

2005 DRAFTING REQUEST

Bill

Received: **10/20/2004**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Gunderson (608) 266-3363**

By/Representing: **mike Bruhn**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Agriculture - animals**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gunderson@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Give DATCP authority over all requirements concerning fencing of captive deer

Instructions:

Like 03-3650/1

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 10/21/2004	wjackson 10/30/2004		_____			S&L
/1			pgreensl 11/01/2004	_____	sbasford 11/01/2004	lnorthro 02/11/2005	

FE Sent For:

<END>

↳ At Intro.

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LRB-0568

11/01/2004 12:31:50 PM

Page 2

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/?	btradewe		11/1 PS	11/1 PSTch			

FE Sent For:

<END>

Tradewell, Becky

From: Bruhn, Mike
Sent: Wednesday, October 20, 2004 2:57 PM
To: Tradewell, Becky
Subject: drafting

Becky,

Can you begin re-drafting LRB-3650/1 for the 2005-2007 Legislative Session. Please call me at 266-3363 with any questions.

Thanks,

Mike Bruhn
Rep. Gunderson's office

Sections Affected Post-Drafting-Check For 03-3650/1

Thursday, October 21, 2004 10:11 am

Current Wisconsin Statutes updated through 2003 Act 327

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
20.370(1)(mu) of	(aff. 2001 WisAct 109) am. effec. 7-1-2003 WisAct 109 2001	
20.370(1)(mu)	(aff. 2001 WisAct 109, s. 36db) am.	Act 0033
20.370(1)(mu) Act 0321	(aff. 2001 WisAct 56, 2001 WisAct 109, s. 36d) am.	
20.370(1)(mu)	effec. 7-1-2003	Act 0321
23.50(1)	am.	Act 0139
23.50(1)	(aff. 2003 WisAct 139) am.	Act 0276

Cross-Reference Post-Drafting-Check For 03-3650/1

Thursday, October 21, 2004 10:08 am

TREATMENT	REFERENCE
20.115 to 20.765	16.528(4)
20.115 to 20.855	16.54(9)(c)
20.115 to 20.875	20.001(3)(a)
20.115 to 20.875	20.001(3)(b)
20.115 to 20.875	20.001(3)(c)
20.115 to 20.875	20.001(3)(d)
20.115 to 20.875	20.001(3)(intro.)
20.115 to 20.875	20.002(7)
20.115 to 20.875	20.003(3)(a)
20.115 to 20.875	20.004(2)
20.370(1)(mu)	20.285(1)(kf)
20.370(1)(mu)	29.598(2)
20.370(1)(mu)	30.203(9)
20.370(3)(mu)	167.31(5)(d)
20.370(3)(mu)	169.46(1)(e)
20.370(3)(mu)	169.46(2)(e)
20.370(3)(mu)	29.987(2)
20.370(3)(mu)	29.989(2)
23.50 to 23.85	23.50(1)
23.50 to 23.85	23.50(2)
23.50(1)	23.50(4)
23.50(1)	23.51(1m)
23.50 to 23.85	23.51(intro.)
23.50(1)	23.53(1)
23.50(1)	23.56(1)
23.50(1)	23.57(1)(intro.)
23.50(1)	23.58
23.50(1)	23.59
23.50(1)	23.60
23.50(1)	23.62(1)(intro.)
23.50 to 23.99	25.29(1)(a)
23.50 to 23.99	281.48(5s)(a)
23.50 to 23.99	283.89(2m)
23.50 to 23.99	285.57(4)
23.50 to 23.99	285.59(7)
23.50 to 23.99	285.86(1)
23.50 to 23.99	287.95(4)
23.50(1)	29.921(1)
23.50 to 23.99	299.64(3)

23.50 to 23.99	299.85(7)(am)
23.50 to 23.85	345.11(1m)
23.50 to 23.85	345.11(1r)
23.50 to 23.85	345.20(2)(f)
23.50 to 23.85	345.20(2)(g)
23.50 to 23.85	77.09(2)
23.50 to 23.85	77.905
23.50 to 23.85	778.104
23.50 to 23.67	938.237(2)
25.29(1)(a)	23.0917(5m)(b)2.
90.20(3)	90.20(2)(a)
90.20(4)	90.20(2)(a)
90.20(3)	90.20(2)(b)
90.20(4)	90.20(2)(b)
90.21(6)	169.04(5m)(a)2.
90.21	169.38(1)(intro.)
90.21(6)	169.38(2)(d)
90.21	20.370(1)(mu)
90.21	20.370(3)(mu)
90.21	23.50(1)
90.21	23.65(1)
90.21	23.795(4)
90.21(8)(b)	23.795(4)
90.21	25.29(1)(a)
90.21	25.29(4m)
90.21	895.57(3)
90.21	90.20(2)(intro.)
90.21(6)	90.21(2)(b)
90.21(3)(a)	90.21(3)(c)
90.21(3)(b)	90.21(3)(c)
90.21(6)	90.21(5)
90.21(6)	90.21(7)
90.21(8)(a)	90.21(8)(b)
90.21(7)	90.21(8)(c)1.
90.21	943.75(3)
169.38(1)	169.38(2)(intro.)
943.75(3)	943.75(4)

2003 BILL

LPS:
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1 AN ACT *to repeal* 23.795 (4), 90.20, 90.21 (title), (1) to (3) and (5) to (8) and 169.38
 2 (2) (d); *to renumber and amend* 90.21 (4); and *to amend* 20.370 (1) (mu),
 3 20.370 (3) (mu), 23.50 (1), 23.65 (1), 25.29 (1) (a), 25.29 (4m), 95.55 (6) (a), 169.38
 4 (1) (intro.), 895.57 (3) and 943.75 (3) of the statutes; **relating to:** fencing of
 5 farm-raised deer and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill relates to requirements for fences confining deer that are kept in captivity (farm-raised deer). Under current law, a person who keeps farm-raised deer, other than white-tailed deer, must keep the deer confined by a fence that meets specific requirements that are set out in the statutes. The statutes do not give any state agency authority to enforce these requirements. A person who keeps white-tailed deer must obtain a fence inspection certificate from the Department of Natural Resources (DNR). To obtain a fence inspection certificate, the person must comply with requirements for fences that DNR establishes by rule. Also under current law, a person who keeps any kind of farm-raised deer is required to register with the Department of Agriculture, Trade and Consumer Protection (DATCP).

This bill requires DATCP to promulgate by rule requirements for fences to confine farm-raised deer and repeals the current statute relating to fencing of farm-raised deer that are not white-tailed deer. The bill also ~~repeals~~ DNR's authority over fencing of white-tailed deer.

of all kinds

eliminates

BILL

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 20.370 (1) (mu) of the statutes, as affected by 2003 Wisconsin Act

2 33 is amended to read:

3 20.370 (1) (mu) *General program operations — state funds.* The amounts in
4 the schedule for general program operations that do not relate to the management
5 and protection of the state's fishery resources and that are conducted under ss. 23.09
6 to 23.11, 27.01, 30.203, and 30.277, ~~and 90.21~~, and chs. 29 and 169 and for transfers
7 to the appropriation account under s. 20.285 (1) (kf).

8 SECTION 2. 20.370 (3) (mu) of the statutes is amended to read:

9 20.370 (3) (mu) *General program operations — state funds.* The amounts in
10 the schedule for law enforcement operations under ss. 23.09 to 23.11, ~~90.21~~, and
11 166.04 and chs. 29, 30, and 169 and for review of environmental impact requirements
12 under ss. 1.11 and 23.40.

Insert
2-12 13 SECTION 3. 23.50 (1) of the statutes, as affected by 2003 Wisconsin Act
14 (Assembly Bill 421), is amended to read:

15 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
16 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
17 for violations of ss. 77.09, ~~90.21~~, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),
18 283.33, 285.57 (2), 285.59 (2), (3) (c), and (4), 287.07, 287.08, 287.81, and 299.64 (2),
19 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
20 administrative rules promulgated thereunder, violations specified under s. 285.86,
21 violations of ch. 951 if the animal involved is a captive wild animal, violations of rules

BILL

1 of the Kickapoo reserve management board under s. 41.41 (7) (k), or violations of local
 2 ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or
 3 30.77.

4 **SECTION 4.** 23.65 (1) of the statutes is amended to read:

5 23.65 (1) When it appears to the district attorney that a violation of s. ~~90.21,~~
 6 134.60, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c), and (4), 287.07, 287.08,
 7 287.81, or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or 350, or any
 8 administrative rule promulgated pursuant thereto, a violation specified under s.
 9 285.86, or a violation of ch. 951, if the animal involved is a captive wild animal, has
 10 been committed the district attorney may proceed by complaint and summons.

11 **SECTION 5.** 23.795 (4) of the statutes is repealed.

12 **SECTION 6.** 25.29 (1) (a) of the statutes is amended to read:

13 25.29 (1) (a) Except as provided in ss. 25.293 and 25.295, all moneys accruing
 14 to the state for or in behalf of the department under chs. 26, 27, 28, 29, 169, and 350,
 15 subchs. I and VI of ch. 77 and ss. 23.09 to 23.31, 23.325 to 23.42, 23.50 to 23.99, 30.50
 16 to 30.55, 70.58, 71.10 (5), 71.30 (10), and ~~90.21~~ 95.55 (5m), including grants received
 17 from the federal government or any of its agencies except as otherwise provided by
 18 law.

19 **SECTION 7.** 25.29 (4m) of the statutes is amended to read:

20 25.29 (4m) No moneys that accrue to the state for or in behalf of the department
 21 under ch. 29 or 169 ^{stat} ~~or s. 90.21~~ 95.55 (5m) may be expended or paid for the enforcement of the
 22 treaty-based, off-reservation rights to fish held by members of federally recognized
 23 American Indian tribes or bands domiciled in Wisconsin.

24 **SECTION 8.** 90.20 of the statutes is repealed.

25 **SECTION 9.** 90.21 (title), (1) to (3) and (5) to (8) of the statutes are repealed.

BILL**SECTION 10**

1 **SECTION 10.** 90.21 (4) of the statutes is renumbered 95.55 (5m) and amended
2 to read:

3 95.55 (5m) NEW OPERATIONS; DRIVING OUT OF WILD DEER. A person who is starting
4 an operation to keep farm-raised deer that are white-tailed deer and who is applying
5 ~~for a fence inspection certificate to be registered~~ under this section shall make a
6 reasonable effort to drive any wild white-tailed deer from the area to be fenced before
7 the area is completely closed. No person may place any baiting material in attempt
8 to attract white-tailed deer to remain in the fenced area. ~~If the department issues~~
9 ~~a certificate under this section,~~ The applicant shall notify the department of natural
10 resources after the area is completely closed and the department of natural resources
11 shall determine whether any white-tailed deer remaining in the area after the area
12 is completely closed will be killed or will be sold to the ~~holder of the certificate~~
13 applicant. If the white-tailed deer are to be killed, the department of natural
14 resources shall determine how the deer will be killed. If the white-tailed deer are
15 to be sold, the ~~holder of the certificate~~ applicant shall pay the department of natural
16 resources the fair market value for each deer.

17 **SECTION 11.** 95.55 (6) (a) of the statutes is amended to read:

18 95.55 (6) (a) The department shall promulgate rules to regulate persons who
19 keep farm-raised deer. The rules shall establish disease testing requirements for
20 bovine tuberculosis and chronic wasting disease and may establish testing
21 requirements for other diseases. The rules shall also include requirements for fences
22 for confining farm-raised deer.

23 **SECTION 12.** 169.38 (1) (intro.) of the statutes is amended to read:

24 169.38 (1) DEPARTMENTAL AUTHORITY. (intro.) For purposes of enforcing s. 90.21
25 and rules promulgated under that section and ch. 29 and rules promulgated under

Insert
4-23

BILL

1 that chapter, with respect to a person who keeps farm-raised deer that are
2 white-tailed deer, and for purposes of enforcing this chapter and ch. 29 and rules
3 promulgated under this chapter and ch. 29, with respect to a person who keeps
4 farm-raised game birds or wild animals under a license issued under s. 95.68, 95.69,
5 or 95.71, a conservation warden or representative of the department, upon
6 presenting his or her credentials to that person, may do any of the following:

7 **SECTION 13.** 169.38 (2) (d) of the statutes is repealed.

8 **SECTION 14.** 895.57 (3) of the statutes is amended to read:

9 895.57 (3) Subsection (2) does not apply to any humane officer, local health
10 officer, peace officer, employee of the department of natural resources while on any
11 land licensed under s. 169.15, 169.18, or 169.19, ~~subject to certification under s.~~
12 ~~90.21,~~ or designated as a wildlife refuge under s. 29.621 (1), or employee of the
13 department of agriculture, trade and consumer protection if the officer's or
14 employee's acts are in good faith and in an apparently authorized and reasonable
15 fulfillment of his or her duties.

16 **SECTION 15.** 943.75 (3) of the statutes is amended to read:

17 943.75 (3) Subsections (2) and (2m) do not apply to any humane officer, local
18 health officer, peace officer, employee of the department of natural resources while
19 on any land licensed under s. 169.15, 169.18, or 169.19, ~~subject to certification under~~
20 ~~s. 90.21,~~ or designated as a wildlife refuge under s. 29.621 (1), or employee of the
21 department of agriculture, trade and consumer protection if the officer's or
22 employee's acts are in good faith and in an apparently authorized and reasonable
23 fulfillment of his or her duties. This subsection does not limit any other person from
24 claiming the defense of privilege under s. 939.45 (3).

25 **SECTION 16. Nonstatutory provisions.**

BILL

1 (1) PROPOSED RULES. The department of agriculture, trade and consumer
 2 protection shall submit in proposed form the rules required under section 95.55 (6)
 3 (a) of the statutes, as affected by this act, relating to the fencing of farm-raised deer
 4 to the legislative council staff under section 227.15 (1) of the statutes no later than
 5 the first day of the ^{10th} 13th month beginning after the effective date of this subsection

6 **SECTION 17. Effective dates.** This act takes effect on the first day of the 18th
 7 month beginning after publication, except as follows:

8 (1) The treatment of SECTION 16 takes effect on the day after publication.

9 (END)

*3 unless the secretary of administration requires the department to
 prepare an economic impact report under section
 227.137¹ of the statutes for the proposed rules*

DNote¹

Section #. 23.50 (1) of the statutes is amended to read:

* 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of ss. 77.09, ~~90.21~~, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any administrative rules promulgated thereunder, violations specified under s. 285.86, violations of ch. 951 if the animal involved is a captive wild animal, violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k), violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

History: 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 703b, 2102 (39) (f); 1981 c. 390; 1985 a 36; 1987 a. 27; 1987 a. 200 s. 4; 1989 a. 79, 284, 335, 359; 1991 a. 39, 97; 1993 a. 16, 243, 344, 349, 491; 1995 a. 27, 216, 227, 290; 1997 a. 35; 1999 a. 9; 2001 a. 56; 2003 a. 139, 276.

Insert 4-22

- US68/1

Section #. 169.04 (5m) (a) 2. of the statutes is amended to read:

169.04 (5m) (a) 2. The license holder keeps the deer within a fenced area that has a double perimeter fence around the area and that complies with all of the requirements under the rules promulgated under s. ~~90.21 (6)~~ 95055 (6) (a) ✓

History: 2001 a. 56 ss. 75, 224; 2003 a. 179.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

0568
LRB-3650/1dn
RCT:wlj:rs

March 15, 2004

This draft relates to fencing of farm-raised deer.

The draft repeals the existing statutes concerning deer fencing, ss. 90.20 and 90.21, except for one part of s. 90.21 that does not relate to the characteristics of fences. Current s. 90.21 (4) relates to wild deer ~~than~~^{that} might be confined within a new white-tailed deer farm. Rather than repeal that, I moved it to the section on farm-raised deer, s. 95.55.

I included a delayed effective date to give DATCP time to get its rules promulgated. If DATCP does not get the rules promulgated before the current fencing statutes are repealed, there will be no legal requirements concerning deer fencing. If this is a concern, it should be possible to come up with an approach that will ensure that there is no gap in regulation.

Please let me know if you have questions or want any changes to the draft.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

to the rule-making provisions of

Not This may be more likely to occur given the changes made in ch 227 during the 2003 legislative session. If the DATCP is required to prepare an economic impact report under section 227.137 of the statute, the secretary of administration will be required to review and approve the rule under 50 227.138 of the statute and there is no statutory limit on how long this process may take.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0568/1dn
RCT:wlj:pg

November 1, 2004

This draft relates to fencing of farm-raised deer.

The draft repeals the existing statutes concerning deer fencing, ss. 90.20 and 90.21, except for one part of s. 90.21 that does not relate to the characteristics of fences. Current s. 90.21 (4) relates to wild deer that might be confined within a new white-tailed deer farm. Rather than repeal that, I moved it to the section on farm-raised deer, s. 95.55.

I included a delayed effective date to give DATCP time to get its rules promulgated. If DATCP does not get the rules promulgated before the current fencing statutes are repealed, there will be no legal requirements concerning deer fencing. This may be more likely to occur given the changes made to the rule-making provisions of ch. 227 during the 2003 legislative session. If DATCP is required to prepare an economic impact report under section 227.137 of the statutes, the secretary of administration will be required to review and approve the rules under s. 227.138 of the statutes and there is no statutory limit on how long this process may take. If this is a concern, it should be possible to come up with an approach that will ensure that there is no gap in regulation.

Please let me know if you have questions or want any changes to the draft.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Northrop, Lori

From: Bruhn, Mike
Sent: Friday, February 11, 2005 10:32 AM
To: LRB.Legal
Subject: Draft review: LRB 05-0568/1 Topic: Give DATCP authority over all requirements concerning fencing of captive deer

It has been requested by <Bruhn, Mike> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0568/1 Topic: Give DATCP authority over all requirements concerning fencing of captive deer