



Ohio Legislative Service Commission

Final Analysis

Jeff Grim

Sub. H.B. 420

129th General Assembly
(As Passed by the General Assembly)

Reps. Peterson and Stinziano, McClain, Grossman, Henne, McGregor, Ruhl, Combs, C. Hagan, Hill, Stebelton, Garland, Clyde, Buchy, Hall, Heard, Kozlowski, Letson, Luckie

Sens. Hite, Bacon, Balderson, Lehner, Patton, Seitz, Wagoner

Effective date: March 27, 2013

ACT SUMMARY

Licensing of commercial nuisance wild animal control operators

- Requires a person who provides nuisance wild animal removal or control services for hire to obtain an annual license from the Chief of the Division of Wildlife.
- Requires money collected from license fees to be credited to the existing Wildlife Fund.
- Requires a commercial nuisance wild animal control operator or an individual providing nuisance wild animal removal or control services for hire to obtain a certification of completion of a course of instruction.
- Requires an individual to be licensed under the Pesticides Law if a pesticide is used in the removal or control of a nuisance wild animal.
- Requires the Chief, with the approval of the Director of Natural Resources, to adopt rules necessary to implement the act.

* This version updates the effective date of the act.

Wild animal hunting preserves and commercial bird shooting preserves

- Allows a person to hunt game and nonnative wildlife in a licensed wild animal hunting preserve without obtaining a hunting license or a deer permit otherwise required by current law.
- Allows a person to hunt game birds, other than wild turkeys, in a licensed commercial bird shooting preserve without obtaining a hunting license otherwise required by current law.

Hunting, trapping, and fishing by nonresident landowners

- Authorizes a nonresident owner of property in Ohio and that owner's children to hunt deer or wild turkey or hunt or trap fur-bearing animals on the owner's property without a deer, wild turkey, or fur taker permit, as applicable, if the owner is exempt from obtaining an Ohio hunting license under current law.
- Authorizes a nonresident owner of land in Ohio through or along which water flows or stands and the spouse and children living with the owner to take or catch frogs, turtles, or fish without obtaining an Ohio fishing license if the owner's state of residence provides a similar exemption for Ohio residents.

Anhydrous ammonia

- Revises the Director of Agriculture's rulemaking authority regarding fertilizers, including separating that authority regarding anhydrous ammonia from other fertilizers and specifying that the rules governing the storage and handling of anhydrous ammonia apply to anhydrous ammonia that is used for agricultural purposes.
- Expands the Director's authority regarding stop-use orders for anhydrous ammonia by authorizing the Director to issue orders for anhydrous ammonia systems in addition to anhydrous ammonia equipment as under ongoing law, and defines those terms.

CONTENT AND OPERATION

Licensing of commercial nuisance wild animal control operators

The act requires a person who provides nuisance wild animal removal or control services for hire to obtain a license from the Chief of the Division of Wildlife.¹ It

¹ R.C. 1531.40(B)(1).

specifies that a commercial nuisance wild animal control operator that holds such a license is responsible for the acts of each of the operator's employees in the removal or control of a nuisance wild animal.² Under the act, a nuisance wild animal is a wild animal that interferes with the use or enjoyment of property, is causing a threat to public safety, or may cause damage or harm to a structure, property, or person.³ A commercial nuisance wild animal control operator is an individual or business that provides nuisance wild animal removal or control services for hire to the owner, the operator, or the owner's or operator's authorized agent of property or a structure.⁴

A license must be renewed annually prior to March 1 each year and expires on the last day of February each year. An applicant must pay a \$40 license fee. The act requires that all money collected from license fees be credited to the Wildlife Fund created in continuing law.⁵

Under the act, unless otherwise specified by Division rule, a commercial nuisance wild animal control operator and any individual who is employed by an operator that is engaged in activities that are part of or related to the removal or control of nuisance wild animals, including setting or maintaining traps, must obtain a certification of completion of a course of instruction that complies with rules adopted under the act (see below). An individual who provides nuisance wild animal removal or control services under a license issued under the act also must comply with that requirement. A certification must be renewed every three years.⁶

Under the act, in accordance with the Administrative Procedure Act and rules adopted under the act, the Chief may suspend or revoke a license the Chief finds that the holder of the license is violating or has violated the Division of Wildlife Law, the Hunting and Fishing Law, or rules adopted under those Laws.⁷

Exemptions

The act exempts an individual who is providing nuisance wild animal removal or control services for hire under a license issued under the act from obtaining a

² R.C. 1531.40(D).

³ R.C. 1531.40(A)(1).

⁴ R.C. 1531.40(A)(2).

⁵ R.C. 1531.40(B)(2).

⁶ R.C. 1531.40(C).

⁷ R.C. 1531.40(G).

hunting license, a fur taker permit, or a fishing license for the purposes of performing those services.⁸

The act also exempts an individual who is employed by the state, a county, or a municipal corporation and who performs nuisance wild animal removal or control services on land that is owned by the state, county, or municipal corporation, as applicable, as part of the individual's employment from obtaining a license under the act.⁹

Use of pesticides by individual in control or removal of nuisance wild animal

Under the act, if an individual who is licensed under it uses a pesticide in the removal or control of a nuisance wild animal, the individual must obtain the appropriate license under the Pesticides Law.¹⁰

Rule-making authority

The act requires the Chief to adopt rules with the approval of the Director of Natural Resources establishing all of the following:

(1) Appropriate methods for trapping, capturing, removing, relocating, and controlling nuisance wild animals by operators licensed under the act;

(2) Procedures for issuing, denying, suspending, and revoking a license;

(3) Requirements governing the certification course required by the act (see above). The rules must specify the minimum contents of such a course, including public safety and health, animal life history, the use of nuisance wild animal removal and control devices, and the laws and rules governing those activities. The rules also must specify who may conduct such a course. The rules must require that, in order for an operator to receive a certification of completion, the operator must pass an examination.

(4) Any other requirements and procedures necessary to administer and enforce the bill.¹¹

⁸ R.C. 1531.40(B)(3).

⁹ R.C. 1531.40(B)(4).

¹⁰ R.C. 1531.40(E).

¹¹ R.C. 1531.40(F).

Wild animal hunting preserves and commercial bird shooting preserves

Am. H.B. 389 of the 129th General Assembly, effective June 29, 2012, in part repealed a statute that did both of the following: (1) stated that the statutes governing propagation licenses and hunting preserves did not supersede the laws requiring a resident license to hunt, and (2) authorized a nonresident to hunt on a commercial bird shooting preserve or a wild animal hunting preserve without having obtained a nonresident hunting license otherwise required by the Hunting and Fishing Law.¹²

The act allows a person to hunt game and nonnative wildlife in a licensed wild animal hunting preserve without obtaining a hunting license or a deer permit otherwise required by current law.¹³ The act also allows a person to hunt game birds, other than wild turkeys, in a licensed commercial bird shooting preserve without obtaining a hunting license otherwise required by current law.¹⁴ It makes necessary conforming changes to the statutes governing the issuance of hunting licenses and deer permits.¹⁵

Hunting, trapping, and fishing by nonresident landowners

Am. Sub. H.B. 153, effective September 29, 2011, in part required a nonresident owner of land in Ohio and the owner's children and grandchildren, if applicable, to purchase a nonresident hunting license, deer or wild turkey permit, fur-taker permit, or nonresident fishing license by applying the exemptions in continuing law for landowners and their families only to Ohio residents.¹⁶ Am. Sub. H.B. 487, effective September 10, 2012, in part allowed a nonresident owner of real property in Ohio, and the spouse and children living with the property owner, to hunt on that property without a hunting license, provided that the state of residence of the real property owner allowed Ohio residents owning real property in that state, and the spouse and children living with the property owner, to hunt without a hunting license.¹⁷

The act authorizes a nonresident landowner who is so exempt from obtaining a hunting license and that owner's children to hunt deer or wild turkey or hunt or trap fur-bearing animals on the owner's property without a deer or wild turkey permit or

¹² R.C. 1533.80, repealed by Am. H.B. 389.

¹³ R.C. 1533.731.

¹⁴ R.C. 1533.73.

¹⁵ R.C. 1533.10 and 1533.11.

¹⁶ R.C. 1533.10, 1533.11, 1533.111, and 1533.32.

¹⁷ R.C. 1533.10.

fur-taker permit, as applicable.¹⁸ In addition, the act specifies that a nonresident owner of land in Ohio over, through, upon, or along which any water flows or stands, except where the land is in or borders on state parks or state-owned lakes, and the spouse and children living with the owner, may take frogs and turtles and may take or catch fish of the kind permitted to be taken or caught from that water without obtaining a fishing license under continuing law, provided that the state of residence of the owner allows Ohio residents owning real property in that state, and the spouse and children living with such a property owner, to take frogs and turtles and take or catch fish without a license.¹⁹

Anhydrous ammonia

Background

The laws governing anhydrous ammonia have been amended twice in the 129th General Assembly prior to the enactment of this act. Am. Sub. S.B. 315, effective September 10, 2012, generally established requirements governing: (1) rules adopted by the Director of Agriculture regarding the design and construction of anhydrous ammonia storage facilities, and (2) the approval of those designs by the Director. Sub. S.B. 309, effective December 26, 2012, further clarified the requirements governing the rules adopted by the Director for safety in the design, construction, location, installation, or operation of anhydrous ammonia systems.²⁰

Rule-making authority of the Director of Agriculture

The act revises the rule-making authority of the Director regarding fertilizers. First, the act separates the Director's rule-making authority regarding anhydrous ammonia from rule-making authority regarding other fertilizers and makes conforming changes.²¹ Second, it revises the Director's rule-making authority governing the storing and handling of anhydrous ammonia by specifying that those rules apply to anhydrous ammonia that is used for agricultural purposes.²² Third, the act eliminates a requirement that the rules adopted by the Director had to prohibit the reselling or reuse of such containers without authorization by the owner thereof.²³ Former law was

¹⁸ R.C. 1533.11 and 1533.111.

¹⁹ R.C. 1533.32.

²⁰ R.C. 905.40, 905.41, and 905.411.

²¹ R.C. 905.40, 905.44, 905.50, and 905.99.

²² R.C. 905.40(A).

²³ R.C. 905.40(C).

unclear as to the meaning of "such containers." Fourth, former law required the Director to adopt the rules regarding fertilizers under the abbreviated rule-making procedure established in continuing law, which do not require public notice or an administrative hearing before a rule is adopted. The act instead requires the Director to adopt the rules discussed above regarding anhydrous ammonia and other fertilizers in accordance with the Administrative Procedure Act.²⁴

As a result of the rule-making separation discussed above, the act specifically authorizes the Director to adopt and enforce the following rules regarding fertilizers that are not anhydrous ammonia:

(1) Governing the storing and handling of fertilizers;

(2) For safety in the design, construction, location, installation, or operation of equipment, containment structures, and buildings for storing and handling fertilizers; and

(3) Requiring that guaranteed analysis be stated in a form other than that specified in the Fertilizer Law when another form will not impose an economic hardship on manufacturers, distributors, and users of fertilizer by reason of conflicting labeling requirements among the states.

The rules are similar to those adopted for anhydrous ammonia as discussed above. Former law authorized the Director to adopt and enforce rules governing fertilizer in general.²⁵

Enforcement

The act expands the Director's authority regarding stop-use orders for anhydrous ammonia by authorizing the Director to issue orders for anhydrous ammonia systems in addition to anhydrous ammonia equipment as under ongoing law.²⁶ Anhydrous ammonia equipment is, with regard to the handling or storage of anhydrous ammonia, a container or containers with a maximum capacity of not more than 4,999 gallons or any appurtenances, pumps, compressors, or interconnecting pipes associated with such a container or containers. Anhydrous ammonia equipment does not include equipment for the manufacture of anhydrous ammonia or the storage of anhydrous ammonia

²⁴ R.C. 905.40.

²⁵ R.C. 905.44.

²⁶ R.C. 905.411.

either underground or in refrigerated structures.²⁷ An anhydrous ammonia system is, with regard to the handling or storage of anhydrous ammonia, a container or containers with a minimum capacity of not less than 5,000 gallons or any appurtenances, pumps, compressors, or interconnecting pipes associated with such a container or containers. An anhydrous ammonia system does not include equipment for the manufacture of anhydrous ammonia or the storage of anhydrous ammonia either underground or in refrigerated structures.²⁸

HISTORY

ACTION	DATE
Introduced	01-24-12
Reported, H. Agriculture and Natural Resources	05-09-12
Passed House (74-22)	05-24-12
Reported, S. Agriculture, Environment & Natural Resources	12-04-12
Passed Senate (33-0)	12-05-12
House concurred in Senate amendments (90-3)	12-11-12

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²⁷ R.C. 905.31(AA).

²⁸ R.C. 905.31(BB).

