WEST VIRGINIA CODE CHAPTER 19 ARTICLE 2H

WV Legislature

§19-2H-1. Short title; legislative findings.

(a) This article shall be called the Captive Cervid Farming Act.

(b) The Legislature finds that captive cervid farming is primarily an agricultural business and that captive cervids should be regulated like other livestock.

(c) The Legislature further finds that the Department of Agriculture possesses the knowledge, training and expertise to regulate captive cervid farming as an agricultural business and to adequately protect the health and safety of animals and the general public. Matters related to licensure, the sale of venison, animal health and testing, fencing, interstate and intrastate movement, animal identification system, recordkeeping, animal husbandry, equipment and other related matters shall be regulated by the department.

WV Legislature

§19-2H-2. Definitions.

As used in this article:

(a) "Biosecurity" means measures, actions or precautions taken to prevent the transmission of disease in, among or between free-ranging and captive cervids.

(b) "Captive cervid" or the plural means a member of the Cervidae family of animals including, but not limited to, fallow deer, red deer, white-tailed deer, axis deer, elk, moose, reindeer and caribou which are domesticated animals under the control of the owner of the animal.

(c) "Captive cervid farming facility", "facility" or the plural means the captive cervids, property, fenced area, operations and equipment regulated and licensed by the department pursuant to this article.

(d) "Commissioner" means the Commissioner of the West Virginia Department of Agriculture.

(e) "Department" means the West Virginia Department of Agriculture.

(f) "Identification system" means a process or procedure that allows an individual cervid to be continuously recognized as a unique animal throughout its lifetime.

(g) "License" means the authorization issued by the department for the operation of a captive cervid farming facility pursuant to this article.

(h) "Owner" means the person who owns or operates a captive cervid farming facility.

(i) "Person" means an individual, corporation, limited liability company, partnership, association, joint venture or other legal entity.

(j) "Release" means to allow a cervid from a licensed captive cervid farming facility to be outside the perimeter fence of that licensed captive cervid farming facility without being under the direct control of the owner or his or her agent.

WV Legislature

§19-2H-3. Authority of the department; duties and obligations of the commissioner.

(a) The department is hereby granted authority to regulate captive cervid farming facilities in this state in accordance with this article. Subject to the transition provisions contained in this article, no person may operate a captive cervid farming facility in this state unless that person holds a license issued by the commissioner pursuant to this article.

(b) The commissioner or his or her designees may:

(1) Establish a section and designate staff responsible for the enforcement of this article;

(2) Contract with veterinarians, biologists or other professionals to implement this article;

(3) Enter into contracts or compacts with state agencies or other states to enhance the biosecurity of captive cervid farming facilities in this and other states;

(4) Lease, rent, purchase, construct, maintain, operate, sell, encumber or assign rights of real or personal property to meet the objectives of this article;

(5) Hold hearings, subpoena witnesses, administer oaths, take testimony, require the production of evidence and designate hearing examiners and employees;

(6) Take any other action necessary or incidental to the performance of his or her duties pursuant to this article;

(7) Regulate the movement of captive cervids and require the documentation of the origin and destination of all shipments of captive cervids; and

(8) Prohibit captive cervid facilities in this state from receiving live captive cervids or any byproduct thereof, or captive cervid genetic materials from a captive cervid facility that has had a confirmed chronic wasting disease or tuberculosis positive cervid in the last sixty months.

WV Legislature

§19-2H-4. Application for license.

(a) A person desiring to operate a captive cervid farming facility in this state must submit an application for a license to the department. The department shall provide the forms and instructions for the filing of applications.

(b) The application form shall require submission of the following information:

(1) The mailing address of the proposed captive cervid farming facility and the size, location and an adequate legal description of the facility;

(2) The number of each species of cervid to be included in the proposed facility;

(3) The biosecurity measures to be utilized;

(4) The proposed method of flushing wild cervids from the enclosure, if applicable;

(5) The proposed record-keeping system;

(6) The method of verification that all wild cervids have been removed;

(7) The current zoning of the property proposed for the facility; and

(8) Any other information requested by the department.

(c) The application shall be accompanied by the annual license fee as follows:

(1) Class one license. -- For a facility to breed and propagate captive cervids, and create cervid byproducts, for sale to others, $375; or

(2) Class two license. -- For a facility to breed, propagate, harvest or slaughter captive cervids, create cervid byproducts, permit hunting of captive cervids or sell venison to others, $750.

WV Legislature

§19-2H-5. Action on applications.

(a) The department shall act on a complete application for a license within sixty days of receipt. The department may issue a provisional license for a proposed facility that has not yet been constructed, but operations shall not begin under a provisional license until the fully constructed facility has been inspected and approved by the department.

(b) The department may not issue a license until the commissioner has determined that the facility meets all of the following criteria:

(1) The facility has been inspected by the department and it meets the requirements of this article and the rules promulgated thereunder;

(2) The applicant has all necessary federal, state and local governmental permits; and

(3) The owner has paid all applicable license fees and all departmental charges for services provided to the facility.

(c) If the department finds a deficiency in the license application, then the owner shall be given at least thirty days to remedy the deficiency before the license application is denied.

(d) If the department finds that the proposed captive cervid farming facility does not comply with the requirements of this article, then the owner shall be given at least thirty days to remedy the deficiency at the facility before the license application is denied.

(e) The applicant may request a hearing, pursuant to article five, chapter twenty-nine-a of this code, to contest the denial of a license or any limitations placed upon the issuance of a license.

(f) The department shall retain the license fee for its services in the event a license is denied.

WV Legislature

§19-2H-6. License certificate; renewal; sale or transfer of license.

(a) Once approved, the department shall issue a license certificate to the owner of a captive cervid farming facility containing the following information:

(1) The class of license, the license number and expiration date;

(2) The captive cervid species and number of captive cervids approved for the licensed facility; and

(3) The name, business address and telephone number of the owner and of the captive cervid farming facility.

(b) An application for renewal of a license shall be submitted on forms provided by the department sixty days prior to the expiration of the current license. Each license issued shall be for a period of one year from the date of issuance.

(c) The sale or transfer of ownership of a captive cervid farming facility will not operate to transfer the license. The department may issue a new license to the transferee if all license requirements and fees are satisfied.

WV Legislature

§19-2H-7. License modification.

An owner shall apply to the department for a license modification if there is any proposed change in the class of license, cervid species, number of captive cervids or other requirement necessitating an application for modification.

WV Legislature

§19-2H-8. Inspection of facility by the department.

The department shall have access at all reasonable hours to any captive cervid farming facility to conduct inspections, secure samples or specimens or determine whether the owner is in compliance with the requirements of this article. Inspections and sampling shall be conducted in a manner which will not unnecessarily jeopardize the health of the captive cervids.

WV Legislature

§19-2H-9. Transition to captive cervid farming licenses; statutory conflicts.

(a) A captive cervid farming facility in existence on the effective date of this article may continue operation under its existing authorization until the department acts on its application so long as the facility applies for a license under this article within sixty days after application forms are made available.

(b) Notwithstanding any other provision of the law to the contrary, an owner or an owner's customer harvesting captive cervids from a captive cervid farming facility is not subject to laws regarding possession limits and closed seasons. Further, a facility is not subject to sections thirteen, fourteen and forty-seven, article two, chapter twenty of this code or the rules promulgated thereunder.

WV Legislature

§19-2H-10. Administrative penalties; hearing.

(a) Upon finding that a person has violated any requirement or rule promulgated under this article, the commissioner may:

(1) Issue a warning;

(2) Impose a civil penalty of not more than $1,000 plus the costs of investigation for each violation;

(3) Suspend, revoke or modify a license;

(4) Obtain a declaratory judgment that a particular action is a violation of this article; or

(5) Obtain an injunction.

(b) A person aggrieved by an administrative action under this section may request an informal hearing or a hearing pursuant to article five, chapter twenty-nine-a of this code.

WV Legislature

§19-2H-11. Prohibited conduct; criminal penalties.

(a) A person may not release or permit the release of any captive cervids from a captive cervid farming facility.

(b) A person may not cause the entry or introduction of wild cervids into a captive cervid farming facility.

(c) An owner may not cease operation of or abandon a captive cervid farming facility without complying with the requirements and rules promulgated under this article.

(d) Any person who violates subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than ninety days, or fined not more than $300, or both fined and confined for a first offense. Any person who violates subsection (a) or (b) of this section for a second or subsequent offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, or fined not more than $1,000, or both fined and confined.

(e) Any person who intentionally or knowingly violates subsection (a), (b) or (c) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than three years, or fined not more than $1,000, or both fined and imprisoned.

(f) A person may not kill, injure, or take any captive cervid that is the property of another. A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than $500 and pay restitution pursuant to sections four and five, article eleven-a, chapter sixty-one of this code.

WV Legislature

§19-2H-12. Rulemaking.

(a) The commissioner shall propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement and enforce this article. The rules shall be consistent with the rules of the United States Department of Agriculture in so far as practicable. Any rules promulgated by the commissioner before September 1, 2015, may be emergency rules.

(b) The rules shall include, but not be limited to:

(1) Preventing the spread of diseases between captive and wild cervids;

(2) Implementing an identification system that allows individual captive cervids to be recognized and identified throughout the animal's life;

(3) Establishing specifications for fencing necessary to prevent the escape of captive cervids and the infiltration of wild cervids into a captive cervid farming facility;

(4) Specifying record-keeping standards required of captive cervid farming facilities, including standards for documenting purchases, propagation, sales, harvesting, sales of venison and other documentation required to maintain accurate and complete business records;

(5) Establishing animal health testing criteria, inoculation requirements and statistical information to track, discover and prevent the spread of animal diseases, including chronic wasting disease;

(6) Regulating the intrastate and interstate movement of captive cervids and maintaining documentation of the origin and destination of all cervid shipments, disease and identification records and any other requisite documentation;

(7) Creating regulations for the sale and slaughtering of captive cervids for venison;

(8) Establishing a schedule of fees and charges for services provided by the department to captive cervid farming facilities; and

(9) Procedures for captive cervid farming facilities to close and wind down operations.

WV Legislature