

LEGISLATIVE BILL 404

Approved by the Governor May 12, 1999

Introduced by Dierks, 40

AN ACT relating to cervine animals; to amend sections 37-411, 37-465, and 54-701.03, Reissue Revised Statutes of Nebraska; to adopt the Domesticated Cervine Animal Act; to eliminate the Domesticated Cervine Animal Registry; to provide penalties; to harmonize provisions; to repeal the original sections; to outright repeal section 54-2301, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 22 of this act shall be known and may be cited as the Domesticated Cervine Animal Act.

Sec. 2. The Legislature finds and declares that the production of domesticated cervine animals contributes to the strength of the economy of this state. The Legislature further declares that the Department of Agriculture under the powers and duties provided by law for the protection of the health of livestock is the appropriate agency to adopt, promulgate, and enforce rules and regulations necessary to control disease, importation, identification, issuing of permits, containment, and escape of domesticated cervine animals.

Sec. 3. For purposes of the Domesticated Cervine Animal Act, unless the context otherwise requires:

(1) Commission means the Game and Parks Commission or its authorized agent;

(2) Department means the Department of Agriculture or its authorized agent;

(3) Director means the Director of Agriculture or his or her designee;

(4) Domesticated cervine animal has the same meaning as in section 54-701.03; and

(5) Person means any individual, firm, group of individuals, partnership, limited liability company, corporation, unincorporated association, cooperative, or other entity, public or private.

Sec. 4. On and after January 1, 2000, it is unlawful for any person to own, possess, buy, sell, or barter any domesticated cervine animal in this state unless such animal is individually identified and kept at a premises for which a domesticated cervine animal facility permit has been issued by the department. Permits shall be issued only after a determination that the applicant is in compliance with the Domesticated Cervine Animal Act. This section shall not be construed to require a municipal, state, or federal zoo, park, refuge, or wildlife area, a bona fide circus or animal exhibit, or any private, nonprofit zoological society to obtain a permit in order to own, possess, buy, sell, or barter a domesticated cervine animal.

Sec. 5. (1) On and after August 1, 1999, any person required to obtain a permit under section 4 of this act shall file an application with the department in the manner established by the department. Such application shall include:

(a) The name, residence, and place of business of the applicant;

(b) The exact description of the land upon which the domesticated cervine animal facility is to be located and the nature of the applicant's title to the land, whether in fee or under lease; and

(c) The kind and number of domesticated cervine animals authorized to be kept or reared in such facility.

(2) The department may by rule and regulation prescribe additional information to be contained in such application. The application shall be filed annually with the department on or before October 1 of each year. The annual fee for a domesticated cervine animal facility permit shall not be less than ten dollars nor more than two hundred dollars, as established by the department. Permittees not filing by October 1 shall be considered delinquent. The department may impose a penalty for delinquency, not to exceed one hundred dollars per month or a portion of a month, in addition to the permit fees. Such permits shall expire on December 31 of the year of issuance.

Sec. 6. The department may deny a domesticated cervine animal facility permit to an applicant who is or has been convicted of violating the laws or regulations of this state or any other state pertaining to

domesticated cervine animals or has knowingly committed or participated in the violation of an order of quarantine or other disciplinary order issued by the department.

Sec. 7. (1) No person shall be issued a domesticated cervine animal facility permit under section 4 of this act without proof of initial inspection and approval of the minimum construction requirements established under this section.

(2) The department shall inspect and approve or disapprove:

(a) The initial construction and new construction of perimeter fencing; and

(b) The initial construction and new construction of a handling facility which is capable of sorting and restraining individual animals for testing, identification, treatment, or other purposes deemed necessary by the department.

(3) The department may inspect and approve or disapprove:

(a) The maintenance of perimeter fencing; and

(b) The maintenance of a handling facility which is capable of sorting and restraining individual animals for testing, identification, treatment, or other purposes deemed necessary by the department.

(4) The department shall, in consultation with the commission, adopt and promulgate rules and regulations specifying the minimum initial construction, subsequent new construction, and maintenance requirements of perimeter fencing and handling facilities and shall establish a fee to defray the expenses associated with inspecting domesticated cervine animal facilities.

Sec. 8. The department may require, by general or special order, a permitholder under the Domesticated Cervine Animal Act to file with the department, on such forms as prescribed, regular or special reports or answers, in writing, to specific questions for the purpose of furnishing information concerning any activity undertaken. Special reports shall be made under oath and filed within thirty days.

Sec. 9. (1) A permitholder under the Domesticated Cervine Animal Act shall comply with the act, the rules and regulations adopted and promulgated pursuant thereto, and any order of the director issued pursuant thereto. The permitholder shall not interfere with the department in the performance of its duties.

(2) A permitholder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing and to show cause why an order of probation should not be issued; and (c) the director finds that issuing an order of probation is appropriate, based on the hearing record or on the available information, if the hearing is waived by the permitholder.

(3) A permit may be suspended after: (a) The director determines the permitholder has not complied with subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of a right to a hearing to show cause why the permit should not be suspended; and (c) the director finds that issuing an order suspending the permit is appropriate, based on the hearing record or on the available information, if the hearing is waived by the permitholder.

(4) A permit may be immediately suspended and the director may order the permitholder's facility closed prior to hearing when: (a) The director determines an immediate danger to the health of livestock exists due to infectious, contagious, transmissible diseases in or caused by the permitholder's facility; (b) the director determines that an immediate danger to the health of wildlife exists due to infectious, contagious, transmissible diseases in or caused by the permitholder's facility; and (c) the permitholder receives the written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the permitholder may request, in writing, a date for a hearing and the director shall consider the interests of the permitholder when the department establishes the date and time of the hearing, except that no hearing shall be held earlier than is reasonable under the circumstances. When a permitholder does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and shall notify the permitholder of the date and time of such hearing.

(5) A permit may be revoked after: (a) The director determines the permitholder has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section; (b) the permitholder is given written notice to comply and written notice of the right to a hearing to

show cause why the permit should not be revoked; and (c) the director finds that issuing an order revoking the permit is appropriate based on the hearing record or on the available record or on the available information if the hearing is waived by the permitholder.

(6) Any domesticated cervine animal facility for which a permit has been suspended may possess, while correcting the violation, but may not buy, sell, or barter animals, or parts thereof, until the permit is reinstated. Any domesticated cervine animal facility for which a permit has been revoked shall be permitted to dispose of all animals on its premises, with approval of the department, within thirty days after the issuance of the order of revocation and shall close and remain closed until a new permit is issued.

(7) The director may terminate proceedings to suspend or revoke a permit or to subject a permitholder to an order of probation at any time if the reasons for such proceedings no longer exist. A permit which has been suspended may be reinstated. A person with a revoked permit may be issued a new permit. A permitholder may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings for suspension, revocation, or probation shall not preclude the department from pursuing other civil or criminal actions.

Sec. 10. (1) Any notice or order under the Domesticated Cervine Animal Act shall be personally served on the permitholder or on the person authorized by the permitholder to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the permitholder or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply under section 9 of this act shall state the acts or omissions with which the permitholder is charged.

(3) A notice of the permitholder's right to a hearing under section 9 of this act shall state the time and place of the hearing except as provided in subsection (4) of section 9 of this act and shall include notice that the permitholder's right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the permitholder's right to a hearing to show cause why the permit should not be revoked shall include notice to the permitholder that the permit may be revoked or suspended, that the permitholder may be subject to an order of probation, and that the permit may be suspended and the permitholder subject to an order of probation, if the director determines such action is appropriate. A notice of the permitholder's right to a hearing to show cause why the permit should not be suspended shall include notice to the permitholder that the permit may be suspended and that the permitholder may also be subject to an order of probation if the director determines such action is appropriate.

(4) The hearings provided for in the act shall be conducted by the director at the time and place the director designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 9 of this act, the director shall sustain, modify, or rescind the order. All hearings shall be in compliance with the Administrative Procedure Act.

(5) A permitholder is deemed to waive the right to a hearing if such permitholder does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the permitholder makes a showing to the director that the permitholder had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the permitholder waives the right to a hearing, the director shall make a final finding based upon available information and issue an order. If the director has suspended a permit pursuant to subsection (4) of section 9 of this act, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director has ten days from the entry of the director's order to request a new hearing if such person can show a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

(7) Any person aggrieved by any order entered by the director or any other action taken by the department may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 11. A domesticated cervine animal, or any part thereof, shall

be appropriately marked for proof of ownership according to rules and regulations adopted by the department. The department shall adopt and promulgate rules and regulations specifying the acceptable forms of domesticated cervine animal identification in a manner which visibly distinguishes a domesticated cervine animal from wild cervidae. The department, in consultation with the commission, shall establish separate identification or proof of ownership requirements for transporting taken domesticated cervine animals.

Sec. 12. The luring or enticement of wildlife into a permitted domesticated cervine animal facility for the purpose of containing such wildlife is cause for permit suspension under section 9 of this act and shall be considered a violation of section 37-411. Any permitholder under the Domesticated Cervine Animal Act who lures or entices wildlife into such a facility is responsible for any and all expenses incurred by the commission to remove such wildlife from the facility.

Sec. 13. (1) In order to prevent, suppress, control, and eradicate dangerous transmissible diseases among the domesticated cervine animals of this state, the department may place in quarantine any county, or part of any county, any private premises, or any private or public stockyards and may quarantine any domesticated cervine animal infected with such disease or which has been or is suspected of having been exposed to such disease. Such animals shall remain under quarantine until released by the department. An infected animal may be destroyed as provided by section 54-747.

(2) The department may regulate or prohibit the arrival into, departure from, and movement within the state of any domesticated cervine animal infected with a dangerous transmissible disease or exposed or suspected of having been exposed to such disease.

Sec. 14. When testing of domesticated cervine animals is performed pursuant to an order by the department, the owners of such animals are responsible for the cost of gathering, confining, restraining, and testing such animals and for providing the necessary facilities and assistance.

Sec. 15. (1) Any permitholder under the Domesticated Cervine Animal Act shall, within twenty-four hours after the discovery of the escape of any such animals, notify the department, which shall immediately notify the commission, of such escape.

(2) It is the responsibility of the permitholder to recapture or destroy any escaped domesticated cervine animal within five days.

(3) If the permitholder is unwilling or unable to capture any escaped domesticated cervine animal within five days after the discovery of such escape, the commission may destroy such escaped animals. The commission may, on a case-by-case basis, extend the number of days for a permitholder to recapture or destroy any escaped domesticated cervine animal.

(4) Any escaped domesticated cervine animal known to have originated from an area placed under quarantine by the department pursuant to section 13 of this act may be destroyed by the commission upon notice of the escape of such animal.

(5) Any expenses incurred by the department or the commission to recapture or destroy escaped domesticated cervine animals shall be assessed to the permitholder. The department and the commission shall not be held liable for the value of any domesticated cervine animal destroyed under this section.

Sec. 16. Any permitholder under the Domesticated Cervine Animal Act shall, within twenty-four hours after the discovery of wild cervidae in a domesticated cervine animal facility, notify the commission and the department of such occurrence. The commission shall adopt policies providing for the disposition of wild cervidae found in a domesticated cervine animal facility and shall consult with the department before removal of such animals from the facility.

Sec. 17. The department may adopt and promulgate rules and regulations for the testing, control, and eradication of diseases, including, but not limited to, chronic wasting disease, brucellosis, and tuberculosis in domesticated cervine animal herds in the state. The rules and regulations may include, but are not limited to, provisions governing:

(1) Testing, test results, and test subjects;

(2) Intrastate change of ownership, including provisions requiring all domesticated cervine breeding animals to be tested or originate from a herd which is in a herd certification program as established by the department under section 18 of this act; and

(3) Any other issues deemed necessary by the department to effectively control and eradicate diseases.

Sec. 18. In addition to administering the Domesticated Cervine Animal Act and conducting program activities authorized by the act, the department may develop a herd certification program and may cooperate with the

United States Government, or any department, agency, or officer thereof, in the development of such program, including the adoption of or reference to applicable federal regulations or industry guidelines.

Sec. 19. The department may assess and collect costs for services provided and expenses incurred pursuant to its responsibilities under the Domesticated Cervine Animal Act. All costs assessed and collected pursuant to the act shall be remitted to the State Treasurer for credit to the Domesticated Cervine Animal Cash Fund, which fund is hereby created. The fund shall be utilized by the department for the purpose of carrying out the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 20. In administering the Domesticated Cervine Animal Act, the agents and employees of the department:

(1) Shall have access, upon notification, to any premises where domesticated cervine animals may be for the purpose of implementing the rules and regulations adopted and promulgated under the act; and

(2) May enter any premises occupied by a permitholder at any reasonable time to examine books and records maintained by the permitholder. Such books and records shall be maintained by the permitholder for review for five years after the death or disposal of any domesticated cervine animal from the facility.

Sec. 21. The commission shall have access, upon notification, to any premises where domesticated cervine animals may be for the purpose of assessing populations of wild cervidae.

Sec. 22. (1) In order to insure compliance with the Domesticated Cervine Animal Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated under the act. The district court of the county where the violation is occurring or is about to occur has jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) The Attorney General or the county attorney of the county in which violations of the act, rules, or regulations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay.

(3) Any person who violates the Domesticated Cervine Animal Act or any rules or regulations adopted and promulgated pursuant to the act is guilty of a Class IV misdemeanor for the first offense and a Class II misdemeanor for each subsequent offense.

Sec. 23. Section 37-411, Reissue Revised Statutes of Nebraska, is amended to read:

37-411. (1) Unless holding a permit as required in the Game Law, it shall be unlawful:

(a) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to engage in fur harvesting or possess any fur-bearing animal or raw fur, except that a person may possess a fur-bearing animal or raw fur for up to ten days after expiration of a valid permit. Nonresident fur-harvesting permits may be issued only to residents of states which sell similar permits to residents of Nebraska;

(b) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to hunt or possess any kind of game birds, game animals, or crows;

(c) For any person who is sixteen years of age or older to hunt or possess any migratory waterfowl without first obtaining and affixing to his or her hunting permit a federal migratory bird hunting stamp. All such stamps affixed to hunting permits shall be signed by the holder of the hunting permit. Migratory waterfowl means any ducks, geese, coots, or brant upon which an open season has been established by the commission; or

(d) For any person who is sixteen years of age or older to take any kind of fish, bullfrog, snapping turtle, tiger salamander, or mussel from the waters of this state or possess the same except as provided in section 37-402. All nonresident anglers under sixteen years of age shall be accompanied by a person possessing a valid fishing permit.

(2) It shall be unlawful for a nonresident to hunt or possess any kind of game birds or game animals, to take any kind of fish, mussel, turtle, or amphibian, or to harvest fur while in the possession of a resident permit illegally obtained.

(3) It shall be unlawful for anyone to do or attempt to do any other

thing for which a permit is required by the Game Law without first obtaining such permit and paying the fee required.

(4) Any nonresident who hunts or has in his or her possession any wild mammal or wild bird shall first obtain and have in his or her possession a nonresident hunting permit.

(5) Any nonresident who takes or has in his or her possession any wild turtle, mussel, or amphibian shall first obtain and have in his or her possession a nonresident fishing permit.

(6) Except as provided in this section and sections 37-407 and 37-418, it shall be unlawful for any nonresident to trap or attempt to trap or to harvest fur or attempt to harvest fur from any wild mammal.

~~(7)(a)~~ (7) It shall be unlawful for anyone to lure or entice wildlife into a domesticated cervine animal facility for the purpose of containing such wildlife.

(8)(a) Any person violating this section shall be guilty of a Class II misdemeanor and shall be fined at least forty dollars.

(b) If the offense is failure to hold a hunting, fishing, fur-harvesting, deer, turkey, or antelope permit as required, unless issuance of the required permit is restricted so that permits are not available, the court shall require the offender to purchase the required permit and exhibit the permit to the court.

Sec. 24. Section 37-465, Reissue Revised Statutes of Nebraska, is amended to read:

37-465. Permits for game farming, fur farming, and aquaculture facilities may be issued by the commission upon written application by any qualified person. Such application shall state (1) the name, social security number if the applicant is an individual, residence, and place of business of the applicant, (2) the exact description of the land upon which such game farm, fur farm, or aquaculture facility is to be located, together with the nature of the applicant's title to the land, whether in fee or under lease, and (3) the kind and approximate number of game animals, game birds, fur-bearing animals, except mutation foxes or minks, or aquatic organisms authorized to be kept or reared on such farm or in such facility. The annual fee for an aquaculture facility permit shall be not less than fifty dollars and not more than sixty-five dollars, as established by the commission pursuant to section 37-327. Such permits shall expire on December 31. Permits under this section shall not be required for possession or production of domesticated cervine animals as defined in section 54-701.03 ~~which are registered with the Domesticated Cervine Animal Registry pursuant to section 54-2301 by a permit holder under the Domesticated Cervine Animal Act.~~

Sec. 25. Section 54-701.03, Reissue Revised Statutes of Nebraska, is amended to read:

54-701.03. For purposes of sections 54-701 to 54-705 and 54-742 to 54-753.05:

(1) Animal means all vertebrate members of the animal kingdom except humans or uncaptured wild animals;

(2) Domesticated cervine animal means any elk, deer, or other member of the family cervidae legally obtained ~~and from a facility which has a license, permit, or registration authorizing domesticated cervine animals which has been issued by the state where the facility is located and such animal is raised in a confined area; for breeding stock, exhibition, or companionship, or for the carcass, skin, or other part of such animal, but not for hunting or sport;~~

(3) Livestock means cattle, swine, sheep, horses, goats, domesticated cervine animals, ratite birds, and poultry; and

(4) Ratite bird means any ostrich, emu, rhea, kiwi, or cassowary.

Sec. 26. Original sections 37-411, 37-465, and 54-701.03, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 27. The following section is outright repealed: Section 54-2301, Reissue Revised Statutes of Nebraska.

Sec. 28. Since an emergency exists, this act takes effect when passed and approved according to law.