

Legislative Analysis



ANIMAL CARE STANDARDS

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House Bill 5127

Sponsor: Rep. Mike Simpson

House Bill 5128

Sponsor: Rep. Jeff Mayes

Committee: Agriculture

Complete to 8-5-09

A REVISED SUMMARY OF HOUSE BILLS 5127 AND 5128 AS INTRODUCED 6-23-09

The bills would amend the Animal Industry Act (MCL 287.701 et seq.) to establish animal care guidelines, a third-party auditing and certification program, and the Animal Care Advisory Council. The bills are tie-barred to each other, meaning that unless both were enacted, neither would take effect.

House Bill 5127 would do the following:

- Grant the Michigan Department of Agriculture (MDA) and the Commission of Agriculture sole authority to regulate livestock health and welfare.
- Adopt specified guidelines developed by national agricultural interest groups as they existed on the bill's effective date as the standards with which Michigan farmers would have to comply by July 1, 2020; allow the Advisory Council created in the companion bill to suggest additional species-specific standards.
- Define the term "farm" for this act the same way it is defined in the Michigan Right to Farm Act, which is a very broad definition with no minimum size requirement.
- Require the MDA to develop a system of third-party auditors (within 24 months of the bill's effective date) to audit and certify whether farms are in compliance with the animal care guidelines; require MDA to set fees to be paid by farms for audits and certifications.
- Make audits and any information provided by farms in connection with audits private information exempt from the Freedom of Information Act.
- Make the certification of a farm found to be in compliance last indefinitely, subject to the MDA's right to request written information from the farm periodically.
- Require the MDA to provide written notice, a reasonable time to comply, and a progressive system designed to help the farm achieve compliance for a farm found in non-compliance. (A farm found not to be in compliance could also request a contested case hearing and would have rights of appeal and judicial review.)
- Allow the Commission of Agriculture to adopt exemptions from the standards.
- Ban state funds from being used to educate the public about or advocate for different animal care standards.

- Preempt any local ordinances covering animal care standards for animals covered by the act.
- Establish a presumption that animals cared for in compliance with the standards are not being treated cruelly or inhumanely.

House Bill 5128 would establish the Animal Care Advisory Council and prescribe its membership, officers, and duties.

DETAILED SUMMARY:

House Bill 5127

Sole regulatory authority. The MDA and the Commission of Agriculture would have the "sole authority" to regulate livestock health and welfare and to enforce standards and rules issued or developed under specified subsections of Section 8a of the act:

8a(2) (animal care standards), 8a(8)(additional species-specific standards), and 8a(11)(administrative rules).

Animal care standards. The MDA would adopt and incorporate by reference the following standards (in the form they exist as of the bill's effective date) as the department's animal care standards:

- **Pork Quality Assurance Plus** (National Pork Board, 2007)
- **National Dairy Farm Program: Farmers Assuring Responsible Management** (National Milk Producers Federation, 2009) (Note: These guidelines currently exist only in draft form but are expected to be finalized by October, 2009)
- **United Egg Producers-Animal Husbandry Guidelines for United States Egg-Laying Flocks** (United Egg Producers, 2008)
- **National Chicken Council Animal Welfare Guidelines** (National Chicken Council, 2005)
- **Animal Care Best Management Practices for the Care of Turkeys** (National Turkey Federation, 2004)
- **Beef Quality Assurance Program** (National Cattlemen's Beef Association, 2009)
- **Veal Quality Assurance Program** (American Veal Association, 2009)

Compliance deadline. Farms subject to the act would have to comply with these standards by July 1, 2020.

[Note: "Farm," as defined in the companion bill (House Bill 5128) means "that term as defined in Section 2 of the Michigan Right to Farm Act, 1981 PA 93, MCL 286.572." Presumably, then, any farm that qualifies as a farm under the Right to Farm Act would be a farm "subject to the act" required to comply with the bill's animal standards. The definition of "farm" in the Right to Farm Act is an extremely broad definition with no minimum size requirement. Section 2 of the Right to Farm Act defines "farm" as:

"Farm" means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products. (MCL 286.572(a))

"Farm product" means those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan commission of agriculture. (MCL 286.572(c))]

Review of standards. After July 1, 2020, the MDA and Animal Care Advisory Council to be created by the companion bill (House Bill 5128), would have to review the animal care standards at least every five years to make recommendations to the Commission of Agriculture regarding any changes, including implementation guidelines.

Third-party audits & certification system. The MDA would have to establish a system to audit whether farms comply with the animal care standards. The department would have to approve and train private, third-party entities to conduct the audits and certify farms that comply with the standards. The MDA would have to establish this system within 24 months of the bill's effective date.

Fees. The MDA would have to impose and collect fees, approved by the Commission of Agriculture, sufficient to cover the cost of the third-party auditing program. The owner or operator (not the MDA or the State of Michigan) would be responsible for the cost of the audit.

Privacy of audit; FOIA exemption. An audit conducted by at third-party auditor under the act would be considered a "private transaction" between that entity and the owner or operator of the farm. In addition, any information submitted by the farm or on its behalf would be exempt from disclosure under the Freedom of Information Act.

Duration of compliance certification. A certified farm would be considered in compliance with the animal care standards "until otherwise determined." The MDA could request the farm to submit information or documents periodically, no later than five years from the date of the farm's last certification.

Finding of non-compliance; enforcement; contested case hearings. If a third-party auditor determined that a farm is not in compliance with the animal care standards, it would have to notify the MDA and the MDA would notify the farm's owner or operator in writing. The department would have to give the owner or operator "a reasonable time

to achieve compliance," as recommended by the Commission of Agriculture. The MDA would have to establish a progressive enforcement mechanism designed to aid farms in achieving compliance with the animal care standards. A farm owner or operator that contested a finding of non-compliance could request a contested case hearing under the Administrative Procedures act and exercise any right to appeal or for judicial review provided by that act.

Additional species-specific standards. The council could review standards that are not already addressed in the act and recommend to the MDA and the Commission of Agriculture additional standards on a species-by-species basis.

Exemptions. The Commission of Agriculture, upon the recommendation of the council, could exempt farms "involved in specialized markets" for research or educational purposes.

Ban on using state funds to educate the public about or promote different standards. State funds could not be used to educate the public or promote animal care standards inconsistent with those adopted in the bill.

Preemption of local ordinances. A local unit of government could not enforce any ordinance involving animal care standards applying to livestock covered by the act. The act would specifically preempt "any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or animal care standards adopted under this section."

Presumption that compliance equates to no cruelty or inhumane treatment. The bill includes a presumption that "the raising, keeping, care, treatment, marketing, or sale of animals in compliance with the standards adopted under this section does not constitute cruelty to, or the inhumane treatment of, livestock."

Rules. The MDA director, in consultation with the council and the Commission of Agriculture, could promulgate rules under the Administrative Procedures Act to update, substitute, or amend the animal care standards.

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Animal Care Advisory Council. The bill would create an Animal Advisory Council within MDA, with nine voting members. Except for the MDA director (a non-voting member of the council), council members would be appointed by the MDA director from lists of potential appointees supplied by the organization or interest groups noted below. Members would serve four-year terms, which would be staggered by having some appointees' initial term last for six years, rather than four.

- The MDA Director or his or her designee (non-voting, ex officio member).

- Two veterinarians specializing in food animal and livestock health issues (Michigan Veterinary Medical Association; one veterinarian would have an initial six-year term).
- Two individuals directly involved in agriculture production (agricultural commodity producers covered by the act; one agricultural producer would have an initial six-year term).
- One animal welfare and husbandry researcher with internationally recognized peer-reviewed published research (the Dean of MSU's College of Agriculture and Natural Resources; initial six-year term).
- One individual representing an animal welfare agency (Michigan Humane Society; initial six-year term)
- One individual representing the food processing industry in Michigan (Michigan Food Processors Association; initial six-year term).
- One individual representing the retail food industry in Michigan (Michigan Grocer's Association).
- One individual representing restaurants (Michigan Restaurant Association).

Council officers. The council would elect a chair and vice-chair who would serve an initial term of two years. After that, terms would last one year. Officers could serve additional consecutive terms. The MDA director would serve as the council's secretary.

Council duties. The council's function would be to make recommendations to the MDA and the Commission. It would have to do the following specific things:

- Within 18 months of the bill's effective date, review the on-farm certification program for animal care standards based on sound scientific principles. It could make recommendations through subcommittees appointed by the council that included noncouncil members who specialize in science-based species-specific issues.
- At least every five years, consider and change species-specific science-based animal care standards and implementation guidelines that consider changes to developments in existing national standards.
- Develop a process and fee for the certification of third-party auditors by the MDA. Auditors would pay a fee to the MDA for certification.

Definitions. As noted previously, the term "farm" would have the same meaning in these bills as it has in the Michigan Right to Farm Act, MCL 286.472.

FISCAL IMPACT:

The department has provided a preliminary estimate of costs associated with the proposed bills. The department estimates annual costs of administering the animal care standards program to be between \$200,000 and \$250,000. The actual costs would be affected by the scope of the program as defined in administrative rules.

House Bill 5127 indicates that the department "shall impose and collect fees sufficient, as approved by the commission of agriculture, to cover the costs of establishing the approval of third-party entities to conduct farm audits and administer the farm certification process." The bill does not appear to specify how the fees would be assessed or on whom. And the bill is unclear whether the fees are intended to cover the one-time costs of establishing the program, or the ongoing costs for administering the program.

House Bill 5128 would establish an Animal Care Advisory Council within the department. The bill directs the Council to "develop a process for the certification of third-party auditors by the department and impose an appropriate fee to be paid by the third-party auditor to the department for certification." It is not clear if the Council would impose the proposed fee or would simply advise the Commission of Agriculture regarding the imposition of fees.

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■ 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.