

No. 2002-190

AN ACT

HB 2842

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, further providing for definitions, for indemnification, for depopulation incentive, for membership and duties of the Food Employee Certification Advisory Board and for certification of employees; and providing for Cervidae livestock operations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2303 of Title 3 of the Pennsylvania Consolidated Statutes is amended by adding definitions to read:

§ 2303. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

“Cervidae livestock operation.” A farm operation which:

(1) contains behind fences privately owned members of the genus and species cervus elaphus involved in the production, growing, breeding, using, harvesting, transporting, exporting, importing or marketing of Cervidae species or Cervidae products; and

(2) does not allow captive bred or captive held Cervidae species to be harvested through hunting anywhere on the farm operation.

“Cleanup costs.” The costs of indemnification for cleaning, disinfecting or sanitizing domestic animals, domestic animal products, equipment, facilities, buildings and other articles, including all other costs reasonably related to cleanup, when these costs are incurred either:

(1) as required by a quarantine order issued by the department under authority of this chapter; or

(2) as part of an agreement pursuant to which the department is paying a depopulation incentive under authority of this chapter.

* * *

“Disposal costs.” The costs of indemnification for disposing of domestic animals, domestic animal products, equipment and other articles, including the cost of transportation for disposal and all other costs reasonably related to disposal, when these costs are incurred either:

(1) as required by a quarantine order issued by the department under authority of this chapter; or

(2) as part of an agreement pursuant to which the department is paying a depopulation incentive under authority of this chapter.

* * *

Section 2. Section 2331(a) and (c) of Title 3 are amended and the section is amended by adding a subsection to read:

§ 2331. Indemnification.

(a) In general.—Whenever a condemned domestic animal, domestic animal product or other condemned property is slaughtered or destroyed by order of the department to eradicate or prevent the spread of dangerous transmissible disease or contamination by a hazardous substance, the department may compensate the owner of such domestic animal, domestic animal product or other condemned property for a portion of the appraised value of the domestic animal or property *and may compensate a person for cleanup costs and disposal costs or a portion thereof*, provided that such compensation is made in accordance with this section. Notwithstanding the definition of “owner” set forth in section 2303 (relating to definitions), indemnification payments *and payments of cleanup costs and disposal costs* made under this section shall be made only to those persons who have an actual ownership interest in the domestic animal or other property that is the subject of the indemnification payment.

* * *

(b.1) Cleanup costs and disposal costs—

(1) The department may pay cleanup costs and disposal costs incurred on or after October 1, 2001, but prior to the effective date of this subsection if the cleanup and disposal activities generating the costs are agreed upon in writing between the department and the person incurring the costs.

(2) The department may pay cleanup costs and disposal costs incurred on or after the effective date of this subsection if the cleanup and disposal activities generating the costs are agreed upon in writing between the department and the person incurring the costs in advance of the performance of the activities.

(3) The amount of cleanup costs and disposal costs which the department may pay under this section shall be limited by the availability of funds for this purpose.

(c) Forfeiture.—A person shall not be eligible for any indemnity payment [or], depopulation incentive payment, *cleanup cost payment or disposal cost payment* under this chapter for any domestic animal, group of domestic animals, domestic animal product or other article if such person has been determined by the department to have committed a violation of any provision of this chapter or order, rule or regulation adopted under authority of this chapter that has resulted in the condemnation for which indemnity would be paid. A person shall not be eligible for any indemnity payment [or], depopulation incentive payment, *cleanup cost payment or disposal cost payment* with respect to any domestic animal or group of domestic animals having a condition of disease or contamination which the department has determined to have been directly caused by the person's willful misuse of a pesticide or a hazardous substance.

* * *

Section 3. Section 2332(a) of Title 3 is amended to read:

§ 2332. Depopulation incentive.

(a) Generally.—If a domestic animal, domestic animal product or other property has not been condemned under authority of this chapter, the department shall have the discretion to pay to the owner of any domestic animal or other property a sum which shall not exceed 33% of the appraised value of that domestic animal or other property *and may compensate a person for cleanup costs and disposal costs or a portion thereof* in consideration of that owner *or other authorized person* voluntarily slaughtering or destroying that domestic animal or other property *and implementing cleanup and disposal measures* in accordance with this chapter and with the prior agreement of the department. This discretion may be exercised only upon the department's determination that the destruction and disposal of the domestic animal or other property serves to protect public health, the safety or quality of the food supply or the economic well-being of domestic animal industries. Payment of a depopulation incentive under this section is limited by the availability of funds for this purpose.

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Section 4. Chapter 23 of Title 3 is amended by adding a subchapter to read:

SUBCHAPTER G.1
CERVIDAE LIVESTOCK OPERATIONS

Sec.

- 2380.1. Definitions.
- 2380.2. License required.
- 2380.3. Application.
- 2380.4. Issuance.
- 2380.5. Renewal.
- 2380.6. Keeping and handling of cervids.
- 2380.7. Periodic inspections.
- 2380.8. Violations by licensees.
- 2380.9. Game and Wildlife Code.

§ 2380.1.¹ Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Applicant.” A person applying for a license.

“License.” A license issued by the Department of Agriculture to operate Cervidae livestock operation.

“Licensee.” A person that holds a license.

¹“§ 2380.” in enrolled bill.

§ 2380.2.¹ License required.

A person may not operate a Cervidae livestock operation within this Commonwealth unless the person has a license. A separate license is required for each Cervidae livestock operation.

§ 2380.3.² Application.

An application for licensure, including license renewal, must be made on a form prescribed by the department.

§ 2380.4.³ Issuance.

The department shall issue a license if it determines, after inspection of the premises and investigation of the applicant, all of the following:

(1) The premises, including fences, buildings, equipment and sanitary conditions, comply with this subchapter and regulations of the department under this subchapter.

(2) The applicant can conduct a Cervidae livestock operation in compliance with this subchapter and regulations of the department under this subchapter.

§ 2380.5.⁴ Renewal.

A license is valid for a period of one year. A license may be renewed upon application if the department determines all of the following:

(1) The licensee has not been cited for a violation of this subchapter or a regulation of the department under this subchapter.

(2) There is no reason to believe that the licensee cannot conduct a Cervidae livestock operation in compliance with this subchapter and regulations of the department under this subchapter.

§ 2380.6.⁵ Keeping and handling of cervids.

(a) Pens, shelters and enclosures.—The department shall adopt regulations concerning the type and size of pens, shelters and enclosures used for Cervidae livestock operations. Regulations shall ensure that pens, shelters or enclosures used to hold cervids are no less than ten feet from the ground to the top, provide for the health and comfort of the cervids and be designed to protect the public, confine the cervids and exclude the entity of wild cervids.

(b) Marking cervids contained at Cervidae livestock operations.—A person may not transfer possession of a cervid unless that cervid is marked by both of the following:

(1) At least one permanent unique identifier, such as a legible tattoo, United States Department of Agriculture (USDA) approved ear tag, breed registration or other department-approved identification method. If a microchip is used, the cervid owner must provide the necessary reader.

¹§ 2380.1." in enrolled bill.

²§ 2380.2." in enrolled bill.

³§ 2380.3." in enrolled bill.

⁴§ 2380.4." in enrolled bill.

⁵§ 2380.5." in enrolled bill.

(2) At least one temporary identifier.

(c) Live Cervidae.—On delivery of a live cervid, the Cervidae livestock operation shall prepare and deliver to the shipper, purchaser or consignee a receipt, detailed invoice or consignment document including the date, name and address of purchaser or person to whom sold or consigned, the quantity, sex and species of the cervid and the name and address of the Cervidae livestock operation.

(d) Dead Cervidae.—Prior to delivery and removal from the Cervidae livestock operation premises, the Cervidae livestock operation shall place the dead cervid or part of a cervid in a package or container or shall attach a label to it. The package, container or label shall have printed upon it the name, address and telephone number of the Cervidae livestock operation who produced the cervid. The Cervidae livestock operation shall also issue a receipt, detailed invoice or consignment document including the date of shipment or sale, the name of the shipper, purchaser or consignee, the quantity and sex and species of the cervid so shipped or sold and the name and address and permit number of the Cervidae livestock operation shipping, consigning or selling cervids. A dead cervid produced under the authority of the Cervidae livestock operation may not be removed from its package or container or have removed from it the label provided for in this subsection until final consumption or disposal.

(e) Receipt for shipping cervids.—Each shipment of cervids, living or dead, or parts of cervids raised or held on a Cervidae livestock operation shall be accompanied by a receipt, detailed invoice or consignment document issued by the Cervidae livestock operation describing the shipment and stating the origin of the shipment, date, what is being shipped, destination and any other information required by the department. The receipt, detailed invoice or consignment document shall be available for examination during normal business hours until the shipment reaches its final destination, at which time it becomes part of the consignee's record. The consignee's record shall be retained for three years.

(f) Records.—A Cervidae livestock operation shall maintain records of acquisitions and disposals of cervids as well as cervids born and slaughtered on the premises. Records shall be in ink, written in English, and include the full name and address of the person with whom a transaction is conducted. Records shall be available for inspection at reasonable hours. Entries shall be made on the day of transaction. The records shall be kept for three years and shall be the basis of any reports required by the department.

(g) Importation.—Before importing a cervid, the licensee must first obtain an importation permit from the department. An application for an importation permit must state the name and address of the applicant, name and address of the person supplying the cervid, common and scientific name and number of cervids to be covered by the permit, purpose for which the cervid is being imported, qualifications of the applicant to use the cervid for the stated purpose and the location where the cervid will be housed or

retained. The application must be received by the department at least ten days prior to the proposed import date. If the cervid is to be purchased at auction, the name and address of the person supplying the cervid and number of cervids purchased shall be reported to the department by telephone, fax or electronic means on the date of purchase. The permittee must receive a confirmation number before the animal is imported. A copy of the completed permit shall be forwarded to the permittee.

§ 2380.7.¹ Periodic inspections.

During regular business hours, the department is authorized to inspect the premises of a licensee for compliance with this subchapter and regulations under this subchapter.

§ 2380.8.² Violations by licensees.

(a) Notice.—The department must provide a licensee with written notice of a violation of this subchapter or a regulation under this subchapter. The notice must provide a time period within which to correct the violation.

(b) Sanctions.—

(1) If the licensee does not correct a violation specified in a notice under subsection (a) within the specified time period, the department may take the following actions:

(i) Suspend the license.

(ii) Revoke the license.

(iii) Seek enforcement under section 2383 (relating to enforcement and penalties).

(2) Paragraph (1)(i) and (ii) are subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 2380.9.³ Game and Wildlife Code.

This subchapter supersedes any contrary provision in 34 Pa.C.S. (relating to game).

Section 5. Section 6503(a) of Title 3 is amended and the section is amended by adding a subsection to read:

§ 6503. Certification advisory board and programs.

(a) Members of board.—The secretary shall appoint persons to serve as members of the Food Employee Certification Advisory Board. Representatives shall be selected to represent the following groups for a term of two, three or four years to be determined by the secretary:

(1) The chairman and minority chairman of the Agricultural and Rural Affairs Committee of the Senate or their designees and the chairman and minority chairman of the Agricultural and Rural Affairs Committee of the House of Representatives or their designees.

(2) A consumer representative.

¹“§ 2380.6.” in enrolled bill.

²“§ 2380.7.” in enrolled bill.

³“§ 2380.8.” in enrolled bill.

- (3) The Secretary of Agriculture or the secretary's designee.
- (4) Two representatives of production agriculture.
- (5) Representatives, including at least one person recommended by each of the following: Pennsylvania Association of Milk Dealers, Pennsylvania Restaurant Association, Pennsylvania Food Merchants Association, Pennsylvania Convenience Store Council, Pennsylvania Bakers Association, Pennsylvania Food Processors Association, *National Federation of Independent Businesses, Pennsylvania Petroleum Marketers & Convenience Store Association, Local 1776 UFCW, Pennsylvania Retailers Association, the Licensed Beverage Association, Pennsylvania Tourism and Lodging Association, Associated Petroleum Industries*, Pennsylvania Veterinary Medical Association, County Commissioners Association of Pennsylvania, Pennsylvania League of Cities and Municipalities, Pennsylvania State Association of Boroughs, Pennsylvania State Association of Township Commissioners, Pennsylvania State Association of Township Supervisors and Pennsylvania School Food Service Association. At least one representative shall have experience in the field of public health.

(c.1) Other duties.—For the purpose of complying with the requirements of section 6504(g)(1) (relating to certification of employees), the secretary shall convene a meeting of the advisory board no later than March 1, 2003.

Section 6. Section 6504(c) and (g) of Title 3 are amended to read:
§ 6504. Certification of employees.

(c) Compliance.—

[1] Compliance with this chapter by a food establishment shall be optional until July 1, 2003. Section 6503(e) (relating to certification advisory board and programs) shall not apply to a food establishment prior to July 1, 2003, unless that food establishment complies with this chapter. On or after July 1, 2003, compliance with this chapter by a food establishment shall be mandatory unless a resolution to the contrary has been adopted prior to December 1, 2002, in accordance with this subsection. The President pro tempore of the Senate and the Speaker of the House of Representatives shall cause to be placed on their respective calendars for the first legislative day after November 1, 2002, the question, in the form of a resolution, of whether the food employee certification program shall remain optional for food employees of food establishments in this Commonwealth. If a majority of the members elected to each house approve such a resolution, the resolution shall be presented to the Governor for approval or disapproval in accordance with section 9 of Article III of the Constitution of Pennsylvania.]

(2) A food establishment exempt under section 6510(d) (relating to exemptions) may voluntarily seek certification under this section.

(3) *Except as provided in section 6510, compliance with this chapter by a food establishment shall be mandatory by July 1, 2004. Section 6503(e) (relating to certification advisory board and programs) shall not apply to any food establishment prior to July 1, 2004, unless that food establishment complies with this chapter.*

* * *

(g) Training program.—

(1) Training programs to prepare candidates for certification examinations and the administration of the examination shall be made available throughout this Commonwealth through cooperation with industry and others and approved by the department. *In order to meet the requirements of this paragraph, the department shall promulgate regulations with the approval of the board no later than July 1, 2004, which establish training programs providing for the following considerations which include:*

(i) *The existence and operation of a department-approved employee training program on safe food handling conducted by the food establishment.*

(ii) *The limited handling of potentially hazardous food.*

(iii) *The number of hours necessary to prepare employees for safe food handling due to the food establishment's scope of business.*

(iv) *The demonstration of satisfactory knowledge and proficiency in the safe handling of food as approved by the department.*

(2) The department shall develop and administer a training program for food establishments voluntarily seeking certification under subsection (c)(2). The General Assembly may appropriate funds to offset the cost of the program for food establishments exempt under section 6510(d).

* * *

Section 7. The amendment of 3 Pa.C.S. §§ 2303, 2331 and 2332 shall apply to cleanup costs and disposal costs incurred on or after October 1, 2001.

Section 8. Any action or the effect of any inaction by the General Assembly under 3 Pa.C.S. § 6504(c)(1) prior to the effective date of this act shall be considered null and void.

Section 9. This act shall take effect as follows:

(1) The addition of 3 Pa.C.S. § 2380.1 shall take effect in 120 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER