

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1237/1dn
MGG:wlj:ch

January 31, 2000

1. Pursuant to your instructions, I have deleted all of the following provisions relating to rule-making authority: ss. 22.15 (5), 22.16 (6), 22.17 (3), 22.18 (5) (c), 22.19 (6), 22.20 (4), 22.21 (3), 22.23 (3), 22.25 (6), 22.26 (4), 22.27 (4) and 22.28 (4). I modified but did not delete the rule-making authority for rehabilitation license. See s. 22.24 (3) and the drafter's note below. However, it is unclear to me, and I think it could well be unclear to a court, whether all of these provisions duplicate generic rule-making authority under s. 227.11. Under s. 227.11 (2) (a), DNR may only promulgate rules that "interpret" the provisions of the statutes that it enforces and administers. I am not sure whether "interpreting" includes imposing additional standards, limitations and requirements.

Furthermore, some of the deleted rule-making authority is quite specific. Sections 22.15 (5) and 22.16 (6) refer to requirements for fencing farms. Sections 22.20 (4) and 22.21 (3) refer to standards that provide adequate protection for the wild animals that are used in dog training and dog trials. Section 22.23 (3) refers to specifying species of wild animals that may be introduced and to specifying where they may be introduced.

Finally, eliminating the word "qualified" from most of these provisions makes it even less clear what authority DNR has in determining who will receive these licenses. Any person who files a "proper" application and pays the fee will receive the license. While some of the licensing provisions have statutory requirements that an applicant must meet, many do not. This is particularly true of deer farm licenses, white-tailed deer venison sales licenses, hound dog training licenses, dog trial licenses and stocking licenses.

2. There has to be a reference in ch. 22 to the rules in ch. 29 regarding falconry. Otherwise, since a raptor is a "captive wild animal", some other ch. 22 license will be necessary in order to possess, exhibit, propagate or conduct other falconry activities.

3. Regarding the exemption from the statutory requirements for rehabilitation licenses, there really are not any statutory requirements (except for the age requirements) so I left in language concerning requirements to be promulgated as rules. Please let me know if you want any changes.

4. Note that "possess" is defined in reviewing the change in the language concerning service of notice of a quarantine order under s. 22.41 (2) (intro.). The "person possessing" the wild animal can be a caretaker or an absent owner. OK?

5. I have made the changes that were requested regarding ch. 173. Due to time constraints, I have not been able to determine whether using ss. 29.931 and 29.934 sufficiently protects the due process rights of owners of animals subject to regulation under ch. 22. In drafting this legislation, I had purposely used ch. 173 as the vehicle for establishing these procedures. First, ch. 173 has no definition of “animal”. Even though DATCP may take the position that it does not cover wild animals subject to regulation under ch. 22, there is room for argument to the contrary. Secondly, ch. 173 amply protects the due process rights of the animal owner. Finally ch. 173 covers unclaimed and abandoned live animals. Chapter 29 does not address this since the animals are wild and presumably can just be released. Note that s. 22.42 (1) authorizes wardens to accept abandoned, stray and unwanted animals, those involved in fights and those delivered by veterinarians. But there are no specific procedures as to what DNR is to do with them. OK?

If the concern is having DNR procedures comingled with those in ch. 173, perhaps parallel provisions could be created in ch. 22.

Also note in amending s. 29.931, I only included ch. 22 in one cross-reference. DNR’s inspection authority for ch. 22 is found in s. 22.37.

6. I did not think any changes were necessary to s. 29.936 (1) and (2) in light of the changes to s. 29.931 (1) and (2) (a) in this draft.

7. As requested, I have eliminated the repeal of s. 29.873. I feel that this issue should be addressed in ch. 22, but due to time constraints and the language in s. 29.873 being so sweeping, I have not done so. Note the change I made in s. 22.44 (1). If this change is not made, DNR could fail to specify the fur-bearing animals covered by s. 29.873 as being domesticated animals for purposes of ch. 22 and thereby subject them to regulation under ch. 22.

8. I have made the change you requested in s. 93.07 (10) (b). I do not think it gives DATCP specific inspection authority, however. I therefore have also created s. 95.23 (5). OK?

9. Regarding DATCP’s role: do you want to take out lines 1 to 4 on page 60 or lines 21 to 23 on page 61? Do you want to remove the reference to DATCP on page 63, lines 8 and 9?

10. Please review my changes regarding reptiles and amphibians carefully. Note that I deleted s. 22.15 (1) (c). I also changed s. 22.12 (4) to parallel s. 22.12 (1). I did not think it made sense to follow rules for possessing and taking reptiles and amphibians and then require a Class A license to sell them. It seemed to me that the concept of purchasing these animals is absent from the draft so I included that in s. 22.12 (4). OK?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215