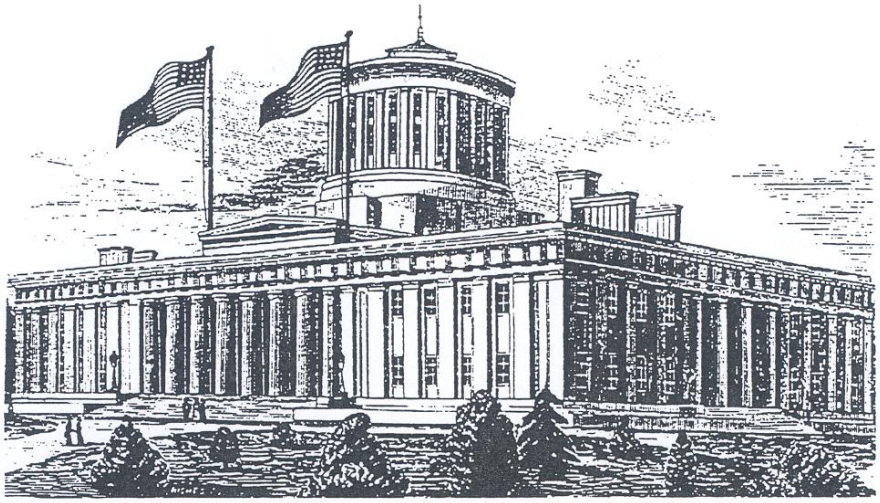
Public Practice CLE Seminar

Rule Making and Rover



Friday, April 4, 2014
ODOT Auditorium
1980 West Broad Street
Columbus, Ohio

Sponsored by the:

Ohio Legislative Service Commission

Mark Flanders
Director

SENATE MEMBERS

Keith Faber, Chairperson

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Armond Budish
Cheryl L. Grossman
Tracy Maxwell Heard
Matt Huffman
Barbara R. Sears

Registration

8:00 a.m. - 8:25 a.m.

Welcome and Introduction

8:25 a.m. - 8:30 a.m.

Administrative Rule-Making Process Overview

Director Larry Wolpert

8:30 a.m. - 9:00 a.m.

Dangerous Wild Animal and Restricted Snake Law Overview

Michael Rodgers, Sheriff Matthew Lutz, and Jack Advent

9:00 a.m. - 10:00 a.m

Break

10:00 a.m. - 10:15 a.m.

Overview of Ohio's Breeder Law

Dr. David Glauer, Kellie DiFrischia, and Ervin Raber

10:15 a.m. - 11:15 a.m.

Overview of the Livestock Care Standards Board

Dr. David Glauer

11:15 a.m. - 11:45 a.m.

Closing Remarks

11:45 a.m. - 11:50 a.m

Administrative Rule-Making Process Overview

Larry Wolpert
Joint Committee on Agency Rule Review

Larry Wolpert is the Executive Director for the Joint Committee on Agency Rule Review. He served as a member of the Ohio House of Representatives from 2000 to 2008, where he chaired the Local and Municipal Government and Urban Revitalization Committee for six years, co-chaired special committees on Growth and Land Use, Privacy and Public Records, and Local Government Fund Reform, and was a member of the Ohio Commission on Local Government Reform and Collaboration. He also introduced 55 bills. He also served on the Ohio Elections Commission from 2009-2011.

His prior experience includes working for Real Living/HER and Grange Insurance Companies, and serving as a member of Hilliard City Council. He received his master of business administration from Capital University and his Bachelor of Science in Business Administration from the Ohio State University.

Joint Committee on Agency Rule Review

Larry Wolpert – Executive Director

2014

1

Joint Committee on Agency Rule Review (JCARR) Legislative History

- JCARR was created in 1977 by House Bill 257
- House Bill 473 in the 121st Assembly added the requirement that JCARR review all existing rules every five years.
- Senate Bill 2 in the 129th General Assembly adds JCARR's 6th prong and creates CSI.

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What is the JCARR Committee

- It is a standing joint committee of 5 Senators and 5 House Members.
- The Committee is currently Chaired by Rep. Ross McGregor and the Vice Chair is Sen. Bob Peterson.
- The committee meets about every three weeks.
- All rules go through the committee and every rule is open for public testimony.

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Who files Rules?

- There are over 110 different agencies, boards or commissions that file rules with JCARR.
- In any one year JCARR will review around 9,000 rules actions.

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Types of Rules JCARR Reviews

- Original filed Rules (new, amended or rescinded rules)
- No Change Rules (5 year review) Note: since 1996 Ohio law requires existing rules be review by agencies every 5 years.

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Original Filed Rules

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How is an Original Filed Rule Processed?

- The Agency, Board or Commission files the rule on the Electronic Rule File (ERF) system. They also complete on the system a Rule Summary and Fiscal Analysis (RSFA) form which further describes the rule and its financial impact. JCARR has jurisdiction over the rule for 65 days after filed.

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JCARR Review of Original Filed Rules

- One of the JCARR Lawyer / Analysts reviews the rule filing specifically looking for a JCARR prong violation. The following are the current six JCARR prongs:

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Original Filed JCARR Prongs

1. Does the rule exceed the rule maker's statutory authority?
2. Does the rule conflict with an existing rule?
3. Does the rule conflict with legislative intent?
4. Did the rule maker prepare a complete and accurate Rule Summary and Fiscal Analysis?
5. If the rule maker incorporated text by reference, did they meet the required standards for incorporation?
6. If the rule has an adverse impact on business, did the rule maker demonstrate through the business impact analysis, CSI recommendations, and the memorandum of response that the regulatory intent of the rule justifies its adverse impact on business.

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What actions do we take when an Original Filed Rule JCARR prong violation is discovered?

- Our first approach is to apply what we call "speak softly and carry a big stick". Our lawyer analyst will call the rule filer and inform them of the potential JCARR prong violation. In most cases, the rule filer will revise or refile the rule to correct the prong violation.
- Our final approach is to have the JCARR Committee recommend a concurrent resolution to invalidate the rule. (Note: Because of the "speak softly and carry a big stick" approach, there have only been 14 rule invalidations since JCARR's inception.)

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How does a motion to invalidate a Original Filed Rule work?

- A motion to recommend a resolution to invalidate is made by a committee member, and if there is a second a vote is taken. For the motion to succeed it must receive 6 votes.
- After the JCARR Committee makes a recommendation for invalidation, a Concurrent Resolution is prepared and introduced in the Senate or House
- If the resolution passes one house by a majority vote, the resolution goes to the other house.
- If both houses pass the resolution by a majority vote, the rule is removed from the rule filing system.

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No Change 5 Year Review Rules

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Agency review criteria to determine if a 5 year rule should be amended or rescinded.

- Should the rule be continued without an amendment, amended, or rescinded taking into consideration the purpose, scope and intent of the statue under which the rule was adopted.
- Should the rule be amended or rescinded to give more flexibility at the local level.
- Whether the rule needs amendment or rescission to eliminate unnecessary paperwork.
- Whether the rule incorporates a text or other material by reference and, if so, is the incorporation in compliance with the required procedures and standards stated in ORC 121.72, 121.74, 121.75 or 121.76.
- Whether the rule duplicates, overlaps with or conflicts with other rules.
- Whether the rule has an adverse impact on business, and if it does, has the adverse impact been reduced or eliminated.
- In making the review of the rule the agency shall consider the continued need for the rule, the nature of any complaints or comments concerning the rule, and any relevant factors that have changed in the subject matter area affected by the rule.

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How is a No Change 5 year review Rule Processed?

- The Agency, Board or Commission files the rule in the Electronic Rule File (ERF) system. They also complete on the system a Rule Summary and Fiscal Analysis (RSFA) form which further describes the rule and its financial impact.
- The agency is not required to have a public hearing.
- JCARR has jurisdiction over the rule for 90 days after filed.
- The JCARR Senior Rule Processor reviews the rule filing specifically looking for a JCARR "no change" prong violation. The following are the "no change" JCARR prongs:

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5 Year JCARR Prongs

- Did the agency improperly apply the review criteria when reviewing the rule?
- Did the agency fail to meet the required Incorporation by Reference Standards law?
- Does the rule have an adverse impact on business and the agency has not reduced or eliminated the impact? **

(** Does not apply until passage of corrections bill.)

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"No change" 5 year review Prong Invalidation Procedures

- The invalidation procedures are the same as for the Original Rule File procedures. The only exception is it takes 7 committee votes to pass the motion.

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What happens when an agency misses their 5 year review requirement?

- In most cases JCARR will contact the agency and inform them they have missed the review date and work with them to meet the review requirement.
- Ohio law permits a rule to be invalidated for missing a 5 year review date.
- Before the committee can recommend invalidation, the agency must come before the committee and explain why they missed the review date.
- A missed 5 year review date requires 6 votes for a recommendation to invalidate.

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Senate Bill 2 (SB2)

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How has Senate Bill 2 Change JCARR Procedures?

- SB 2 was signed by the Governor on March 4th 2011 and is effective for JCARR on January 1, 2012.
- The bill's main purpose is to reduce or eliminate "adverse impact" of rules on business.
- The bill creates the Common Sense Initiative Office (CSIO). CSIO will work with the rule filer to reduce or eliminate the "adverse impact" on business before the rule is filed with JCARR.

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- When JCARR receives an original file rule, under SB2 our first task is to determine if it has a "adverse impact" on business. An
- "adverse impact" is described as, if the rule requires:
  - License, permit, or any other prior authorization to engage in or operate a line of business;
  - Imposes a criminal penalty, civil penalty, or another sanction, or creates a cause of action, for failure to comply with its terms; or
  - Requires specific expenditures or the report of information as a condition of compliance.

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What happens if there is a "adverse impact" on business?

- If the rule has a "adverse impact" and the rule filer did not indicate it, or the description of the impact is not complete, then JCARR is required to "reject" the rule.
- If the rule filer indicated it has a "adverse impact", then JCARR must determine if the "adverse impact" is "justifiable". If the "adverse impact" is not justifiable, then the JCARR committee would need to make a recommendation to invalidate the rule. (6th prong for Original Filed Rules.)

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How does SB 2 impact "no change" 5 year review rules?

- It is the same review procedure as "original" file rules except for the following:
  - A 5 year review rule cannot be rejected for not indicating there is a "adverse impact".
  - A 5 year review rule does not have the "justifiable" standard for invalidation. The invalidation standard for 5 year review rules is if the "adverse impact" has not been reduced or eliminated then the JCARR Committee should recommend invalidation.

(The above was not the intent of SB 2)

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Senate Bill 3 (JCARR related)

- Senator LaRose is the sponsor of the bill
- Gives JCARR the ability to refer rules to CSIO for adverse impact analysis
- It clarifies and corrects the no-change rejection function of JCARR and adverse impact on business invalidation option

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New RuleWatch Ohio Website

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RuleWatch Ohio enables you to:

- Follow rules by subject area
- Follow individual rules
- Receive emails overnight when there is rule activity
- Will be adding a CSI link to RuleWatch

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Follow JCARR on

FOLLOW US ON twitter

Find us on Facebook

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Thank you
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Dangerous Wild Animals and Restricted Snake Law Overview

Michael Rodgers
Ohio Department of Agriculture

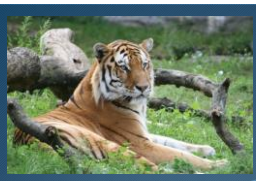
Sheriff Matthew Lutz
Muskingum County

Jack Advent
Ohio Veterinary Medical Association

Michael Rodgers is the chief legal counsel and is responsible for managing the Ohio Department of Agriculture's in-house legal section and also coordinating with the Attorney General's office when representing the various divisions of the Department. He has more than ten years of state experience including time in the legislative, judicial, and executive branches of state government. Mr. Rodgers, who most recently served as senior staff counsel and the acting chief counsel at the Ohio Department of Agriculture, has previously worked as a legislative liaison and policy analyst for the Ohio Judicial Conference and as an administrative and legislative aide in the Ohio House of Representatives. He is a graduate of Capital University Law School, where he earned his law degree, and also of the Ohio State University, where he earned a bachelor's degree in political science and a minor in history.

Matthew Lutz is the Muskingum County Sheriff. He began serving as Sheriff in 2008 (his elected service began in 2009). He began working in the Muskingum County Sheriff's Office in 1989. He graduated from Philo High School in 1986, and enrolled in the Ohio Peace Officers' Training Academy held at the Muskingum Area Technical College (now Zane State) in Zanesville.

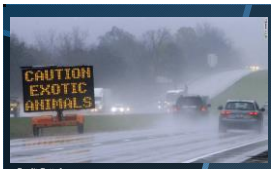
Jack Advent, CAE, is the Executive Director of the Ohio Veterinary Medical Association, a post he has held since 1998. He previously worked for two Ohio trade associations prior to joining OVMA. He is a past president and board member of the American Society of Veterinary Medical Association Executives and the Ohio Society of Association Executives. He earned his certified association executive (CAE) designation from the American Society of Association Executives in 1994. He also serves on the AVMA Animal Welfare Committee and previously on two AVMA legal issues task forces. He is a graduate of Bowling Green State University and is a resident of Westerville, Ohio.



Ohio's Dangerous Wild Animal Act

Michael L. Rodgers
Ohio Department of Agriculture
Chief Legal Counsel

Historic Overview



Credit Getty Images

October 18, 2011

Numerous dangerous wild animals are reported loose near Zanesville, Ohio…

June 5, 2012 – Dangerous Wild Animal Act signed into law

September 5, 2012 – Law becomes effective

November 5, 2012 – Deadline for all dangerous wild animal owners to register their animals with the state

July 18, 2013 – Permanent rules finalized governing ownership of dangerous wild animals and restricted snakes.

October 1, 2013 – Permit application period begins with the Ohio Department of Agriculture

January 1, 2014 – Ban on owning any dangerous wild animals or restricted snakes without a permit or exemption begins

January 10, 2014 – First dangerous wild animal permit issued by the Department of Agriculture

Generally speaking, the law regulates ownership of two basic classes of animals:

1) Dangerous Wild Animals that are defined in Ohio Revised Code (ORC) 935.01(C), and
2) Restricted Snakes that are defined in ORC 935.01(L).

POP QUIZ

Dangerous Wild Animal?

POP QUIZ

Dangerous Wild Animal?

POP QUIZ

Dangerous Wild Animal?

POP QUIZ

Dangerous Wild Animal?

ORC 935.01(C)Dangerous Wild Animals

Means any of the following, including hybrids, unless otherwise specified:

1) Hyenas
2) Grey Wolves (excluding hybrids)
3) Lions
4) Tigers
5) Jaguars
6) Leopards
7) (a.) Cheetahs, (b.) Lynxes, (c.) Cougars, (d.) Caracals, and (e.) Servals (excluding hybrids)
8) Bears
9) Elephants
10) Rhinoceroses
11) Hippopotamuses
12) Cape Buffaloes
13) African Wild Dogs
14) Komodo Dragons
15) Alligators
16) Crocodiles
17) Caimans (excluding dwarf caimans)
18) Gharials
19) Nonhuman primates (excluding lemurs, marmosets, squirrel monkeys and capuchins)
20) All of the following nonhuman primates:

(a) Golden lion, black-faced lion, golden-rumped lion, cotton-top, emperor, saddlebacked, black-mantled, and Geoffroy's tamarins;

(b) Southern and northern night monkeys;

(c) Dusky titi and masked titi monkeys;

(d) Muriquis;

(e) Goeldi's monkeys;

(f) White-faced, black-bearded, white-nose bearded, and monk sakis;

(g) Bald and black uakaris;

(h) Black-handed, white-bellied, brown-headed, and black spider monkeys;

(i) Common woolly monkeys;

(j) Red, black, and mantled howler monkeys.

POP QUIZ

Restricted Snake?

ORC 935.01(L)Restricted Snakes

1) Means any of the following constricting snakes that are twelve feet or longer:

(a) Green anacondas;

(b) Yellow anacondas;

(c) Reticulated pythons;

(d) Indian pythons;

(e) Burmese pythons;

(f) North African rock pythons;

(g) South African rock pythons;

(h) Amethystine pythons.

Green anaconda

Reticulated Python

Amethystine Python

ORC 935.01(L)Restricted Snakes

Means any of the following:

(2) Species of the following families:

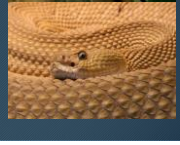
(a) Atractaspididae;

(b) Elapidae;

(c) Viperidae.

(3) Boomslang snakes;

(4) Twig snakes.



Backbone of the law prohibits possession of dangerous wild animals.

Ohio Revised Code 935.02(A)
"No person shall possess a dangerous wild animal on or after January 1, 2014."

Many exceptions apply, including anyone in possession of a proper permit issued by the Ohio Department of Agriculture. The following list is a sample of some of the entities that are almost entirely exempt from the law:

- Zoos
- Circuses
- Research Facilities
- Wildlife Rehabilitation Facilities
- Wildlife Sanctuaries
- Veterinarians providing temporary care
- An individual who does not reside in the state and is traveling through the state for less than 48 hours
- Certain Ohio Department of Natural Resources permit holders
- Spider Monkeys that serve as service animals to a blind, deaf, or mobility impaired person

Permits Issued by the Ohio Department of Agriculture

- Wildlife Shelter Permit
- Wildlife Propagation Permit
- Restricted Snake Possession Permit
- Restricted Snake Propagation Permit
- Rescue Facility Permit

Some of the Dangerous Wild Animal Permit Requirements

- ❑ Application fee
- ❑ Liability Insurance or Surety Bond
- ❑ Must demonstrate requisite experience
- ❑ Compliance with Care and Housing Standards
- ❑ Create and distribute a Dangerous Wild Animal Escape Plan
- ❑ One acre of property (shelter permit) or two acres (propagation permit)
- ❑ Affidavit stating public will not be allowed to come into contact with the dangerous wild animal

Compliance?

Some of the Restricted Snake Permit Requirements

- Application fee
- Liability Insurance or Surety Bond (venomous snakes)
- Must demonstrate requisite experience
- Compliance with Care and Housing Standards
- Create and distribute a Restricted Snake Escape Plan
- Affidavit stating public will not be allowed to come into contact with restricted snake
- Proof that applicant has access to antivenom for each venomous restricted snake

Where are we now?

As of March 7, 2014

The Ohio Department of Agriculture has received 75 permit applications. Of the 75 applications received, 24 have been approved, 49 are still being processed as incomplete, two have been withdrawn, and zero have been denied

Breakdown of applications by type

69 wildlife shelter permit applications
2 dangerous wild animal propagation permit applications
1 restricted snake propagation permit application
2 restricted snake possession permit applications
1 rescue facility permit application

Litigation

Wilkins et al. v Ohio Department of Agriculture

United States District Court – Southern District of Ohio
Constitutionality of the law upheld

United States Court of Appeals for the Sixth Circuit
Constitutionality of the law upheld

Questions?

Ohio Department of Agriculture

John R. Kasich | Governor David T. Daniels | Director

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Dangerous Wild Animals and Restricted Snakes
Review of Ohio Revised Code 935

Section by Section Breakdown

935.01 – Definitions

This section defines key terms that are used in the bill. You will find the definitions used for dangerous wild animals (DWA) and a restricted snake. Any questions about the meaning of a term should start in this section. If a word or term is not defined in 935.01 it is to be given its plain meaning.

935.11 – Adding animals to the definition of a dangerous wild animal or restricted snake

This section states that the director cannot add new species to these definitions without legislative approval.

935.02 – Blanket prohibitions on possession and transfer of DWA

(A) No person shall possess a DWA on or after January 1, 2014

Exceptions: Many exceptions apply. Permit holders will be able to possess, exempted facilities may continue to possess, and any animals that do not meet the definition of a DWA may continue to be possessed.

(B) Generally prohibits acquisition, buying, selling, trading, or transfer of possession or ownership of a DWA after the effective date of the section.

Exceptions: This prohibition does not apply to restricted snakes. There is an exception that allows people to acquire a DWA through inheritance or as next of kin, and there is an exception that provides for the director of ODA to authorize a rescue facility to acquire animals as long as they do not buy them before January 1, 2014. After this date, only a permitted rescue facility can be authorized by the director in this manner.

935.03– Exceptions to ban on possession of DWA and exempted facilities

(A) **Permitted entities/seeking accreditation** – provides a limited exemption to three classes of entities from the outright ban on possession that goes into effect on January 1, 2014:

(1) **Individuals seeking accreditation** – individuals who are licensed by USDA under the Federal Animal Welfare Act, AND that the director determines are in the process of becoming an accredited member of the Association of Zoos and Aquariums (AZA) or the Zoological Association of America (ZAA), ***only if*** the director has informed that person that they are exempt;

Drafted September 18, 2012
Revised February 14, 2014

(2) **Organizations seeking accreditation** – exempts from the ban on ownership organizations that are in the process of becoming an accredited or verified wildlife sanctuary by the Global Federation of Animal Sanctuaries (GFAS), ***only if*** the director has informed the organization that a limited exemption applies; and

(3) **Permit holders** – any person whose possession of a DWA is authorized by an unexpired permit issued under this chapter. (Examples include a wildlife shelter permit, a wildlife propagation permit and a wildlife rescue permit.)

(B) **Exempted entities** – exempts a whole host of entities from the legislation *except that even these exempted entities must still register their DWA*. Please refer to Ohio Revised Code (ORC) 935.03(B) for the entire list of exempted entities.

Example: The owner of an emperor penguin, moose and rat snake is not affected by the legislation in any way because these animals are not classified as DWAs or as a restricted snake. However, the owner of a lemur is required to register pursuant to ORC 935.041 even though it is not a DWA.

935.04 – Registration requirements

(A) **DWA owners must register –** a person that possesses a DWA on the effective date of this section shall register with the director not later than sixty days after the effective date of this section.

NOTE: Section became effective on September 5, 2012 and 60 day registration period ends on November 5, 2012. Restricted snakes are not required to register.

(B) **Form information –** lists information required to be on the form by law.

(C) **Must adhere to rules once adopted –** 90 days after director adopts rules; registered animal owner shall comply with those rules regarding care and housing.

(D) **Microchip requirement –** requires that any animal registered must have a microchip implanted with an identification number and a passive integrated transponder that operates on the frequency of 125, 134.2 or 400 kilohertz.

(E) **Eventual permit application –** states that a person who owns a registered DWA on October 1, 2013 and wishes to continue to possess the dangerous wild animal on or after January 1, 2014 shall obtain a wildlife shelter or propagation permit.

935.041 – Registration requirement for certain non-human primates that are *not* DWA

(A) **Small non-human primates –** a person that possess a marmoset, squirrel monkey, capuchin or lemur must register their animals with the state, but these animals are not DWA. This is the only provision of the law that would apply to these animals.

935.05 – Wildlife shelter permit instructions

(A) **When to apply for permit** – a person that possess a registered DWA in this state on October 1, 2013, and wishes to continue to possess the dangerous wild animal on or after January 1, 2014, and that does not intend to propagate the animal shall apply for a wildlife shelter permit.

(B) **Application information** – must file an application for a permit with the director and an applicant need only apply for one permit regardless of the number of DWA they possess. Application must contain the following:

(1) The name, address, date of birth, social security number, and federal employee identification number, if applicable, of the applicant;

(2) If different from the above information, the address where each DWA will be confined;

(3) A thorough description of each animal;

(4) ID number of the microchip implanted in each DWA and the frequency of the passive integrated transponder contained in the microchip;

NOTE: The preceding information is the same information that was required on the animal registration form. The following are new requirements specific to the permit.

(5) Proof of financial responsibility;

(6) Proof of at least two years of experience in the care of their species of DWA. If they cannot provide proof of experience, they must pass a written examination administered by ODA;

(7) A plan of action if a DWA escapes that must also be submitted to the sheriff of the county and to the chief law enforcement officer and fire chief of the township or municipal corporation having jurisdiction where the DWA are confined;

(8) Proof of a veterinarian-client relationship with regard to each DWA;

(9) Any additional information required in rules.

(C) **Application fees**

(1) $250 if applicant possesses 3 or less DWA;
(2) $500 if applicant possesses 4-10 DWA;
(3) 1,000 if applicant possesses 11-15 DWA;

(4) $1,000 if applicant possesses 16 or more DWA, plus an additional $125 for each animal after fifteen animals.

Examples: The fee for 16 animals = $1,125. The fee for 25 animals = $2,250 etc.

(D) **Proof of financial responsibility** – applicant shall obtain and maintain proof of financial responsibility in one of the following forms:

(1)(a) **Liability insurance** – a policy with an insurer authorized or approved to write such policies in this state that covers claims for injury or damage to persons or property caused by a DWA possessed by an applicant or any resulting claims against the state.

(1)(b) **Surety bond** - a bond which shall be executed by a surety company authorized to do business in this state that covers claims for injury or damage to persons or property caused by a DWA possessed by an applicant or any resulting claims against the state. The bond shall be in a form approved by the director.

(2) **Proof of financial responsibility amounts**
(a) $200,000 if applicant possesses 5 or less DWA;
(b) $500,000 if applicant possesses 6-15 DWA;
(c) $1,000,000 if applicant possess 16 or more DWA.

NOTE: The amounts specified above shall be for each occurrence of injury or damage.

935.06 – Issuance, denial, and renewal of wildlife shelter permit

(A) **How long does ODA have to review? –** no longer than 90 days after receipt of an application the director of agriculture shall issue or deny a wildlife shelter permit. The director shall issue the permit only if the following apply:

(1) Applicant must be 18 years of age or older.

(2) Applicant has registered the DWA that are the subject of an application.

(3) Applicant is in compliance with the housing and care standards established by rule.

(4) Applicant has sterilized each male animal.

Exception: Animals are not required to be sterilized if a veterinarian that is qualified to provide care determines that sterilization is medically contraindicated and applicant submits a copy of the veterinarian's written determination with their application.

(5) Applicant must sign an affidavit attesting that applicant will not allow members of public to be in physical contact with DWA.

Exception: This provision does not apply to an employee of the applicant or a volunteer who assists the applicant in the care of a dangerous wild animal listed in ORC 935.01 (C)(20) [*small non-human primates only*].

(6) Applicant must not have been convicted of or pled guilty to:

a. Felony drug use offense;
b. An offense of violence that is a felony;
c. R.C. 959.13 (Cruelty to animals);
d. R.C. 959.131 (Prohibitions concerning companion animals); or
e. R.C. 2927.21 (Report escape of dangerous animals).

NOTE: R.C. 2927.21 was repealed by S.B. 310 and replaced with a similar provision in R.C. 935.18. However, past convictions under 2927.21 will still bar a permit applicant.

(7) Facility at which the DWA is maintained consists of at least one acre.

Exceptions: One acre requirement does not apply to the small non-human primates listed in ORC 935.01(C)(20) and there is a procedure in the law for the applicant to request a written waiver from the director.

(8) Applicant has signed an affidavit attesting that the facility where the DWA will be maintained and the conditions in which they will be kept are in compliance with the statute and rules.

(9) Applicant must submit a complete application and pay the applicable fee.

If permit is issued, Director shall assign a unique ID number.

(B) **Background check** – prior to issuing a permit, the director must submit a request to BCI&I for a criminal records check for the offenses listed above. Applicant is responsible for paying all costs of the criminal records check.

(C) **Permit denial** – $250 of application fee is retained as payment for reasonable processing expenses and the rest is returned to applicant.

(D) **Annual renewal** – not later than December 1 each year, a permit holder shall apply to the director for a renewal permit if the permit holder intends to retain possession of the DWA identified on the permit. Not later than 30 days after receipt of an application for renewal, the director shall renew or deny the permit. The director shall renew if permit holder complies with the chapter and rules and the applicant pays a renewal fee of the same amount established for initial permits.

(E) **Right to adjudication if renewal permit denied** – director must notify the renewal applicant of the denial, the grounds for denial, and the person's right to an adjudication under Chapter 119.

(F) **Failure to appeal or renewal denial affirmed** – not later than 30 days after a decision not to appeal or after the determination is affirmed, the person shall transfer the DWA to a humane society, wildlife sanctuary, rescue facility, AZA of ZAA accredited facility, or a facility that is located in another state that complies with that state's laws. After transfer has occurred, the former applicant shall submit proof to the director that the DWA was transferred and shall specify where the animals were transferred.

NOTE: Person is responsible for all costs associated with the transfer.

(G) **Next of kin provisions** – if a person has been issued either a wildlife shelter permit or a wildlife propagation permit, the person's next of kin shall do one of the following:

(1) **Next of kin may take possession** – if the next of kin wishes to possess the DWA, they must obtain the appropriate permit and comply with the law and rules;

Exception: Next of kin does not need to pay an initial permit application fee.

(2) **Transfer by will** – if deceased has a will that specifies that DWA are to be transferred to another person that has been issued a wildlife shelter permit, wildlife propagation permit or rescue facility permit, transfer the DWA to the applicable permit holder; or

(3) **No desire to keep and no instructions from deceased** – transfer the DWA that were possessed by the deceased to any of the facilities listed in (F) above.

(H) **Where do fees go?** – all fees collected under this section (*application fees, renewal fees, $250 kept from application denials*) shall be credited to the dangerous and restricted animal fund created in 935.25 of the Revised Code.

935.07 – Wildlife propagation permit instructions

(A) **When to apply for permit** – a person that possess a registered DWA in this state on October 1, 2013, and wishes to continue to possess the dangerous wild animal on or after January 1, 2014, and that intends to propagate the animal solely for the purposes of a species survival program that complies with the rules, shall apply for a wildlife propagation permit.

(B) **Application information** – the application process for the wildlife propagation permit is exactly the same as the process for the wildlife shelter permit except for a few differences.

Different application fees

(1) $1,000 if applicant possesses 50 DWA or less;
(2) $3,000 if applicant possesses more than 50 DWA.

(C) **Different acreage requirement**
Facility where DWA are maintained shall consist of two acres.

Exceptions: Two acre requirement does not apply to the small non-human primates listed in (C)(20) and there is a procedure in the law for the applicant to request a written waiver from the director.

(D) **Where do fees go?** – all fees collected under this section (*application fees, renewal fees, $250 kept from application denials*) shall be credited to the dangerous and restricted animal fund created in 935.25 of the Revised Code.

(E) **No requirement to sterilize** – division (A)(4) of section 935.06 of the Revised Code does not apply to an applicant for a wildlife propagation permit.

NOTE: Exempts applicants for a propagation permit from having to have their animals sterilized.

935.08 – Restricted snake possession permit instructions

(A)(1) **When to apply for permit** – a person that possess a restricted snake in this state prior to January 1, 2014, that wishes to continue to possess the restricted snake on or after that date, and that does not intend to propagate, sell, trade, or otherwise transfer the snake shall obtain a restricted snake possession permit under this section not later than January 1, 2014.

(A)(2) **Permit application for those who acquire after January 1, 2014** – a person that acquires a restricted snake after January 1, 2014, that does not intend to propagate, sell, trade or otherwise transfer snake shall obtain a restricted snake possession permit not later than 120 days after acquiring the snake.

(B) **Application information** – must file an application for a permit with the director and an applicant need only apply for one permit regardless of the number of restricted snakes they possess. Application must contain the following:

(1) The name, date of birth, address, social security number, and federal employee identification number, if applicable, of the applicant;

(2) If different from the above information, the address where each restricted snake will be confined;

(3) A thorough description of each restricted snake;

(4) Proof of financial responsibility;

Exception: The financial responsibility requirement does not apply to the owners of the constricting snakes. This requirement only applies to the venomous restricted snake owners.

(5) Proof of at least two years of experience in the care of the species of restricted snake. If they cannot provide proof of experience, they must pass a written examination administered by ODA;

Exception: No experience requirement needed for constricting snakes.

(6) A plan of action if a restricted snake escapes that must also be submitted to the sheriff of the county and to the chief law enforcement officer and fire chief of the township or municipal corporation having jurisdiction where the restricted snakes are confined;

(7) Written statement from a veterinarian stating they are willing to provide care to applicant's restricted snakes when care is needed;

(8) Any additional information required in rules.

(C) **Restricted Snake Possession Permit Application Fee** – all applicants submit a flat $150 permit fee regardless of the amount of snakes they possess.

(D) **Proof of financial responsibility** – applicant shall obtain and maintain proof of financial responsibility in one of the following forms:

(1) (a) **Liability insurance** – a policy with an insurer authorized or approved to write such policies in this state that covers claims for injury or damage to persons or property caused by a restricted snake possessed by an applicant or any resulting claims against the state.

(b) **Surety bond** – a bond which shall be executed by a surety company authorized to do business in this state that covers claims for injury or damage to persons or property caused by a restricted snake possessed by an applicant or any resulting claims against the state. The bond shall be in a form approved by the director.

(2) **Proof of financial responsibility amounts**

(a) $100,000 if applicant possesses 5 or less restricted snakes;
(b) $250,000 if applicant possesses 6-15 restricted snakes;
(c) $500,000 if applicant possess 16 or more restricted snakes.

NOTE: The amounts specified above shall be for each occurrence of injury or damage.

935.09 – Issuance, denial, and renewal of restricted snake possession permit

(A) **How long does ODA have to review? -** no longer than 90 days after receipt of an application the director of agriculture shall issue or deny a restricted snake possession permit. The director shall issue the permit only if the following apply:

(1) Applicant must be 18 years of age or older.

(2) Applicant has signed an affidavit attesting that the applicant will not allow members of the public to be in physical contact with a restricted snake.

Exceptions: Applicants that display constricting snakes to primary or secondary aged school children, or an employee or volunteer who has entered into a written agreement with the applicant that assists in the care of the restricted snake, are allowed to come into contact with those snakes.

(3) Applicant must not have been convicted of or pled guilty to:
   a. Felony drug use offense;
   b. An offense of violence that is a felony;
   c. R.C. 959.13 (Cruelty to animals);
   d. R.C. 959.131 (Prohibitions concerning companion animals); or
   e. R.C. 2927.21 (Report escape of dangerous animals).

(4) Applicant has signed an affidavit attesting that the facility where the restricted snakes will be maintained and the conditions in which they will be kept are in compliance with the statute and rules.

(5) Applicant must submit a complete application and pay the applicable fee.

If permit is issued, Director shall assign a unique ID number.

(B) **Background check** – prior to issuing a permit, the Director must submit a request to BCI&I for a criminal records check for the offenses listed above. Applicant is responsible for paying all costs of the criminal records check.

(C) **Permit denial** – $75 of application fee is retained as payment for reasonable processing expenses and the rest is returned to applicant.

(D) **Annual renewal** – not later than December 1 each year, a permit holder shall apply to the director for a renewal permit if the permit holder intends to retain possession of the restricted snakes identified on the permit. Not later than 30 days after receipt of an application for renewal, the director shall renew or deny the permit. The director shall renew if permit holder complies with the chapter and rules and the applicant pays a

renewal fee of the same amount established for initial permits. If renewal is denied, director can again keep $75 dollars and must return the rest.

(E) **Right to adjudication if renewal permit denied** – director must notify the renewal applicant of the denial, the grounds for denial, and the person's right to an adjudication under Chapter 119.

(F) **Failure to appeal or renewal denial affirmed** – not later than 30 days after a decision not to appeal or after the determination is affirmed, the person shall transfer the restricted snakes to a humane society, wildlife sanctuary, rescue facility, AZA of ZAA accredited facility, or a facility that is located in another state that complies with that state's laws. After transfer has occurred, the former applicant shall submit proof to the director that the restricted snakes were transferred and shall specify where the snakes were transferred.

NOTE: Person is responsible for all costs associated with the transfer.

(G) **Next of kin provisions** – if a person has been issued either a restricted snake possession permit or a restricted snake propagation permit, the person's next of kin shall do one of the following:

(1) **Next of kin may take possession** – if the next of kin wishes to possess the restricted, they must obtain the appropriate permit and comply with the law and rules;

Exception: – Next of kin does not need to pay an initial permit application fee.

(2) **Transfer by will** – if deceased has a will that specifies that DWA are to be transferred to another person that has been issued a wildlife shelter permit, wildlife propagation permit or rescue facility permit, transfer the DWA to the applicable permit holder; or

(3) **No desire to keep and no instructions from deceased** – transfer the DWA that were possessed by the deceased to any of the facilities listed in (F) above.

(H) **Where do fees go?** – all fees collected under this section (*application fees, renewal fees, $75 kept from application denials*) shall be credited to the dangerous and restricted animal fund created in 935.25 of the Revised Code.

935.10 - Restricted snake propagation permit instructions

(A)(1) **When to apply for permit** – a person that possess a restricted snake in this state prior to January 1, 2014, that wishes to continue to possess the restricted snake on or after that date, and that intends to propagate, sell, trade, or otherwise transfer the snake shall obtain a restricted snake propagation permit under this section not later than January 1, 2014.

(2) **Permit application for those who acquire after January 1, 2014** – a person that acquires a restricted snake after January 1, 2014, that intends to propagate, sell, trade or otherwise transfer snake shall obtain a restricted snake propagation permit not later than 120 days after acquiring the snake.

(B) **Application information** – the application process for the restricted snake propagation permit is exactly the same as the process for the restricted snake possession permit except for a few small differences.

Different application fee:
The application fee for a restricted snake propagation permit is $300.

(C) **Application denial** – if a permit application is denied, $150 of the permit application fee shall be retained as payment for the reasonable expenses of processing the application. The remainder of the fee shall be returned to the applicant.

(D) **Where do fees go?** – all fees collected under this section (*application fees, renewal fees, $150 kept from application denials*) shall be credited to the dangerous and restricted animal fund created in 935.25 of the Revised Code.

935.101 – Rescue facility permit

(A)(1) **Currently operating** – in lieu of obtaining another permit under this chapter, a person that operates a rescue facility in this state prior to January 1, 2014, and that wishes to continue to operate a rescue facility shall obtain a rescue facility permit not later than January 1, 2014.

(A)(2) **New facility** – a person that wishes to begin operation as a rescue facility in this state on or after January 1, 2014, shall obtain a rescue facility permit not later than 60 days prior to beginning operation.

(B)(1) **Permit application information** – an applicant for a rescue facility permit shall file an application with the director on a form prescribed and provided by the director. The application shall include information that the director requires in rules.

(B)(2) **Permit application fees**
(a) $500 if the applicant possesses not more than 3 DWA;
(b) $1,000 if the applicant possesses 4-15 DWA; or
(c) $2,000 if the applicant possesses 16 or more DWA.

(B)(3) **Application permit denial** – if the permit application is denied, $250 of the application shall be retained by the director as payment for reasonable expenses.

(C) **Animals must be sterilized** – the director shall issue or deny a rescue facility permit in accordance with rules. The director shall issue a permit only if the dangerous wild animals that are to be possessed are sterilized.

(D) **Care and housing requirements** – a person issued a rescue facility permit shall comply with the requirements regarding care and housing established in rules under 935.17(G).

(E) **Acquisition permissible** – a person that has a rescue facility permit may acquire, except by purchase, possession of a dangerous wild animal.

935.11 – Dual permitting

This section simply provides language stating that if you would engage in activity that requires two different permits, you are required to get both permits.

> **Example:** if you own a king cobra and tiger, and have no intention or propagating either animal, you would be required to get both a restricted snake possession permit and a wildlife shelter permit.

935.12 – Care and housing requirements for all permit holders

(A) **Care and housing for all DWA permit holders** – a person that has been issued a permit under this chapter for a dangerous wild animal(s) shall comply with the requirements regarding the care and housing of dangerous wild animal(s) established in rules.

(B) **Exception:** a person issued a wildlife shelter permit, wildlife propagation permit, or rescue facility permit under this chapter for a dangerous wild animal(s) specified in ORC 935.01(C)(20) shall comply with both of the following:

(1) The requirements regarding the care of those animals established in regulations adopted under the animal welfare act;

(2) The requirements regarding the housing of those animals established in rules.

(C) **Care for restricted snake possession and propagation permit holders** – a person issued a restricted snake possession permit or a restricted snake propagation permit shall comply with the requirements regarding care and housing of those snakes established in standards adopted by the ZAA.

935.13 – Suspension or revocation of a permit

The director may suspend or revoke a permit for a violation of this chapter or rules. A person adversely affected by an order of suspension or revocation may request an adjudication under Chapter 119.

935.14 – Director to maintain a database

(A) The director shall maintain a database on both of the following:

(1) **Registration Information** – until January 1, 2014, the name and address of each person that possesses a dangerous wild animal and that registers the animal;
(2) **Permit Information** – on and after January 1, 2014, the name and address of each person that has applied for and been issued a permit under this chapter.

(B) **Database Access** – the director shall allow the directors of health and natural resources to have access to the database.

935.15 – Permit holder record keeping requirements

(A) **Record keeping requirements** – a person that has been issued a permit shall maintain records of all of the following regarding each DWA or restricted snake:

(1) The scientific and common names, including the species;

(2) If the animal or snake was purchased or otherwise acquired from another person, the name and address of the other person;

(3) The date on which the animal or snake was acquired, if applicable;

(4) If the permit holder propagates dangerous wild animals, the date of birth of the animal if it was propagated by the permit holder;

(5) If the permit holder propagates restricted snakes, the date of birth of the snake if it was propagated by the permit holder;

(6) The name and address of the person to whom the animal or snake was sold or otherwise transferred, if applicable;

(7) The date on which the animal or snake died or escaped, if applicable;

(8) The identification number of the microchip and frequency of the passive integrated transponder in the microchip.

(B) Permit holder must maintain records in accordance with rules.

935.16 – Responsibilities if an animal escapes

(A) **Notification** – if a DWA or restricted snake escapes the person that possesses the animal or snake must immediately notify the following:

(1) The sheriff of the county and the chief law enforcement officer of the township or municipal corporation where the escape occurred;

(2) The Division of Animal Health via the 24 hour hotline.

(B) **Animal can be destroyed/no liability** – a law enforcement officer or natural resources officer may destroy an escaped animal or snake that poses a threat to public safety, and is not liable for damages in a civil action for any injury, death, or loss to person or property that allegedly arises from the destruction of the animal or snake.

(C) **Who pays costs of escape?** – the person that possesses the animal or snake is responsible for all reasonable costs associated with the capture or destruction of the animal or snake. This section also specifies that the person must reimburse the appropriate political subdivision or state agency.

(D) **Where does money go?** – money collected under (C) above shall be credited to a special fund which is created in the applicable political subdivision and shall be used for the administration and enforcement of this chapter.

Exception: money collected under (C) above for costs incurred by a state highway patrol troopers or a natural resources law enforcement officers shall be deposited in the state treasury to the credit of the dangerous and restricted wild animals fund.

What if multiple officers are involved? – if law enforcement officers from more than one jurisdiction are involved, the money is to be proportionally distributed.

935.17 – Rulemaking authority

The director of agriculture shall adopt rules that establish all of the following:

(A) **Registration rules** – both of the following concerning registration of DWA:

(1) Any additional information that must be included with registration;

(2) Standards for the care and housing of registered dangerous wild animals, including standards for the proper care of each species and caging and fencing of the animals.

(B) **Well-Being rules** – standards for the care and well-being of all dangerous wild animals except the non-human primates in (C)(20) that are possessed by a permit holder. The standards shall govern at least sanitation for, provision of health care for, and feeding, caging, housing, and fencing of dangerous wild animals. In adopting these rules, director

shall consider issues like biosecurity, AZA and ZAA standards, public health and safety, etc.

(C) **Standards for small non-human primates** – director shall establish standards for the housing of dangerous wild animals specified in (C)(20) that are possessed by wildlife shelter permit and propagation permit holders.

(D) **Rules for applications concerning wildlife shelter and propagation permit holders** – the director shall establish rules for all of the following items concerning applications for these types of permits:

(1) any additional information to be included with the permit application.

(2) **Species Survival Program** – criteria for determining what constitutes a species survival program and requirements and procedures to determine if a program meets those criteria.

(3) **Examination** – the rules shall require the examination to test an applicant's knowledge on topics that include proper diet, health care, exercise needs, and housing of the species that are the subject of the application.

(4) **Administration of Exam** – procedures and requirements concerning the administration of the examination.

(E) **Rules specific to restricted snake possession and propagation permit** – all of the following concerning application for permits under section 935.09 and 935.10.

(1) any additional information to be included with the permit application;

(2) **Examination** – the rules shall require the examination to test an applicant's knowledge on topics that include proper diet, health care, exercise needs, and housing of the species that are the subject of the application.

(3) **Administration of exam** – procedures and requirements concerning the administration of the examination.

(F) **Rules specific to rescue facility permit** – both of the following concerning applications for permits under section 935.101.

(1) any additional information to be included with the permit application;

(2) criteria and procedures for the issuance or denial of a permit.

(G) **Care standards for rescue facilities** – standards for the care and well-being of dangerous wild animals that are possessed by rescue facility permit holders. The

standards shall govern at least sanitation for, provision of health care for, and feeding, caging, housing, and fencing of dangerous wild animals. In adopting these rules, the director may consider the standards of care and housing established in rules adopted under division (B) of this section and section 935.12.

(H) **Records** – procedures and requirements governing the maintenance of records under R.C. 935.15.

(I) **Signage** – standards for signs that are required to be posted and displayed in accordance with R.C. 935.18.

(J) **Civil penalties** – the amount of civil penalties that may be assessed under R.C. 935.24.

(K) **Distribution of funds** – procedures and requirements governing the distribution of money from the dangerous and restricted wild animal fund.

(L) **Catch-All** – any other provisions necessary to administer and enforce this chapter.

935.18 – General prohibitions in the law

(A) **Animal auctions** – except for a restricted constricting snake, no person shall sell or offer for sale at auction a dangerous wild animal or restricted snake.

(B) **Microchip removal** – except for a microchip removed for purposes of a medical emergency by a veterinarian that is qualified to provide veterinary care to the dangerous wild animal, no person shall knowingly remove a microchip that is implanted in a dangerous wild animal.

(C) **Signage requirements** – no person that possesses a DWA or restricted snake shall fail to post and display any of the following:

(1) On each cage in which a DWA is confined, signs warning the public that a DWA is confined in the cage;

(2) At each entrance to the property where a DWA is confined, a sign warning the public that a DWA is on the property;

(3) On each container in which a restricted snake is confined, signs warning the public that a restricted snake is in the container;

(4) At the main entrance to each structure where a restricted snake is confined, a sign warning the public that a restricted snake is in the structure;

(5) On a vehicle that is used to transport a DWA or restricted snake, a sign warning that a DWA or restricted snake is in the vehicle.

The signs shall comply with the standards established in rules.

(D) **Illegal release** – no person shall knowingly release a DWA or restricted snake into the wild.

(E) **Roaming** – no person shall allow a DWA or restricted snake to roam off the property where it is confined.

(F) **Declawing/Defanging** – no person shall remove any teeth or claws from a DWA or restricted snake unless determined to be medically necessary by a veterinarian.

(G) **Catch-All** – No person shall violate any other provisions of this chapter or rules.

935.19 – Right of entry

(A)(1) **May enter with consent of owner** – the director or his designee may enter at all reasonable times any premises at which a DWA or restricted snake is confined, with the consent of the owner of the premises, for the purpose of determining compliance with this chapter and rules.

(A)(2) **Search warrant** – if the director or his designee is denied access, and if director reasonably suspects the person is not in compliance, the director may apply for a search warrant in a court of competent jurisdiction authorizing access to the premises.

(A)(3) **Probable cause requirement** – the court shall issue the search warrant if there is probable cause to believe that the person is not in compliance with this chapter or rules. Probable Cause may be based on hearsay.

(B) **Inspections** – the director may designate any of the following to conduct inspections under this section:

(1) ODA employees;

(2) ODNR law enforcement officers with the consent of ODNR's director;

(3) Employees of ODH with consent of ODH's director;

(4) Employees of a board of health, with consent from the board of health;

(5) Agents of the humane society, with consent of the humane society.

(C) **Notification of violation to director** – if a person designated to conduct an inspection determines that a violation has occurred, is occurring, or may occur, the person shall immediately notify the director of agriculture.

935.20 – Procedure for conducting investigations - quarantine and transfer orders

(A) On and after January 1, 2014, the director immediately shall cause an investigation to be conducted if the director has reason to believe any of the following may be occurring:

(1) **No DWA permit** – a DWA is possessed by a person that has not been issued a wildlife shelter permit, wildlife propagation permit, or rescue facility permit.

(2) **No restricted snake permit** – a restricted snake is possessed by a person that has not been issued a restricted snake possession permit or restricted snake propagation permit.

(3) **Illegal treatment** – a DWA or restricted snake is being treated or kept in a manner that is a violation of this chapter or rules.

Quarantine and transfer power – for the purposes of the investigation, director or designee may through a written order, compel the animal to be quarantined or may order the animal to be transferred to a facility that is on the list maintained by the director.

(B) **Notice of quarantine or transfer** – director shall attempt to notify the person owning or possessing the animal that has been ordered quarantined or transferred. Notice shall be delivered via certified mail. Director may also post the quarantine order at two conspicuous sites on the location where the animal is quarantined. ODA must maintain a copy of the order and evidence the director attempted to notify the person owning or possessing the animal.

(C) **Contents of quarantine or transfer order** – a quarantine or transfer order shall contain all of the following:

(1) Name and address of the person owning or possessing the animal, if known;
(2) Description of the quarantined or transferred animal;
(3) Description of the premises affected by the quarantine or transfer;
(4) Reason for the quarantine or transfer;
(5) Any terms or conditions of the quarantine or transfer;
(6) Notice that a person adversely impacted by a quarantine or transfer order may request a hearing to review the order.

(D) **Hearing request** – a person adversely affected by a quarantine or transfer order may request in writing an adjudication in accordance with Chapter 119 if made within 30 days after the order is issued.

(E) **Costs of quarantine or transfer** – owners or possessors of a quarantined or transferred animal are responsible for all costs including the costs of transportation, housing, food, and veterinary care. If they are unable to pay the costs, the director shall certify the costs to the county auditor to be assessed against any property of the owner. All money collected this way shall be credited in accordance with division (J) below.

(F) **Dangerous diseases and euthanasia** – if the state veterinarian determines that a quarantined or transferred animal is infected with a dangerous contagious our infectious disease, the director must be notified. The director may order the animal to be humanely euthanized if the state veterinarian has indicated that euthanization may be necessary.

(G) **When quarantine ends** – a quarantine or transfer order shall remain in effect until one of the following occurs:

(1) **Written release** – the director, after reviewing the results of the investigation conducted under (A) above, issues a written notice of release.

(2) **Court ordered termination** – a court of competent jurisdiction orders the quarantine or transfer order to be terminated in a proceeding conducted under division (H) of this section.

(3) **Court ordered seizure** – a court of competent jurisdiction orders the seizure of the animals in a proceeding conducted under division (H) of this section.

(H) **Proceeding for permanent seizure** – if, after reviewing the results of an investigation concerning a dangerous wild animal or restricted snake conducted under division (A) of this section and after resolution of any proceeding conducted under division (D) of this section, the director determines that a circumstance described in division (A)(1), (2), or (3) of this section is or was occurring, the director shall initiate, in a court of competent jurisdiction, a proceeding for the permanent seizure of the animal or snake, as applicable. If the court affirms the director's determination the court shall order the animal or snake seized and shall order the method of disposition of the animal or snake. The court may order the person owning or possessing the animal or snake to pay all reasonable costs associated with the seizure and, if applicable, the costs associated with the quarantine or transfer of the animal or snake, including the costs of transportation, housing, food, and veterinary care of the animal or snake. If the court does not affirm the director's determination, the court shall order the quarantine or transfer order to be terminated.

(I) **Who can conduct investigations?** – the director may authorize any of the following to conduct an investigation and order a quarantine or transfer of a DWA or restricted snake:

(1) ODA employees;
(2) ODNR law enforcement officers with the consent of ODNR's director;
(3) Employees of ODH with consent of ODH's director;
(4) Employees of a board of health, with consent from the board of health;
(5) Agents of the humane society, with consent of the humane society;
(6) Law enforcement officers with the consent of the sheriff of the county of the chief law enforcement officer of the township or Municipal Corporation by whom the law enforcement officers are employed;

(7) Law enforcement officers who are state highway patrol troopers with the consent of the superintendent of the state highway patrol.

(J) **Where does the money go?** – money collected for reimbursement of costs associated with the quarantine or transfer of dangerous wild animals and restricted snakes shall be credited to one of the following funds, as applicable:

(1) **State employees** – if the animal or snake was quarantined or transferred by an employee of the department of agriculture or the department of health, a natural resources law enforcement officer, or a law enforcement officer who is a state highway patrol trooper, to the dangerous and restricted animal fund created in section 935.25 of the Revised Code;

(2) **Board of health employees** – if the animal or snake was quarantined or transferred by an employee of a board of health, a special fund, which is hereby created in each health district, that shall be used exclusively for the administration and enforcement of this chapter and rules;

(3) **Humane society employee** – if the animal or snake was quarantined or transferred by an agent of a humane society, a special fund, which is hereby created in each county that has a humane society, that shall be used exclusively for the administration and enforcement of this chapter and rules;

(4) **Local law enforcement officer** – if the animal or snake was quarantined or transferred by a law enforcement officer who is not a state highway patrol trooper, the special fund that is created in the political subdivision that employs the law enforcement officer in division (D) of section 935.16 of the Revised Code.

(K) **List of facilities that can accept animals** – the director shall maintain a list of facilities inside and outside the state that the director determines are eligible to accept dangerous wild animals and restricted snakes for the purposes of this section.

935.21 – Backup for an investigation

The director of agriculture may request either of the following to accompany the director or an employee of the department of agriculture for purposes of investigations:

(A) A law enforcement officer;

(B) With the consent of the director of natural resources, a natural resources law enforcement officer.

935.22 – No liability for destroying an animal that is a threat to public safety

An employee of an agency or political subdivision of the state that destroys a dangerous wild animal or restricted snake that is a threat to public safety is not liable for damages in a civil action for any injury, death, or loss to person or property that allegedly arises from the destruction of the animal or snake.

935.23 – Provisions specific to venomous snakes

(A) The owner of a restricted snake specified in division (L)(2), (3), or (4) of section 935.01 of the Revised Code shall do both of the following:

(1) **Antivenom provision** – have access to antivenom for each species of snake that the person owns either at the location where each snake is confined or at a hospital with which the owner has entered into a written agreement to provide the antivenom. However, an owner may apply to the director of agriculture for a waiver to have access to antivenom in a location that is not specified in division (A)(1) of this section.

(2) **Proof of access to antivenom** – submit proof of having access to the antivenom required by division (A)(1) of this section to the sheriff of the county and the chief law enforcement officer of the township or municipal corporation in which each snake that the person owns is confined.

Must submit list of venomous snakes to law enforcement – in addition, the owner shall submit a list that contains the name of each species of restricted venomous snake specified in division (L)(2), (3), or (4) that the person owns to the sheriff of the county and the chief law enforcement officer of the township or municipal corporation in which each snake is confined. If the restricted snake or snakes owned by the person changes, the owner shall submit an updated list to the sheriff of the county and the chief law enforcement officer of the township or municipal corporation in which each such snake is confined no later than seven days after the change occurs.

(B) **Liability for bites** – if a restricted venomous snake specified in division (L)(2), (3), or (4) bites a person other than the snake's owner, the owner is liable for all costs associated with the treatment of the bite, including the cost of replacement of any antivenom that was used to treat the bite.

935.24 – Injunction/Civil Penalties

(A) **How to seek an injunction** – the attorney general, upon request of the director of agriculture, shall bring an action for injunction against any person who has violated, is violating, or is threatening to violate this chapter or rules. The court of common pleas in which an action for injunction is filed has jurisdiction to and shall grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated, is violating, or is threatening to violate this chapter or rules.

(B)(1) **Civil penalty authority** – the director may assess a civil penalty against any person that the director determines is not in compliance with this chapter or rules.

(2) **Right to a hearing** – the director shall afford the person an opportunity for an adjudication under Chapter 119. to challenge the director's determination that the person is not in compliance with this chapter or rules. However, the person may waive the right to an adjudication.

(3) **Waiver of right to an adjudication** – if the opportunity for an adjudication is waived or if, after an adjudication, the director determines that a violation has occurred or is occurring, the director may issue an order and assess a civil penalty in an amount established in rules against the violator. The order and the assessment of the civil penalty may be appealed in accordance with section 119.12 of the Revised Code.

(C) **Where money goes** – notwithstanding any other section of the Revised Code, money resulting from any action taken under this section shall be credited to the dangerous and restricted animal fund created in section 935.25 of the Revised Code.

935.25 – Dangerous and restricted animal fund

(A) **Creation of the fund** – there is hereby created in the state treasury the dangerous and restricted animal fund, which shall consist of all of the following:

(1) Money collected from permit application fees under this chapter;

(2) Money credited to the fund under division (J)(1) of section 935.20 of the Revised Code; (reimbursement of costs associated with a quarantine or transfer order)

(3) Money credited to the fund under division (D) of section 935.24 of the Revised Code.

(B) **Expenditure of funds** – money in the fund shall be used for any of the following purposes:

(1) Administration and enforcement of this chapter and rules;

(2) Compensation of the department of natural resources or the state highway patrol for the costs incurred in capturing or destroying a dangerous wild animal or restricted snake pursuant to section 935.16 of the Revised Code;

(3) Compensation of the departments of natural resources and health, the state highway patrol, and boards of health for the costs incurred in conducting investigations and quarantining or transferring a dangerous wild animal or restricted snake pursuant to section 935.20 of the Revised Code;

(4) Compensation of a facility that is on the list maintained by the director of agriculture under division (K) of section 935.20 of the Revised Code and that accepts a dangerous wild animal or restricted snake pursuant to that section.

(C) **Investment earnings** – investment earnings of the fund shall be credited to the fund.

935.26 – Dangerous and restricted animals advisory board (17 members)

(A) **Creation of the board** – There is hereby created the dangerous and restricted animals advisory board consisting of the following members:

Permanent members (4):

(1) **The director of agriculture** or the director's designee, who shall be the chairperson of the board;
(2) **The director of natural resources** or the director's designee;
(3) **The director of health** or the director's designee;
(4) **The state veterinarian** in the department of agriculture;

Appointed members (13 total):

(5) The following eleven members who shall be appointed by the governor with the advice and consent of the senate and shall be residents of this state:
  (a) One member representing dangerous wild animal or restricted snake owners;
  (b) One member who is knowledgeable about dangerous wild animals or restricted snakes;
  (c) One member representing an accredited member of the association of zoos and aquariums that operates in this state;
  (d) One member representing an accredited member of the zoological association of America;
  (e) Two members who are veterinarians;
  (f) Two members representing the public;
  (g) One member representing the governor;
  (h) One member representing a humane society;
  (i) One member representing a board of health.

(6) One member appointed by the speaker of the house of representatives who shall be a restricted snake owner;
(7) One member appointed by the president of the senate who shall be a dangerous wild animal owner.

Not more than seven members appointed to the board at any given time shall be members of the same political party.

(B)(1) CRITICAL TIMELINE: the governor, the speaker of the house of representatives, and the president of the senate shall make initial appointments to the board not later than forty-five days after the effective date of this section.

(2) **Staggered terms** – the following initial members of the board appointed by the governor shall be appointed for a term ending January 15, 2013:

(a) The member representing dangerous wild animal or restricted snake owners;
(b) One of the members who is a veterinarian;
(c) The member representing the governor;
(d) The member representing an accredited member of the zoological association of America;
(e) The member representing a board of health.

(3) The following initial members of the board shall be appointed for a term ending January 15, 2014:

(a) The member appointed by the speaker of the house of representatives;
(b) The member who is knowledgeable about dangerous wild animals or restricted snakes;
(c) The member representing a humane society;
(d) One of the members representing the public.

(4) The following initial members of the board shall be appointed for a term ending January 15, 2015:

(a) The member appointed by the president of the senate;
(b) The member representing an accredited member of the association of zoos and aquariums that operates in this state;
(c) One of the members representing the public;
(d) One of the members who is a veterinarian.

Length of terms for appointed members – thereafter, terms of office of appointed members shall be for three years with each term ending on the same day of the same month as did the term that it succeeds. An appointed member shall hold office from the date of the member's appointment until the end of the term for which the member was appointed.

Length of terms for office holders – the terms of office of the director of agriculture, the director of natural resources, the director of health, their designees, and the state veterinarian shall coincide with the length of time that the person holds the position of director or state veterinarian or is a designee, as applicable. If a director, a designee, or the state veterinarian resigns or that person's employment is terminated, that person shall

cease to serve on the board, and the successor of that person shall serve on the board in accordance with this section.

(C) **How to fill vacancies** – vacancies on the board shall be filled in the manner provided for original appointments. A member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of one hundred eighty days has elapsed, whichever occurs first. A member may be reappointed upon the expiration of the member's term.

(D) **Frequency of meetings** – the board shall hold at least three regular meetings each year and may hold additional meetings at times that the chairperson or a majority of the board members considers appropriate. At the first meeting of the board in each calendar year, the director of agriculture or the director's designee shall designate one member of the board to serve as its vice-chairperson. A majority of the board constitutes a quorum. The board may act only if a quorum is present and only by a majority vote of the members.

(E) **Board service not considered holding public office** – serving as an appointed member of the board does not constitute holding a public office or position of employment under the laws of this state and does not constitute grounds for removal of public officers or employees from their offices or positions of employment.

(F) **Board member compensation** – appointed members of the board shall receive no compensation for their services. Members shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members. The expenses shall be paid from the dangerous and restricted animal fund created in section 935.25 of the Revised Code. The expenses shall be paid in accordance with the rules and requirements adopted by the department of administrative services that are applicable to state employees.

(G) **Committees** – the board may create committees that it considers appropriate to make recommendations to the board. Committees may include members who do not serve on the board.

(H) **Statutory duties of the board** – the board shall do both of the following:

(1) **Review rules** – review the rules that have been or are proposed to be adopted under divisions (A)(2) and (B) of section 935.17 of the Revised Code;

(2) **Advise director** – advise the director of agriculture on the administration of this chapter and rules.

<u>935.27 – Dangerous wild animal state emergency response commission</u>

(A) **Creation of the commission** – there is hereby created the dangerous wild animal state emergency response commission consisting of all of the following:

Members on the Commission (8 Members)

(1) The director of agriculture or the director's designee, who shall be the chairperson of the commission;
(2) The director of natural resources or the director's designee;
(3) The director of health or the director's designee;
(4) The executive director of the emergency management agency or the executive director's designee;
(5) A member of the house of representatives appointed by the speaker of the house of representatives;
(6) A member of the senate appointed by the president of the senate;

Governor Appointments

(7) Both of the following members who shall be appointed by the governor with the advice and consent of the senate:
    (a) A person representing a local law enforcement agency;
    (b) A person representing the owners of dangerous wild animals.

(B) **CRITICAL TIMELINE:** Not later than thirty days after the effective date of this section, the governor shall make appointments to the commission. Of the initial appointments, one shall serve for a term of two years and one shall serve for a term of three years. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed.

Reappointment – members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office for the remainder of that term. A member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

Frequency of meetings – the commission shall meet at times that the chairperson or a majority of the commission members considers appropriate, provided that no meeting shall be held on the call of the chairperson unless at least seven days' written notice first is provided to all members of the commission. At the first meeting of the commission in each calendar year, the director of agriculture shall designate one member of the commission to serve as its vice-chairperson. A majority vote of the members of the commission is necessary to take action on any matter. A vacancy on the commission does not impair the right of the other members to exercise all of the commission's powers.

Commission member compensation – appointed members of the commission shall serve without compensation for attending commission meetings. Members of the commission shall be reimbursed for their actual and necessary expenses incurred in the performance of official duties as members of the commission.

Office space and personnel – the department of agriculture shall provide the commission with the personnel, office space, and incidentals necessary for it to perform its duties and exercise its powers.

(C) **Statutory duties of the commission** – the commission shall do the following:

(1) **State response plan** – establish a state dangerous wild animal emergency response plan for escaped dangerous wild animals in this state;

(2) **County emergency response teams** – by resolution, appoint members to a dangerous wild animal county emergency response team for each county. A county emergency response team shall consist of the number of members that the commission considers appropriate, but shall include representatives from each of the following groups or organizations: elected local officials, law enforcement personnel, emergency management personnel, firefighting personnel, first aid personnel, health personnel, broadcast and print media personnel, and persons that possess dangerous wild animals.

(3) **Approve/Reject county response plans** – examine and approve or reject emergency response plans submitted to the commission by each county's dangerous wild animal county emergency response team.

The commission shall establish procedures and requirements for the preparation and examination and the approval or rejection of a county's emergency response plan.

935.28 – Counties must prepare emergency response plans

The dangerous wild animal county emergency response team of a county shall prepare an emergency response plan for the county. The plan shall include the methods and procedures that will be utilized in the county in the event of an escaped dangerous wild animal in the county. The emergency response team shall submit the plan to the dangerous wild animal emergency response commission established in section 935.27 of the Revised Code for the commission's approval. The emergency response team shall update the plan on an annual basis and shall submit the updated plan to the commission for approval.

935.29 – Local ordinances restricting dangerous wild animals

(A) For the purposes of this section, ordinances to control dangerous wild animals, restricted snakes, or both include, but are not limited to, ordinances concerned with the acquisition or possession of dangerous wild animals or restricted snakes, dangerous wild animals or

restricted snakes as public nuisances, and dangerous wild animals or restricted snakes as a threat to public health, safety, and welfare.

(B) **More Stringent** – a municipal corporation may adopt and enforce ordinances that are more stringent than the requirements established by this chapter and rules in order to control dangerous wild animals, restricted snakes, or both within the municipal corporation.

(C) No person shall violate an ordinance adopted under this section.

935.99 - Penalties

(A) Whoever violates the following divisions of section 935.18 of the Revised Code is guilty of a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense:

935.18(A) (No person shall sell at auction a DWA or restricted snake.)
935.18(B) (No person shall knowingly remove a microchip implanted in a DWA)
935.18(C) (Failure to display necessary signage)
935.18(E) (No person shall allow a DWA or restricted snake to roam of the property)
935.18(F) (No person shall declaw or defang a DWA or restricted snake)
935.18(G) (No person shall violate any other provisions of this chapter or rules)

(B) Whoever violates section 935.18(D) of the Revised Code is guilty of a felony of the fifth degree. (No person shall knowingly release a DWA or restricted snake into the wild)

(C) Whoever violates section 935.29(C) of the Revised Code is guilty of a minor misdemeanor. (No person shall violate a local ordinance adopted under this section)

The Columbus Dispatch

Sheriff: 56 exotic animals escaped from farm near Zanesville; 49 killed by authorities

Animal farm owner released the animals, then killed himself

APA dead lion lies by the fence on Terry Thompson's farm near Zanesville. Police killed dozens of animals yesterday that escaped from the wild-animal preserve where the owner's body later was found. Warning that more animals still were on the loose, officials expected up to four school districts to cancel classes as the remaining bears, big cats and other beasts from the Muskingum County Animal Farm were hunted down.

THE HOT ISSUE

Was the Muskingum County sheriff's response to escaped wild animals appropriate?

By Josh Jarman, and **Quan Truong**, and **Jim Woods** and **Brenda Jackson**
Wednesday October 19, 2011 8:31 PM

ZANESVILLE, Ohio —Authorities say that in all, 56 exotic animals escaped from a farm in Muskingum County last night, and one could still be missing this afternoon.

Of those animals, 49 were killed. Six animals -- a grizzly bear, three leopards and two monkeys-- were captured alive and taken to the Columbus Zoo and Aquarium, and a monkey and a grey wolf were at large. The animals that were killed included 18 tigers, nine male lions, eight female lions, six black bears, three mountain lions, two grizzly bears, one baboon and two wolves, Sheriff Matt Lutz said. The escaped monkey poses a danger because it is infected with herpes, the sheriff said.

The sheriff said it is possible that the missing monkey was eaten by a large cat.

The Columbus Dispatch

The owner of the farm, Terry Thompson, was found dead last night on his property. Authorities say Thompson opened the cage doors and cut the wires on the cages, then killed himself. He died from a gunshot wound. Lutz said Thompson's body was "bothered" by the animals.

Lutz had previously said a grizzly bear, a wolf and a mountain lion were missing. Today, authorities confirmed they killed the bear on the property last night. The wolf was later found dead; it had been shot last night. An officer wounded the mountain lion, which staggered into a neighbor's property and died.

Thompson's wife has returned to the farm and is talking to authorities. Jack Hanna, director emeritus of the Columbus Zoo, said the wife begged authorities not to take her "babies," but he convinced her to let the animals go and work it out later.

"I held her, I felt her shock. Her animals are gone. Her family is gone. Everything in her life is gone," Hanna said.

The animals that were killed by authorities likely will be buried on Thompson's property.

Lutz defended the shooting of the escaped animals. He said when deputies arrived at the house, there were large animals trying to escape. The deputies had to shoot them with their sidearms.

"Public safety was my No. 1 concern," Lutz said. "I gave the order that if the animals looked like they were going to get out, they were going down."

Hanna called this morning for the state to enact regulations to crack down on the possession, breeding and selling of exotic animals.

"I went to school at Muskingum (College)," he said. "It's like Noah's ark wrecked."

Hanna said he has talked to the governor's office about enacting stricter exotic animal laws.

"We need to set an example in the state of Ohio," he said. "There was a loss of life here, and we thank God it was not human life. It was animal life, and that's my life."

Hanna also defended the deputies shooting the animals.

The deputies were assisted by the State Highway Patrol, authorities from the Columbus Zoo and Aquarium and the Wilds, the state Division of Wildlife, the county Emergency Management Agency and township fire departments.

A plan to bring in a patrol helicopter with a thermal-imaging camera to find animals last night was scuttled last night by stormy weather.

Zanesville, West Muskingum and Maysville school districts, as well as Muskingum County Starlight School, all canceled classes for Wednesday to keep children inside. Lutz also recommends that residents remain inside today and call 911 if any wild animal is seen.Lutz said the incident began

about 5:30 p.m., when the sheriff's office began receiving calls that wild animals were running loose in the area of Kopchak Road, which is in Falls Township and just west of Zanesville.

Lutz said that four deputies with assault rifles in a pickup truck immediately went to 270 Kopchak Rd., where a 46-acre "wild-animal-rescue farm" owned by Thompson borders I-70.

There, Lutz said, they found Thompson dead outside his house and "every single animal-cage door open."Lutz said the deputies saw a number of animals standing outside their cages, still on the property, while others had escaped a fence that surrounds Thompson's property. Deputies immediately began shooting animals, he said.

Lutz said the fence on Thompson's property isn't designed to keep in wild animals.

Lutz said a man who is a caretaker on the animal preserve told deputies that 48 animals lived in cages outside the house on the property. More animals — mostly monkeys, baboons and apes — lived inside Thompson's house, the man said.

Those inside the house were still in the cages, Lutz said.

Late last night, there was a report of a wolf and a bear still roaming at least 4 miles from the farm property. One animal was struck by a car and later killed.

The Licking County Sheriff's Office also received at least four phone calls from residents reporting exotic-animal sightings. SWAT officers with night-vision equipment were searching for animals in Licking County early this morning.

Lutz said Muskingum County deputies had fatally shot and killed at least 25 animals when they first drove to the property. A wolf and bear also reportedly were killed along I-70.

He said that officials from the Columbus Zoo and The Wilds came in shortly after the discovery with tranquilizer guns, hoping to capture some animals alive.

Thompson, 62, was released from federal prison just three weeks ago, after serving a one-year term.

The Bureau of Alcohol, Tobacco, Firearms and Explosives had raided Thompson's Kopchak Road property in June 2008, seizing more than 100 guns. In April 2010, Thompson pleaded guilty in U.S. District Court in Columbus to two federal charges: possession of a machine gun and possession of short firearms without serial numbers.

Under terms of his release, Thompson was confined to his home for a year.

Thompson also was convicted in Muskingum County Municipal Court in 2005 of cruelty to animals, having an animal at large and two counts of rendering animal waste without a license. The charges stemmed from allegations that three cows and a bison had died on another property he owned, on Boggs Road in Perry Township, east of Zanesville.

The Columbus Dispatch

Neighbors there had lodged numerous complaints about him letting his animals wander. Thompson was put on house arrest for six months and paid a $2,870 fine in that case. He also was ordered to move his animals to his Kopchak Road land.

Ohio has no rules regulating the sale and ownership of exotic animals.

Former Gov. Ted Strickland had attempted to enforce such a law, but Gov. John Kasich allowed an executive order to expire.

“There really needs to be some legislation changed on how these things are going on in the state of Ohio,” Lutz said.

Kate Riley, 20, who lives in western Muskingum County, said that Thompson has had lions, tigers and a bear get loose in the past.

Riley’s family owns a feed cattle farm nearby and said that Thompson would come and take their dead cows to feed his lions.

“He’d have claw marks all over him,” she said.

Riley said she understands that Thompson’s wife, Marian, recently left her husband and moved out.

Patti Peters, a spokeswoman for the Columbus Zoo, said staff members were at a dinner last night for the International Rhino Foundation when they heard about the incident. Five staff members from the zoo and the Wilds immediately went to help, she said.

Larry Hostetler, executive director of the Animal Shelter Society of Muskingum County, said the sheriff’s office and state officials had visited the Kopchak Road property in 2008 on a complaint that animals weren’t being taken care of there. The inspection, however, found acceptable treatment, Hostetler said.

Adelbert G. Kempf Jr, a retired veterinarian in Heath, said he inspected Thompson’s horses that day. He said thatThompson told him that he was running a rescue operation for horses.

“ He was far from that,” Hostetler said. “He was more of an animal collector.”

At one point, Thompson took three lion cubs to New York City for a photo shoot with model Heidi Klum. On another occasion, he brought animals to a 2007 community pet fair in Muskingum County. Thompson and his wife brought bear cubs, lions cubs and a baby ape, Hostetler said.

He said the wild animals disrupted the fair because they weren’t friendly.

“We had to change the advertisement in following years to say bring your domestic pets,”Hostetler said. “He was a piece of work.”

Dispatch staff reporter Kathy Lynn Gray contributed to this story.

Ohio Veterinary Medical Association
Policy Statement

Private Ownership of Wild Animals

"The OVMA recommends limiting or prohibiting private ownership (as defined below) of indigenous and non-native wild animals that pose a significant risk to public health, domestic animal health, or the ecosystem, as well as those species whose welfare is unacceptably compromised. Except under special circumstances (such as recognized conservation and research programs), the OVMA especially supports regulatory efforts to prohibit private ownership, and the importation for the purpose of private ownership, of non-native animals that threaten public health, domestic animal health, indigenous wild animal health, agriculture, or the ecosystem, as well as those species whose welfare is unacceptably compromised.

Definitions:

- Private ownership –Ownership by individuals, non-public entities or institutions that are exempt from the Animal Welfare Act.
- Wild- Species that have not yet been subjected to domestication or that may be in the process of being domesticated. These species may be indigenous to North America or non-native (exotic).
- Non-native (Exotic)- Originally imported species; not native to North America; not domesticated.
- Indigenous – Native to North America."

Initially policy approved June 2007, amended January 2013

901:1-4-01.2 Food and water for dangerous wild animals.

(A) As appropriate to the species, animals must receive food and water on a regular basis of sufficient quantity and quality to ensure maintenance of normal body condition and/or growth.

(B) Food and water receptacles must be kept clean and sanitary.

(C) Food provided shall be unspoiled and uncontaminated.

(D) Perishable foods must be kept under refrigeration and all foods must be stored in a safe manner.

(E) A nutritional plan must be developed with veterinary guidance.

(F) Food and water receptacles shall be of a sufficient number and size for the animals being served.

(G) All food and water equipment must be inspected and maintained in working condition.

Effective: 07/18/2013
R.C. 119.032 reviewdates: 07/18/2018
PromulgatedUnder: 119.03
StatutoryAuthority: 935.17
Rule Amplifies: 935.17

901:1-4-01.3 Health for dangerous wild animals.

(A) Each owner of an animal shall have a valid veterinary-client-patient-relationship with a licensed veterinarian.

(B) The veterinarian must visit each facility a minimum of one time per year and provide a written annual program of care for the animals in the facility.

(C) Animals shall be monitored regularly for evidence of disease, injury, and parasites and corrective measures under veterinary guidance must be taken when evidence is found of such conditions.

(D) A primary enclosure must provide the opportunity and space to exercise daily and have freedom of movement to reduce distress and maintain physical condition, unless directed otherwise by a veterinarian.

(E) Each facility shall maintain a safe and effective program for the control of rodents, insects, ectoparasites and other pests.

(F) Owners and any personnel in contact with nonhuman primates or elephants must annually have a negative tuberculosis test.

(G) The introduction of new animals to a social group must be done in a manner to minimize distress, tension and aggression.

(H) Euthanasia for animals must be performed when the likelihood for recovery is poor and the condition cannot be effectively relieved by best species management and medically appropriate procedures.

(I) The director shall appoint a committee made up of three licensed veterinarians to evaluate the condition of an animal or restricted snake that is under the control of the department. The committee's purpose will be to evaluate the animal's condition as necessary following an initial evaluation by the department's veterinarian. The committee shall advise the director on the disposition of the animal based upon the initial evaluation of the animal's health, psychological well-being, and long term quality of life including population management.

Effective: 07/18/2013
R.C. 119.032 review dates: 07/18/2018
Promulgated Under: 119.03
Statutory Authority: 935.17
Rule Amplifies: 935.17

If you would like to read
Sub. S.B. 310 of the 129th General Assembly,
you can find the full act here:

http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_310

Ohio Legislative Service Commission

Final Analysis

Jeff Grim

Sub. S.B. 310

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

Sens. Balderson, Jones, Bacon, Beagle, Burke, Gentile, Hite, Lehner, Manning, Niehaus, Sawyer, Widener

Reps. Fedor, Heard, Murray, Okey, Antonio, Barnes, Beck, Boyd, Carney, Celebrezze, Clyde, Driehaus, Fende, Garland, Grossman, Hill, Lundy, Mallory, McClain, Milkovich, O'Brien, Phillips, Ramos, Thompson, Yuko, Batchelder

Effective date: September 5, 2012

ACT SUMMARY

General prohibitions; exemptions

- Prohibits a person from possessing a dangerous wild animal on or after January 1, 2014, but states that the prohibition does not apply to a person whose possession of a dangerous wild animal is authorized by an unexpired wildlife shelter permit or a wildlife propagation permit issued under the act or to certain other persons.

- Defines "dangerous wild animal" to include big cats, bears, certain nonhuman primates, and other specified animals, and specifically excludes livestock.

- With specified exceptions, prohibits a person from acquiring, buying, selling, trading, or transferring possession or ownership of a dangerous wild animal on or after the act's effective date.

- Defines "restricted snake" to include certain anacondas and pythons, boomslang snakes, twig snakes, and other specified venomous snakes.

- States that the Director of Agriculture may recommend to the General Assembly species of animals to be included in the definition of "dangerous wild animal" and species of snakes to be included in the definition of "restricted snake," and prohibits the Director from adding animals or snakes to the applicable definition without the approval of the General Assembly.

- Generally exempts specified individuals, institutions, and facilities, including zoos and certain wildlife sanctuaries, from the act's provisions, but requires them to register the dangerous wild animals that they possess.

Registration of dangerous wild animals

- Until January 1, 2014, requires a person that possesses a dangerous wild animal on the act's effective date to register the animal with the Director not later than 60 days after the act's effective date.

- Requires the registration form to include certain information, including the name and address of the person registering the dangerous wild animal and a description of the animal.

- Requires a microchip to be implanted in a dangerous wild animal at the time of registration.

- Requires a person that possesses a registered dangerous wild animal on October 1, 2013, and that wishes to continue to possess the animal on and after January 1, 2014, to apply for the applicable permit issued under the act.

Registration only of specified monkeys and lemurs

- Requires a person that possesses any of certain marmosets or capuchins, a squirrel monkey, or a lemur only to register the primate in the same manner as provided for registration of dangerous wild animals.

Wildlife shelter permit

- Requires a person that possesses a registered dangerous wild animal on October 1, 2013, that wishes to continue to possess the animal on and after January 1, 2014, and that does not intend to propagate the animal to apply for an annual wildlife shelter permit and pay an application fee.

- Requires an application for such a permit to include specified information, including a plan of action to be undertaken if a dangerous wild animal escapes and proof of financial responsibility.

- Requires the Director, within 90 days of receiving an application, to issue a wildlife shelter permit if certain criteria are met, including a requirement that the applicant has not been convicted of or pleaded guilty to committing certain crimes.

- Establishes additional permit requirements.

- Specifies that if the Director denies an initial application or renewal application, the applicant must transfer the dangerous wild animal or animals that the person possesses to one of any specified facilities.

Wildlife propagation permit

- Requires a person that possesses a registered dangerous wild animal and that wishes to continue to possess the animal on the dates specified above and intends to propagate the animal solely for the purposes of a species survival program to apply for an annual wildlife propagation permit and pay an application fee.

- Generally requires an applicant for a wildlife propagation permit to comply with the act's requirements and procedures governing application for and issuance of wildlife shelter permits.

Restricted snake possession permit

- Requires a person that possesses a restricted snake prior to January 1, 2014, that wishes to continue to possess the snake on and after that date, and that does not intend to propagate, sell, trade, or otherwise transfer the snake to obtain an annual restricted snake possession permit and pay an application fee not later than January 1, 2014, and requires a person that acquires a restricted snake on or after that date to obtain such a permit not later than 120 days after acquiring the snake.

- Establishes application and permit requirements that are generally the same as those for wildlife shelter permits, but establishes different application fees and amounts of required proof of financial responsibility.

- Additionally, states that an applicant may allow certain individuals, including primary and secondary school age students, to be in physical contact with a restricted snake or snakes possessed by the applicant under specified circumstances.

Restricted snake propagation permit

- Requires a person that possesses a restricted snake and that wishes to continue to possess the snake, or that acquires a restricted snake, on the applicable dates specified above and that intends to propagate, sell, trade, or otherwise transfer the snake to apply for an annual restricted snake propagation permit and pay an application fee.

- Generally requires an applicant for a restricted snake propagation permit to comply with the act's requirements and procedures governing application for and issuance of restricted snake possession permits.

Dual permitting application requirements

- Requires a person that possesses or propagates both dangerous wild animals and restricted snakes to apply for all applicable permits.

Rescue facility permit

- Requires a person that operates a rescue facility prior to January 1, 2014, or that wishes to begin operation on or after that date to obtain a rescue facility permit from the Director, and establishes requirements and procedures governing the issuance or denial of a permit.

Permit suspension or revocation

- Authorizes the Director to suspend or revoke a permit issued under the act for a violation of the act or rules, and allows a permit holder to appeal the suspension or revocation.

Licenses to keep or raise certain wild animals under continuing law

- Specifies that commercial propagating, noncommercial propagating, and raise to release licenses authorized under continuing law cannot be issued to raise or sell dangerous wild animals or restricted snakes.

Standards of care and housing

- Requires the Director to adopt rules establishing standards of care for registered dangerous wild animals, and requires a person that possesses a registered dangerous wild animal to comply with the applicable rules.

- Requires the Director to adopt rules establishing standards of care for certain dangerous wild animals, such as big cats and crocodiles, that are possessed by wildlife shelter or wildlife propagation permit holders, and requires permit holders that possess those animals to comply with those standards.

- Requires permit holders that possess monkeys or restricted snakes to comply with standards of care that are established in regulations adopted under the federal Animal Welfare Act or standards adopted by the Zoological Association of America, respectively.

Records

- Requires a permit holder to maintain certain records regarding each dangerous wild animal and each restricted snake that the permit holder possesses.

Escape of dangerous wild animals and restricted snakes

- Requires a person that possesses a dangerous wild animal or restricted snake that escapes to notify immediately applicable local law enforcement officers and the Division of Animal Health in the Department of Agriculture.

- Authorizes a law enforcement officer or a natural resources law enforcement officer to destroy a dangerous wild animal or restricted snake that has escaped and poses a threat to public safety, and provides civil immunity for such an officer for any injury, death, or loss to person or property that allegedly arises from the destruction of the animal or snake.

- Specifies that the person that possesses a dangerous wild animal or restricted snake that escapes is responsible for all reasonable costs associated with the capture or destruction of the animal or snake.

- Eliminates a provision of law that required the owner or keeper of a nonnative animal that escaped to report the escape to specified local law enforcement officers and certain local government officials within one hour of the escape.

Additional responsibilities and duties of Director of Agriculture

- Requires the Director to adopt rules necessary to administer and enforce the act.

- Requires the Director to maintain a database of the name and address of each person that possesses a registered dangerous wild animal until January 1, 2014, and of each person issued a permit under the act on and after that date.

Enforcement

- Prohibits a person from selling or offering for sale at auction a dangerous wild animal or a venomous snake.

- Prohibits a person from allowing a dangerous wild animal or restricted snake to roam off the property where it is confined.

- Establishes several other prohibitions, including a prohibition against removing the teeth or claws of a dangerous wild animal or restricted snake and a prohibition against failing to comply with signage requirements.

- Specifies that violation of the above prohibitions is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense.

- Prohibits a person from knowingly releasing a dangerous wild animal or restricted snake into the wild, and specifies that violation is a fifth degree felony.

- Authorizes the Director or the Director's designee to enter any premises at which a dangerous wild animal or restricted snake is confined to determine compliance with the act and rules, and authorizes the Director to apply for a search warrant if necessary.

- Requires the Director to immediately investigate if the Director has reason to believe that a dangerous wild animal or restricted snake is possessed by a person that does not have a permit issued under the act or that a dangerous wild animal or restricted snake is being treated or kept in a manner that is in violation of the act or rules.

- Establishes requirements and procedures that the Director or the Director's designee must follow to quarantine or transfer to a qualified facility a dangerous wild animal or restricted snake while determining if one of the above circumstances is occurring, and states that the owner or possessor of the animal or snake is responsible for all reasonable costs associated with the quarantine or transfer.

- If either of the circumstances is occurring, requires the Director to initiate in court a proceeding for permanent seizure of a dangerous wild animal or restricted snake.

- Authorizes a court that orders the seizure of a dangerous wild animal or restricted snake under such a proceeding to order the person owning or possessing the animal or snake to pay all reasonable costs associated with the seizure and, if applicable, the costs associated with the quarantine or transfer of the animal or snake.

- With regard to such investigations, quarantines, and transfers, authorizes the Director to designate employees of certain state agencies or political subdivisions and State Highway Patrol troopers to conduct investigations and order the quarantine or transfer of a dangerous wild animal or restricted snake, including natural resources law enforcement officers.

- Requires money collected for reimbursement of costs associated with the quarantine or transfer of dangerous wild animals or restricted snakes to be credited to the Dangerous and Restricted Animal Fund created by the act or to a designated fund of the appropriate political subdivision whose employee ordered the quarantine or transfer of a dangerous wild animal or restricted snake, as applicable.

- Authorizes the Director to request a law enforcement officer or, with the consent of the Director of Natural Resources, a natural resources law enforcement officer to accompany the Director of Agriculture or an employee of the Department of Agriculture for purposes of investigations and inspections conducted under the act.

- Requires the Attorney General, upon request of the Director, to bring an action for injunction against any person who has violated, is violating, or is threatening to violate the act or rules adopted under it.

- Authorizes the Director to assess a civil penalty against any person that is not in compliance with the act or rules.

Ordinances adopted by municipal corporations

- Authorizes a municipal corporation to adopt and enforce ordinances that are more stringent than the requirements established by the act and rules adopted under it in order to control dangerous wild animals, restricted snakes, or both within the municipal corporation.

Dangerous and Restricted Animal Fund

- Creates the Dangerous and Restricted Animal Fund consisting of money from permit application fees, reimbursement of costs associated with the quarantine and transfer of dangerous wild animals and restricted snakes, and civil penalties.

- Requires the Fund to be used to pay for the administration and enforcement of the act and rules adopted under it, for compensation of the State Highway Patrol, the Departments of Natural Resources and Health, and boards of health for costs incurred in capturing or destroying a dangerous wild animal or restricted snake and in conducting investigations and quarantining or transferring an animal or snake pursuant to the act, as applicable, and for compensation of qualified facilities that accept quarantined or transferred animals or snakes.

Dangerous and Restricted Animals Advisory Board

- Creates the Dangerous and Restricted Animals Advisory Board, and requires it to review the rules that have been proposed to be adopted under the act governing the care of dangerous wild animals and to advise the Director of Agriculture on the administration of the act and rules.

Dangerous Wild Animal State Emergency Response Commission

- Creates the Dangerous Wild Animal State Emergency Response Commission, and requires it to do all of the following:

  --establish a state dangerous wild animal emergency response plan for escaped dangerous wild animals;

--appoint members to a dangerous wild animal county emergency response team for each county; and

--approve or reject emergency response plans submitted to it by each county's dangerous wild animal county emergency response team.

Miscellaneous

- Provides civil immunity for an employee of an agency or political subdivision that destroys a dangerous wild animal or restricted snake that is a threat to public safety.

- Generally requires the owner of a venomous snake to have access to antivenom for each species of snake at the location where each snake is confined or at a hospital, and requires such an owner to submit proof of having access to the antivenom and a list that contains the names of each species of venomous snake that the person owns to local law enforcement officers.

- States that an owner of a venomous snake is liable for all costs associated with treatment of a bite.

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CONTENT AND OPERATION

Overview

The act generally prohibits the possession of dangerous wild animals on or after January 1, 2014, except in compliance with the act. Until that date, a person that possesses a dangerous wild animal must register the animal with the Director of Agriculture. A person that possesses a registered dangerous wild animal on October 1, 2013, and wishes to retain the animal on and after January 1, 2014, must obtain a wildlife shelter permit or a wildlife propagation permit. A person that possesses a restricted snake prior to January 1, 2014, and wishes to retain the snake on and after that date must obtain a restricted snake possession permit or a restricted snake propagation permit by January 1, 2014. A person that acquires a restricted snake on or after the above date for purposes of possession or propagation must obtain the appropriate restricted snake permit not later than 120 days after acquiring the snake. The act also requires permit holders to comply with certain requirements regarding the care and housing of the dangerous wild animals or restricted snakes that they possess. Finally, it generally prohibits the acquisition, buying, selling, trading, or transferring possession or ownership of dangerous wild animals on and after the act's effective date, but allows those activities with regard to restricted snakes.

Species considered dangerous wild animals and restricted snakes

The act defines "dangerous wild animal" as any of the following, including hybrids unless otherwise specified:

(1) Hyenas;

(2) Gray wolves, excluding hybrids;

(3) Lions;

(4) Tigers;

(5) Jaguars;

(6) Leopards, including clouded leopards, Sunda clouded leopards, and snow leopards;

(7) All of the following, including hybrids with domestic cats unless otherwise specified:

(a) Cheetahs;

(b) Lynxes, including Canadian lynxes, Eurasian lynxes, and Iberian lynxes;

(c) Cougars, also known as pumas or mountain lions;

(d) Caracals; and

(e) Servals, excluding hybrids with domestic cats commonly known as Savannah cats.

(8) Bears;

(9) Elephants;

(10) Rhinoceroses;

(11) Hippopotamuses;

(12) Cape buffaloes;

(13) African wild dogs;

(14) Komodo dragons;

(15) Alligators;

(16) Crocodiles;

(17) Caimans, excluding dwarf caimans;

(18) Gharials;

(19) Golden lion, black-faced lion, golden-rumped lion, cotton-top, emperor, saddlebacked, black-mantled, and Geoffroy's tamarins;

(20) Southern and northern night monkeys;

(21) Dusky titi and masked titi monkeys;

(22) Muriquis;

(23) Goeldi's monkeys;

(24) White-faced, black-bearded, white-nose bearded, and monk sakis;

(25) Bald and black uakaris;

(26) Black-handed, white-bellied, brown-headed, and black spider monkeys;

(27) Common woolly monkeys;

(28) Red, black, and mantled howler monkeys; and

(29) Any other nonhuman primates other than lemurs. (See **APPENDIX**.)

The act specifically excludes from the term a domesticated animal that is considered livestock as defined in the Department of Agriculture Law.[1]

The act defines "restricted snake" as any of the following:

(1) All of the following constricting snakes that are 12 feet or longer:

(a) Green and yellow anacondas; and

(b) Reticulated, Indian, Burmese, North African rock, South African rock, and amethystine pythons.

(2) Species of the family atractaspididae;

(3) Species of the family elapidae;

(4) Species of the family viperidae;

(5) Boomslang snakes; and

(6) Twig snakes.[2] (See **APPENDIX**.)

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[1] R.C. 935.01(C).

[2] R.C. 935.01(L).

Addition of species of dangerous wild animals or restricted snakes

The act states that the Director of Agriculture may recommend to the General Assembly species of animals to be included in the definition of "dangerous wild animal" and species of snakes to be included in the definition of "restricted snake" established in the act. The Director cannot add species of animals or snakes to the applicable definition without the approval of the General Assembly.[3]

General prohibitions; exemptions

The act prohibits a person from possessing a dangerous wild animal on or after January 1, 2014.[4] However, the prohibition does not apply to any of the following:

(1) A person to which all of the following apply:

(a) The person possesses a dangerous wild animal;

(b) The person has been issued a license by the U.S. Department of Agriculture under the federal Animal Welfare Act;

(c) The Director has determined that the person is in the process of becoming an accredited member of the Association of Zoos and Aquariums or the Zoological Association of America; and

(d) The Director has informed the person that the person is exempt from the prohibition.

(2) An organization to which all of the following apply:

(a) The organization possesses a dangerous wild animal;

(b) The Director has determined that the organization is in the process of being accredited or verified by the Global Federation of Animal Sanctuaries as a wildlife sanctuary; and

(c) The Director has informed the organization that it is exempt from the prohibition.

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[3] R.C. 935.011.

[4] R.C. 935.02(A).

(3) A person whose possession of a dangerous wild animal is authorized by an unexpired permit issued under the act (see "**Wildlife shelter permit**," "**Wildlife propagation permit**," and "**Rescue facility permit**," below).[5]

Under the act, a wildlife sanctuary is a nonprofit organization that is accredited or verified by the Global Federation of Animal Sanctuaries, that operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced dangerous wild animals or restricted snakes are provided care for their lifetime or released back to their natural habitat, and, with respect to an animal or snake possessed by the organization, that does not do any of the following: (1) use or allow the use of the animal or snake for any type of entertainment or in a traveling exhibit, (2) sell, trade, lease, loan, or barter the animal or snake or the animal's or snake's body parts, (3) use or allow the use of the animal or snake in any manner for profit, (4) breed the animal or snake, or (5) allow the public the opportunity to come into physical contact with the animal or snake.[6]

Additionally, the act generally prohibits a person from acquiring, buying, selling, trading, or transferring possession or ownership of a dangerous wild animal on or after the act's effective date. However, it states that the prohibition does not apply when the next of kin of a person who dies and possesses a dangerous wild animal or animals wants to keep the animal or animals or when such a person has a last will and testament that specifies that the person's dangerous wild animal or animals are to be transferred to another person that has been issued a wildlife shelter permit or wildlife propagation permit under the act (see "**Wildlife shelter permit**; **Disposition on death of permittee**," below). Additionally, a person that operates a rescue facility may acquire, except by purchase, possession or ownership of a dangerous wild animal if one of the following applies:

(1) Prior to January 1, 2014, the person is authorized to do so by the Director in accordance with procedures adopted by the Director; or

(2) On or after January 1, 2014, the person has obtained a rescue facility permit under the act (see below).[7]

Under the act, a rescue facility is a nonprofit organization that operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced dangerous wild animals are provided care for their lifetime or released back

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[5] R.C. 935.03(A).

[6] R.C. 935.01(O).

[7] R.C. 935.02(B).

to their natural habitat and, with respect to an animal possessed by the organization, that does not do any of the following: (1) sell, trade, or barter the animal or the animal's body parts, (2) use the animal in any manner for profit, (3) breed the animal, or (4) allow the public the opportunity to come into contact with the animal.[8]

The act then exempts all of the following from its provisions except as discussed below:

(1) A facility that is an accredited member of either the Association of Zoos and Aquariums or the Zoological Association of America and that is licensed by the U.S. Department of Agriculture under the federal Animal Welfare Act;

(2) A research facility as defined in the federal Animal Welfare Act;

(3) A research facility that is accredited by the Association for the Assessment and Accreditation of Laboratory Animal Care International;

(4) A circus;

(5) A veterinarian that is licensed under the Veterinarians Law and that is providing temporary veterinary care to a dangerous wild animal or restricted snake;

(6) A wildlife sanctuary;

(7) An individual who is not an Ohio resident, is traveling through Ohio with a dangerous wild animal or restricted snake, and does all of the following:

(a) Confines the animal or snake in a cage at all times that is not accessible to the public;

(b) Does not exhibit the animal or snake; and

(c) Is in the state not more than 48 hours unless the animal or snake is receiving veterinary care.

(8) An educational institution that displays a single dangerous wild animal as a sports mascot and that meets all of the following criteria:

(a) An official of the educational institution has submitted an affidavit attesting that the institution will care for the animal as long as the animal lives and in a facility that is an accredited member of the Association of Zoos and Aquariums or the Zoological Association of America;

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[8] R.C. 935.01(K).

(b) The educational institution maintains a liability insurance policy with an insurer authorized or approved to write such insurance in Ohio that covers claims for injury or damage to persons or property caused by a dangerous wild animal. The amount of the insurance coverage must be not less than $1 million.

(c) During display and transport, the educational institution confines the dangerous wild animal in a cage that does not permit physical contact between the animal and the public; and

(d) The educational institution began displaying a dangerous wild animal as a mascot prior to the act's effective date.

(9) A wildlife rehabilitation facility that is issued a permit by the Chief of the Division of Wildlife in the Department of Natural Resources in rules adopted under the Division of Wildlife Law and that rehabilitates dangerous wild animals or restricted snakes that are native to Ohio for the purpose of reintroduction into the wild;

(10) Any person who has been issued a scientific, educational, or rehabilitation permit for wild animals by the Chief under the Division of Wildlife Law;

(11) Any person authorized by the Chief under the Division of Wildlife Law or rules adopted under it to possess a dangerous wild animal or restricted snake that is native to Ohio and that is endangered; and

(12) A mobility impaired person or a person who is blind, as those persons are defined in the law governing assistance dogs, or a deaf or hearing impaired person who possesses a capuchin monkey that has been trained by a nonprofit agency or is in such training to assist the person.[9]

Under the act, a circus is a traveling show to which all of the following apply:

(1) It is licensed by the U.S. Department of Agriculture under the federal Animal Welfare Act;

(2) It presents dangerous wild animals, restricted snakes, or both in a public performance as its own event or as part of a fair or carnival;

(3) It does not allow physical contact between the public and the dangerous wild animals or restricted snakes possessed by it. However, physical contact may occur during rides or other interactions between the public and an elephant, provided that

[9] R.C. 935.03(B).

such a ride or other interaction is under the direct supervision of an experienced animal handler.

(4) It is in Ohio for less than 65 days each year.[10]

The act requires all of the above exempt individuals, institutions, and facilities to register their dangerous wild animals. However, they are not required to comply with specified standards of care or have their animals microchipped (see "**Registration of dangerous wild animals**," below).[11]

Registration of dangerous wild animals

Under the act, a person that possesses a dangerous wild animal on the act's effective date must register the animal with the Director of Agriculture not later than 60 days after the act's effective date.[12] The person must do so on a form prescribed and provided by the Director, which must include all of the following:

(1) The name, address, Social Security number, and federal employer identification number, if applicable, of the person registering the dangerous wild animal;

(2) If different from the name and address provided above, the name and address of the location where the dangerous wild animal is confined;

(3) A description of the dangerous wild animal, including the scientific and common names of the animal, the name that the person has given the animal, the animal's sex, age, color, and weight, and any distinguishing marks or coloration that would aid in the identification of the animal;

(4) The name, address, and telephone number of the veterinarian that provides veterinary care to the dangerous wild animal; and

(5) Any other information required by the Director in rules adopted under the act (hereafter "rules") (see "**Rules**," below).[13]

A person that registers a dangerous wild animal must have permanently implanted in the animal a microchip at the time of registration. The microchip must

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[10] R.C. 935.01(B).

[11] R.C. 935.03(B).

[12] R.C. 935.04(A).

[13] R.C. 935.04(B).

have an identification number that is unique to the microchip. In addition, the microchip must contain a passive integrated transponder, which must have a frequency of 125, 134.2, or 400 kHz.[14]

A person that possesses a registered dangerous wild animal on October 1, 2013, and that wishes to continue to possess the dangerous wild animal on and after January 1, 2014, must obtain either a wildlife shelter permit or a wildlife propagation permit issued under the act (see below).[15]

Registration only of specified monkeys and lemurs

Under the act, a person that possesses any of the following animals only must register the animal in the same manner as provided for registration of dangerous wild animals under the act:

(1) Pygmy, white-tufted-ear, silvery, and black-pencilled marmosets;

(2) Squirrel monkeys;

(3) Brown, white-faced, weeping, and white-fronted capuchins; and

(4) Lemurs.[16] (See **APPENDIX**.)

Wildlife shelter permit

Application

Under the act, a person that possesses a registered dangerous wild animal in Ohio on October 1, 2013, that wishes to continue to possess the dangerous wild animal on and after January 1, 2014, and that does not intend to propagate the animal must apply for a wildlife shelter permit. A permit applicant must file an application with the Director on a form prescribed and provided by the Director. An applicant need apply for only one permit regardless of the number of dangerous wild animals that the applicant possesses. The application must include all of the following:

(1) The applicant's name, date of birth, address, Social Security number, and federal employer identification number, if applicable;

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[14] R.C. 935.04(D).

[15] R.C. 935.04(E).

[16] R.C. 935.041.

(2) If different from the name and address provided above, the name and address of the location where each dangerous wild animal will be confined;

(3) A description of each dangerous wild animal, including the scientific and common names, the name that the applicant has given the animal, the animal's sex, age, color, and weight, and any distinguishing marks or coloration that would aid in the identification of the animal;

(4) The identification number of the microchip that is implanted in each dangerous wild animal and the frequency of the passive integrated transponder contained in the microchip as required by the act;

(5) Proof of financial responsibility as required by the act (see below);

(6) Proof that the applicant has at least two years of experience in the care of the species of dangerous wild animal or animals that are the subject of the application. However, if an applicant cannot provide such proof, the applicant must pass a written examination regarding the care of dangerous wild animals that is established and administered in accordance with rules (see below).

(7) A plan of action to be undertaken if a dangerous wild animal escapes. An applicant must submit a copy of the plan of action for an escaped dangerous wild animal to the sheriff of the county and to the chief law enforcement officer and fire chief of the township or municipal corporation having jurisdiction where the dangerous wild animal or animals are confined.

(8) Proof that the applicant has established a veterinarian-client relationship as described in the Veterinarians Law with regard to each dangerous wild animal; and

(9) Any additional information required by the Director in rules.[17]

An applicant must submit one of the following fees, as applicable, with an application:

(1) $250 if the applicant possesses not more than three dangerous wild animals;

(2) $500 if the applicant possesses at least four, but not more than ten dangerous wild animals;

(3) $1,000 if the applicant possesses at least 11, but not more than 15 dangerous wild animals; or

[17] R.C. 935.05(A) and (B).

(4) $1,000 if the applicant possesses 16 or more dangerous wild animals plus an additional $125 for each animal that the applicant possesses in an amount greater than 15 dangerous wild animals.[18]

Additionally, an applicant must obtain and maintain proof of financial responsibility in one of the following forms:

(1) A liability insurance policy with an insurer authorized or approved to write such insurance in Ohio that covers claims for injury or damage to persons or property caused by a dangerous wild animal possessed by the applicant or any resulting claims against the state; or

(2) A surety bond, which must be executed by a surety company authorized to do business in this state that covers claims for injury or damage to persons or property caused by a dangerous wild animal possessed by the applicant or any resulting claims against the state. The bond must be in a form approved by the Director.

Proof of financial responsibility must be in one of the following amounts, as applicable:

(1) $200,000 if the applicant possesses not more than five dangerous wild animals;

(2) $500,000 if the applicant possesses at least six, but not more than 15 dangerous wild animals; or

(3) $1 million if the applicant possesses 16 or more dangerous wild animals.

The amounts specified above must be for each occurrence of injury or damage.[19]

Issuance or denial; renewal

Not later than 90 days after receipt of an application for a wildlife shelter permit, the Director must issue or deny the permit. The Director must issue a permit only if all of the following apply:

(1) The applicant is at least 18 years old;

(2) The applicant has registered the dangerous wild animal or animals that are the subject of the application;

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[18] R.C. 935.05(C).

[19] R.C. 935.05(D).

(3) The applicant is in compliance with the standards of care established in rules (see "**Standards of care and housing**," below);

(4) The applicant has sterilized each male dangerous wild animal that is possessed by the applicant. However, a dangerous wild animal is not required to be sterilized if a veterinarian that is qualified to provide veterinary care to the dangerous wild animal determines that the sterilization is medically contraindicated and the applicant has submitted a copy of the veterinarian's written determination with the applicant's application.

(5) The applicant has signed an affidavit attesting that the applicant will not allow members of the public to be in physical contact with a dangerous wild animal possessed by the applicant. However, an applicant may allow an employee of the applicant or a volunteer who has entered into a written agreement with the applicant to work for or volunteer for the applicant and assists in the care of a monkey or monkeys possessed by the applicant to be in physical contact with a monkey possessed by the applicant if the care is provided under the direction of the applicant.

(6) The applicant has not been convicted of or pleaded guilty to a felony drug abuse offense as defined in the Criminal Code, an offense of violence that is a felony under the Criminal Code, or a violation of animal cruelty statutes, or of the statute repealed by the act that required an owner to report the escape of an animal that was not indigenous to Ohio (see "**Escape of dangerous wild animals and restricted snakes**," below), as determined by a criminal records check performed by the Bureau of Criminal Identification and Investigation in the Office of the Attorney General in accordance with the act (see below);

(7) The facility at which a dangerous wild animal or animals will be maintained under the permit consists of at least one acre. The requirement does not apply to facilities at which monkeys will be maintained under the permit or if the Director issues a waiver.

(8) The applicant has signed an affidavit attesting that the facility at which a dangerous wild animal or animals will be maintained under the permit and the conditions in which each dangerous wild animal will be kept in that facility are in compliance with the act and rules;

(9) The applicant has submitted a complete application that meets the act's requirements; and

(10) The applicant has submitted the appropriate application fee.

If a permit is issued, the Director must assign a unique identification number to it.[20]

Prior to issuing or denying a wildlife shelter permit, the Director must submit a request to the Bureau of Criminal Identification and Investigation for a criminal records check of the applicant. Upon receipt of a request, the Superintendent of the Bureau must conduct a criminal records check in the manner described in continuing law governing criminal background checks to determine whether any information exists that indicates that the applicant previously has been convicted of or pleaded guilty to any of the offenses specified in item (6), above. The applicant is responsible for paying all costs associated with the criminal records check.[21]

If a permit application is denied, $250 of the permit application fee must be retained by the Director as payment for the reasonable expense of processing the application, and the remainder of the fee must be returned to the applicant.[22]

Not later than December 1 each year, a permit holder must apply to the Director, on a form prescribed and provided by the Director, for a renewal of the permit if the permit holder intends to retain possession of the dangerous wild animal or animals that are identified in the permit. Not later than 30 days after receipt of an application for renewal, the Director must renew the permit or deny the renewal. The Director must renew the permit if the permit holder complies with the act and rules and pays a renewal fee in the same amount as the fee established for the initial permit. If a renewal permit is denied, $250 of the renewal fee must be retained by the Director as payment for the reasonable expense of processing the application, and the remainder of the renewal fee must be returned to the applicant.[23]

If the Director denies an application for a permit or a renewal of a permit, the Director must notify the person of the denial, the grounds for the denial, and the person's right to an adjudication under the Administrative Procedure Act. If a person does not appeal the Director's determination to deny an application for a permit or a renewal of a permit or if the Director's determination is affirmed under the Administrative Procedure Act, not later than 30 days after the decision not to appeal or after the determination is affirmed, as applicable, the person must transfer the animal or animals that the person possesses to a county humane society, wildlife sanctuary,

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[20] R.C. 935.06(A).

[21] R.C. 935.06(B).

[22] R.C. 935.06(C).

[23] R.C. 935.06(D).

rescue facility, facility that is an accredited member of either the Association of Zoos and Aquariums or the Zoological Association of America, or facility that is located in another state and that complies with that state's applicable laws. After the transfer has occurred, the person must submit proof to the Director that the dangerous wild animal or animals were transferred and must specify the society, sanctuary, or facility to which the animal or animals were transferred.

The person is responsible for all costs associated with the transfer of the dangerous wild animal or animals.[24]

Disposition on death of permittee

If a person that has been issued a wildlife shelter permit or a wildlife propagation permit (see below) dies, the person's next of kin must do one of the following:

(1) If the next of kin wishes to possess the dangerous wild animal or animals, obtain a wildlife shelter permit or a wildlife propagation permit, as applicable. That next of kin must comply with the act and rules, except that, with respect to the next of kin's initial permit, the person need not pay the permit application fee for the applicable permit.

(2) If the deceased person has a last will and testament that specifies that the dangerous wild animal or animals possessed by the person are to be transferred to another person that has been issued a wildlife shelter permit, wildlife propagation permit, or rescue facility permit under the act, transfer the dangerous wild animal or animals to the applicable permit holder; or

(3) Transfer the dangerous wild animal or animals that were possessed by the deceased person in the same manner as prescribed in the provisions governing the disposition of dangerous wild animals whose possessor is denied a wildlife shelter permit (see above).[25]

Crediting of permit fees

The act requires all fees collected for the issuance and renewal of wildlife shelter permits to be credited to the Dangerous and Restricted Animal Fund created by the act (see "**Dangerous and Restricted Animal Fund**," below).[26]

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[24] R.C. 935.06(E) and (F).

[25] R.C. 935.06(G).

[26] R.C. 935.06(H).

Wildlife propagation permit

A person that possesses a registered dangerous wild animal in Ohio on October 1, 2013, that wishes to continue to possess the dangerous wild animal on and after January 1, 2014, and that intends to propagate the animal solely for the purposes of a species survival program that complies with rules (see below) must apply for a wildlife propagation permit issued by the Director. An applicant need apply for only one permit regardless of the number of dangerous wild animals that the applicant possesses.[27]

Except as otherwise provided in the act (see below), an applicant for a wildlife propagation permit must comply with the requirements and procedures established by the act governing the application for and issuance of wildlife shelter permits. The application fee for a wildlife propagation permit must be one of the following, as applicable:

(1) $1,000 if the applicant possesses not more than 50 dangerous wild animals; or

(2) $3,000 if the applicant possesses more than 50 dangerous wild animals.

The fees are to be credited to the Dangerous and Restricted Animal Fund created by the act.[28]

The facility at which a dangerous wild animal or animals will be maintained under a wildlife propagation permit must consist of at least two acres. The requirement does not apply to facilities at which monkeys will be maintained under the permit or if the Director issues a waiver.[29]

Restricted snake possession permit

Application

The act requires a person that possesses a restricted snake to apply for a restricted snake possession permit and establishes requirements for application for and procedures for the issuance or denial of such a permit. Under the act, a person that possesses a restricted snake in Ohio prior to January 1, 2014, that wishes to continue to possess the restricted snake on and after that date, and that does not intend to propagate, sell, trade, or otherwise transfer the snake must obtain a restricted snake

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[27] R.C. 935.07(A).

[28] R.C. 935.07(B) and (D).

[29] R.C. 935.07(C).

possession permit not later than January 1, 2014. A person that acquires a restricted snake in Ohio on or after January 1, 2014, and that does not intend to propagate, sell, trade, or otherwise transfer the snake must obtain a restricted snake possession permit not later than 120 days after acquiring the snake. An applicant need apply for only one permit regardless of the number of restricted snakes that the applicant possesses.

The application requirements and procedures for obtaining a restricted snake possession permit are identical to those established by the act for obtaining a wildlife shelter permit (see above) with the following exceptions:

(1) An applicant is not required to have a restricted snake microchipped.

(2) If an applicant possesses a constricting snake, the applicant does not need to have two years of experience in the care of the snake's species.

(3) An applicant must provide a written statement from a veterinarian stating that the veterinarian is willing to provide veterinary care to an applicant's restricted snake or snakes when the care is needed.

(4) An applicant must submit a $150 application fee.[30]

If a permit application is denied, $75 of the application fee must be retained by the Director as payment for the reasonable expense of processing the application, and the remainder of the fee must be returned to the applicant.[31]

(5) Except with regard to constricting snakes, the proof of financial responsibility must be in one of the following amounts, as applicable:

(a) $100,000 if the applicant possesses not more than five restricted snakes;

(b) $250,000 if the applicant possesses at least six, but not more than 15 restricted snakes; or

(c) $500,000 if the applicant possesses 16 or more restricted snakes.

An applicant that possesses one or more constricting snakes, but no other restricted snakes, is not required to obtain and maintain proof of financial responsibility.[32]

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[30] R.C. 935.08.

[31] R.C. 935.09(C).

[32] R.C. 935.08.

Issuance or denial; renewal; disposition on death of permittee

The act also establishes identical requirements and procedures governing the issuance or denial of a restricted snake possession permit, the renewal of such a permit, and the disposition of a restricted snake on the death of a permittee with the following exceptions:

(1) An applicant is not required to register the restricted snake or snakes that are the subject of the application.

(2) An applicant may allow a primary or secondary school age student to whom the applicant displays the restricted snake or snakes to be in physical contact with a restricted snake or snakes possessed by the applicant.

(3) An applicant does not need to have male snakes sterilized.

(4) The act does not establish acreage requirements for snakes.[33]

Restricted snake propagation permit

The act requires a person that possesses a restricted snake and that intends to propagate, sell, trade, or otherwise transfer the snake to apply for a restricted snake propagation permit. A person that possesses a restricted snake in Ohio prior to January 1, 2014, that wishes to continue to possess the snake on and after that date, and that intends to propagate, sell, trade, or otherwise transfer the snake must obtain a restricted snake propagation permit not later than January 1, 2014. A person that acquires a restricted snake in Ohio on or after January 1, 2014, and that intends to propagate, sell, trade, or otherwise transfer the snake must obtain a restricted snake propagation permit not later than 120 days after acquiring the snake. An applicant need apply for only one permit regardless of the number of restricted snakes that the applicant possesses.

Except as otherwise provided in the act (see below), an applicant for a restricted snake propagation permit must comply with the requirements and procedures established by the act governing the application for and issuance of restricted snake possession permits. The application fee for a restricted snake propagation permit is $300. If a permit application is denied, $150 of the application fee must be retained by the Director as payment for the reasonable expense of processing the application, and the remainder of the fee must be returned to the applicant.[34]

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[33] R.C. 935.09.

[34] R.C. 935.10.

Dual permitting application requirements

Under the act, a person that possesses at least one dangerous wild animal and at least one restricted snake must apply for both a wildlife shelter permit and a restricted snake possession permit. Similarly, a person that possesses at least one dangerous wild animal and intends to propagate the animal solely for the purposes of a species survival program that complies with rules (see below) and that possesses at least one restricted snake and intends to propagate, sell, trade, or otherwise transfer the snake must apply for both a wildlife propagation permit and a restricted snake propagation permit.

Additionally, a person that possesses at least one dangerous wild animal and does not intend to propagate the animal and that possesses at least one restricted snake and intends to propagate, sell, trade, or otherwise transfer the snake must apply for both a wildlife shelter permit and a restricted snake propagation permit. Similarly, a person that possesses at least one dangerous wild animal and intends to propagate the animal solely for the purposes of a species survival program that complies with rules and that possesses at least one restricted snake and does not intend to propagate, sell, trade, or otherwise transfer the snake must apply for both a wildlife propagation permit and a restricted snake possession permit.[35]

Rescue facility permit

The act states that, in lieu of obtaining any other permit under the act, a person that operates a rescue facility in Ohio prior to January 1, 2014, and that wishes to continue to operate a rescue facility on and after that date must obtain a rescue facility permit under the act not later than January 1, 2014. Additionally, a person that wishes to begin operation of a rescue facility in this state on or after January 1, 2014, must obtain a rescue facility permit under the act not later than 60 days prior to beginning operation.[36]

An applicant for a rescue facility permit must file an application for a permit with the Director on a form prescribed and provided by the Director. The application must include information that the Director requires in rules. An applicant for a rescue facility permit must submit one of the following fees, as applicable, with an application:

(1) $500 if the applicant possesses not more than three dangerous wild animals;

(2) $1,000 if the applicant possesses at least four, but not more than 15 dangerous wild animals; or

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[35] R.C. 935.11.

[36] R.C. 935.101(A).

(3) $2,000 if the applicant possesses 16 or more dangerous wild animals.

If a permit application is denied, $250 of the application fee must be retained by the Director as payment for the reasonable expense of processing the application and the remainder of the fee must be returned to the applicant.[37] The Director must issue or deny a rescue facility permit in accordance with rules.[38] The act precludes the Director from issuing a permit unless the dangerous wild animal or animals that are or will be possessed by the applicant are sterilized.

A person that has been issued a rescue facility permit must comply with the requirements regarding the care and housing of dangerous wild animals established in rules (see below). A person that has been issued a rescue facility permit may acquire, except by purchase, possession or ownership of a dangerous wild animal.[39]

Permit suspension or revocation

The act authorizes the Director to suspend or revoke a permit issued under the act for a violation of the act or rules. A person adversely affected by an order of suspension or revocation may request an adjudication under the Administrative Procedure Act.[40]

Licenses to keep or raise certain wild animals under continuing law

The act specifies that a commercial propagating, noncommercial propagating, or raise to release license authorized under continuing law cannot be issued to a person to raise or sell a dangerous wild animal or restricted snake. The Division of Wildlife in the Department of Natural Resources issues those licenses. Under a commercial propagating license, a licensee may propagate game birds, game quadrupeds, reptiles, amphibians, or fur-bearing animals in a wholly enclosed preserve, sell the propagated birds and animals and ship them from the state alive at any time, or kill them and sell the carcasses for food. The annual fee for such a license is $40. Under a noncommercial propagating license, a licensee may propagate game birds, game quadrupeds, reptiles, amphibians, or fur-bearing animals and hold them in captivity only for the licensee's own use. Such a licensee cannot sell the birds or animals. The annual fee for such a license is $25. Under the free raise to release license, a licensee may engage in the raising of game birds, game quadrupeds, or fur bearing animals for release and not for

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[37] R.C. 935.101(B).

[38] R.C. 935.101(C).

[39] R.C. 935.101(D) and (E).

[40] R.C. 935.13.

sale or personal use. "Game birds," "game quadrupeds," "reptiles," "amphibians," and "fur-bearing animals" are defined in the Division of Wildlife Law.[41]

Standards of care and housing

The act requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish standards for the care and housing of dangerous wild animals registered under the act, including standards for the proper care of each species of dangerous wild animal and caging and fencing of the animals. The Director must adopt the rules not later than 90 days after the act's effective date.[42] Beginning 90 days after the Director adopts the rules, a person that possesses a registered dangerous wild animal must comply with the applicable rules.[43]

In addition, the Director must adopt rules that establish standards for the care and well-being of big cats, bears, hyenas, wolves, rhinoceroses, elephants, hippopotamuses, cape buffaloes, African wild dogs, Komodo dragons, alligators, crocodiles, caimans, gharials, and nonhuman primates that are not monkeys that are possessed by wildlife shelter or wildlife propagation permit holders. The standards must govern at least sanitation for, provision of health care for, and feeding, caging, housing, and fencing of dangerous wild animals. In adopting the rules, the Director must consider the following factors: (1) best management practices for the care and well-being of dangerous wild animals, (2) public health and safety, (3) biosecurity, (4) the prevention of disease, (5) animal morbidity and mortality data, (6) generally accepted veterinary medical practices, (7) standards adopted by the Association of Zoos and Aquariums, (8) standards adopted by the Zoological Association of America, (9) standards established in the federal Animal Welfare Act, (10) ethical standards established by the American Veterinary Medical Association, and (11) any other factors that the Director considers necessary for the proper care and well-being of dangerous wild animals in this state.[44]

Finally, the act requires the Director to adopt rules establishing standards for the care and well-being of dangerous wild animals that are possessed by rescue facilities issued permits under the act. The standards must govern at least sanitation for, provision of health care for, and feeding, caging, housing, and fencing of dangerous wild animals. In adopting the rules, the Director may consider the care and housing

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[41] R.C. 1533.71.

[42] R.C. 935.17(A)(2).

[43] R.C. 935.04(C).

[44] R.C. 935.17(B).

standards established in rules for the holders of wildlife shelter and wildlife propagation permits (see above).[45]

Except as otherwise provided (see below), the act requires a person that has been issued a permit under the act for a dangerous wild animal or animals to comply with the requirements regarding the care and housing of dangerous wild animals established by the Director in rules.[46]

The act requires persons issued wildlife shelter, wildlife propagation, or rescue facility permits under the act that possess monkeys to comply with different standards of care and housing for those animals. A permit holder that possesses one or more monkeys must comply with both of the following:

(1) The requirements regarding the care of those animals that are established in regulations adopted under the federal Animal Welfare Act; and

(2) The requirements regarding the housing of those animals established in rules.[47]

Under the act, restricted snake possession and restricted snake propagation permit holders that possess one or more restricted snakes must comply with the requirements regarding the care and housing of those snakes that are established in standards adopted by the Zoological Association of America.[48]

Records

The act requires a person that has been issued a permit under the act to maintain records, in accordance with rules, of all of the following regarding each dangerous wild animal and each restricted snake that the permit holder possesses:

(1) The scientific and common names of the animal or snake, including the species;

(2) If the animal or snake was purchased or otherwise acquired from another person, the name and address of the other person;

(3) The date on which the animal or snake was acquired, if applicable;

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[45] R.C. 935.17(G).

[46] R.C. 935.12(A).

[47] R.C. 935.12(B).

[48] R.C. 935.12(C).

(4) If the permit holder propagates dangerous wild animals, the date of birth of the animal if the animal was propagated by the permit holder;

(5) If the permit holder propagates restricted snakes, the date of birth of the snake if the snake was propagated by the permit holder;

(6) The name and address of the person to whom the animal or snake was sold or otherwise transferred, if applicable;

(7) The date on which the animal or snake died or escaped, if applicable; and

(8) The identification number of the microchip that is implanted in a dangerous wild animal and the frequency of the passive integrated transponder contained in the microchip as required by the act.[49]

Escape of dangerous wild animals and restricted snakes

Under the act, if a dangerous wild animal or restricted snake escapes, the person that possesses the animal or snake immediately must notify both of the following:

(1) The sheriff of the county and the chief law enforcement officer of the township or municipal corporation where the escape occurred; and

(2) The Division of Animal Health in the Department of Agriculture by means of the 24-hour telephone number that is maintained by the Division.[50]

A law enforcement officer or a natural resources law enforcement officer may destroy a dangerous wild animal or restricted snake that has escaped and that poses a threat to public safety. The law enforcement officer or natural resources law enforcement officer is not liable for damages in a civil action for any injury, death, or loss to person or property that allegedly arises from the destruction of the animal or snake.[51]

For purposes of the act, a law enforcement officer is a sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, or State Highway Patrol trooper.[52] In addition, a natural resources law enforcement officer is an employee of the Department of Natural

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[49] R.C. 935.15.

[50] R.C. 935.16(A).

[51] R.C. 935.16(B).

[52] R.C. 935.01(H).

Resources who is one of the following: (1) a natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer, (2) a Division of Wildlife employee who is designated by the Chief of the Division of Wildlife to enforce all laws pertaining to wild animals, or (3) a Division employee who conducts research and investigations or engages in restocking of game or fish, in restoration projects, or in the enforcement of applicable laws governing wildlife.[53]

The person that possesses a dangerous wild animal or restricted snake that escapes is responsible for all reasonable costs associated with the capture or destruction of the animal or snake. The person must reimburse the political subdivision that employs the law enforcement officer who captured or destroyed the dangerous wild animal or restricted snake for the costs incurred in capturing or destroying the animal or snake. However, if the law enforcement officer is a State Highway Patrol trooper or if a natural resources law enforcement officer captured or destroyed the dangerous wild animal or restricted snake, the person must reimburse the State Highway Patrol or the Department of Natural Resources, as applicable, for those costs.[54]

Except as discussed below, money collected by the political subdivision must be credited to a special fund created by the act in the applicable political subdivision. Money in the special fund must be used exclusively for the administration and enforcement of the act and rules adopted under it. Money collected by the State Highway Patrol or the Department of Natural Resources must be credited to the Dangerous and Restricted Animal Fund created by the act (see below). If law enforcement officers from more than one jurisdiction assist in the capture or destruction of a dangerous wild animal or restricted snake, the money collected must be proportionally distributed to each political subdivision's special fund and the Dangerous and Restricted Animal Fund, if applicable.[55]

The act eliminates a provision of law that required the owner or keeper of any member of a species of the animal kingdom that escaped from the owner's or keeper's custody or control and that was not indigenous to Ohio or presented a risk of serious physical harm to persons or property, or both, to report it, within one hour after the owner or keeper discovered or reasonably should have discovered the escape, to

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[53] R.C. 935.01(I).

[54] R.C. 935.16(C).

[55] R.C. 935.16(D).

specified law enforcement officers and certain municipal corporation or township officials, as applicable. Failure to report the escape was a first degree misdemeanor.[56]

Additional responsibilities and duties of Director of Agriculture

Rules

The act requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish all of the following in addition to rules establishing standards of care and housing as discussed above:

(1) Any additional information that must be included with a registration of a dangerous wild animal. As discussed above, the Director must adopt the rules not later than 90 days after the act's effective date.[57]

(2) All of the following concerning applications for wildlife shelter permits and wildlife propagation permits issued under the act:

(a) Any additional information that must be included with a permit application;

(b) Criteria for determining what constitutes a species survival program for the purposes of wildlife propagation permits and requirements and procedures that are necessary to determine if a program meets those criteria;

(c) The content of the examination to be taken if an applicant does not provide proof that the applicant has at least two years of experience in the care of the species of dangerous wild animal or animals that are the subject of the application. The rules must require the examination to test an applicant's knowledge on topics that include proper diet, health care, exercise needs, and housing of the applicable species.

(d) Procedures and requirements concerning the administration of the examination.

(3) All of the following concerning applications for restricted snake possession permits and restricted snake propagation permits issued under the act:

(a) Any additional information that must be included with a permit application;

(b) The content of the examination to be taken if an applicant does not provide proof that the applicant has at least two years of experience in the care of the species of

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[56] R.C. 2927.21, repealed.

[57] R.C. 935.17(A)(1).

restricted snake or snakes that are the subject of the application. The rules must require the examination to test an applicant's knowledge on topics that include proper diet, health care, and housing of the applicable species.

(c) Procedures and requirements concerning the administration of the examination.

(4) Procedures and requirements governing the maintenance of records required to be maintained by holders of permits issued under the act;

(5) Standards for signs that are required to be posted and displayed by persons that possess dangerous wild animals or restricted snakes (see "**Prohibitions**," below);

(6) The amount of civil penalties that may be assessed by the Director for violation of the act and rules (see "**Enforcement**," below);

(7) Procedures and requirements governing the distribution of money from the Dangerous and Restricted Animal Fund created by the act for the compensation of facilities that accept a dangerous wild animal or restricted snake that is quarantined or transferred under the act (see below); and

(8) Any other provisions necessary to administer and enforce the act.[58]

Maintenance of database

The act requires the Director to maintain a database of both of the following:

(1) Until January 1, 2014, the name and address of each person that possesses a dangerous wild animal and registers the animal under the act; and

(2) On and after January 1, 2014, the name and address of each person that has applied for and been issued a permit under the act.

The Director must allow the Directors of Health and Natural Resources to have access to the database.[59]

Enforcement

Prohibitions

The act prohibits any person from doing any of the following:

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[58] R.C. 935.17(C) to (I).

[59] R.C. 935.14.

(1) Selling or offering for sale at auction a dangerous wild animal or a venomous snake;

(2) Except for a microchip removed for purposes of a medical emergency by a veterinarian that is qualified to provide veterinary care to the dangerous wild animal, knowingly removing a microchip that is implanted in a dangerous wild animal as required by the act;

(3) Allowing a dangerous wild animal or restricted snake to roam off the property where it is confined;

(4) Removing any teeth or claws from a dangerous wild animal or restricted snake, as applicable, unless determined to be medically necessary by a veterinarian; or

(5) Violating any other provisions established by the act or rules.[60]

Additionally, the act prohibits a person that possesses a dangerous wild animal or restricted snake from failing to post and display any of the following:

(1) On each cage in which a dangerous wild animal is confined, signs warning the public that a dangerous wild animal is confined in the cage;

(2) At each entrance to the property where a dangerous wild animal is confined, a sign warning the public that a dangerous wild animal is on the property;

(3) On each container in which a restricted snake is confined, a sign warning the public that a restricted snake is in the container;

(4) At the main entrance to each structure where a restricted snake is confined, a sign warning the public that a restricted snake is in the structure; and

(5) On a vehicle that is used to transport a dangerous wild animal or restricted snake, a sign warning that a dangerous wild animal or restricted snake, as applicable, is in the vehicle.

The signs must comply with standards established in rules.[61]

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[60] R.C. 935.18(A), (B), (E), (F), and (G).

[61] R.C. 935.18(C).

Violation of any of the above prohibitions is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense.[62]

Finally, the act prohibits a person from knowingly releasing a dangerous wild animal or restricted snake into the wild.[63] Violation of the prohibition is a fifth degree felony.[64]

Inspection authority

The act authorizes the Director of Agriculture or the Director's designee to enter at all reasonable times any premises at which a dangerous wild animal or restricted snake is confined, with the consent of the owner of the premises, for the purpose of determining compliance with the act and rules. If the Director or the Director's designee is denied access to any such premises, and if the Director reasonably suspects that the person who possesses the dangerous wild animal or restricted snake is not in compliance with the act or rules, the Director may apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises for the purpose of an inspection.

The court must issue the search warrant if there is probable cause to believe that the person is not in compliance with the act or rules. The finding of probable cause may be based on hearsay, provided that there is a substantial basis for believing that the source of the hearsay is credible and that there is a factual basis for the information furnished.[65]

The Director may designate any of the following to conduct inspections:

(1) Employees of the Department of Agriculture;

(2) Natural resources law enforcement officers with the consent of the Director of Natural Resources;

(3) Employees of the Department of Health with the consent of the Director of Health;

(4) Employees of a board of health with the consent of the board; and

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[62] R.C. 935.99(A).

[63] R.C. 935.18(D).

[64] R.C. 935.99(B).

[65] R.C. 935.19(A).

(5) Agents of a humane society appointed under the Humane Societies Law with the consent of the humane society.[66]

If a person designated by the Director of Agriculture determines, while conducting an inspection, that a violation of the act or rules has occurred, is occurring, or may occur, the person must immediately notify the Director. The Director may proceed as provided in the act (see "**Enforcement actions**," below).[67]

Quarantine, transfer, or seizure

The act requires the Director, on and after January 1, 2014, to immediately cause an investigation to be conducted if the Director has reason to believe that one of the following may be occurring:

(1) A dangerous wild animal is possessed by a person who has not been issued a wildlife shelter permit, wildlife propagation permit, or rescue facility permit under the act;

(2) A restricted snake is possessed by a person that has not been issued a restricted snake possession permit or a restricted snake propagation permit under the act; or

(3) A dangerous wild animal or restricted snake is being treated or kept in a manner that is in violation of the act or rules.

For purposes of the investigation, the Director or the Director's designee may order the animal or snake that is the subject of the notification to be quarantined or may order the transfer of the animal or snake to a facility that is on a list that is maintained by the Director. The list must include facilities inside and outside Ohio that the Director determines are eligible to accept dangerous wild animals or restricted snakes for the purposes of those provisions.[68] If the Director's designee orders the animal or snake to be quarantined or transferred, the designee must provide a copy of the order to the Director.[69]

The Director must attempt to notify the person owning or possessing an animal or snake that has been ordered to be quarantined or transferred. The notice must be

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[66] R.C. 935.19(B).

[67] R.C. 935.19(C).

[68] R.C. 935.20(K).

[69] R.C. 935.20(A).

delivered in person or by certified mail. The Director also may post a copy of a quarantine order at two conspicuous locations on the premises where the animal or snake is quarantined. The Director must maintain a copy of the order and evidence that the Director attempted to notify the person owning or possessing the animal or snake.[70]

A quarantine or transfer order must contain all of the following:

(1) The name and address of the person owning or possessing the animal or snake, if known;

(2) A description of the quarantined or transferred animal or snake;

(3) A description of the premises affected by the quarantine or transfer;

(4) The reason for the quarantine or transfer;

(5) Any terms and conditions of the quarantine or transfer; and

(6) A notice that a person adversely affected by the order may request a hearing to review the order.[71]

A person that is adversely affected by a quarantine or transfer order pertaining to a dangerous wild animal or restricted snake owned or possessed by the person, within 30 days after the order is issued, may request in writing an adjudication in accordance with the Administrative Procedure Act. A request for an adjudication does not stay a quarantine or transfer order.[72]

The owner of or person possessing a dangerous wild animal or restricted snake that was quarantined or transferred must be responsible for all reasonable costs associated with the quarantine or transfer, including the costs of transportation, housing, food, and veterinary care for the animal or snake. If such an owner or person is unable to pay for the reasonable costs, the Director must certify the costs to the county auditor to be assessed against any property of the owner or person and thereby made a lien upon it and collected as other taxes. All money from the collection of liens must be credited in accordance with the act's provisions governing the crediting of

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[70] R.C. 935.20(B).

[71] R.C. 935.20(C).

[72] R.C. 935.20(D).

money collected for reimbursement of costs associated with a quarantine or transfer of a dangerous wild animal or restricted snake under the act (see below).[73]

If the State Veterinarian determines that a dangerous wild animal or restricted snake that was quarantined or transferred is infected with or exposed to a dangerously contagious or infectious disease or is seriously injured, the State Veterinarian must so notify the Director. The Director may order the animal or snake to be humanely euthanized by a veterinarian if the State Veterinarian has indicated that euthanization is medically necessary.

A quarantine or transfer order must remain in effect until one of the following occurs:

(1) The Director, after reviewing the results of the investigation conducted under the act, issues a written notice of release;

(2) A court of competent jurisdiction orders the quarantine or transfer order to be terminated in a proceeding as discussed below; or

(3) A court of competent jurisdiction orders the seizure of the dangerous wild animal or restricted snake in a proceeding as discussed below.[74]

If, after reviewing the results of an investigation concerning a dangerous wild animal or restricted snake conducted under the act and after resolution of any proceeding requested by the person owning or possessing the animal or snake, the Director determines that a circumstance described above is or was occurring, the Director must initiate, in a court of competent jurisdiction, a proceeding for the permanent seizure of the animal or snake. If the court affirms the Director's determination, the court must order the animal or snake seized and must order the method of disposition of the animal or snake. The court may order the person owning or possessing the animal or snake to pay all reasonable costs associated with the seizure and, if applicable, the costs associated with the quarantine or transfer of the animal or snake, including the costs of transportation, housing, food, and veterinary care of the animal or snake. If the court does not affirm the Director's determination, the court must order the quarantine or transfer order to be terminated and the animal or snake to be returned to the person owning or possessing it, if applicable.[75]

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[73] R.C. 935.20(E).

[74] R.C. 935.20(F) and (G).

[75] R.C. 935.20(H).

The Director may authorize any of the following to conduct an investigation and order the quarantine or transfer of a dangerous wild animal or restricted snake under the act:

(1) Employees of the Department of Agriculture;

(2) Natural resources law enforcement officers with the consent of the Director of Natural Resources;

(3) Employees of the Department of Health with the consent of the Director of Health;

(4) Employees of a board of health with the consent of the board;

(5) Agents of a humane society with the consent of the humane society;

(6) Law enforcement officers with the consent of the sheriff of the county or the chief law enforcement officer of the township or municipal corporation, as applicable, by whom the law enforcement officers are employed; and

(7) Law enforcement officers who are State Highway Patrol troopers with the consent of the Superintendent of the State Highway Patrol.[76]

Money collected for reimbursement of costs associated with the quarantine or transfer of dangerous wild animals and restricted snakes must be credited to one of the following funds, as applicable:

(1) If the animal or snake was quarantined or transferred by an employee of the Department of Agriculture or the Department of Health, a natural resources law enforcement officer, or a law enforcement officer who is a State Highway Patrol trooper, the Dangerous and Restricted Animal Fund created by the act (see below);

(2) If the animal or snake was quarantined or transferred by an employee of a board of health, a special fund that the act creates in each health district and that must be used exclusively for the administration and enforcement of the act and rules adopted under it;

(3) If the animal or snake was quarantined or transferred by an agent of a humane society, a special fund that the act creates in each county having a humane society and that must be used exclusively for the administration and enforcement of the act and rules adopted under it; or

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[76] R.C. 935.20(I).

(4) If the animal or snake was quarantined or transferred by a law enforcement officer who is not a State Highway Patrol trooper, the special fund that is created by the act in the political subdivision that employs the law enforcement officer (see above).[77]

Request for assistance

The act authorizes the Director of Agriculture to request either of the following to accompany the Director or an employee of the Department of Agriculture for purposes of investigations and inspections conducted under the act:

(1) A law enforcement officer; or

(2) With the consent of the Director of Natural Resources, a natural resources law enforcement officer.[78]

Enforcement actions

Under the act, the Attorney General, upon request of the Director of Agriculture, must bring an action for injunction against any person who has violated, is violating, or is threatening to violate the act or rules. The court of common pleas in which an action for injunction is filed has jurisdiction to and must grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated, is violating, or is threatening to violate the act or rules.[79]

The Director may assess a civil penalty against any person that the Director determines is not in compliance. The Director must afford the person an opportunity for an adjudication under the Administrative Procedure Act to challenge the Director's determination that the person is not in compliance. However, the person may waive the right to an adjudication. If the opportunity for an adjudication is waived or if, after an adjudication, the Director determines that a violation has occurred or is occurring, the Director may issue an order and assess a civil penalty in an amount established in rules against the violator. The order and the assessment of the civil penalty may be appealed.[80] The act specifies that notwithstanding any other statute, money resulting from any enforcement action taken under the act must be credited to the Dangerous and Restricted Animal Fund created by the act (see below).[81]

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[77] R.C. 935.20(J).

[78] R.C. 935.21.

[79] R.C. 935.24(A).

[80] R.C. 935.24(B).

[81] R.C. 935.24(C).

Ordinances adopted by municipal corporations

The act authorizes a municipal corporation to adopt and enforce ordinances that are more stringent than the requirements established by the act and rules adopted under it in order to control dangerous wild animals, restricted snakes, or both within the municipal corporation. For the purposes of that provision, ordinances to control dangerous wild animals, restricted snakes, or both include, but are not limited to, ordinances concerned with the acquisition or possession of dangerous wild animals or restricted snakes, dangerous wild animals or restricted snakes as public nuisances, and dangerous wild animals or restricted snakes as a threat to public health, safety, and welfare.[82]

The act prohibits a person from violating such an ordinance adopted by a municipal corporation. Whoever violates the prohibition is guilty of a minor misdemeanor. Each day of continued violation constitutes a separate offense. Fines levied and collected for violations must be distributed by the mayor or clerk of the municipal court in accordance with continuing law to the treasury of the applicable municipal corporation.[83]

Dangerous and Restricted Animal Fund

The act creates in the state treasury the Dangerous and Restricted Animal Fund consisting of all of the following:

(1) Money collected from permit application fees under the act;

(2) Money credited to the Fund for the reimbursement of costs associated with the quarantine and transfer of dangerous wild animals and restricted snakes if an employee of the Department of Agriculture or Department of Health, a natural resources law enforcement officer, or a law enforcement officer who is a State Highway Patrol trooper quarantined or transferred such an animal or snake; and

(3) Money credited to the Fund from any enforcement action taken by the Director of Agriculture or the Attorney General under the act.[84]

Money in the Fund must be used for all of the following purposes:

(1) Administration and enforcement of the act and rules adopted under it;

---

[82] R.C. 935.29(A) and (B).

[83] R.C. 935.29(C) and 935.99(C).

[84] R.C. 935.25(A).

(2) Compensation of the Department of Natural Resources or the State Highway Patrol for the costs incurred in capturing or destroying a dangerous wild animal or restricted snake pursuant to the act;

(3) Compensation of the Departments of Natural Resources and Health, the State Highway Patrol, and boards of health for the costs incurred in conducting investigations and quarantining or transferring a dangerous wild animal or restricted snake pursuant to the act; and

(4) Compensation of a qualified facility that is on the list maintained by the Director of Agriculture under the act (see above) and that accepts a dangerous wild animal or restricted snake that is quarantined or transferred pursuant to the act.

Investment earnings of the Fund must be credited to it.[85]

Dangerous and Restricted Animals Advisory Board

The act creates the Dangerous and Restricted Animals Advisory Board to do both of the following:

(1) Review the rules that have been or are proposed to be adopted under the act governing the care of dangerous wild animals; and

(2) Advise the Director of Agriculture on the administration of the act and rules.[86]

The Board consists of the following members:

(1) The Director of Agriculture or the Director's designee, who must be the chairperson;

(2) The Director of Natural Resources or the Director's designee;

(3) The Director of Health or the Director's designee;

(4) The State Veterinarian in the Department of Agriculture;

(5) The following 11 members who must be appointed by the Governor with the advice and consent of the Senate and must be Ohio residents:

(a) One member representing dangerous wild animal or restricted snake owners;

---

[85] R.C. 935.25(B) and (C).

[86] R.C. 935.26(H).

(b) One member who is knowledgeable about dangerous wild animals or restricted snakes;

(c) One member representing an accredited member of the Association of Zoos and Aquariums that operates in this state;

(d) One member representing an accredited member of the Zoological Association of America;

(e) Two members who are veterinarians;

(f) Two members representing the public;

(g) One member representing the Governor;

(h) One member representing a county humane society;

(i) One member representing a board of health.

(6) One member appointed by the Speaker of the House of Representatives who must be a restricted snake owner; and

(7) One member appointed by the President of the Senate who must be a dangerous wild animal owner.

Not more than seven members appointed to the Board at any given time can be members of the same political party.[87] The Governor, the Speaker of the House of Representatives, and the President of the Senate must make initial appointments to the Board not later than 45 days after the act's effective date. The act provides for staggered three-year terms for the appointed members of the Board. The terms of office of the Director of Agriculture, the Director of Natural Resources, and the Director of Health, their designees, and the State Veterinarian must coincide with the length of time that the person holds the position of Director or State Veterinarian or is a designee, as applicable. If a Director, a designee, or the State Veterinarian resigns or that person's employment is terminated, that person must cease to serve on the Board, and the successor of that person must serve on the Board in accordance with the act. Every other member must hold office from the date of the member's appointment until the end of the term for which the member was appointed.

The act generally establishes standard procedures for filling vacancies. However, under the act, a member must continue in office subsequent to the expiration

[87] R.C. 935.26(A).

date of the member's term until the member's successor takes office, or until a period of 180 days has elapsed, whichever occurs first. A member may be reappointed upon the expiration of the member's term.[88]

The Board must hold at least three regular meetings each year and may hold additional meetings at times that the chairperson or a majority of the Board members considers appropriate. At the first meeting of the Board in each calendar year, the Director of Agriculture or the Director's designee must designate one member of the Board to serve as its vice-chairperson. A majority of the Board constitutes a quorum. The Board may act only if a quorum is present and only by majority vote of the members.[89]

Serving as an appointed member of the Board does not constitute holding a public office or position of employment under Ohio law and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. Appointed members must receive no compensation for their services. Members must be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members. The expenses must be paid from the Dangerous and Restricted Animal Fund in accordance with the rules and requirements adopted by the Department of Administrative Services that are applicable to state employees.[90]

The Board may create committees that it considers appropriate to make recommendations to the Board. Committees may include members who do not serve on the Board.[91]

Dangerous Wild Animal State Emergency Response Commission

The act creates the Dangerous Wild Animal State Emergency Response Commission and requires it to do the following:

(1) Establish a state dangerous wild animal emergency response plan for escaped dangerous wild animals in Ohio;

(2) By resolution, appoint members to a dangerous wild animal county emergency response team for each county (see below); and

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[88] R.C. 935.26(B) and (C).

[89] R.C. 935.26(D).

[90] R.C. 935.26(E) and (F).

[91] R.C. 935.26(G).

(3) Examine and approve or reject emergency response plans submitted to the Commission by each county's dangerous wild animal county emergency response team under the act.

The Commission must establish procedures and requirements for the preparation and examination and the approval or rejection of a county's emergency response plan.[92]

Under the act, the Commission consists of all of the following:

(1) The Director of Agriculture or the Director's designee, who is the chairperson of the Commission;

(2) The Director of Natural Resources or the Director's designee;

(3) The Director of Health or the Director's designee;

(4) The Executive Director of the Emergency Management Agency or the Executive Director's designee;

(5) A member of the House of Representatives appointed by the Speaker of the House of Representatives;

(6) A member of the Senate appointed by the President of the Senate; and

(7) A person representing a local law enforcement agency and a person representing the owners of dangerous wild animals who must be appointed by the Governor with the advice and consent of the Senate.

Not later than 30 days after the act's effective date, the Governor must make appointments to the Commission. The act provides for staggered three-year terms for the appointed members of the Commission. Each member must hold office from the date of the member's appointment until the end of the term for which the member was appointed. The act establishes standard procedures for filling vacancies.

The Commission must meet at times that the chairperson or a majority of the Commission members considers appropriate, provided that no meeting must be held on the call of the chairperson unless at least seven days' written notice first is provided to all members of the Commission. At the first meeting of the Commission in each calendar year, the Director of Agriculture must designate one member of the Commission to serve as its vice-chairperson. A majority vote of the members of the

[92] R.C. 935.27(A) and (C).

Commission is necessary to take action on any matter. A vacancy on the Commission does not impair the right of the other members to exercise all of the Commission's powers.

Appointed members of the Commission must serve without compensation for attending Commission meetings. Members of the Commission must be reimbursed for their actual and necessary expenses incurred in the performance of official duties as members of the Commission. The Department of Agriculture must provide the Commission with the personnel, office space, and incidentals necessary for it to perform its duties and exercise its powers.[93]

Dangerous wild animal county emergency response team

As indicated above, the act requires the Commission to appoint members to a dangerous wild animal county emergency response team for each county. A county emergency response team must consist of the number of members that the Commission considers appropriate, but must include representatives from each of the following groups or organizations: elected local officials, law enforcement personnel, emergency management personnel, firefighting personnel, first aid personnel, health personnel, broadcast and print media personnel, and persons that possess dangerous wild animals.

The act requires each county's dangerous wild animal county emergency response team to prepare an emergency response plan for its county. The plan must include the methods and procedures that will be utilized in the county in the event of an escaped dangerous wild animal in the county. The emergency response team must submit the plan to the Dangerous Wild Animal Emergency Response Commission for the Commission's approval. The emergency response team must update the plan annually and must submit the updated plan to the Commission for approval.[94]

Miscellaneous

Under the act, an employee of an agency or political subdivision of the state that destroys a dangerous wild animal or restricted snake that is a threat to public safety is not liable for damages in a civil action for any injury, death, or loss to person or property that allegedly arises from the destruction of the animal or snake.[95]

The owner of a venomous snake must do both of the following:

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[93] R.C. 935.27(A) and (B).

[94] R.C. 935.28.

[95] R.C. 935.22.

(1) Have access to antivenom for each species of snake that the person owns either at the location where each snake is confined or at a hospital with which the owner has entered into a written agreement to provide the antivenom. However, an owner may apply to the Director for a waiver to have access to antivenom in a different location.

(2) Submit proof of having access to the antivenom to the sheriff of the county and the chief law enforcement officer of the township or municipal corporation in which each snake that the person owns is confined.

In addition, the owner must submit a list that contains the name of each species of venomous snake that the person owns to the sheriff of the county and the chief law enforcement officer of the township or municipal corporation in which each snake is confined. If the restricted snake or snakes owned by the person change, the owner must submit an updated list to the sheriff and the chief law enforcement officer no later than seven days after the change occurs.

If a venomous snake bites a person other than the snake's owner, the owner is liable for all costs associated with the treatment of the bite, including the cost of replacement of any antivenom that was used to treat the bite.[96]

HISTORY

ACTION	DATE
Introduced	03-08-12
Reported, S. Agriculture, Environment & Natural Resources	04-25-12
Passed Senate (30-1)	04-25-12
Reported, H. Agriculture & Natural Resources	05-17-12
Passed House (89-9)	05-22-12
Senate concurred in House amendments (31-1)	05-22-12

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[96] R.C. 935.23.

APPENDIX

Sub. Senate Bill 310

As Passed by the General Assembly

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Dangerous wild animals

African wild dog

Joy Viola, Northeastern University, Bugwood.org

Alligator

Wendy VanDyk Evans, Bugwood.org

Bear (example—black)

Terry Spivey, USDA Forest Service, Bugwood.org

Caiman

Bonsak Hammeraas, Bioforsk - Norwegian Institute for Agricultural and Environmental Research, Bugwood.org

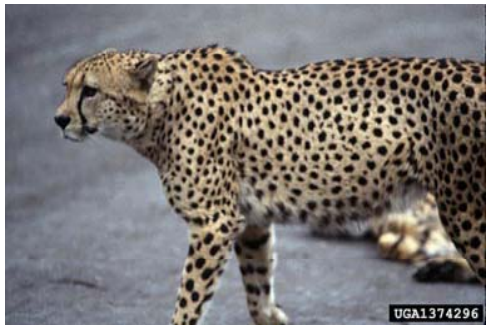
Cape buffalo

Paul Bolstad, University of Minnesota, Bugwood.org

Caracal

Gary M. Stolz, U.S. Fish and Wildlife Service

Cheetah



Terry Spivey, USDA Forest Service, Bugwood.org

Cougar

U.S. National Park Service

Crocodile

Alfred Viola, Northeastern University, Bugwood.org

Elephant (example—African)

Alfred Viola, Northeastern University, Bugwood.org

Gharial

Cleveland Metroparks Zoo

Goeldi's monkey

Julie Katt, John Ball Zoo Society

Gray wolf

Gary M. Stolz, U.S. Fish and Wildlife Service

Hippopotamus

Alfred Viola, Northeastern University, Bugwood.org

Howler monkey: black

Zoo photo

Howler monkey: mantled

Roy Fontaine

Howler monkey: red

Joy Viola, Northeastern University, Bugwood.org

Hyena

Alfred Viola, Northeastern University, Bugwood.org

Jaguar

Joy Viola, Northeastern University, Bugwood.org

Komodo dragon

Alfred Viola, Northeastern University, Bugwood.org

Leopard

Alfred Viola, Northeastern University, Bugwood.org

Leopard: clouded

Cleveland Metroparks Zoo

Leopard: snow

Kemmeth Fink, NPS.gov, Yellowstone Digital Slide File

Lion

Kenneth M. Gale, Bugwood.org

Lynx: Canadian

U.S. Fish and Wildlife Service

Lynx: Eurasian

Bonsak Hammeraas, Bioforsk - Norwegian Institute for Agricultural and Environmental Research, Bugwood.org

Muriqui

Cincinnati Zoo & Botanical Garden

Night monkey: northern

Luiz Claudio Marigo, Wisconsin Primate Center Library

Other nonhuman primate (example—baboon)

Gary M. Stolz, U.S. Fish and Wildlife Service

Other nonhuman primate (example—chimpanzee)

Dirck Byler, U.S. Fish and Wildlife Service

Other nonhuman primate (example—gorilla)

Richard Gruggiero, U.S. Fish and Wildlife Service

Other nonhuman primate (example—orangutan)

Microsoft Clip Art

Rhinoceros (example—white)

Gary M. Stolz, U.S. Fish and Wildlife Service

Saki: black-bearded

Luiz Claudio Marigo, Wisconsin Primate Center Library

Saki: monk

Zoological Society of Philadelphia, Wisconsin Primate Center Library

Saki: white-faced

Cincinnati Zoo & Botanical Garden

Saki: white-nosed bearded

Luiz Claudio Marigo, Wisconsin Primate Center Library

Serval

Gary M. Stolz, U.S. Fish and Wildlife Service

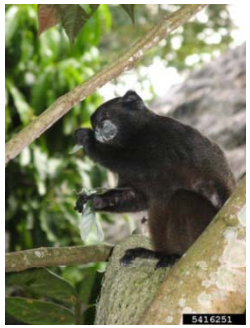
Spider monkey: black

Irwin Samuel Bernstein

Spider monkey: black-handed

Cincinnati Zoo & Botanical Garden

Tamarin: black-mantled

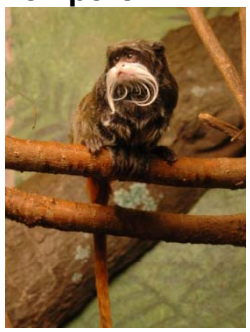


Caleb Slemmons, University of Maine, Bugwood.org

Tamarin: cotton-top

Rebekah D. Wallace, University of Georgia, Bugwood.org

Tamarin: emperor



Cincinnati Zoo & Botanical Garden

Tamarin: Geoffroy's

Cleveland Metroparks Zoo

Tamarin: golden lion

Alfred Viola, Northeastern University, Bugwood.org

Tamarin: golden-rumped lion

Luiz Claudio Marigo

Tamarin: saddlebacked

Anne Zeller, Ph.D.

Tiger (example— Bengal)

Alfred Viola, Northeastern University, Bugwood.org

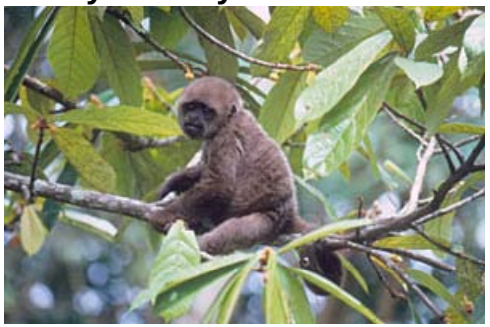
Titi monkey: dusky

Zoo Photo

Uakari: bald

Roy Fontaine

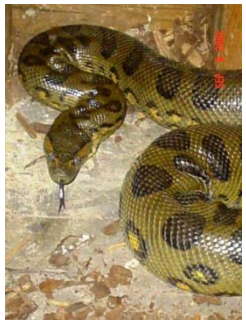
Woolly monkey



Luiz Claudio Marigo

Restricted snakes

Anaconda: green



Indianapolis Zoo

Anaconda: yellow

Houston Zoo

Elapidae (example—cobra)

Virginia Aquarium & Marine Science Center

Elapidae (example—coral snake)

Matt Caron, U.S. National Park Service

Python: amethystine

Alfred Viola, Northeastern University, Bugwood.org

Python: Burmese

Skip Snow, National Park Service, Bugwood.org

Python: Indian

Alfred Viola, Northeastern University, Bugwood.org

Python: North African rock

U.S. Geological Survey

Python: reticulated

Bjorn Lardner, Colorado State University, USGS.gov

Python: South African rock

Graham J. Alexander, University of Witwatersrand, USGS.gov

Viperidae (example—copperhead)

U.S. National Park Service

Viperidae (example—rattlesnake)

U.S. National Park Service

Nonhuman primates only required to be registered

Capuchin: brown

Cincinnati Zoo & Botanical Garden

Capuchin: weeping

John G. Robinson

Capuchin: white-faced

Dickerson Park Zoo

Capuchin: white-fronted

Irwin Samuel Bernstein

Lemur

Rebekah D. Wallace, University of Georgia, Bugwood.org

Marmoset: black-pencilled

Ludwig Muller, Wisconsin Primate Center Library

Marmoset: pygmy

Alfred Viola, Northeastern University, Bugwood.org

Marmoset: silvery

Roy Fontaine, Wisconsin Primate Center Library

Marmoset: white-tufted-ear

Lynn Davis, Wisconsin Primate Center Library

Squirrel monkey

Pueblo Zoo, Pueblo, CO

Photographic images were unavailable for the following animals:

Leopard: Sunda clouded
Lynx: Iberian
Night monkey: southern
Spider monkey: brown-headed
Spider monkey: white-bellied
Tamarin: black-faced lion
Titi monkey: masked
Uakari: black
Atractaspididae (examples—burrowing asp snake, mole viper snake)
Boomslang snake
Twig snake

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 14a0043p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

TERRY WILKINS; SEAN TRIMBACH; MIKE STAPLETON; CINDY HUNTSMAN; CYRIL VIERSTRA, ROBERT SAWMILLER; STEVE FRANTZ,
Plaintiffs-Appellants,

v.

DAVID T. DANIELS, in his official capacity as Director of the Ohio Department of Agriculture; THE OHIO DEPARTMENT OF AGRICULTURE,
Defendants-Appellees,

THE HUMANE SOCIETY OF THE UNITED STATES,
Intervenor.

No. 13-3112

Appeal from the United States District Court
for the Southern District of Ohio at Columbus.
No. 2:12-cv-01010—George C. Smith, District Judge.

Argued: November 22, 2013

Decided and Filed: March 4, 2014

Before: DAUGHTREY, GIBBONS, and DONALD, Circuit Judges.

COUNSEL

ARGUED: Robert M. Owens, OWENS LAW OFFICE, Delaware, Ohio, for Appellants. Eric E. Murphy, OFFICE OF THE OHIO ATTORNEY GENERAL, Columbus, Ohio, for Appellees. Anna Frostic, THE HUMANE SOCIETY OF THE UNITED STATES, Washington, D.C., for Intervenor. **ON BRIEF:** Robert M. Owens, OWENS LAW OFFICE, Delaware, Ohio, for Appellants. Alexandra Schimmer, Michael J. Hendershot, James R. Patterson, Pearl M. Chin, OFFICE OF THE OHIO ATTORNEY GENERAL, Columbus, Ohio, for Appellees. Anna Frostic, THE HUMANE SOCIETY OF THE UNITED STATES, Washington, D.C., Donald J. McTigue, Corey Colombo, Mark McGinnis, McTIGUE & McGINNIS LLC, Columbus, Ohio, for Intervenor.

OPINION

JULIA SMITH GIBBONS, Circuit Judge. This case involves constitutional challenges to the Ohio Dangerous Wild Animals and Restricted Snakes Act, Ohio Revised Code §§ 935.01–935.99. Plaintiffs-appellants are seven owners of animals regulated by the Act. Defendants-appellees are the Director of the Ohio Department of Agriculture, named in his official capacity, and the Ohio Department of Agriculture. After January 1, 2014, no person may possess a dangerous wild animal or restricted snake as defined by the Act without obtaining a permit. As part of the permitting process, individuals are required to implant a microchip under the skin of their animals; yet individuals are not reimbursed for this expense. There are exemptions from the Act's permitting requirements, including an exemption for individuals accredited by the Association of Zoos and Aquariums (AZA) or the Zoological Association of America (ZAA).

Appellants contend that the Act violates their First Amendment rights to freedom of association and speech because the Act's permitting requirements are so onerously expensive as to constitute a non-option—the only viable means to comply with the Act, appellants assert, is to join the AZA or ZAA. Thus, appellants contend that they are compelled to associate with those organizations and to subsidize the organizations' speech. Appellants also argue that the Act's microchipping requirement constitutes a physical taking in violation of the Fifth Amendment.

We affirm the district court's denial of injunctive relief. Appellants' First Amendment claim fails because appellants have not demonstrated that they are compelled to join the AZA or ZAA. Appellants' Taking Clause claim fails because the Act does not effect a physical taking.

I.

A.

In 2011, an Ohio man released over fifty exotic animals before committing suicide. Partially in response, the Ohio General Assembly passed the Ohio Dangerous Wild Animals and Restricted Snakes Act. Ohio Rev. Code §§ 935.01–935.99. The Act is designed to regulate prospectively the acquisition, purchase, sale and transfer of "dangerous wild animals" and "restricted snakes" as defined in sections 935.01(C) and (L). The Act went into effect on September 5, 2012.

All persons in possession of dangerous wild animals prior to September 5, 2012, were required to register with the Ohio Department of Agriculture, which administers the Act, by November 5, 2012. *Id*. § 935.04(A). In order to record and track these animals, the Act requires microchipping each registered dangerous wild animal at the time of registration. *Id*. § 935.04(D). This is a commonly used technique to track and identify animals. The microchips must contain unique identification numbers and passive integrated transponders ("PIT tags"). *Id*. The microchip, about the size of a grain of rice, is implanted under the skin of the animal to provide a permanent form of identification. Once applied, the microchip may not be removed except "for purposes of a medical emergency by a veterinarian that is qualified to provide veterinary care to dangerous wild animals." *Id.* § 935.18(B).

As noted above, the Act took full effect on January 1, 2014, prohibiting the possession of a dangerous wild animal following that date. *Id*. § 935.02(A). A person already in possession of a dangerous wild animal and who wishes to continue to possess the animal after that date may obtain a wildlife shelter permit or a wildlife propagation permit. *Id.* § 935.04(E). An applicant for a wildlife shelter permit must provide identifying information as well as information demonstrating his or her ability to possess responsibly a dangerous wild animal. *Id.* § 935.05(B). In particular, an applicant must provide proof that he or she has at least two years of experience in the care of that species of dangerous wild animal or, in the alternative, the applicant must pass a written

examination regarding the care of dangerous wild animals. *Id*. § 935.05(B)(6). The applicant must also provide "[a] plan of action to be undertaken if a dangerous wild animal escapes." *Id*. § 935.05(B)(7). Not only is microchipping required for registration under the Act, it is also required prior to the issuance of a permit. *Id*. § 935.06(A)(2). There is no express exception to the microchipping requirement for permit applicants.[1]

Final issuance of a wildlife shelter permit is contingent upon sterilization of each male dangerous wild animal, unless a qualified veterinarian determines that sterilization is medically contraindicated. *Id*. § 935.06(A)(4). An applicant must sign an affidavit attesting that he or she will not allow members of the public to be in physical contact with the dangerous wild animal. *Id*. § 935.06(A)(5). Finally, an applicant must comply with the Department's standards of care and housing adopted by rule. *Id*. § 935.06(A)(3). The requirements for a wildlife propagation permit are substantially similar. *See id*. § 935.07(B).

Appellants' claims focus in large part on Ohio's caging regulations. Section 935.17 directs the Director of Agriculture to establish caging requirements for dangerous wild animals. Polly Britton, legislative agent for the Ohio Association of Animal owners, was on a task force assigned to discuss possible caging regulations. Britton testified that the emergency caging regulations adopted by the state were significantly more burdensome than ZAA or AZA requirements. For example, she testified that under the emergency regulations, there was a five-thousand square foot requirement for hyenas as opposed to a ZAA standard of six-hundred square feet. She explained: "The comments that were made during the task force meetings—and these were by Ohio Department of Agriculture officials—was that, when it comes time to write the rules, they would be so strict that owners could not, or would not, be able to keep their animals." And that, Britton testified, was "exactly what happened." Appellants point to these caging requirements as a major factor in their inability to comply with the Act's

[1]Counsel for the Humane Society testified that if microchipping is too risky for a particular animal, this issue could be raised as an equitable defense at an enforcement proceeding.

permitting requirements. Subsequent to the district court's order, the Department promulgated final regulations that were less stringent than originally proposed.

As a general matter, the permitting requirements for restricted snakes are substantially similar. However, neither registration nor microchipping is required. *See* Ohio Rev. Code §§ 935.04, 935.08–935.10. An animal owner is entitled to appeal the denial or revocation of a permit. *Id*. § 935.06(E)-(F) (dangerous wild animals); *id*. § 935.09(E)-(F) (restricted snakes).

The Act's general prohibition on possession of dangerous wild animals and restricted snakes is subject to fourteen exemptions, including: facilities accredited by the AZA or the ZAA;[2] research facilities as defined in the federal animal welfare act; research facilities accredited by the association for the assessment and accreditation of laboratory animal care international; circuses; wildlife rehabilitation facilities permitted by the Ohio Department of Natural Resources ("ODNR"); veterinarians providing temporary veterinary care; wildlife sanctuaries; individuals transporting such an animal, subject to various requirements; educational institutions that display a single dangerous wild animal as a sports mascot, subject to various requirements; persons issued permits for scientific or educational use; persons issued permits for native threatened species; mobility impaired persons possessing certain primate species; deaf persons possessing certain primate species; and blind persons possessing certain primate species. *Id*. § 935.03(B). An animal owner is not required to microchip his or her animal if he or she meets one of these exemptions. *Id*.

The Act provides that if an owner is not able to obtain a permit or meet an exemption, the owner must transfer, within thirty days, all animals that the person possesses to a humane society, wildlife sanctuary, rescue facility, facility that is an accredited member of either the AZA or ZAA, or facility that is located in another state and complies with that state's applicable laws. *Id*. § 935.06(F) (dangerous wild animals); *id*. § 935.09(F) (restricted snakes). Such a person must pay all costs associated

[2]Some appellants are associate members with either the AZA or ZAA, but the costs of accreditation that would trigger this exemption are significantly greater than membership costs.

with the transfer. *Id*. § 935.06(F) (dangerous wild animals); *id*. § 935.09(F) (restricted snakes). The Director may also assess a civil penalty against any person not in compliance with Chapter 935 or the promulgated rules. *Id*. § 935.24(B)(1). Any person assessed a civil penalty has the opportunity for an administrative hearing. *Id*. § 935.24(B)(2). The Act also prescribes criminal penalties for noncompliance with certain provisions. *Id.* § 935.99.

Appellants Terry John Wilkins, Cynthia Huntsman, Mike Stapleton, Cyril Vierstra, Robert Sawmiller, Steve Frantz, and Sean Trimbach are a group of self-described exotic animal enthusiasts. Each owns animals regulated by the Act and each believes that he or she cannot comply with the Act's permitting requirements and does not otherwise fit within an exemption. Appellants testified that they would not be willing to join either the AZA or ZAA, whose views they abhor, because those organizations "are at opposite ends of the spectrum." Some appellants own elderly animals, for example, African servals and lions, whose lives would be endangered, appellants claim, if they were subject to anesthesia in order to microchip them.

B.

Appellants brought suit in the United States District Court for the Southern District of Ohio under 42 U.S.C. § 1983 challenging the constitutionality of the Act. Appellants contended that the Act violated their First Amendment rights to freedom of speech and association, effected a deprivation of property without due process of law in violation of the Fourteenth Amendment and the Ohio Constitution, and that the Act effected either a physical or regulatory taking without just compensation in violation of the Fifth Amendment. Appellants sought injunctive relief, declaratory relief, and nominal damages.

The Humane Society filed a motion to intervene, which the district court granted. In November 2012, appellants moved for a temporary restraining order and a preliminary injunction. The district court consolidated the evidentiary hearing on appellants' motion with a full trial on the merits pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure. The district court took testimony on appellants' claims from December

10–12, 2012. The district court then denied appellants' motions for a temporary restraining order, preliminary and permanent injunction in their entirety. Appellants timely appealed.[3]

II.

A.

Appellants' motion for a preliminary injunction was converted to a trial on the merits. Ordinarily, this court reviews a challenge to the grant or denial of a request for a permanent injunction for abuse of discretion. *See Parks v. City of Columbus*, 395 F.3d 643, 647 (6th Cir. 2005). However, we review the district court's legal conclusions *de novo*. *Id.*[4]

B.

Appellants bring two distinct but interrelated First Amendment claims. First, appellants assert that the Act violates their First Amendment freedom of association rights because they believe it forces them to join either the AZA or ZAA. Second, appellants assert that the Act violates their First Amendment freedom of speech rights "by compelling Appellants to subsidize the speech of their purely private political and ideological rivals," the AZA or ZAA.

The Supreme Court "has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). The Constitution guarantees this freedom of association because it is "an indispensable means of preserving other individual

[3]Appellants do not appeal the district court's judgment with respect to their federal and state procedural due process claims and their regulatory takings claim.

[4]There are no factual disputes present in this appeal.

liberties." *Id*. A corollary to this right is the right not to associate. *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000).[5]

As the First Amendment protects freedom of association and the corollary right not to associate, so too does it protect freedom of speech and the corollary right not to speak. "Closely related to compelled speech and compelled association is compelled funding of the speech of other private speakers or groups." *Knox v. Serv. Emps. Int'l Union, Local 1000*, 132 S. Ct. 2277, 2288 (2012). "[C]ompulsory subsidies for private speech are subject to exacting First Amendment scrutiny . . . ." *Id*. at 2289.

The threshold inquiry in a compelled subsidy case is whether the State has "mandated association." *United States v. U.S. Foods, Inc.*, 533 U.S. 405, 414 (2001); *see also Knox*, 132 S. Ct. at 2289. If the association is not compelled, neither are the subsidies for the organization's speech. Thus, to prevail on either of appellants' First Amendment claims, they must establish that joining the AZA or ZAA is mandatory; what is fatal to the compelled association claim is fatal to the compelled subsidy claim. *See, e.g.*, *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647–54 (2000); *Roberts*, 468 U.S. at 622–29; *Knox*, 32 U.S. at 2289; *Keller v. State Bar of Cal.*, 496 U.S. 1, 7–17 (1990). Accordingly, we consider both claims together.

There are fifteen ways appellants can comply with the Act: the permitting requirement and fourteen exemptions. Appellants' argument hinges on the proposition that only one of these options is actually available—joining the AZA or ZAA. *See* Ohio Rev. Code § 935.03(B)(1). Appellants assert that "the Act provides a textbook Hobson's choice": the permitting requirements are too expensive and no exemption other than the

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[5] Supreme Court case law on compelled association has either considered whether an organization can be forced to accept members or whether individuals compelled to associate with an organization can be forced to subsidize that organization's speech. We assume, *arguendo*, that appellants can state compelled association claims on the basis of being compelled to join an organization. *Cf. Elrod v. Burns*, 427 U.S. 347 (1976) (plurality opinion) (holding county sheriff's office could not fire or threaten dismissal of employees for failure to affiliate with a political party); *Menkes v. St. Lawrence Seaway Pilots' Ass'n*, 269 F. App'x 54, 56 (2d Cir. 2008) ("Without violating the Constitution, the government can compel an individual to join a professional association as a condition of employment." (citing *Keller v. State Bar of Cal.*, 496 U.S. 1, 8 (1990)).

AZA or ZAA exemption applies, therefore appellants' only feasible option is to join the AZA or ZAA.

State compulsion has been defined largely in the context of compelled speech. A "general principle of compelled speech jurisprudence . . . is that a violation of the First Amendment right against compelled speech occurs only in the context of actual compulsion." *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 189 (3d Cir. 2005). "In order to compel the exercise or suppression of speech, the governmental measure must punish, or threaten to punish, protected speech by governmental action that is 'regulatory, proscriptive, or compulsory in nature.'" *Phelan v. Laramie Cnty. Cmty. Coll. Bd. of Trs.*, 235 F.3d 1243, 1247 (10th Cir. 2000) (quoting *Laird v. Tatum*, 408 U.S. 1, 11 (1972)); *see also Axson-Flynn v. Johnson*, 356 F.3d 1277, 1290 (10th Cir. 2004). The consequence need not be direct; imprisonment, fines, injunctions, or taxes may suffice. *Axson-Flynn*, 356 F.3d at 1290; *see also C.N.*, 430 F.3d at 189. "A discouragement that is 'minimal' and 'wholly subjective' does not, however, impermissibly deter the exercise of free speech rights." *Phelan*, 235 F.3d at 1247–48 (quoting *United States v. Ramsey*, 431 U.S. 606, 623–624 (1977)).

A brief comparison of cases in which state compulsion has been found and where state compulsion has been found lacking demonstrates that the State of Ohio has not compelled appellants to join the AZA or ZAA. In the compelled association cases, the compulsion has generally operated by force of law: accept these members or be in violation of a public accommodation law. *See Dale*, 530 U.S. at 645–46; *Roberts*, 468 U.S. at 615–16. In compelled subsidy cases, plaintiffs have generally been presented with a binary choice between subsidizing speech or quitting their jobs. *See Keller*, 496 U.S. at 5–6; *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 211 (1977). In the compelled speech arena, the Supreme Court has struck down a state statute requiring schoolchildren to recite the Pledge of Allegiance and to salute the American flag, *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943), as well as a state statute requiring residents to display the state's motto on their license plates, *Wooley v. Maynard*, 430 U.S. 705, 717 (1977). In contrast, in the absence of state mandated

penalties coercing an individual to choose a course of conduct, state compulsion has not been found. *See Phelan*, 235 F.3d at 1248; *C.N.*, 430 F.3d at 189.

In the instant case, appellants do not contend that they will be penalized if they do not join the AZA or ZAA. Rather, they contend that they are unwilling or unable to meet fourteen other options available to them. This is not the type of compulsion that qualifies them for First Amendment protection. We need look no further than the Act's permitting requirements to see why this is the case. Appellants contend that the costs of complying with the permitting requirements are "so exorbitantly high" as to present an illusory option. Appellants' objections stem primarily from the caging requirements promulgated under the Act.

Since the district court's order, Ohio has promulgated final regulations for caging requirements. Ohio Admin. Code § 901:1–4. Appellants are correct that this court should not unduly speculate about the cost of compliance with the final regulations. Nevertheless, it is sufficient to note that the final regulations are substantially less onerous than originally proposed. The cost of compliance with the final regulations does not make this a sham option.

Nor is obtaining a permit the only option available to appellants under the Act. Of the fourteen exemptions to the permitting requirement, the ODNR educational use permit would appear a strong candidate for many of the appellants. *See* Ohio Rev. Code § 935.03(B)(10); *id*. § 1533.08. A permittee under that section need only pay an annual fee of twenty-five dollars and is not required to microchip his or her animals. *Id*. § 1533.08; *id.* § 935.03(B). And Sawmiller and Trimbach actually have native wildlife permits under Ohio Revised Code section 1531.25, which exempt those animals covered by the permits from the Act's requirements. *Id*. § 935.03(B)(11).

Finally, appellants have not even established that joining the AZA or ZAA is an available option. Sawmiller testified that he could not sustain his business if he joined the AZA or ZAA because he would have to limit his exhibition of wild animals to schools only. Likewise, Huntsman testified that joining the AZA and ZAA was "not feasible." Wilkins testified that he could meet neither the AZA or ZAA's "physical

requirements for their facilities" nor Ohio's requirements. Trimbach testified that he could not continue his business profitably if he joined either the AZA or ZAA. And Vierstra testified that he would not be able to afford becoming a member of the ZAA and doubted whether he would qualify for membership. Appellants clearly are not required to join the AZA or ZAA if they are incapable of joining those organizations.

On the most general level, the plain language of the Act and its practical application demonstrate that appellants do have options. Mere unwillingness to conform their conduct to the permitting requirements or the other thirteen exemptions does not mean that the Act compels appellants to join the AZA or ZAA. The Act imposes a choice on appellants, even though it is not a choice they welcome. Appellants "wholly subjective" belief that the Act compels them to join the AZA or ZAA is insufficient to trigger either compelled association or compelled subsidy protection under the First Amendment. *See Phelan*, 235 F.3d at 1247. The burden of regulation may, unfortunately, fall heavier on some than on others, but that, without more, is not enough to render this Act unconstitutional.

C.

Appellants contend that the Act's microchipping requirement effects a physical taking without compensation in violation of the Takings Clause of the Fifth Amendment. Before turning to the merits of that claim, we must consider whether it is ripe.

1.

Applicable to the States through the Fourteenth Amendment, the Takings Clause of the Fifth Amendment "provides that private property shall not 'be taken for public use, without just compensation.'" *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536 (2005) (quoting U.S. Const. amend. V). It is important at the outset to distinguish two different types of Takings Clause challenges: challenges to the public-use requirement and challenges to the just-compensation requirement. Public-use challenges assert that in effecting the taking, the government exceeded its permissible scope of authority under the Constitution; the action is invalid regardless of whether compensation is provided.

Just-compensation challenges concede that the government acted within the scope of its authority and assert that the government must provide the affected party with "just compensation."

Appellants bring a just-compensation challenge. With regard to this type of challenge, the Supreme Court has clarified:

> As its text makes plain, the Takings Clause "does not prohibit the taking of private property, but instead places a condition on the exercise of that power." In other words, "it is designed not to limit the governmental interference with property rights *per se*, but rather to secure *compensation* in the event of otherwise proper interference amounting to a taking."

Id. at 536–37 (internal citations omitted) (quoting *First English Evangelical Lutheran Church of Glendale v. Cnty. of L.A.*, 482 U.S. 304, 314–15 (1987)). "Nor does the Fifth Amendment require that just compensation be paid in advance of, or contemporaneously with, the taking; all that is required is that a reasonable, certain and adequate provision for obtaining compensation exist the time of the taking." *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194 (1985) (internal quotation marks omitted). Generally, then, a State does not violate the Takings Clause "until it refuses to compensate the owner." *Hensley v. City of Columbus*, 557 F.3d 693, 695–96 (6th Cir. 2009); *see also Williamson Cnty.*, 473 U.S. at 195 ("[T]he State's action is not 'complete' in the sense of causing a constitutional injury 'unless or until the State fails to provide an adequate postdeprivation remedy for the property loss.'" (quoting *Hudson v. Palmer*, 468 U.S. 517, 532 n.12 (1984))).

Williamson County elaborates a two-part ripeness test. A federal court may hear a takings claim only after: (1) the plaintiff has received a "final decision" from the relevant government actor; and (2) the plaintiff has sought "compensation through the procedures the State has provided for doing so." *Williamson Cnty.*, 473 U.S. at 186, 194–95. We apply this test to both regulatory and physical takings claims. *See Hensley*, 557 F.3d at 696 n.2; *River City Capital, L.P. v. Bd. of Cnty. Comm'rs*, 491 F.3d 301, 307 (6th Cir. 2007); *Arnett v. Myers*, 281 F.3d 552, 563 (6th Cir. 2002).

Appellants contend that *Williamson County* is inapplicable to facial challenges. Their argument oversimplifies Takings Clause jurisprudence. With respect to just-compensation challenges, while *Williamson County*'s first requirement may not apply to facial challenges, its second requirement—that plaintiffs must seek just compensation through state procedures—does. *See Alto Eldorado P'ship v. Cnty. of Santa Fe*, 634 F.3d 1170, 1177 (10th Cir. 2011) ("Courts considering claims alleging a . . . taking without just compensation, even when characterized as facial claims, have applied the second *Williamson County* requirement . . . ." (citing *Equity Lifestyle Props., Inc. v. Cnty. of San Louis Obispo*, 548 F.3d 1184, 1190 n.13 (9th Cir. 2008); *Cnty. Concrete Corp. v. Twp. of Roxbury*, 442 F.3d 159, 168 (3d Cir. 2006); *Holliday Amusement Co. of Charleston, Inc. v. South Carolina*, 493 F.3d 404, 407 (4th Cir. 2007))).[6]

Appellants do not contend that they sought compensation in state court or that Ohio does not provide an adequate remedy. *See Williamson Cnty.*, 473 U.S. at 194 (explaining "all that is required is that a reasonable, certain and adequate provision for obtaining compensation exist at the time of the taking" (internal quotation marks omitted)). Ordinarily this would end our inquiry. However, *Williamson County* ripeness is a prudential doctrine. *See Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 733–34 (1997).

The requirement to seek compensation prior to bringing suit will often serve important federalism interests. In regulatory takings cases involving sensitive issues of state policy, or cases that turn on whether the plaintiff has a property interest as defined by state law, ripeness concerns will prevent a federal court from reaching the merits prematurely. But where it is clear that there has been no "taking," an issue of federal

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[6] Not subject to *Williamson County*'s second requirement, and for a very good reason, are public-use challenges. *See, e.g.*, *San Remo Hotel, L.P. v. City & Cnty. of San Fransisco*, 545 U.S. 323, 345-46 (2005). Because compensation is irrelevant to a public-use challenge—the state action either did or did not exceed the scope of the government's constitutional authority—*Williamson County*'s state procedures requirement makes little sense in the context of a public-use challenge. *See Alto Eldorado*, 634 F.3d at 1176.

Much of the confusion surrounding this issue stems from *Yee v. City of Escondido*, 503 U.S. 519, 533–34 (1992), and its progeny, on which appellants rely. There, the Supreme Court stated that where petitioners brought a facial challenge asserting that the ordinance at issue did not substantially advance a legitimate state interest, *Williamson County* was inapplicable. *Id.* at 534. The "substantially advance" theory, now defunct, *see Lingle*, 544 U.S. at 548, is best thought of as a species of public-use challenge that has no application here. *See Alto Eldorado*, 634 F.3d at 1176 n.3.

constitutional law, no jurisprudential purpose is served by delaying consideration of the issue. If anything, dismissing the case on ripeness grounds does a disservice to the federalism principles embodied in this doctrine as it would require the state courts to adjudicate a claim, already before the federal court, that clearly has no merit. We therefore turn to whether the Act effects a taking.

2.

Appellants raise only a physical takings claim. "[P]hysical takings require compensation because of the unique burden they impose: A permanent physical invasion, however minimal the economic cost it entails, eviscerates the owner's right to exclude others from entering and using her property—perhaps the most fundamental of all property interests." *Lingle*, 544 U.S. at 539. Appellants argue that any law that effects a physical invasion of an individual's property effects a taking. Yet *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982), the seminal case on physical takings, made clear that not every permanent physical invasion rises to the level of a taking. Only "[w]hen the government physically takes possession of an interest in property," *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (2002), or authorizes a "physical occupation . . . by a third party," *Loretto*, 458 U.S. at 440, does state action rise to the level of a taking.

For this reason, *Loretto* explained that the Takings Clause does not impinge on a state's ability to pass regulations for the general welfare in most cases. The Court emphasized: "our holding today in no way alters the analysis governing the State's power to require landlords to comply with building codes and provide utility connections, mailboxes, smoke detectors, fire extinguishers, and the like in the common area of a building." *Id*. Those types of regulations are not constitutionally suspect because they do not involve government occupation or a government-authorized occupation by a third party. *Id*.

Here, neither the government nor a third party has occupied appellants' property. If appellants do not qualify for an exemption from the Act's permitting requirements, they are required to implant microchips in animals classified as "dangerous wild

animals." *See* Ohio Rev. Code § 935.04(D).[7] But even after appellants implant the microchips, they retain the ability to use and possess their animals and the implanted microchips. Indeed, the Act is close kin to the general welfare regulations that the Supreme Court ensured were not constitutionally suspect. There is little difference between a law requiring a microchip in an animal and a law requiring handrails in apartment buildings. Both are regulations of individuals property properly challenged as regulatory takings, *Loretto*, 458 U.S. at 440, and neither law effects a government occupation of property or a government-authorized occupation of property by a third party. As appellees point out, were the Act's microchipping requirement to be ruled a taking, "laws requiring license plates on cars, warning labels on packaging, lighting on boats, handrails in apartment buildings, and ramps leading to restaurants" would be suspect. This is to say nothing of the implications for the myriad state laws regarding the microchipping of exotic and domesticated animals as well as the ear-tagging of agricultural animals. *Loretto* established a "narrow" rule applicable to "[]possessory governmental activity." 458 U.S. at 440–41. The Act's microchipping requirement does not fit within this narrow rule.

III.

Appellants' constitutional claims lack merit. We therefore affirm the district court's final judgment denying injunctive relief.

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[7] There is a tension between appellants' First Amendment and Fifth Amendment claims. If the Act requires appellants to join the AZA or ZAA, appellants would not be required to microchip their animals. *See* Ohio Rev. Code § 935.03(B) (exempting owners who qualify for an exemption from all but submitting a registration form). It is only if appellants are not required to join the AZA or ZAA and do not qualify for another exemption that the microchipping requirement would be applicable.

Overview of Ohio's Breeder Law

Dr. David Glauer

Kellie DiFrischia
Columbus Dog Connection

Ervin Raber
Ohio Professional Dog Breeders Association

Dr. David Glauer is a graduate of the Ohio State College of Veterinary Medicine. He was an associate of one of Ohio's most recognized large animal practices for 27 years, specializing in food animal health. He was appointed Ohio's State Veterinarian in 1993 and served as the state's top animal health official until 2006. He oversaw a state field staff comprised of livestock inspectors and veterinary medical officers, in addition to administering Ohio's Animal Disease Diagnostic Laboratory and its highly skilled technical professionals in the fields of pathology, toxicology, microbiology, and virology. He worked hand in hand with his federal counterparts on disease control and animal production food safety programs and initiatives. Since 2010, Dr. Glauer has served as a Technical Writer for the Ohio Department of Agriculture. He has participated in the development of the Ohio Administrative Code rules for the Ohio Livestock Care Standards Board, the Dangerous and Restricted Animal Advisory Board, and the Commercial Dog Breeder Advisory Board. Dr. Glauer's direct participation and interaction over 12 years as a member of the National Association of Chief Livestock Health Officials, the United States Animal Health Association, and the North Central Animal Health Association, demonstrated his ability and desire to well represent the interests of Ohio's animal health and public health. Dr. Glauer was instrumental in a number of initiatives directly affecting Ohio livestock and poultry producers. The ADDL now facilitates export testing. Dr. Glauer was instrumental in obtaining a food safety educational outreach grant from USDA, which has funded Beef Quality Assurance (BQA) initiatives and the Ohio Egg Quality Assurance Program. He and his staff worked to assure Ohio is prepared to respond to a foreign animal disease outbreak and/or biosecurity risk. Dr. Glauer was a key player in the development and implementation of the Ohio Livestock Show Reform Act and the educational initiatives currently underway to educate junior fair and 4-H participants in responsible livestock husbandry and drug use. Dr. Glauer is a member of the American Veterinary Medical Association, and was elected to the AVMA Council on Public Health and Regulatory Veterinary Medicine (CPHRVM) and Animal Agriculture Liaison Committee. He served

as the Chair for the council from July 2005 through July 2006. He was also a member of the Livestock Conservation Institute and served on the executive committee of the US Animal Health Association. He served as chairman of the Food Safety Committee for USAHA. He is a member of the Ohio Veterinary Medical Association. Dr. Glauer received the OVMA Veterinarian of the Year award for 2005. He was also the recipient of the 2003 Ohio State University College of Veterinary Medicine Distinguished Alumni Award, and the 2004 USDA Veterinary Services Recognition for "outstanding contributions to implementing the Animal Health Safeguarding Review."

Kellie DiFrischia is Co-Founder and Director of Columbus Dog Connection, a not-for-profit animal welfare agency re-homing dogs and cats, where she has served for 16 years. While working to advance the mission of her group, forefront for Ms. DiFrischia is assisting in the efforts of all humane organizations. This was the impetus for numerous projects she created including: Mingle With Our Mutts, Habitat for Dogmanity and The Elevated Dog Bed Project, which won The Make A Difference Day state award. Most recently, she spent seven years working on Senate Bill 130, groundbreaking legislation to regulate the commercial high volume dog breeding industry. Senator Jim Hughes called this bill the most difficult of his career. As co-author of the "puppy mill bill," she served as the lead advocate for the humane movement, which required intense negotiations with a wide range of stakeholders and interested parties at both the state and national level. Ms. DiFrischia's professional experience and leadership in the animal welfare movement have contributed to her being widely recognized as one of the state's leading experts on puppy mills.

Ervin L. Raber is a commercial dog breeder who testified in both the House of Representatives and the Senate on the hearings for Senate Bill 130, and attended all but one hearing during the seven-year legislative process. He is Vice-President and founder of the Ohio Professional Dog Breeders Association.

Overview of Commercial Dog Breeder Act
April 4, 2014
LSC/CLE

R. David Glauer, DVM
Technical Writer
Ohio Department of Agriculture

Timeline

- Numerous legislative proposals over a seven year period
  - Various opinions among breeders, animal-rights advocates, farmers, veterinarians and others
  - Sticking points included who would regulate breeders, the threshold for being regulated and the standards of care
- Sub. S.B. 130 signed into law by Gov. John Kasich on December 11, 2012
- The Commercial Dog Breeders Act became effective on March 13, 2013
- Appoint an advisory board within 60 days

Enabling Legislation

- Established the Commercial Dog Breeding Advisory Board
  - The State Veterinarian in the ODA plus:
    - A member of a humane society
    - A county dog warden
    - A veterinarian
    - A member representing animal rescues
    - A member representing a professional dog breeding association
    - A member representing the public
  - Members are appointed for three years

Enabling Legislation

- Duties of the Board
  - Review proposed rules
  - Advise the Director on the administration of the act and the rules

Register with the ODA

- High volume dog breeder: maintains breeding dogs that produce 9 litters per year and sells 60 puppies
  - Requires annual license application and a fee
- Dog retailer: anyone who buys, sells, offers at wholesale for resale, or sells or gives 1 or more dogs to a pet store annually
  - Requires annual license application and a fee
- Animal rescue for dogs: must register with ODA, but can not operate for a profit
  - No fee

Registration Exemptions

- Exemptions
  - Medical kennels
  - Research kennels
  - County, municipal or non-profit organization animals shelters
  - Veterinarians
- Requires the Director to conduct inspections, and provides for enforcement through civil penalties, citations, and injunctive relief

Application Fees

- High Volume Dog Breeder
  - $150 sells 9-15 litters
  - $250 sells 16-25 litters
  - $350 sells 26-35 litters
  - $500 sells 36-45 litters
  - $750 sells 46 ore more litters
- Dog Retailer
  - Application fee - $500

Financial Responsibility

- Liability insurance or surety bond requirements
  - $5,000 for not more than 25 adult dogs
  - $10,000 for 26-50 adult dogs
  - $50,000 for 51 or more adult dogs

Application Must Include

- High Volume Breeder Permit Application Form
- Appropriate application fee
- Complete background check
- Reimbursement form and original receipt
- Bond form or Certificate of Insurance
- Affidavit – Compliance with Facility and Care Standards
- Affidavit – Number of Litters Produced and Number of Dogs Sold or anticipated if new
- Photographs of the facility where dogs are housed

Rule-Making Process

- The Commercial Dog Breeders Ad Hoc Committee was formed and met four times from January to March 2013
- A draft standard for the care and housing by high volume dog breeders was developed
- Reviewed by the Commercial Dog Breeders Advisory Board on May 22, 2013
- Submitted to JCARR July 23, 2013
- Public hearing August 29, 2013
- Passed JCARR September 23, 2013
- Effective Date October 10, 2013

Enabling Legislation

- Director must develop standards of care governing the following:
  - Housing
  - Nutrition
  - Exercise
  - Grooming
  - Biosecurity and disease control
  - Waste management
  - Whelping
  - Any other general standards of care

Enabling Legislation

- Director must consider the following in developing the standards
  - Best management practices
  - Biosecurity
  - Prevention of disease
  - Morbidity and mortality data
  - Generally accepted veterinary medical standards and ethical standards (AVMA)
  - Standards established by USDA/AC

Commercial Dog Breeder Rules Care and Housing Standards

- 901:1-6-01 – Definitions and General Considerations
- 901:1-6-02 – Housing – refer to handout
- 901:1-6-03 – Socialization
  - Puppies shall have human physical contact during the first 16 weeks of life
  - Dogs and puppies shall be provided daily positive human contact beyond feeding and cleaning
  - Dogs and puppies shall be provided some form of effective enrichment

Commercial Dog Breeder Rules Care and Housing Standards

- 901:1-6-04 – Food and Water
  - Dogs shall receive food at least once daily
  - Dogs shall receive water on a continual basis or not less than twice daily

Commercial Dog Breeder Rules Care and Housing Standards

- 901:1-6-05 – Health
  - Must have a V-C-P-R
  - The attending veterinarian
    - Will visit each facility a minimum of one time per year
    - Will conduct a physical exam of each dog and puppy
    - Provide a written annual plan for exercise, behavior and social needs, and health care to include a *Brucella canis* monitoring program
  - Surgical procedures, except dewclaw removal and tail docking between 2 and 5 days of age, shall be performed by a licensed veterinarian
  - Prescription drugs only administered as directed

Commercial Dog Breeder Rules Care and Housing Standards

- 901:1-6-06 – Transportation
  - Each adult dog or puppy over 16 weeks of age must be offered food and water at least once every 8 hours
  - Puppies less than 16 weeks must be offered food and water at least once every 4 hours
- 901:1-6-07 – Record Keeping and Identification
- 901:1-6-08 – Licensing
- 901:1-6-09 – Inspections
  - At least once annually by ODA
- 901:1-6-10 – Civil Penalties
  - $100 for a first offense and $500 for each subsequent offense

FAQ - HVDB

Do the affidavits have to say "swear"? The wording can be changed to “Affirm” or “Attest” if needed based on an exemption.

Can my son/grandson who's under 18 works in the kennel and show you around if he's here when you inspect? We ultimately need consent from the owner in order to enter onto the property. We also need to be accompanied by a designated person responsible for responding to our inspection findings during our inspection.

If we have plastic flooring with holes in it (greenhouse floor) do we still need a solid resting surface? Possibly, but we would encourage you to read the rules. Depends on what the greenhouse floor looks like. It has to meet the regulatory requirements.

Other questions referred to the use of resting mats and visual barriers. Refer to rules.

What about a background check? This is explained in the application process. The requirement is based on the statute.

Surety bond information, who do I call, where do I start? Refer to application. (ODA is not promoting these companies; however these are the only companies we are currently aware of). Habrun’s Ins. 1-800-340-3767, Trent Ins. Group Eric McFarren 330-683-0855, XINSURANCE 801-304-5565, Kalmanson Ins. 407-645-5000

Where are fingerprinting locations? An Attorney General web-check location link will be available on the ODA/CDB webpage.

Will I still be inspected by my county, the USDA and the ODA now? Yes where applicable; depending on whose jurisdiction you fall under.

Will the USDA and ODA programs eventually become one? No; not that we envision.

Will I have to license with USDA and Ohio both? Not necessarily; but maybe. Our definition is different than USDA’s definition. We suggest you check with USDA on their definition.

If I’m not Ohio HVDB do I have to license with USDA? Check with USDA for their definition.

Do HVDB still need licensed by county? Check with your County Auditor – It is the County Prosecutor who interprets ORC 955.

Will you tell USDA that I’m a breeder? ODA License is public record.

What is the ODA dog tag and where can I get one? If you are USDA licensed we are okay with the use of those tags. County tags will work as well. At this point in time, there are no “ODA tags”.

Will Ohio supply Kennel Records documents that you say we need to keep? No, but perhaps in the future based on the need and rules. You are still expected to maintain records/documentation.

Will you contact us when we can apply for license? Yes, rules go into effect 10/10/2013 and packets are available. You can get information off our website or call Candice if you cannot access the web.

Will there be a notice of annual renewal for the licenses? Yes

Why 9 litters, and sell 60 or more adult dogs or puppies? Good question – not sure why those numbers were decided but this is how the law reads and this is what we will enforce.

Can I get reimbursed if I license, then do not hit the 9 litters/60 puppies? No it's non-refundable

What does my vet need to know? We will have the vet's name from your high volume breeder application. We will be holding a meeting with these veterinarians in order to update them. We also encourage you to share the rules with your vet.

Brucellosis Test- is this going to be done yearly, or on a as- come- into- kennel basis? We are in the process of developing a Brucellosis Program Template that will be presented to you and your veterinarian in the near future.

What does ODA expect to see as far as records are concerned? We are going to expect that you keep records based on requirements outlined in the regulations.

Will you be showing up un-announced and what are the procedures when someone is not home? We will conduct inspections during normal business hours. If you are not home we will leave notification and return another day.

If I am not an existing facility and want to build a new kennel when must it be completed? This is a big concern being that winter is approaching. If you are a HVDB you must be licensed. We will work with people to become licensed. This will be dealt with on a case-by-case basis.

Is use of wood in kennel construction ok, being that it is a hard surface? No wood is porous, and therefore cannot be sanitize as needed.

Will you provide a Vet Care Plan Guideline or Template? Yes.

Will the Inspection form be available to producers? Yes a copy of the completed form will be made available at the exit interview. The inspection form follows the rules.

Where can I find information? On the Ohio Department of Agriculture (ODA)/Commercial Dog Breeder (CDB) webpage; or by calling ODA, or from your Inspectors.

Ohio Department of Agriculture
Governor John R. Kasich • Lt. Governor Mary Taylor
Director David T. Daniels

Division of Animal Health
Business Section - Bromfield Building
8995 East Main Street, Reynoldsburg, OH 43068
Phone: 614-728-6220 • Fax: 614-752-3065
www.agri.ohio.gov • animal@agri.ohio.gov

ODA

Minimum Space Requirements for Dogs

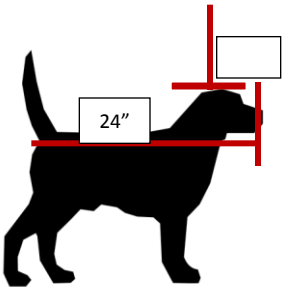
Commercial Dog Breeders rules require that primary enclosures for adult dogs without nursing puppies or weaned puppies must have adequate space to allow the dogs to turn about freely, to stand, sit, and lie in a comfortable, normal position and to walk in a normal manner (OAC 901:1-6-02 (D)(2). Additionally, the interior height of the primary enclosure must be at least six (6) inches higher than the head of the tallest dog in the enclosure, measured when the dog is standing in a normal comfortable standing position (OAC 901:1-6-02 (D)(4).

Note: OAC 901:1-6-01 (E) Existing Facility OAC 901:1-6-02 (G) Existing Facilities Primary Enclosures

Measuring the Length of a Dog

With the dog in a normal standing position, or with the dog held lying flat on its side, measure the dog along a straight line from the tip of the nose to the base of the tail. Do not follow the contours of the dog's body when measuring the length of the dog.

There must be a minimum space of 6 inches from the top of dog's head to the top of cage



Dog Length (in)	Sq Ft Needed	Dog Length (in)	Sq Ft Needed	Dog Length (in)	Sq Ft Needed
7	2.35	17	7.30	27	15.12
8	2.72	18	8.00	28	16.06
9	3.13	19	8.86	29	17.02
10	3.56	20	9.76	30	18.00
11	4.10	21	10.12	31	19.02
12	4.50	22	10.88	32	20.06
13	5.00	23	11.68	33	21.12
14	5.50	24	12.50	34	22.22
15	6.10	25	13.35	36	24.50
16	6.70	26	14.22	38	26.88

Calculating Minimum Space Requirements For First/Largest Dog OAC 901:1-6-02 The following is an example of how to calculate minimum space requirements. Jess is a female Cocker Spaniel. She is 24 inches long from the tip of her nose to the base of the tail.

Step 1: Measure the length of the dog from tip of nose to base of tail (inches). Add 6 inches to this number.

24 inches + 6 inches = 30 Inches

Step 2: Calculate minimum floor space in square inches.

30 inches X 30 inches = 900 square inches

Step 3: Now we are going to double this number to get the space we need.

900 square inches X 2 = 1800 square inches = Minimum required amount of floor space in square inches

Step 4: Calculate minimum floor space in square feet.

$$\frac{\text{1800 square inches}}{\text{144*}} = \text{12.5 square feet = minimum floor space in square feet}$$

(*144= 1 square foot in inches)

The total floor space for dogs in "group housing" must meet or exceed the dog's minimum space requirement. OAC 901: 1-6-02 (D)(1) Measure each additional dog for space requirement.

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Dog Lenth (in)	Sq Ft Needed	Dog Length (in)	Sq Ft Needed	Dog Length (in)	Sq Ft Needed
7	1.17	17	3.67	27	7.56
8	1.36	18	4.00	28	8.03
9	1.56	19	4.34	29	8.51
10	1.78	20	4.69	30	9.00
11	2.01	21	5.06	31	9.51
12	2.25	22	5.44	32	10.03
13	2.51	23	5.84	33	10.56
14	2.78	24	6.25	34	11.11
15	3.06	25	6.67	36	12.25
16	3.36	26	7.11	38	13.44

Special Requirements for Dams with Nursing Puppies

The additional space required for dams with nursing puppies is determined by the dog's breed and behavioral characteristics, the veterinarian's approval and the minimum space requirement calculation OAC 901: 1-6-02 (D)(1). Each puppy requires a minimum of 5% of the dam's minimum space requirement OAC 901: 1-6-02 (Q)(6).

Example: Jess has a litter of 5 puppies. Jess is 24" from the tip of her nose to the base of her tail. Calculate the minimum amount of space they require.

Step 1: Calculate dam's minimum space requirement in square inches. **24 inches + 6 inches = 30**

(30 inches X 30 inches) = 900 square inches

Step 2: Calculate additional minimum floor space per puppy

900 square inches x 0.05* = 45 square inches

Jess's puppies each need 45 square inches of space.

(*0.05=5%)

Step 3: Multiply additional floor space per puppy by number of puppies.

45 square inches x 5 puppies = 225 square inches minimum amount of additional floor space for all 5 puppies

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Step 4: Calculate minimum space requirement in square inches. Add Jess's space requirements to the space requirement for the puppies.

900 square inches + 225 square inches = 1125 total minimum space requirement in square inches: Jess and her pups need 1125 square inches of space.

Step 5: Calculate space required in square feet

$$\frac{\text{1125 square inches}}{\text{144*}} = \text{7.81 square feet minimum floor space in square feet}$$

***144= 1 square foot in inches**

Jess and her puppies need 7.81 square feet of space.

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If you would like to read
Sub. S.B. 130 of the 129th General Assembly,
you can find the full act here:

http://www.legislature.state.oh.us/bills.cfm?ID=129_SB_130

Ohio Legislative Service Commission

Final Analysis

Jeff Grim

Sub. S.B. 130

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

Sens. Hughes and Cates, Lehner, Seitz, Skindell, Turner, Hite, Beagle, Burke, Gentile, Jones, LaRose, Niehaus, Patton, Sawyer, Schiavoni, Tavares, Wagoner

Reps. Antonio, Ashford, Budish, Celebrezze, Cera, Combs, Derickson, Dovilla, Fedor, Fende, Garland, Gerberry, Goyal, Grossman, R. Hagan, Heard, Kozlowski, Letson, Lundy, Mallory, Milkovich, O'Brien, Phillips, Ramos, Schuring, Szollosi, Thompson, Winburn, Yuko

Effective date: March 13, 2013

ACT SUMMARY

- Distinguishes dog kennels that are required to be registered under the Dogs Law from high volume breeders that are required to be licensed under the act.
- Defines "high volume breeder," requires a person who operates such an establishment to obtain a license from the Director of Agriculture, and specifies information that must be included with an application for a high volume breeder license.
- Defines "dog retailer," and requires a person acting as or performing the functions of a dog retailer to obtain a license from the Director.
- Defines "animal rescue for dogs," prohibits a person from operating an animal rescue for dogs without first registering with the Director, and requires the Director to maintain a database of all persons registered to operate an animal rescue for dogs in Ohio.
- Exempts medical kennels for dogs, research kennels for dogs, animals shelters for dogs that are operated by counties or municipal corporations (pounds), and veterinarians from the act.
- Establishes license application fees for high volume breeders and dog retailers, and requires the money to be credited to a new High Volume Breeder Kennel Control

License Fund with a portion of breeder application fees transferred to the applicable county dog and kennel fund.

- Requires the Director to deny an application for a license under specified circumstances, and authorizes the Director to suspend or revoke a license for violation of any of the act's provisions or a rule adopted or order issued under it if the violation materially threatens the health or welfare of a dog.

- Requires the Director to adopt rules establishing requirements and procedures that are necessary to administer and enforce the act, including standards governing housing and nutrition for high volume breeders, requires the Director to take into consideration at least specified factors when establishing those standards, and prohibits high volume breeders and dog retailers from failing to comply with applicable standards.

- Requires the Director to conduct inspections under certain circumstances and authorizes the Director to do so under other circumstances, establishes authority for and procedures and requirements governing inspections, authorizes the Director to enter into contracts or agreements with veterinarians to conduct inspections, and establishes parameters for those inspections.

- Authorizes the Director to impound a dog if the Director or the Director's authorized representative determines that the dog is being kept by a high volume breeder or dog retailer in a manner that materially violates the act or the rules adopted under it, and establishes procedures governing such an impoundment.

- Provides for enforcement of its provisions through civil penalties, citations and orders, and injunctive relief.

- Creates the Commercial Dog Breeding Advisory Board, and requires the Board to review rules that have been or are proposed to be adopted under the act and advise the Director on the administration of the act and rules adopted under it.

- Creates the High Volume Breeder Kennel Control Fund, states that the Fund consists of money collected by the Director from license fees under the act and from civil penalties imposed under the act and of any money appropriated to it, and requires the Director to request the Controlling Board to release not more than $2.5 million per biennium from the Fund.

- Requires the Director of Agriculture to use money in the Fund to administer the act and rules adopted under it.

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CONTENT AND OPERATION

Dogs Law provisions governing kennels

Under law revised in part by the act, the owner of a kennel of dogs must apply for the registration of the kennel and pay to the county auditor a $10 registration fee for the kennel unless a greater fee has been established by the applicable board of county commissioners.[1] The fees are deposited into the county's dog and kennel fund.[2] Former law defined "kennel owner" as a person, partnership, firm, company, or corporation that was professionally engaged in the business of breeding dogs for hunting or for sale. The act instead defines "dog kennel" or "kennel" for purposes of the Dogs Law as an establishment that keeps, houses, and maintains adult dogs for the purpose of breeding the dogs for a fee or other consideration received through a sale, exchange, or lease and that is not a high volume breeder that is licensed under the act.[3] Thus, while retaining county registration of certain dog kennels, the act distinguishes those kennels from high volume breeders that must be licensed under the act's new regulatory program (see

[1] R.C. 955.04 and 955.14, not in the act.

[2] R.C. 955.20.

[3] R.C. 955.02.

"**High volume breeders**," below). It also incorporates high volume breeders in certain provisions of the Dogs Law as discussed below.

Law generally unchanged by the act prohibits the owner of a dog, except a dog constantly confined to a registered kennel, from failing to require the dog to wear, at all times, a valid tag issued in connection with a certificate of registration. The act applies that exception also to a dog that is constantly confined to a high volume breeder that is licensed under the act.[4]

Similarly, under law largely retained by the act, a county dog warden and the warden's deputies must seize and impound on sight all dogs found running at large and all dogs more than three months of age found not wearing a valid registration tag. Exceptions include any dog that wears a valid registration tag and is kept constantly confined in a registered dog kennel. The act applies that exception also to a dog that is kept constantly confined in a high volume breeder that is licensed under the act.[5]

High volume breeders

Under the act, a person is prohibited from operating a high volume breeder in Ohio without a license issued by the Director of Agriculture in accordance with the act and rules adopted under it.[6] The Director is precluded from issuing a license unless the Director determines that the applicant will operate or will continue to operate the high volume breeder in accordance with the act and rules adopted under it.[7]

Under the act, a high volume breeder is an establishment that keeps, houses, and maintains adult breeding dogs that produce at least nine litters of puppies in any given calendar year and, in return for a fee or other consideration, sells 60 or more adult dogs or puppies per calendar year.[8] An adult dog is a dog that is 12 months of age or older, and a puppy is a dog that is under 12 months of age.[9] Finally, a breeding dog is an unneutered, unspayed dog that is primarily harbored or housed on property that is the dog's primary residence.[10]

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[4] R.C. 955.10.

[5] R.C. 955.12.

[6] R.C. 956.04(A)(1).

[7] R.C. 956.04(A)(3).

[8] R.C. 956.01(F).

[9] R.C. 956.01(A) and (L).

[10] R.C. 956.01(E).

In determining whether an establishment is a high volume breeder requiring a license under the act, the Director must determine if, in any given year, the establishment is a high volume breeder as defined by the act. All facilities that are located at an individual postal address must be licensed as one high volume breeder. Not more than one license must be issued for any given postal address.[11]

A person who is proposing to operate a new high volume breeder must submit an application for a license to the Director at least 90 days before commencing operation. The application must be submitted in the form and with the information required by rules adopted under the act and must include with it at least all of the following:

(1) An affidavit signed under oath or solemn affirmation of the number of adult dogs that are kept, housed, and maintained by the applicant at the location that is the subject of the application;

(2) An estimate of the number of puppies to be kept, housed, and maintained and of the number of litters of puppies or total number of puppies to be produced during the term of the license;

(3) Photographic evidence documenting the facilities where dogs will be kept, housed, and maintained by the applicant. The Director may conduct an inspection of the facilities that are the subject of an application in addition to reviewing photographic evidence submitted by an applicant for a license.

(4) A signed release permitting the performance of a background investigation regarding the applicant in accordance with rules adopted under the act; and

(5) Proof that the applicant has established a veterinary-client-patient relationship as described in the Veterinarians Law.

During the month of December, but before January 1 of the next year, a person who is proposing to continue the operation of a high volume breeder must obtain a license for the kennel from the Director for the following year. The person must apply for the license in the same manner as for an initial license.[12]

The act requires the owner or operator of a high volume breeder that is in operation on the act's effective date to submit to the Director an application for a high volume breeder license not later than three months after that date. The Director must

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[11] R.C. 956.04(B).

[12] R.C. 956.04(D).

issue or deny the application within 90 days after the receipt of the completed application.[13]

A person who has received a high volume breeder license under the act, upon sale or other disposition of the high volume breeder, may have the license transferred to another person with the consent of the Director, provided that the transferee otherwise qualifies to be licensed as a high volume breeder under the act and rules adopted under it and does not have a certified unpaid debt to the state.[14]

An applicant for a high volume breeder license must demonstrate that the high volume breeder that is the subject of the application complies with standards established in rules adopted under the act (see "**Standards of care**," below).[15]

Dog retailers

The act prohibits a person from acting as or performing the functions of a dog retailer in this state without a dog retailer license issued by the Director in accordance with the act and rules adopted under it.[16] The Director is precluded from issuing a license unless the Director determines that the applicant will act as or perform the functions of a dog retailer in accordance with the act and rules adopted under it.[17]

Under the act, a dog retailer is a person who buys, sells, or offers to sell dogs at wholesale for resale to another or who sells or gives one or more dogs to a pet store annually. A dog retailer does not include an animal rescue for dogs (see "**Animal rescues for dogs**," below), an animal shelter for dogs, a humane society established under state law, a medical kennel for dogs, a research kennel for dogs (see "**Exemptions**," below), a pet store, or a veterinarian.[18] An animal shelter for dogs is a facility that keeps, houses, and maintains dogs such as a dog pound operated by a municipal corporation, or by a county under the Dogs Law, or that is operated by a humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization that is devoted to the welfare, protection, and humane treatment of dogs and other animals.[19] A pet store is a retail store that sells dogs to the

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[13] R.C. 956.04(E).

[14] R.C. 956.04(F).

[15] R.C. 956.04(G).

[16] R.C. 956.05(A)(1).

[17] R.C. 956.05(A)(3).

[18] R.C. 956.01(H).

[19] R.C. 956.01(C).

public.[20] Finally, for the act's purposes, a veterinarian is a veterinarian who is licensed under state law.[21]

A person who is proposing to act as or perform the functions of a dog retailer must submit an application for a license to the Director. During the month of December, but before January 1 of the next year, a person who is proposing to continue to act as or perform the functions of a dog retailer must obtain a license from the Director for the following year.[22]

A person who is acting as or performing the functions of a dog retailer on the act's effective date must submit to the Director an application for a dog retailer license not later than three months after that date. The Director must issue or deny the application within 90 days after the receipt of the completed application.[23]

Animal rescues for dogs

The act prohibits a person from operating an animal rescue for dogs without first registering to do so with the Director of Agriculture in accordance with rules adopted under the act.[24] Under the act, an animal rescue for dogs is an individual or organization recognized by the Director that keeps, houses, and maintains dogs and that is dedicated to the welfare, health, safety, and protection of dogs, provided that the individual or organization does not operate for profit, does not sell dogs for a profit, does not breed dogs, and does not purchase more than nine dogs in any given calendar year unless the dogs are purchased from a dog warden, a humane society, or another animal rescue for dogs. An animal rescue for dogs includes an individual or organization that offers spayed or neutered dogs for adoption and charges reasonable adoption fees to cover the costs of the individual or organization, including, but not limited to, costs related to spaying or neutering dogs.[25]

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[20] R.C. 956.01(K).

[21] R.C. 956.01(N).

[22] R.C. 956.05(B).

[23] R.C. 956.05(C).

[24] R.C. 956.06.

[25] R.C. 956.01(B).

Under the act, no registration fee must be charged to an animal rescue for dogs. The Director must maintain a database of all persons that are registered to operate an animal rescue for dogs in Ohio.[26]

Exemptions

Medical kennels for dogs, research kennels for dogs, animal shelters for dogs that are operated by a municipal corporation, or by a county under the Dogs Law, and veterinarians are not required to obtain a license under the act or comply with any other requirements of the act and rules adopted under it.[27] Under the act, a medical kennel for dogs is a facility that is maintained by a veterinarian and operated primarily for the treatment of sick or injured dogs, and a research kennel for dogs is a facility housing dogs that is maintained exclusively for research purposes.[28]

Application fees

Under the act, a person who is applying for a license to operate a high volume breeder or to act as or perform the functions of a dog retailer must include with the application for a license a nonrefundable license application fee. For the purpose of calculating the application fee for a high volume breeder, the sale of one dog from a litter constitutes the sale of a litter. The application fees are as follows:

For a high volume breeder:

(1) $150 if the breeder annually sells nine to 15 litters;

(2) $250 if the breeder annually sells 16 to 25 litters;

(3) $350 if the breeder annually sells 26 to 35 litters;

(4) $500 if the breeder annually sells 36 to 45 litters; or

(5) $750 if the breeder annually sells 46 or more litters.

For a dog retailer, $500.[29]

The Director must transmit money collected by the Director from each application fee to the Treasurer of State to be credited to the High Volume Breeder

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[26] R.C. 956.06.

[27] R.C. 956.02.

[28] R.C. 956.01(J) and (M).

[29] R.C. 956.07(A).

Kennel Control License Fund created by the act (see "**High Volume Breeder Kennel Control License Fund**," below). The Treasurer of State must transfer to the county auditor of the county in which a high volume breeder is or will be located $50 of the application fee submitted by the breeder or an amount equal to the fee charged in that county for the registration of a kennel under the Dogs Law (see above), whichever is greater. The county auditor must deposit the money in the county's dog and kennel fund.[30]

Application denial; license suspension and revocation

The act requires the Director to deny an application for a license that is submitted under the act for either of the following reasons:

(1) The applicant for the license has violated any provision of the act or a rule adopted under it if the violation materially threatens the health or welfare of a dog; or

(2) The applicant, in the past 20 years, has been convicted of or pleaded guilty to violating any of specified statutes prohibiting animal cruelty or animal fighting or an equivalent municipal ordinance, law of another state, or federal law or, in the past 20 years, has been convicted of or pleaded guilty to violating more than once the statute prohibiting domestic violence or an equivalent municipal ordinance, law of another state, or federal law.[31]

Additionally, the Director may suspend or revoke a license issued under the act for violation of any provision of the act or a rule adopted or order issued under it if the violation materially threatens the health or welfare of a dog.[32]

An application or a license cannot be denied, suspended, or revoked without a written order of the Director stating the findings on which the denial, suspension, or revocation is based. A copy of the order must be sent to the applicant or license holder by certified mail or may be provided to the applicant or license holder by personal service. In addition, the person to whom a denial, suspension, or revocation applies may request an adjudication hearing under the Administrative Procedure Act; the Director must comply with such a request. The determination of the Director at an adjudication hearing may be appealed in accordance with the Administrative Procedure

[30] R.C. 956.07(B).

[31] R.C. 956.15(A).

[32] R.C. 956.15(B)

Act, except that the determination may be appealed only to the Environmental Division of the Franklin County Municipal Court.[33]

Rules

The act requires the Director to adopt rules in accordance with the Administrative Procedure Act establishing all of the following:

(1) Requirements and procedures governing high volume breeders, including the licensing and inspection of and record keeping by high volume breeders, in addition to the requirements and procedures established by the act;[34]

(2) Requirements and procedures for conducting background investigations of each applicant for a high volume breeder license issued under the act in order to determine if the applicant has been convicted of or pleaded guilty to any of the offenses specified in the act the violation of which precludes a person from being licensed (see above);[35]

(3) Requirements and procedures governing dog retailers, including the licensing of and record keeping by dog retailers, in addition to the requirements and procedures established by the act;[36]

(4) The form of applications for licenses issued under the act and the information that is required to be submitted in the applications, and the form for registering as an animal rescue for dogs under the act and the information that is required to be provided with a registration, including the name and address of each foster home that it utilizes;[37]

(5) A requirement that each high volume breeder submit to the Director, with an application for a high volume breeder license, evidence of insurance or, in the alternative, evidence of a surety bond payable to the state to ensure compliance with the act and rules adopted under it. The face value of the insurance coverage or bond must be in the following amounts:

(a) $5,000 for high volume breeders keeping, housing, and maintaining not more than 25 adult dogs;

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[33] R.C. 956.15(C).

[34] R.C. 956.03(A).

[35] R.C. 956.03(B).

[36] R.C. 956.03(C).

[37] R.C. 956.03(D).

(b) $10,000 for high volume breeders keeping, housing, and maintaining 26 to 50 adult dogs; and

(c) $50,000 for high volume breeders keeping, housing, and maintaining more than 50 adult dogs.

The rules must require that the insurance be payable to the state or that the surety bond be subject to redemption by the state, as applicable, upon a suspension or revocation of a high volume breeder license for the purpose of paying for the maintenance and care of dogs that are seized or otherwise impounded from the high volume breeder in accordance with the act.[38]

(6) Procedures for inspections conducted under the act in addition to the procedures established by the act (see "**Inspectors and inspections**," below), and procedures for making records of the inspections;[39]

(7) Both of the following:

(a) A requirement that an in-state retailer of a puppy or adult dog provide to the purchaser the complete name, address, and telephone number of all high volume breeders, dog retailers, and private owners that kept, housed, or maintained the puppy or adult dog prior to its coming into the possession of the retailer or proof that the puppy or adult dog was acquired through an animal rescue for dogs, animal shelter for dogs, or humane society, or a valid health certificate from the state of origin pertaining to the puppy or adult dog; and

(b) A requirement that an out-of-state retailer of a puppy or adult dog that is conducting business in Ohio provide to the purchaser a valid health certificate from the state of origin pertaining to the puppy or adult dog and the complete name, address, and telephone number of all breeders, retailers, and private owners that kept, housed, or maintained the puppy or adult dog prior to its coming into the possession of the retailer or proof that the puppy or adult dog was acquired through an animal rescue for dogs, animal shelter for dogs, or humane society in this state or another state;[40]

(8) A requirement that a high volume breeder or a dog retailer who advertises the sale of a puppy or adult dog include with the advertisement the vendor number assigned by the Tax Commissioner if the sale of the puppy or dog is subject to the Sales

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[38] R.C. 956.03(E).

[39] R.C. 956.03(G).

[40] R.C. 956.03(H).

Tax Law (sales of animals by nonprofit animal adoption services or county humane societies are not subject to the sales tax);[41]

(9) A requirement that a licensed high volume breeder and a licensed dog retailer comply with the Sales Tax Law. The rules must authorize the Director to suspend or revoke a license for failure to comply with that Law. The Director must work in conjunction with the Tax Commissioner for the purposes of those rules.[42]

(10) Any other requirements and procedures that are determined by the Director to be necessary for the administration and enforcement of the act and rules adopted under it. However, those rules cannot establish additional requirements and procedures governing animal rescues for dogs other than those adopted regarding the form for registering animal rescues for dogs.[43]

Standards of care

The act requires the Director, in addition to the rules discussed above, to adopt rules in accordance with the Administrative Procedure Act establishing standards of care governing all of the following for high volume breeders:

(1) Housing;

(2) Nutrition;

(3) Exercise;

(4) Grooming;

(5) Biosecurity and disease control;

(6) Waste management;

(7) Whelping; and

(8) Any other general standards of care for dogs.[44]

In adopting the rules, the Director must consider at least the following factors:

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[41] R.C. 956.03(I).

[42] R.C. 956.03(J).

[43] R.C. 956.03(K).

[44] R.C. 956.03(F)(1).

(1) Best management practices for the care and well-being of dogs;

(2) Biosecurity;

(3) The prevention of disease;

(4) Morbidity and mortality data;

(5) Generally accepted veterinary medical standards and ethical standards established by the American Veterinary Medical Association; and

(6) Standards established by the U.S. Department of Agriculture under the Federal Animal Welfare Act.[45]

It prohibits any person operating a high volume breeder or acting as or performing the functions of a dog retailer from failing to comply with applicable standards established by the Director.[46]

Inspections

At least once annually, the Director or the Director's authorized representative must inspect a high volume breeder that is subject to licensure under the act and rules adopted under it to ensure compliance with the act and rules adopted under it, including the standards of care established in rules (see above). The Director or the Director's authorized representative must inspect a boarding kennel when the Director or the Director's authorized representative has received information that the boarding kennel is breeding dogs and may be subject to licensure under the act and rules adopted under it.[47] Under the act, a boarding kennel is an establishment operating for profit that keeps, houses, and maintains dogs solely for the purpose of providing shelter, care, and feeding of the dogs in return for a fee or other consideration.[48]

In addition, the act authorizes the Director or the Director's authorized representative to do any of the following:

(1) Upon receiving a complaint, inspect a high volume breeder that is subject to licensure to ensure compliance with the act and rules adopted under it;

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[45] R.C. 956.03(F)(2).

[46] R.C. 956.04(G) and 956.08.

[47] R.C. 956.10(A).

[48] R.C. 956.01(D).

(2) Upon the request of a member of the public, a public official, or an animal shelter for dogs, inspect any facility at which a person is acting as or performing the functions of a dog retailer to ensure such compliance;

(3) Upon receiving a complaint, inspect an animal rescue for dogs to ensure compliance with the act's registration requirement and applicable rules; and

(4) Conduct an inspection during regular business hours without providing advance notice.[49]

Inspections must be conducted in accordance with rules adopted under the act. A record of each inspection must be made by the Director or the Director's authorized representative who is responsible for the inspection in accordance with those rules.[50]

Under the act, the Director or the Director's authorized representative, upon proper identification and upon stating the purpose and necessity of an inspection, may enter at reasonable times on any public or private property, real or personal, to inspect or investigate and to examine or copy records in order to determine compliance with the act and rules adopted under it. The Director, the Director's authorized representative, or the Attorney General upon the request of the Director may apply to the appropriate court in the county in which the inspection will occur for an appropriate court order or search warrant as necessary to achieve the purposes of the act and rules adopted under it.[51]

The act prohibits an owner or operator of a high volume breeder, person acting as or performing the functions of a dog retailer, owner or operator of an animal rescue for dogs, or owner or operator of a boarding kennel from interfering with an inspection or refusing to allow the Director or the Director's authorized representative full access to all areas where dogs are kept or cared for. If entry is refused or inspection or investigation is refused, hindered, or thwarted by a high volume breeder or dog retailer, the Director may suspend or revoke the breeder's or retailer's license in accordance with the act.[52]

If entry that is authorized by the act is refused or if an inspection or investigation is refused, hindered, or thwarted by intimidation or otherwise and if the Director, an authorized representative of the Director, or the Attorney General applies for and

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[49] R.C. 956.10(B).

[50] R.C. 956.10(C).

[51] R.C. 956.10(D).

[52] R.C. 956.10(E).

obtains a court order or a search warrant to conduct the inspection or investigation, the owner or operator of the premises where entry was refused or inspection or investigation was refused, hindered, or thwarted, if found guilty of violating the act or rules adopted under it, is liable to the Director for the reasonable costs incurred by the Director for the regular salaries and fringe benefit costs of personnel assigned to conduct the inspection or investigation from the time the court order or search warrant was issued until the court order or search warrant is executed; for the salary, fringe benefits, and travel expenses of the Director, an authorized representative of the Director, or the Attorney General incurred in obtaining the court order or search warrant; and for expenses necessarily incurred for the assistance of local law enforcement officers in executing the court order or search warrant. In the application for a court order or a search warrant, the Director, the Director's authorized representative, or the Attorney General may request and the court, in its order granting the court order or search warrant, may order the owner or operator of the premises, if found guilty of violating the act or rules adopted under it, to reimburse the Director for any of those costs that the court finds reasonable. From money so recovered, the Director must reimburse the Attorney General for the costs incurred by the Attorney General in connection with proceedings for obtaining the court order or search warrant, must reimburse the political subdivision in which the premises is located for the assistance of its law enforcement officers in executing the court order or search warrant, and must deposit the remainder in the state treasury to the credit of the High Volume Breeder Kennel Control License Fund created by the act.[53]

The act requires a dog warden or an agent of a humane society entering on public or private property to make investigations and inspections under their authorizing statutes to report any violations of the act and rules adopted under it to the Director or the Director's authorized representative.[54]

Inspections by veterinarians

The act authorizes the Director to enter into a contract or agreement with a veterinarian to conduct the inspections discussed above. The veterinarian must be considered the Director's authorized representative for the purposes of those inspections. The act authorizes such a veterinarian to inspect a high volume breeder with whom the veterinarian has established a veterinarian-client-patient relationship as described in the Veterinarians Law only every other year. Additionally, if the Director determines that a veterinarian who is conducting inspections under the act has falsified

[53] R.C. 956.10(G).

[54] R.C. 956.10(H).

any information submitted to the Director pursuant to an inspection, the Director must inform the Veterinary Medical Licensing Board of the falsification.[55]

Impoundment

Under the act, the Director may impound a dog if the Director or the Director's authorized representative determines that the dog is being kept by a high volume breeder or dog retailer in a manner that materially violates the act or rules adopted under it. The act authorizes the Director, for purposes of the act's provisions regarding impoundment, to enter into contracts or agreements with an animal rescue for dogs, an animal shelter for dogs, a boarding kennel, a veterinarian, a board of county commissioners, or a humane society. If the Director impounds a dog, the Director may order it to be seized by such an entity or individual with which the Director has entered into a contract or agreement. Upon receiving the order, the entity or individual must seize the dog and keep, house, and maintain it.

The Director or the Director's authorized representative must give written notice of the impoundment by posting a notice on the door of the premises from which the dog was taken or by otherwise posting the notice in a conspicuous place at the premises from which the dog was taken. The notice must provide a date for an adjudication hearing, which must take place not later than five business days after the dog is taken and at which the Director must determine if the dog should be permanently relinquished to the custody of the Director.[56]

The owner or operator of the applicable high volume breeder or the person acting as or performing the functions of a dog retailer may appeal the determination made at the adjudication hearing in accordance with the Administrative Procedure Act, except that the appeal may be made only to the Environmental Division of the Franklin County Municipal Court.[57]

If, after the final disposition of an adjudication hearing and any appeals from that adjudication hearing, it is determined that a dog must be permanently relinquished to the custody of the Director, the dog may be adopted directly from the animal rescue for dogs, animal shelter for dogs, boarding kennel, veterinarian, county dog pound, or humane society where it is being kept, housed, and maintained, provided that the dog has been spayed or neutered unless there are medical reasons against spaying or neutering as determined by a veterinarian. That entity or individual may charge a

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[55] R.C. 956.10(F).

[56] R.C. 956.11(B).

[57] R.C. 956.11(C).

reasonable adoption fee, which must be at least sufficient to cover the costs of spaying or neutering the dog unless it is medically contraindicated. Impounded dogs must be returned to persons acquitted of any alleged violations.[58]

Enforcement

Citations and orders

Under the act, if the Director or the Director's authorized representative determines that a person has violated or is violating the act or rules adopted under it, the Director may issue and cause to be served by certified mail or personal service a citation of violation and an order requiring the person to cease the acts or practices that constitute a violation or requiring the person to take corrective actions to eliminate the conditions that constitute a violation. The order must state specifically the provision or provisions of the act or the rule or rules adopted under it that have been violated and the facts constituting the violation, the actions that the person must take to correct the deficiencies, and the time period within which the person must correct the violations.[59]

Civil penalty

The act also authorizes the Director to assess a civil penalty against a person violating the act or rules adopted under it if all of the following occur:

(1) The person has received an order and been notified of the violation by certified mail or personal service as required by the act;

(2) After the time period for correcting the violation specified in the order has elapsed, the Director or the Director's authorized representative has inspected the premises where the violation has occurred and determined that the violation has not been corrected, and the Director has issued a notice of an adjudication hearing as discussed below; and

(3) The Director affords the person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination that the person is not in compliance with the act or rules adopted under it, the imposition of the civil penalty, or both. A person may waive the opportunity for an adjudication hearing.

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation of the act or a rule

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[58] R.C. 956.11(D).

[59] R.C. 956.12.

adopted under it has occurred or is occurring, the Director may assess a civil penalty. The civil penalty may be appealed in accordance with the Administrative Procedure Act, except that the civil penalty may be appealed only to the Environmental Division of the Franklin County Municipal Court.

Civil penalties must be assessed in the following amounts:

(1) A person who has operated a high volume breeder or acted as or performed the functions of a dog retailer without the required license must pay a civil penalty in an amount that is established by the Director in rules adopted under the act.

(2) A person who has violated any other provision of the act or rules adopted under it, including the standards of care established in rules adopted under the act, must pay a civil penalty of $100.

Each day that a violation continues constitutes a separate violation.[60]

Injunctions

The Attorney General, upon the request of the Director, may bring an action for injunction against a person who has violated or is violating the act, rules adopted under it, or an order issued under it. An action for injunction must be filed in the appropriate court in the county in which the violation is alleged to have occurred. That court must grant such injunctive relief upon a showing that the person against whom the action is brought has violated or is violating the act, rules adopted under it, or an order issued under it. The court must give precedence to such an action over all other cases.[61]

Hearings – witnesses, subpoenas

The act authorizes the Director, the Director's authorized representative, or the Attorney General to require the attendance of witnesses and the production of books, records, papers, and dogs that are needed either by the Director or the Attorney General or by any party to a hearing before the Director and for that purpose may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, papers, or dogs. The subpoena must be served by personal service or by certified mail. If the subpoena is returned because of inability to deliver, or if no return is received within 30 days after the date of mailing, the subpoena may be served by ordinary mail. If no return of ordinary mail is received within 30 days after the date of mailing, service must be deemed to have been made. If the subpoena is returned because of inability to deliver, the Director or the Attorney General may designate a

[60] R.C. 956.13.

[61] R.C. 956.14.

person or persons to effect either personal or residence service on the witness. The person so designated may be the sheriff of the county in which the witness resides or may be found or any other duly designated person. The fees and mileage of the person serving the subpoena must be the same as those allowed by the courts of common pleas in criminal cases and must be paid from the funds of the Department of Agriculture. Fees and mileage for the witness must be the same as those allowed for witnesses by the courts of common pleas in criminal cases and, upon request of the witness following the hearing, must be paid from the money in the High Volume Breeder Kennel Control Fund created by the act (see "**High Volume Breeder Kennel Control Fund**," below).[62]

Commercial Dog Breeding Advisory Board

The act creates the Commercial Dog Breeding Advisory Board consisting of the State Veterinarian in the Department of Agriculture and the following six members appointed by the Governor, with the advice and consent of the Senate:

(1) One member representing a humane society;

(2) One member who is a county dog warden;

(3) One member who is a veterinarian;

(4) One member representing animal rescues for dogs in Ohio;

(5) One member who is a member of a professional dog breeding association in Ohio; and

(6) One member representing the public.

Initial appointments to the Board must be made not later than 60 days after the act's effective date. The act provides for staggered three-year terms for the appointed members. Members may be reappointed. The act establishes standard procedures for the filling of vacancies.

The Director of Agriculture must select a chairperson from among the Board's members. A majority of the members constitutes a quorum. The Board must meet at least four times a year in Columbus or at other locations selected by the chairperson. The chairperson must determine the agenda for each meeting.

Members of the Board must serve without compensation for attending Board meetings, but must be reimbursed for their actual and necessary expenses incurred in the performance of official duties as members of the Board.

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[62] R.C. 956.16.

The act requires the Board to do both of the following:

(1) Review rules that have been or are proposed to be adopted under the act; and

(2) Advise the Director on the administration of the act and rules adopted under it.[63]

High Volume Breeder Kennel Control License Fund

All money collected by the Director from license fees under the act and from civil penalties assessed under the act must be deposited in the state treasury to the credit of the High Volume Breeder Kennel Control License Fund, which the act creates. The Fund must also consist of money appropriated to it. Under the act, no money may be released from the Fund without Controlling Board approval. The Director must request the Controlling Board to release money in an amount not to exceed $2.5 million per biennium.[64] The act states that it is the intent of the General Assembly to appropriate money to the Fund to enable the Director to begin administering the act and rules adopted under it.[65] The Director must use money in the Fund for the purpose of administering the act and rules adopted under it.[66]

Miscellaneous

The act requires the Director to enforce the requirements and standards established in the act and rules adopted under it.[67]

HISTORY

ACTION	DATE
Introduced	03-22-11
Reported, S. Agriculture, Environment & Natural Resources	02-01-12
Passed Senate (30-0)	02-01-12
Reported, H. Agriculture & Natural Resources	11-14-12
Passed House (91-5)	11-14-12
Senate concurred in House amendments (32-1)	11-27-12

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[63] R.C. 956.17.

[64] R.C. 956.18(A) and (B).

[65] Section 3.

[66] R.C. 956.18(C).

[67] R.C. 956.09.

Overview of the Livestock Care Standards Board

Dr. David Glauer

Ohio Livestock Care Standards

Ohio Livestock Care Standards

An Overview of Ohio's Livestock Care Standards
LSC/CLE
April 4, 2014

Presented by:
R. David Glauer, DVM
Technical Writer
Ohio Department of Agriculture

Timeline

- November 3, 2009: State Issue 2 passes
- January 19, 2010: Legislation introduced
- March 24, 2010: Sub HB 414 passed by General Assembly
- March 31, 2010: Sub HB 414 is signed

Implementing Legislation

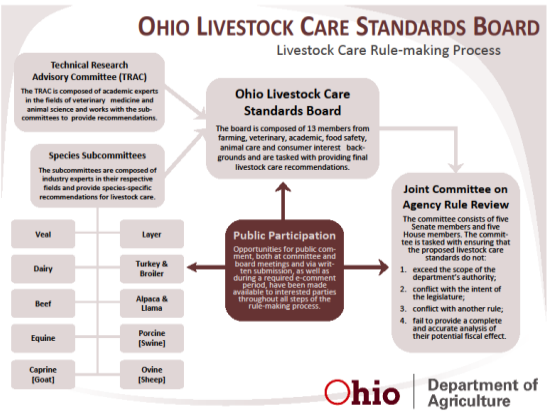
- 13 Board Members
  - Director of Agriculture (Chair)
  - State Veterinarian (Vice-Chair)
  - Family Farmer (3)
  - Rep. of Statewide Farm Organization (2)
  - Food Safety Expert
  - Consumer (2)
  - County Humane Society
  - Licensed Veterinarian
  - Dean of Agricultural College

Implementing Legislation Definition of Livestock

- How is "livestock" defined?
  - Equine
  - Swine
  - Cattle
  - Goat
  - Sheep
  - Poultry
  - Llama

Implementing Legislation

- In adopting rules, the Board must consider:
  - Best management practices for care and well-being of livestock
  - Biosecurity, disease prevention
  - Animal morbidity and mortality data
  - Food safety practices
  - Protection of local, affordable food supplies
  - Generally accepted veterinary medical practices
  - Any other factors the board considers necessary for the proper care and well-being of livestock in this state



General Process

- Species Subcommittee meets
- Species Subcommittee meets with TRAC
- Board reviews draft
- Board approves draft in rule form
- Rule posted for two week comment period
- Board reviews comments
- Rule filed with JCARR
- JCARR required public hearings

Standards for the Care and Welfare of Livestock

Ohio Livestock Care Standards

901:12
Ohio's Livestock Care Standards

- 901:12-1 Euthanasia
- 901:12-2 Civil Penalties
- 901:12-3 General Considerations for the Care and Welfare of Livestock
- 901:12-4 Disabled and Distressed Livestock
- 901:12-5 Bovine - Veal
- 901:12-6 Bovine - Dairy
- 901:12-7 Bovine - Beef

901:12
Ohio's Livestock Care Standards

- 901:12-8 Porcine - Swine
- 901:12-9 Poultry - Layers
- 901:12-10 Poultry – Broilers/Broiler Breeders
- 901:12-11 Poultry – Turkey/Turkey Breeders
- 901:12-12 Ovine - Sheep
- 901:12-13 Caprine - Goat
- 901:12-14 Llamas and Alpacas
- 901:12-15 Equine

Communication and Outreach

- Ohio Livestock Care Standards

Published Materials

Euthanasia

- Stand-alone rule
- Intended primarily for on-farm use and all species are covered
  - Also, for emergencies (e.g., animals in transit, at fairs, auctions, etc.)
- Death is confirmed by:
  - The absence of a heartbeat or breathing for five minutes
  - Lack of blink reflex when the eye is touched
- Must be performed when the likelihood for recovery is poor

General Considerations

- Definitions (if applicable)
- Feed and Water
- Management
  - Procedures
  - Housing (indoor or outdoor)
- Health (if applicable)
- Transportation (if applicable)

Definitions

"Responsible Party"

A person of legal age who is the owner of the livestock and/or a person who has current responsibility or custody of the livestock

Definitions

"Distress"

Occurs when livestock are injured, sick or in pain

Definitions

"Pain"

An unpleasant physical sensation occurring in varying degrees of severity as consequence of injury, disease or from a medical or management procedure

Definitions

"Humane"

The care and handling of livestock that seeks to minimize distress through utilization of the livestock care standards

Feed and Water

- Sufficient quantity and quality
- Regular basis
- Colostrum / Colostrum replacement

Management

- Management practices must be performed in a humane manner
- Health/medical treatment must be done humanely
- Livestock production activities must be performed humanely
  - Acts of tagging
  - Ear notching
  - Hoof trimming
  - Deworming
  - Branding
  - Artificial insemination including semen collection, preparation and freezing

Management

- Acceptable livestock production activities (with advice and consent of a licensed veterinarian)
  - Castration
  - Tail docking
  - Non-surgical dehorning
  - Intravenous fluid administration
  - Pregnancy detection other than by rectal technique
  - Medication and biological administration, except for those prohibited by law

Castration

- Method and pain management **must** take into consideration:
  - Animal's age and weight
  - Environmental conditions
  - Available facilities
  - Safety

Dehorning

- After the horn has erupted (no longer covered by hair)
- A pain management practice **must be used**

Tail Docking

- Dairy Cattle
  - Cannot be performed before the confirmation of pregnancy
  - Permitted until December 31, 2017, with the use of elastrator castration band **only**
  - Fly management plan **must be in place**
  - Beginning January 1, 2018, tail docking can only be performed:
    - By a licensed veterinarian
    - Only if medically necessary

Tail Docking and Monitoring

- Horses
  - Only if medically necessary such as in the case of:
    - Accident, malformation or disease
  - As a proactive measure to prevent injury
  - Must be performed by a licensed veterinarian
  - Animals must be monitored for functional condition
  - If condition not maintained, corrective measures must be taken

Induced Molting – Poultry

- Only non-feed withdrawal methods may be used
- Layers, broilers and turkey breeders must be fed maintenance ration
- Light reduced no fewer than six hours in closed houses
- Light reduced no shorter than natural day length in open houses
- Monitor: Flock health, mortality and bird weight

Handling

- When using handling, sorting or other devices to move livestock or for initial diagnostic evaluation, the devices must be used humanely

Electric Prods

- Electric prods must not be used:
  - Poultry
  - Non-ambulatory disabled livestock
  - Alpacas, llamas, and equine animals
    - Except for an initial diagnostic evaluation
  - Calves weighing less than 200 lbs.
  - Swine weighing less than 35 lbs.
  - In sensitive areas including:
    - Eyes
    - Ears
    - Nose
    - Vulva
    - Anus
    - Udder
    - Testicles

Handling

- Restraint must:
  - Be minimal in degree and duration
  - Minimize the potential for injury
- Animals must not be maliciously or recklessly thrown, dropped, or dragged
- Animals must not be picked up and/or carried by the ears and tails or legs pulled such that causes distress
- Movement of ambulatory/non-ambulatory disabled and distressed livestock must be done humanely

Housing

- Must provide a clean and safe environment
- Must provide reasonable protection from adverse weather and predators
- Enclosures must be designed and maintained to minimize bruising and injury
- During labor – space to separate from other animals

Stocking Density

- All animals easily lie down at the same time and stand back up
- All animals to access feed and water without excessive competition

Veal Calf – Housing Transition

- After January 1, 2018, veal calves must be:
  - Able to turn around
  - Housed in group pens by 10 weeks of age at a minimum of 2 calves per pen
  - A group pen must have a minimum of 14 square feet per calf
  - Monitored on a daily basis for naval and cross sucking and provided with intervention

Existing Facility - Swine

- An "**existing facility**" means all buildings or structures that currently house swine utilizing any housing system as of September 29, 2011.

Swine Housing - Transition

- Ohio's livestock care standards require that anyone raising swine in the state of Ohio transition to employing group housing methods for pregnant sows (**after they are confirmed pregnant**) by the end of the year 2025.

Swine Housing - Transition

- Breeding/gestation stalls can be used in all existing facilities until December 31, 2025
- Beginning January 1, 2026, breeding/gestation stalls can only be used **post-weaning** to:
  - Maximize embryonic welfare
  - Allow for the confirmation of pregnancy

Existing Farm – Layer

- An "**existing farm**" means as of September 29, 2011:
  - All land that houses pullets, layers or breeders utilizing any housing system
  - Any land contiguous to the "existing farm" that is acquired by the owner or operator of the "existing farm" before or after September 29, 2011
  - The sale, transfer and/or partition of an "**existing farm**" after September 29, 2011, does not void its status as an "**existing farm**"

Conventional Battery Cage Systems

- Cage floor slope must not exceed eight degrees
- Minimum 67 square inches per layer and manure must not drop on birds in lower cages
- For systems installed prior to September 29, 2011, must average 67 square inches per layer by September 29, 2016
- Existing farms permitted to expand using current case housing systems
- Existing farms may replace the same housing system in the case of a catastrophic event
  - Fire, flood, wind, or building collapse
- Beginning September 29, 2011, conventional battery cages can only be installed on an "existing farm"

Enriched Cage Systems

- Cage floor slope must not exceed eight degrees
- Minimum 67 square inches per layer
- Manure from birds in upper cage levels does not drop directly on birds in lower cage levels
- Features must be provided in addition to feed and water
  - Areas for nesting, scratching, perching, and/or dust bathing

Cage-Free Housing Systems

- Minimum of 144 square inches per layer
- Perches:
  - Positioned to minimize fecal fouling birds below
- Multi-tiered perches:
  - Allow safe access to other vertical tiers, including the floor
- Nests:
  - Must be cleaned as necessary

Cage-Free Housing Systems

- Existing cage-free systems must meet criteria by September 29, 2016

Distress and Disabled Livestock

- Appropriate protection from other livestock, predators and adverse weather conditions
- Handling and moving must be done in a humane manner
- Maintain records of treatments, medications and withdrawal times

Emaciated Livestock

- Following documented intervention strategies of additional care, additional feed or treatment without observable improvement in body condition must be:
  - Marketed
  - Transported directly to slaughter plant
  - Slaughtered on the farm
  - Euthanized

Health

- Monitored regularly
  - Corrective measures must be taken when evidence is found
- Able to separate sick animals from healthy livestock
- Prescription and extra-label medications with involvement of a licensed veterinarian
- Label instructions must be followed, including:
  - Route of administration
  - Dosage
  - Storage
  - Withdrawal times

Enforcement

- Farms that are not currently subject to regular inspection will not be subject to any new regular inspections as a result of these rules
- These standards do not detract or expand the authority of county humane societies
  - Animal cruelty will continue to be investigated and addressed at the local level

Minor Violations/Civil Penalties

- Generally due to neglect or unintentional acts of substandard practices
- Finable up to $500 for the first minor offense
- Finable up to $1,000 for each subsequent minor offense committed within 60 months of previous minor violation

Major Violations

- Reckless or intentional acts which result in the unjustified infliction of pain
- Can be any action which:
  - Places an animal's life in imminent peril
  - Causes protracted disfigurement
  - Causes protracted impairment of health
  - Causes protracted loss or impairment of the function of a limb or bodily organ

Major Violations/Civil Penalties

- Finable between $1,000 and $5,000 for the first major violation
- Finable between $5,000 and $10,000 for each subsequent major violation committed within 60 months of previous major violation

Questions

- Please call ODA, Division of Animal Health
  - 614-728-6220
- Visit the Department's website:
  - www.agri.ohio.gov
- Ohio Livestock Care Standards:
  - www.ohiolivestockcarestandards.gov

General Care

Ohio Livestock Care Standards

Unless otherwise noted, the responsibility for ensuring these livestock care standards are being kept falls on the person who owns or has responsibility for or custody of the animal(s).

Care and Handling

- Animals **must** receive a sufficient quantity and quality of feed and water on a regular basis.
- Livestock handling equipment and devices **must** be designed and maintained in order to minimize bruising and injury and **must** be used humanely.
- When restraint is required, it **must** be minimal in degree and duration, and it **must** minimize the potential for injury.
- Livestock **cannot** maliciously or recklessly be thrown, dropped or dragged.

Housing and Facilities

- Livestock housing and handling facilities must be designed to **minimize** bruising and injury.
- Livestock housing should provide reasonable protection from adverse weather conditions and from predators.
- Generally, all animals **must** have room to lie down at the same time and easily stand back up.
- All animals **must** have access to feed and water without excessive competition.
- Adequate lighting **must** be available for inspection purposes.

Health

- All practices and procedures pertaining to the health and medical treatment of livestock must be performed so as to **minimize** distress.
- All prescription and extra-label use medication **must** be obtained and administered with the advice and involvement of a licensed veterinarian.
- Livestock must also be monitored regularly for evidence of disease, injury and parasites and if evidence of any of these ailments is found, corrective measures **must** be taken.

To download a more comprehensive overview of Ohio's livestock care standard, please visit ***www.ohiolivestockcarestandards.gov***

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John R. Kasich , Governor
Mary Taylor, Lt. Governor
James Zehringer, Director

Ohio | Department of Agriculture

Enforcement

Ohio Livestock Care Standards

Ohio's livestock care standards will be enforced by the Ohio Department of Agriculture's (ODA) Divisions of Animal Health and Enforcement. ODA staff will investigate credible complaints to determine if a violation has occurred. If a violation is found, the person who owns or has immediate custody of the animal(s) will be informed in person, or by telephone, fax, or email.

If the violation can be corrected, ODA staff will include the corrective measures which must be taken to achieve compliance with the rules, including the amount of time allowed to take any necessary corrective measures, in the written notice. If the responsible party fails to remedy the violation within the time specified in the written notice, they may be assessed a subsequent violation for each day the violation remains uncured.

Minor Violations

Minor violations of Ohio's livestock care standards are generally due to neglect or unintentional acts of substandard practices. Minor violations are finable up to $500 for the first minor offense and up to $1,000 for each subsequent minor offense that is committed within 60 months of the previous minor violation.

Major Violations

Major violations of Ohio's livestock care standards are reckless or intentional acts which result in the unjustified infliction of pain. Major violations can be any action which:

- places an animal's life in imminent peril
- causes protracted disfigurement
- causes protracted impairment of health
- causes protracted loss or impairment of the function of a limb or bodily organ

Major violations of Ohio's livestock care standards are finable offenses with penalties ranging between $1,000 and $5,000 for the first major violation and $5,000 to $10,000 for each subsequent major violation that is committed within 60 months of the previous major violation.

Anyone who has been issued a fine for violation of these rules will have 30 days to request a hearing to appeal the Department's decision.

To download a more comprehensive overview of Ohio's livestock care standards, please visit ***www.ohiolivestockcarestandards.gov***

Ohio Department of Agriculture
Division of Animal Health
8995 E. Main St.
Reynoldsburg, OH 43068

614-728-6220
animal@agri.ohio.gov

www.agri.ohio.gov

John R. Kasich , Governor
Mary Taylor, Lt. Governor
James Zehringer, Director

Ohio | Department of Agriculture

Euthanasia

Ohio Livestock Care Standards

Euthanasia of livestock must be performed when the liklihood of recovery is poor and the condition cannot be effectively relieved by best species-management practices or medically appropriate procedures.

Except in slaughter facilities already governed by federal or state law, the **only** acceptable methods of euthanasia for livestock are those listed below. If, in the course of employing one of these methods, **humane death** does not occur, the same method or another acceptable method **must** be performed immediately. **Death is confirmed by the absence of a heartbeat or breathing for five minutes, and the animal's lack of a blink reflex when the eye is touched.**

As a standalone method, *Exsanguination* (to bleed an animal to death) can only be used for ritual slaughter. However, it can be used to ensure the death of an unconscious animal or following stunning.

These methods are to be considered as sole methods for euthanasia; however, the rules do not preclude a licensed veterinarian from performing acceptable standards of veterinary practices.

Acceptable methods (by species)

Bovines, Camelids, Equines
(Veal, Dairy, Beef, Alpacas, Llamas, Horses, Ponies, Mules, Donkeys)
penetrating captive bolt gun, gunshot, injectable barbituates

Ovines, Caprines
(Sheep, Goats)
gunshot, inhaled carbon dioxide agent, injectable barbiturates
weight >12 lbs: penetrating captive bolt
weight <12 lbs: non-penetrating captive bolt gun, blunt force

Poultry
(Layers, Broilers, Turkeys)
inhaled carbon dioxide agent, cervical dislocation, a gunshot, blunt force, decapitation, non-penetrating captive bolt gun, maceration, injectable barbiturates

Swine
weight >70 lbs: penetrating captive bolt gun, gunshot, injectable barbiturates
weight 12-70 lbs: penetrating captive bolt gun, gunshot, inhaled carbon dioxide agent, injectable barbiturates
weight ≤12 lbs: a non-penetrating captive bolt, blunt force, inhaled carbon dioxide agent, injectable barbiturates
weight ≥10 lbs: electrocution

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§ 14.01 Ohio Livestock Care Standards Board

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(A) There is hereby created the Ohio Livestock Care Standards Board for the purpose of establishing standards governing the care and well-being of livestock and poultry in this state. In carrying out its purpose, the Board shall endeavor to maintain food safety, encourage locally grown and raised food, and protect Ohio farms and families. The Board shall be comprised of the following thirteen members:

(1) The director of the state department that regulates agriculture who shall be the chairperson of the Board;

(2) Ten members appointed by the Governor with the advice and consent of the Senate. The ten members appointed by the Governor shall be residents of this state and shall include the following:

(a) One member representing family farms;

(b) One member who is knowledgeable about food safety in this state;

(c) Two members representing statewide organizations that represent farmers;

(d) One member who is a veterinarian who is licensed in this state;

(e) The State Veterinarian in the state department that regulates agriculture;

(f) The dean of the agriculture department of a college or university located in this state;

(g) Two members of the public representing Ohio consumers;

(h) One member representing a county humane society that is organized under state law.

(3) One member appointed by the Speaker of the House of Representatives who shall be a family farmer;

(4) One member appointed by the President of the Senate who shall be a family farmer.

Not more than seven members appointed to the Board at any given time shall be of the same political party.

(B) The Board shall have authority to establish standards governing the care and well-being of livestock and poultry in this state, subject to the authority of the General Assembly. In establishing those standards, the Board shall consider factors that include, but are not limited to, agricultural best management practices for such care and well-being, biosecurity, disease prevention, animal morbidity and mortality data, food safety practices, and the protection of local, affordable food supplies for consumers.

(C) The state department that regulates agriculture shall have the authority to administer and enforce the standards established by the Board.

(D) The General Assembly may enact laws that it deems necessary to carry out the purposes of this section, to facilitate the execution of the duties of the Board and the state department that regulates agriculture under this section, and to set the terms of office of the Board members and conditions for the Board members' service on the Board.

(E) If any part of this section is held invalid, the remainder of this section shall not be affected by that holding and shall continue in full force and effect.

(Am. Sub. SJR 6; Adopted, effective November 3, 2009.)

If you would like to read
Sub. H.B. 414 of the 128th General Assembly,
you can find the full act here:

http://www.legislature.state.oh.us/bills.cfm?ID=128_HB_414

Ohio Legislative Service Commission

Final Analysis

Jeff Grim

Sub. H.B. 414

128th General Assembly
(As Passed by the General Assembly)

Reps. Sayre and Bolon, Boose, Hite, Ruhl, Derickson, Pryor, Weddington, Domenick, Zehringer, Wagner, R. Adams, Balderson, Book, Bubp, Carney, Coley, Combs, Daniels, DeBose, Dyer, Evans, Garland, Gerberry, Goodwin, Goyal, Grossman, Hackett, Hall, Hottinger, Luckie, Lundy, McClain, Murray, Newcomb, Snitchler, Uecker, B. Williams, Winburn, Yuko

Sens. Morano, Buehrer, Gibbs, Harris, Husted, Jones, Niehaus, Patton, Schaffer, Seitz, Strahorn, Wagoner, Widener, Wilson, Hughes, Faber, Kearney

Effective date: Emergency, March 31, 2010

ACT SUMMARY

- Pursuant to the Ohio Constitution, creates the Ohio Livestock Care Standards Board consisting of specified members, and establishes the terms of office for the members of the Board.

- Requires the Board to adopt rules governing the care and well-being of livestock in this state, including best management practices for the care and well-being of livestock and the prevention of disease, and establishing the amount of civil penalties to be assessed against persons who violate the rules, and defines "livestock" for those purposes.

- With regard to organic producers that are certified by the United States Department of Agriculture under the National Organic Program, states that if there is a conflict between the Board's rules governing the care and well-being of livestock and the standards established by the United States Department of Agriculture under that Program, the standards established under that Program must prevail.

- Requires the Director of Agriculture to assist the Board in the administration and enforcement of the act, including hiring employees of the Board, entering into contracts, enforcing the rules adopted by the Board, and taking other specified actions regarding those rules.

- Authorizes the Director or the Director's authorized representative, with the consent of the premises owner and the livestock owner, if different from the premises owner, to enter at all reasonable times on any premises to determine compliance with rules adopted under the act.

- Prohibits a person from falsifying any plans, specifications, data, reports, records, or other information required by the act or rules adopted under it to be kept or submitted to the Director or the Board or violating any provision of the act or any order, rule, or determination of the Director or Board issued, adopted, or made under the act or rules adopted under it.

- Requires the Director, until the General Assembly appropriates money for the purposes of the act and rules adopted under it, to request the Controlling Board to authorize the transfer of all or part of an appropriation from any fund administered by the Department of Agriculture to the Ohio Livestock Care Standards Fund created by the act.

- Specifies that the Fund consists of all money appropriated by the General Assembly for use by the Board, money transferred from any fund administered by the Department as provided in the act, and all money donated to the Department or the Board for the purposes of advancing livestock care, and requires the Director to use money credited to the Fund to carry out the purposes of the act, including the administration and enforcement costs of the Department of Agriculture and the compensation of the Board's employees.

- States that the authority granted to the Board and the Director by the act does not detract from or expand the authority or obligations of county humane societies or county officials under the Humane Societies Law.

- States that the authority granted to the Board and the Director by the act does not apply to food processing production activity that is regulated by the Department of Agriculture under the agricultural laws in Title IX of the Revised Code.

- Prohibits the Board from creating a statewide animal identification system.

- Declares an emergency.

CONTENT AND OPERATION

Introduction

The Ohio Livestock Care Standards Board was created when the electors of the state voted to amend the Ohio Constitution in November 2009. The amendment authorizes the General Assembly to enact laws that it deems necessary to carry out the purposes of the amendment, to facilitate the execution of the duties of the Board and the Department of Agriculture under the amendment, and to set the terms of office of the Board members and conditions for the Board members' service on the Board. (Ohio Constitution, Article XIV, Section 1.)

Appointment of the members of the Ohio Livestock Care Standards Board; operation of the Board

The act creates the Ohio Livestock Care Standards Board consisting of the following members:

(1) The Director of Agriculture, who must be the chairperson of the Board;

(2) Ten members appointed by the Governor with the advice and consent of the Senate. The ten members must be Ohio residents and must include the following:

(a) One member representing family farms;

(b) One member who is knowledgeable about food safety in this state;

(c) Two members representing statewide organizations that represent farmers;

(d) One member who is a veterinarian licensed under the Veterinarians Law;

(e) The State Veterinarian in the Department of Agriculture;

(f) The dean of the agriculture department of a college or university located in this state;

(g) Two members of the public representing Ohio consumers; and

(h) One member representing a county humane society organized under the Humane Societies Law.

(3) One member appointed by the Speaker of the House of Representatives who must be a family farmer; and

(4) One member appointed by the President of the Senate who must be a family farmer.

Not more than seven members appointed to the Board at any given time can be of the same political party. (R.C. 904.02(A).)

The act requires the Governor, the Speaker of the House of Representatives, and the President of the Senate to make appointments to the Board not later than 45 days after the act's effective date. It generally provides for staggered three-year terms for the appointed members of the Board. However, the terms for the Director and the State Veterinarian must coincide with the length of time that the person holds the position of Director or State Veterinarian, as applicable. If the Director or the State Veterinarian resigns or that person's employment is terminated, the Director or State Veterinarian, as applicable, must cease to serve on the Board, and the successor of the Director or State Veterinarian must then serve on the Board in accordance with the act. Every other member must hold office from the date of the member's appointment until the end of the term for which the member was appointed.

The act establishes standard procedures for filling vacancies. Under the act, a member must continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of 180 days has elapsed, whichever occurs first. A member may be reappointed upon the expiration of the member's term. (R.C. 904.02(B) and(C).)

The act requires the Board to hold at least three regular meetings each year and authorizes it to hold additional meetings at times that the chairperson or a majority of the Board members considers appropriate. At the three regular meetings, the Board must conduct a review of the rules governing the care and well-being of livestock that have been or are proposed to be adopted under the act. At the first meeting of the Board in each calendar year, the Director must designate one member of the Board to serve as its vice-chairperson. A majority of the Board constitutes a quorum. The Board may act only if a quorum is present and only by majority vote of that quorum. A vacancy on the Board does not impair the right of the other members to exercise all of the Board's powers. (R.C. 904.02(D).)

Serving as an appointed member of the Board does not constitute holding a public office or position of employment under the laws of this state and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. Appointed members of the Board must receive no compensation for their services. Members must be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members. The expenses must be paid from the Ohio Livestock Care Standards Fund created by the act

(see "**Funding**," below). The expenses must be paid in accordance with the rules and requirements adopted by the Department of Administrative Services that are applicable to state employees. (R.C. 904.02(E) and (F).)

The act requires the members of the Board to file financial disclosure statements with the Ohio Ethics Commission in the same manner as members of other state boards and commissions and public officials file those statements. A member of the Board must include with the statement a $25 filing fee. (R.C. 102.02.)

The Board may create committees that it considers appropriate to make recommendations to the Board. Committees may include non-Board members. (R.C. 904.02.)

Duties of the Board

The act requires the Board to adopt rules in accordance with the Administrative Procedure Act governing the care and well-being of livestock in this state. Under the act, "livestock" means equine animals regardless of the purpose for which they are raised and any of the following animals that are raised for human food products or fiber: (1) porcine animals, (2) bovine animals, (3) caprine animals, (4) ovine animals, (5) poultry, (6) alpacas, (7) llamas, and (8) any other animal designated in rules adopted under the act (R.C. 904.01).

In adopting the rules, the Board must consider the following factors:

(1) Best management practices for the care and well-being of livestock;

(2) Biosecurity;

(3) The prevention of disease;

(4) Animal morbidity and mortality data;

(5) Food safety practices;

(6) The protection of local, affordable food supplies for consumers;

(7) Generally accepted veterinary medical practices, livestock practice standards, and ethical standards established by the American Veterinary Medical Association; and

(8) Any other factors that the Board considers necessary for the proper care and well-being of livestock in this state.

However, with regard to organic producers that are certified by the United States Department of Agriculture under the National Organic Program, the act states that if there is a conflict between the rules adopted under the act and the standards established by the United States Department of Agriculture under the National Organic Program, the standards established under that Program must prevail. (R.C. 904.03(A).)

Additionally, the Board must adopt rules in accordance with the Administrative Procedure Act that establish the amount of civil penalties to be assessed against persons who violate the rules governing the care and well-being of livestock. All of the rules adopted under the act do not apply to animals that are used in agricultural, biological, or biomedical research or confined in research or medical facilities that operate in accordance with "The Guide for the Care and Use of Agricultural Animals in Research and Teaching" published by the Federation of Animal Science Societies or "The Guide for the Care and Use of Laboratory Animals" published by the National Academy of Sciences. (R.C. 904.03(B) and (C).)

Duties and powers of the Director of Agriculture

The act requires the Director of Agriculture to do all of the following in order to assist the Board in the administration and enforcement of the act:

(1) Hire all employees of the Board, including an executive director. Employees of the Board must be in the unclassified civil service, serve at the pleasure of the Director, and be compensated with money from the Ohio Livestock Care Standards Fund created by the act (see "**Funding**," below).

(2) Enter into contracts on behalf of the Board;

(3) Do all of the following with regard to rules governing the care and well-being of livestock adopted by the Board: process and submit the rules to the Joint Committee on Agency Rule Review pursuant to the Administrative Procedure Act, contract for surveys and analyses, and perform any other activities that assist the Board in adopting the rules;

(4) Publish and distribute information related to livestock care, including educational materials, to livestock producers and members of the public;

(5) Investigate complaints regarding violations of the rules adopted by the Board in accordance with the authority granted by the act, the provisions governing the enforcement and investigation authority of the Director in the Department of Agriculture Law, and rules adopted under the act and that Law;

(6) Enforce the rules adopted by the Board and levy the civil penalties established by those rules. The Director may apply to a court of competent jurisdiction for a temporary or permanent injunction or other appropriate relief for violations of the act and rules adopted under it. The court of competent jurisdiction must be either the Licking County Court of Common Pleas or the court of common pleas of the county where the violation is occurring. Money collected from civil penalties levied under the act must be deposited in the state treasury to the credit of the General Revenue Fund.

(7) Perform any other duties necessary to assist the Board in the administration and enforcement of the act. (R.C. 904.04(A).)

The act authorizes the Director or the Director's authorized representative, with the consent of the premises owner and, if the premises owner is different from the livestock owner, the livestock owner, to enter at all reasonable times on any premises for the purpose of determining compliance with the rules adopted under the act. If the Director or the Director's authorized representative is denied access to the premises and the Director or the Director's authorized representative suspects that those rules are not being complied with, the Director may apply for a search warrant authorizing access from a court of competent jurisdiction. The court must issue the search warrant if there is probable cause. Probable cause may be based on hearsay, provided that there is substantial basis for believing the source is credible and there is factual basis for the information. Upon entry on premises in accordance with the act, the Director or the Director's authorized representative must observe biosecurity measures in order to prevent spreading disease and infecting livestock. (R.C. 904.04(B).)

Prohibitions

The act prohibits a person from doing either of the following:

(1) Falsifying any plans, specifications, data, reports, records, or other information required by the act or rules adopted under it to be kept or submitted to the Director or the Board; or

(2) Violating any provision of the act or any order, rule, or determination of the Director or Board issued, adopted, or made under the act or rules adopted under it. (R.C. 904.05.)

Funding

The act requires the Director, until the General Assembly appropriates money for the purposes of the act and rules adopted under it, to request the Controlling Board to authorize the transfer of all or part of an appropriation from any fund administered by the Department of Agriculture to the Ohio Livestock Care Standards Fund, which is

created in the state treasury by the act. The act specifies that the Fund consists of all money appropriated by the General Assembly for use by the Board, money transferred from any fund administered by the Department as provided in the act, and all money donated to the Department or the Board for the purposes of advancing livestock care. It then requires the Director to use money credited to the Fund to carry out the purposes of the act, including the administration and enforcement costs of the Department and the compensation of employees of the Board. (R.C. 904.06.)

Humane societies

The act states that the authority granted to the Board and the Director by the act does not detract from or expand the authority or obligations of county humane societies or county officials under the Humane Societies Law (R.C. 904.07).

Food processing production activity

The act states that the authority granted to the Board and the Director by the act does not apply to food processing production activity that is regulated by the Department of Agriculture under the agricultural laws in Title IX of the Revised Code (R.C. 904.08).

Statewide animal identification system

The act prohibits the Board from creating a statewide animal identification system (R.C. 904.09).

Declaration of an emergency

Stating the importance of beginning the process of establishing standards of care for livestock and poultry as quickly as possible in order to fulfill the constitutional mandate of the Board to maintain food safety, encourage locally grown and raised food, and protect Ohio farms and families, the act declares an emergency (Section 3).

HISTORY

ACTION	DATE
Introduced	01-19-10
Reported, H. Agriculture & Natural Resources	03-03-10
Passed House (98-0)	03-10-10
Reported, S. Agriculture	03-24-10
Passed Senate (32-0)	03-24-10
House concurred in Senate amendments (98-0)	03-24-10

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