

SENATE BILL No. 310

March 24, 2011, Introduced by Senator HUNE and referred to the Committee on Agriculture.

A bill to regulate raising of swine as an agricultural enterprise in this state; to provide powers and duties of certain state agencies and officials; and to prescribe penalties and provide 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. 2. 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

1 taken to prevent the transmission of disease in, among, or between
2 privately owned swine species.

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

6 (d) "Department" means the department of agriculture and rural
7 development.

8 (e) "Director" means the director of the department or his or
9 her designee.

10 (f) "Farm operation" means that term as defined in section 2
11 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

12 (g) "Feral swine" means that term as it is defined in section
13 3 of the animal industry act, 1988 PA 466, MCL 287.703.

14 (h) "Flush" or "flushed" means to move or chase wildlife from
15 a sporting swine livestock operation.

16 (i) "Identification" means any documentable system or process
17 that allows a person to recognize as separate or different an
18 individual animal.

19 (j) "Law enforcement officer" means a person appointed by the
20 state or a local governmental unit who is responsible for the
21 enforcement of the criminal laws of this state.

22 (k) "Livestock" means that term as it is defined in section 5
23 of the animal industry act, 1988 PA 466, MCL 287.705.

24 (l) "Owner" means the person who owns or is responsible for a
25 sporting swine livestock operation.

26 (m) "Person" means an individual, partnership, corporation,
27 association, governmental entity, or other legal entity.

1 (n) "Premises identification number" means the number assigned
2 by the department to identify a sporting swine livestock operation.

3 (o) "Registration" means a registration issued by the
4 department under section 10 authorizing the operation of a sporting
5 swine livestock operation.

6 (p) "Release" means to allow an animal not under the direct
7 control of the owner to become located outside the perimeter fence
8 of a sporting swine livestock operation.

9 (q) "Sporting swine breeding operation" means an operation
10 that contains 1 or more privately owned sporting swine species
11 involving the producing, growing, propagating, using, harvesting,
12 transporting, exporting, importing, or marketing of sporting swine
13 species or sporting swine products.

14 (r) "Sporting swine livestock operation" means a sporting
15 swine breeding operation or a sporting swine shooting operation, or
16 both.

17 (s) "Sporting swine products" means any products, coproducts,
18 or by-products of sporting swine, including tusks, capes, hides,
19 meat, or any part of the animal.

20 (t) "Sporting swine shooting operation" means a privately
21 owned operation on privately controlled lands capable of holding
22 and containing sporting swine species for the purpose of hunting.

23 (u) "Sporting swine species" means members of the swine family
24 *Sus scrofa*.

25 Sec. 3. (1) The department shall administer this act in
26 consultation with the department of natural resources.

27 (2) The department may conduct activities designed to develop

1 and assist the sporting swine industry in the manner provided for
2 by law.

3 Sec. 4. (1) A sporting swine livestock operation is an
4 agricultural enterprise and is considered to be part of the farming
5 and agricultural industry of this state. The department shall
6 ensure that sporting swine livestock operations are afforded all
7 rights, privileges, opportunities, and responsibilities of other
8 agricultural enterprises. The commission of agriculture and rural
9 development shall establish generally accepted agricultural and
10 management practices under the Michigan right to farm act, 1981 PA
11 93, MCL 286.471 to 286.474, that are applicable to sporting swine
12 livestock operations.

13 (2) Sporting swine livestock operations are a form of
14 agriculture. Sporting swine livestock operations and their
15 equipment are considered to be agricultural facilities and
16 equipment. A sporting swine livestock operation is considered an
17 agricultural use.

18 (3) Sporting swine products and sporting swine species
19 lawfully produced, purchased, possessed, or acquired from within
20 this state or imported into this state are the exclusive and
21 private property of the owner.

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

25 Sec. 5. (1) A person shall not operate a sporting swine
26 livestock operation unless he or she obtains a registration from
27 the department or unless otherwise exempt by rule or law. A

1 registration under this act does not exempt the person or sporting
2 swine livestock operation from requirements imposed under any other
3 local, state, or federal law. Zoos accredited under the zoological
4 association of America or other accreditations or standards
5 determined appropriate by and acceptable to the department are
6 exempt from this act.

7 (2) Beginning 90 days after the effective date of this act, a
8 person shall not operate a sporting swine livestock operation that
9 was in existence on the effective date of this act, unless the
10 sporting swine livestock operation has applied for a registration
11 under this act.

12 Sec. 6. (1) A sporting swine livestock operation shall be
13 maintained to prevent captive sporting swine species from escaping.
14 Fencing shall be approved by the department and shall comply with
15 all of the following:

16 (a) Fencing shall be a standard high-tensile game fence and
17 shall not contain holes larger than 4 inches by 4 inches below 4.5
18 feet.

19 (b) Fencing shall be a minimum of 8 feet high for enclosures
20 at sporting swine shooting operations.

21 (c) Fencing shall be a minimum of 5 feet high for enclosures
22 at sporting swine breeding operations.

23 (d) Fencing shall be constructed in compliance with at least 1
24 of the following:

25 (i) Be anchored to the ground.

26 (ii) Contain skirting.

27 (iii) Be buried.

1 (iv) Contain an operational electric wire.

2 (e) A minimum of 12 feet clear of trees shall be maintained on
3 each side of the fence.

4 (2) The owner or owner's designee shall conduct and complete a
5 weekly inspection of fencing at a sporting swine livestock
6 operation and shall document the weekly inspection.

7 Sec. 7. (1) All imported and exported sporting swine at a
8 sporting swine livestock operation shall have clearly visible
9 permanent individual official identification as provided for in the
10 animal industry act, 1988 PA 466, MCL 287.701 to 287.746. In
11 addition, all sporting swine breeding operations providing animals
12 to sporting swine shooting operations shall have permanent
13 individual animal identification on all swine before reaching 50
14 pounds.

15 (2) Sporting swine at a sporting swine livestock operation
16 shall be cared for and managed as livestock.

17 (3) All sporting swine at a sporting swine livestock operation
18 shall have a negative pseudorabies test within 30 days before
19 entering the sporting swine livestock operation or must originate
20 from a qualified negative pseudorabies herd. The department may
21 require other appropriate tests after giving at least a 30-day
22 notice to all licensed sporting swine livestock operations.

23 (4) Feral swine shall not be captured and used in sporting
24 swine livestock operations.

25 (5) A person registered under this act to operate a sporting
26 swine livestock operation shall keep and maintain records of
27 production, purchases, or imports necessary to establish proof of

1 ownership. A person transporting sporting swine species shall
2 produce documentation that contains the origin of shipment,
3 registration or registration copies or documentation, documentation
4 demonstrating shipping destination, and any other proof that may be
5 required under the animal industry act, 1988 PA 466, MCL 287.701 to
6 287.746, upon request of the department or a law enforcement
7 officer. An owner shall keep records of all sporting swine species
8 harvested and all purchases of sporting swine, including dates of
9 sale and the names and addresses of purchasers. Records shall be
10 kept by the owner for a minimum of 7 years and shall be available
11 upon request of the department.

12 (6) As determined by the herd management plan, a blood sample
13 of hunter-killed swine shall be drawn and sent to a department-
14 approved laboratory, at the expense of the owner, and tested for
15 pseudorabies, brucellosis, and any other disease the department
16 considers necessary. The laboratory shall send the results of the
17 tests to the owner and to the department.

18 (7) Viscera and other body parts from a sporting swine
19 livestock operation shall be disposed of in accordance with 1982 PA
20 239, MCL 287.651 to 287.683.

21 (8) If a sporting swine is found to be positive for
22 pseudorabies or brucellosis, herd testing protocol established by
23 the director under the animal industry act, 1988 PA 466, MCL
24 287.701 to 287.746, shall be followed. If the herd testing protocol
25 indicates that the herd is positive, the director shall order the
26 depopulation of the herd. A new herd management plan shall be
27 approved by the director and implemented before repopulation may

1 occur.

2 Sec. 8. (1) A person that wishes to obtain a sporting swine
3 livestock operation registration under this act shall submit an
4 application to the department. An application is valid for 3 years
5 from the date it is received by the department, after which time a
6 new application must be submitted to the department.

7 (2) As part of the application under subsection (1), the
8 applicant shall submit a business plan complying with the standards
9 established under this act that includes all of the following:

10 (a) The complete address of the proposed sporting swine
11 livestock operation and the size, location, and legal description
12 of the land upon which the sporting swine livestock operation will
13 be conducted.

14 (b) A proposed site plan for the sporting swine livestock
15 operation including the proposed size and location of each
16 enclosure at the operation.

17 (c) Whether the sporting swine livestock operation will
18 include a sporting swine breeding operation or a sporting swine
19 shooting operation, or both.

20 (d) Biosecurity measures to be utilized, including, but not
21 limited to, methods of disease surveillance, fencing, and
22 appropriate animal identification.

23 (e) The proposed method of flushing wild cervidae species from
24 enclosures, unless the sporting swine livestock operation is
25 currently registered as a cervidae livestock facility.

26 (f) A proposed record-keeping system.

27 (g) The current zoning of the property proposed as a sporting

1 swine livestock operation and whether the local unit or units of
2 government within which the sporting swine livestock operation will
3 be located have an ordinance regarding fences and whether the
4 proposed facility would be in violation of that ordinance, unless
5 the same property is currently registered as a cervidae livestock
6 facility. If a variance from an ordinance has been granted or is
7 being considered, the applicant shall include this information in
8 the application.

9 (3) Upon receipt of an application for facilities to be
10 constructed after the effective date of this act, the department
11 shall forward a copy to the department of natural resources. The
12 department shall also send a written notice to the local unit or
13 units of government within which the proposed sporting swine
14 livestock operation will be located unless the proposed sporting
15 swine livestock operation is registered as a cervidae livestock
16 facility or the department determines, from information provided in
17 the application, that the local unit of government has a zoning
18 ordinance under which the land is zoned agricultural. The local
19 unit or units of government may respond, within 30 days after
20 receipt of the written notice, indicating whether the applicant's
21 proposed sporting swine livestock operation would be in violation
22 of a currently existing ordinance. If the proposed operation would
23 be in violation of an ordinance, the applicant shall obtain a
24 variance from the local unit of government within 60 days after the
25 application is submitted. Failure to obtain a variance voids the
26 application.

27 (4) Within 60 days after receiving an application under this

1 section, the department shall issue a conditional registration for
2 a sporting swine livestock operation if all of the following are
3 met:

4 (a) The existing or proposed sporting swine livestock
5 operation agrees to meet the requirements of this act and complies
6 with the business plan submitted to the department.

7 (b) The applicant agrees to maintain fencing in compliance
8 with this act to prevent the escape or entry of sporting swine
9 species.

10 (c) The applicant agrees to utilize a method for individual
11 animal identification.

12 (d) For proposed facilities that were not in existence on the
13 effective date of this act and are 200 acres in size or larger, the
14 department of natural resources has approved a site plan for the
15 facility under section 9.

16 (5) Within 60 days of receiving an application, if the
17 department determines that the applicant has not met the
18 requirements of subsection (4), the department shall deny the
19 issuance of a conditional registration. Upon receipt of a denial
20 under this section and without filing a second application, the
21 applicant may request in writing and, if requested, the department
22 shall provide an informal department review of the application. The
23 review shall include input from the applicant, the department, and
24 the department of natural resources, if applicable. Within 30 days
25 after receiving a request for an informal review, the department
26 shall do either of the following:

27 (a) If the department determines that the proposed sporting

1 swine livestock operation complies with the requirements of
2 subsection (4), the department shall issue a conditional
3 registration.

4 (b) If the department determines that the proposed sporting
5 swine livestock operation does not comply with the requirements of
6 subsection (4), the department shall affirm the denial of the
7 conditional registration in writing and specify the deficiencies
8 needed to be addressed or corrected in order for a conditional
9 registration to be issued.

10 (6) A conditional registration issued under this section is
11 valid for 9 months from the date of approval unless an extension is
12 granted by the department. A conditional registration authorizes
13 the construction of a sporting swine livestock operation, but for
14 operations not in existence on the effective date of this act, does
15 not authorize the sporting swine livestock operation to be
16 populated with sporting swine.

17 Sec. 9. (1) Upon receipt of an application for registration
18 of a new sporting swine livestock operation under section 8 on a
19 proposed site of 200 acres or larger, the department of natural
20 resources shall review the proposed site plan contained in the
21 application. Within 30 days after receiving the application, the
22 department of natural resources shall do either of the following:

23 (a) Approve the proposed site plan if it determines that the
24 proposed size and location of the enclosures will not place
25 unreasonable stress on wildlife habitat or migration corridors.

26 (b) Disapprove the proposed site plan if it determines that
27 the proposed site plan does not meet the conditions under

1 subdivision (a) and specify the reasons for its determination.

2 (2) A sporting swine livestock operation that possesses a
3 permit to maintain wildlife in captivity issued by the department
4 of natural resources shall be considered to meet the requirements
5 of subsection (1).

6 (3) Upon making its determination under subsection (1), the
7 department of natural resources shall provide written notice of
8 its determination to the department.

9 Sec. 10. (1) Following construction of the sporting swine
10 livestock operation in compliance with a conditional registration,
11 the applicant shall notify the department in writing. Within 30
12 days after notification of the completion of the sporting swine
13 livestock operation, the department shall inspect the sporting
14 swine livestock operation. If the department determines that the
15 proposed sporting swine livestock operation complies with this act,
16 the department shall issue a registration within 30 days after
17 completion of an inspection.

18 (2) If the department determines that a proposed sporting
19 swine livestock operation does not comply with the requirements of
20 this act, the department shall deny the issuance of a registration.
21 The department shall notify in writing an applicant of the reasons
22 for a registration denial within 30 days after completion of the
23 inspection. The notice shall specify in writing the deficiencies to
24 be corrected in order for a registration to be issued.

25 (3) If the department denies the issuance of a registration
26 under subsection (2), an applicant may request a second inspection
27 after the specified deficiencies have been corrected. The

1 department is not required to make more than 2 preregistration
2 inspections of the same proposed sporting swine livestock operation
3 per application.

4 (4) Upon receipt of a second denial under this section and
5 without filing a second application, the applicant may request in
6 writing and, if requested, the department shall provide an informal
7 department review of the application. The review shall include
8 input from the applicant, the department, and the department of
9 natural resources, if applicable. After the informal department
10 review, the department shall do either of the following:

11 (a) If the department determines that the proposed sporting
12 swine livestock operation complies with the requirements of this
13 act, the department shall issue a registration within 30 days after
14 the informal department review.

15 (b) If the department determines that the proposed sporting
16 swine livestock operation does not comply with the requirements of
17 this act, the department shall affirm the denial of the application
18 in writing and specify the deficiencies needed to be addressed or
19 corrected in order for a registration to be issued.

20 (5) The applicant may request a hearing pursuant to the
21 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
22 24.328, on a denial of a registration or upon any limitations
23 placed upon the issuance of a registration.

24 (6) A registration issued by the department under this section
25 is valid for a 3-year time period.

26 Sec. 11. A registration issued by the department shall contain
27 the following information:

1 (a) The expiration date of the registration.

2 (b) The complete name, business name, business address, and
3 telephone number of the owner.

4 (c) The complete address of the sporting swine livestock
5 operation location.

6 (d) The premises identification number.

7 (e) The complete name, address, and telephone number of the
8 department contact person regarding sporting swine livestock
9 operations.

10 Sec. 12. (1) The department shall establish an expedited
11 process for renewal of a registration under this act. An
12 application for renewal of a registration shall be submitted not
13 later than 60 days before expiration of the current registration.
14 The department shall make a decision on a renewal application under
15 this subsection within 30 days after the applicant submits a
16 completed application.

17 (2) A renewal submitted later than 60 days before expiration
18 of the current registration shall require submission of an
19 application under section 8. Failure of the department to process a
20 renewal application that was submitted in a timely and complete
21 manner operates to extend the current registration until such time
22 as the department completes the processing.

23 (3) Unless otherwise indicated in writing by the department at
24 the time the department sends its renewal application, there is a
25 presumption that the department shall renew the registration upon
26 timely submission of the completed renewal application and
27 application fee.

1 (4) If a sporting swine livestock operation is sold or
2 transferred, the new owner shall notify the department in writing.
3 Within 3 months after the sale or transfer, the new owner shall
4 obtain a new registration for the sporting swine livestock
5 operation.

6 Sec. 13. (1) The owner of a sporting swine livestock operation
7 shall apply for a modification of his or her registration before
8 any change in the activities for which the registration is issued.
9 An application for a modification of a registration shall be
10 submitted in the same manner as an application for registration
11 under section 8.

12 (2) The owner of a sporting swine livestock operation may
13 submit a request to the department for decommissioning of a
14 sporting swine livestock operation. Upon receipt of a request under
15 this subsection, the department shall approve a request for
16 decommissioning as long as it is conducted in a manner that does
17 not create a risk to the environment and other free-ranging
18 animals.

19 Sec. 14. The department shall enter into a memorandum of
20 understanding with the director of the department of natural
21 resources containing a process for reviewing the siting of new
22 sporting swine livestock operations for determining compliance by
23 persons engaged in sporting swine livestock operations and
24 investigating violations of this act.

25 Sec. 15. (1) The owner shall grant the department or its
26 authorized agent access at all reasonable hours to any sporting
27 swine livestock operation to inspect and to determine if this act

1 is being violated and to secure samples or specimens of any
2 sporting swine species. An inspection shall be conducted under
3 practices designed not to jeopardize the health of the sporting
4 swine species.

5 (2) The department shall contract with persons who have
6 received training from the department to conduct an inspection
7 during the second and third years of the term of a registration of
8 a sporting swine livestock operation for confirmation that there
9 are in place procedures or barriers designed to prevent the escape
10 of sporting swine species and for confirmation of compliance with
11 other requirements of this act or as otherwise required by law.

12 Sec. 16. A person shall not knowingly provide false
13 information in a matter pertaining to this act and shall not
14 resist, impede, or hinder the department in the discharge of its
15 duties under this act.

16 Sec. 17. (1) The department, upon finding that a person has
17 violated any provision of this act, may do any of the following:

18 (a) Issue a warning.

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

25 (c) Issue an appearance ticket as described and authorized by
26 sections 9a to 9g of chapter IV of the code of criminal procedure,
27 1927 PA 175, MCL 764.9a to 764.9g.

1 (d) Place a quarantine upon the sporting swine livestock
2 operation disallowing any movement of animals until certain
3 requirements imposed by the department are met.

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

9 (3) Notwithstanding any other provision of this act, the
10 department may bring an action to do either or both of the
11 following:

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

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

16 (4) The remedies under this act are cumulative, and use of 1
17 remedy does not bar the use of another unless otherwise prohibited
18 by law.

19 Sec. 18. (1) After an opportunity for an administrative
20 hearing, the department may deny, suspend, revoke, or limit a
21 registration if the registrant fails to comply with this act.

22 (2) Except in the case of an informal departmental review, the
23 department shall conduct an administrative proceeding under this
24 act pursuant to the administrative procedures act of 1969, 1969 PA
25 306, MCL 24.201 to 24.328.

26 Sec. 19. Except as otherwise provided in section 20, a person
27 that violates this act is guilty of a misdemeanor punishable by a

1 fine of not less than \$300.00 or more than \$1,000.00 or
2 imprisonment for not less than 30 days or more than 90 days, or
3 both.

4 Sec. 20. (1) A person shall not release or allow the release
5 of any sporting swine species. This section does not prohibit the
6 sale, breeding, marketing, exhibition, or other approved uses of
7 sporting swine species in the manner provided for by law. An animal
8 that escapes from a sporting swine livestock operation is
9 considered to be public property if the operator of a sporting
10 swine livestock operation does not notify the department.

11 (2) An owner shall not abandon a registered sporting swine
12 livestock operation without first notifying the department.

13 (3) A person shall not intentionally or knowingly cause the
14 ingress of feral swine species into a sporting swine livestock
15 operation.

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

22 (5) Notwithstanding subsection (4), a person who intentionally
23 or knowingly violates subsection (1) or (2) or who violates
24 subsection (3) is guilty of a felony punishable by imprisonment for
25 not more than 4 years or a fine of not more than \$5,000.00, or
26 both.

27 (6) A court may allow the department to recover reasonable

1 costs and attorney fees incurred in a prosecution resulting in a
2 conviction for a violation of this act.

3 Enacting section 1. This act does not take effect unless all
4 of the following bills of the 96th Legislature are enacted into
5 law:

6 (a) Senate Bill No. 309.

7

8 (b) Senate Bill No. 308.

9

10 (c) Senate Bill No. 307.

11