_v2\).pdf](http://www.house.mi.gov/hfa/PDFs/animal_industry(pub_v2).pdf)

For a detailed discussion of fiscal issues specific to sporting swine, See House Fiscal Agency memo dated June 25, 2008, *Pseudorabies Outbreak and the Fiscal Impact*.

<http://www.house.mi.gov/hfa/PDFs/pseudorabies.pdf>

POSITIONS

The Michigan Department of Natural Resources supports the bills pending Senate amendments. (6-7-11)

Michigan Farm Bureau supports the concept of the bills. (5-18-11)

Michigan Animal Farmers Association supports the bills. (5-4-11)

United Deer Farmers of Michigan support the bills. (5-11-11)

The National Rifle Association supports the bills. (5-18-11)

A representative of Thunder Hills Ranch indicated support for the bills. (5-4-11)

A representative of Deer Tracks Ranch indicated support for the bills. (5-4-11)

A representative of Trophy Ranch, Inc. indicated support for the bills. (5-4-11)

A representative of Sunrise Safaris indicated support for the bills. (5-11-11)

A representative of Bear Mountain Farms indicated support for the bills. (5-4-11)

A representative of Superior Game Ranch indicated support for the bills. (5-11-11)

The Michigan Corn Growers Association opposes the bills. (5-18-11)

The Michigan Soybean Association opposes the bills. (5-18-11)

The Michigan Agri-Business Association opposes the bills. (4-13-11)

The Michigan Wildlife Conservancy opposes the bills. (5-18-11)

The Michigan Pork Producers Association opposes the bills. (5-18-11)

The Nature Conservancy opposes the bills. (4-13-11)

The Michigan Milk Producers Association opposes the bills. (5-4-11)

The Michigan United Conservation Clubs opposes the bills. (5-18-11)

The Michigan Environmental Council opposes the bills. (4-13-11)

Greenstone Farm Credit Services opposes the bills. (5-4-11)

Saginaw Valley Field and Stream opposes the bills. (5-4-11)

Michigan Trout Unlimited opposes the bills. (5-4-11)

The Michigan State Council of Pheasants Forever opposes the bills. (5-18-11)

The Humane Society of the United States opposes the bills. (5-18-11)

Legislative Analyst: Jeff Stoutenburg
Fiscal Analyst: William E. Hamilton

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.