



2005 ASSEMBLY BILL 420

May 12, 2005 – Introduced by Representatives GUNDERSON, PETTIS, BALLWEG, BIES, FREESE, GRONEMUS, HINES, MURSAU, MUSSER, NASS, NERISON, OWENS, VAN ROY, M. WILLIAMS and KESTELL, cosponsored by Senator OLSEN. Referred to Committee on Natural Resources.

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, 23.65 (1), 25.29 (1) (a), 25.29 (4m), 95.55 (6) (a), 169.04
4 (5m) (a) 2., 169.38 (1) (intro.), 895.57 (3) and 943.75 (3) of the statutes; **relating**
5 **to:** fencing of 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 of all kinds and repeals the current statute relating to fencing of farm-raised deer that are not white-tailed deer. The bill also eliminates DNR's authority over fencing of white-tailed deer.

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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 is amended to read:

2 20.370 (1) (mu) *General program operations — state funds.* The amounts in
3 the schedule for general program operations that do not relate to the management
4 and protection of the state’s fishery resources and that are conducted under ss. 23.09
5 to 23.11, 27.01, 30.203, and 30.277,~~and 90.21,~~ and chs. 29 and 169 and for transfers
6 to the appropriation account under s. 20.285 (1) (kf).

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

8 20.370 (3) (mu) *General program operations — state funds.* The amounts in
9 the schedule for law enforcement operations under ss. 23.09 to 23.11,~~90.21,~~ and
10 166.04 and chs. 29, 30, and 169 and for review of environmental impact requirements
11 under ss. 1.11 and 23.40.

12 **SECTION 3.** 23.50 of the statutes is amended to read:

13 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
14 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
15 for violations of ss. 77.09, ~~90.21,~~ 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),
16 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2),
17 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
18 administrative rules promulgated thereunder, violations specified under s. 285.86,
19 violations of ch. 951 if the animal involved is a captive wild animal, violations of rules
20 of the Kickapoo reserve management board under s. 41.41 (7) (k), violations to which

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1 s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances enacted by any local
2 authority in accordance with s. 23.33 (11) (am) or 30.77.

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

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

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

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

12 25.29 (1) (a) Except as provided in ss. 25.293 and 25.295, all moneys accruing
13 to the state for or in behalf of the department under chs. 26, 27, 28, 29, 169, and 350,
14 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
15 to 30.55, 70.58, 71.10 (5), 71.30 (10), and ~~90.21~~ 95.55 (5m), including grants received
16 from the federal government or any of its agencies except as otherwise provided by
17 law.

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

19 25.29 (4m) No moneys that accrue to the state for or in behalf of the department
20 under ch. 29 or 169 or s. ~~90.21~~ 95.55 (5m) may be expended or paid for the
21 enforcement of the treaty-based, off-reservation rights to fish held by members of
22 federally recognized American Indian tribes or bands domiciled in Wisconsin.

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

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

ASSEMBLY BILL 420**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.** 169.04 (5m) (a) 2. of the statutes is amended to read:

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1 169.04 **(5m)** (a) 2. The license holder keeps the deer within a fenced area that
2 has a double perimeter fence around the area and that complies with all of the
3 requirements under the rules promulgated under s. ~~90.21 (6)~~ 95.55 (6) (a).

4 **SECTION 13.** 169.38 (1) (intro.) of the statutes is amended to read:

5 169.38 **(1)** DEPARTMENTAL AUTHORITY. (intro.) For purposes of enforcing s. ~~90.21~~
6 ~~and rules promulgated under that section and ch. 29~~ and rules promulgated under
7 that chapter, with respect to a person who keeps farm-raised deer that are
8 white-tailed deer, and for purposes of enforcing this chapter and ch. 29 and rules
9 promulgated under this chapter and ch. 29, with respect to a person who keeps
10 farm-raised game birds or wild animals under a license issued under s. 95.68, 95.69,
11 or 95.71, a conservation warden or representative of the department, upon
12 presenting his or her credentials to that person, may do any of the following:

13 **SECTION 14.** 169.38 (2) (d) of the statutes is repealed.

14 **SECTION 15.** 895.57 (3) of the statutes is amended to read:

15 895.57 **(3)** Subsection (2) does not apply to any humane officer, local health
16 officer, peace officer, employee of the department of natural resources while on any
17 land licensed under s. 169.15, 169.18, or 169.19, ~~subject to certification under s.~~
18 ~~90.21,~~ or designated as a wildlife refuge under s. 29.621 (1), or employee of the
19 department of agriculture, trade and consumer protection if the officer's or
20 employee's acts are in good faith and in an apparently authorized and reasonable
21 fulfillment of his or her duties.

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

23 943.75 **(3)** Subsections (2) and (2m) do not apply to any humane officer, local
24 health officer, peace officer, employee of the department of natural resources while
25 on any land licensed under s. 169.15, 169.18, or 169.19, ~~subject to certification under~~

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1 s. ~~90.21~~, or designated as a wildlife refuge under s. 29.621 (1), or employee of the
2 department of agriculture, trade and consumer protection if the officer's or
3 employee's acts are in good faith and in an apparently authorized and reasonable
4 fulfillment of his or her duties. This subsection does not limit any other person from
5 claiming the defense of privilege under s. 939.45 (3).

SECTION 17. Nonstatutory provisions.

7 (1) PROPOSED RULES. The department of agriculture, trade and consumer
8 protection shall submit in proposed form the rules required under section 95.55 (6)
9 (a) of the statutes, as affected by this act, relating to the fencing of farm-raised deer
10 to the legislative council staff under section 227.15 (1) of the statutes no later than
11 the first day of the 10th month beginning after the effective date of this subsection,
12 unless the secretary of administration requires the department to prepare an
13 economic impact report under section 227.137 of the statutes for the proposed rules.

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

16 (1) SECTION 17 takes effect on the day after publication.

17 (END)