

By: Harris

S.B. No. 1766

A BILL TO BE ENTITLED

AN ACT

1
2 relating to transferring certain responsibilities from the Texas
3 Department of Parks and Wildlife to the Texas Department of
4 Agriculture.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Title 3, Agriculture Code, is amended by adding
7 Chapter 40 and a chapter heading is added to read as follows:

8 CHAPTER 40. DEER MANAGEMENT PROGRAMS

9 SECTION 2. Subchapter R, Chapter 43, Parks and Wildlife
10 Code, is transferred to Chapter 40, Agriculture Code, redesignated
11 as Subchapter A, Chapter 40, Agriculture Code, and amended to read
12 as follows:

13 SUBCHAPTER A [~~R~~]. DEER MANAGEMENT PERMITS

14 Sec. 40.001 [~~43.601~~]. PERMIT FOR DEER MANAGEMENT. (a) The
15 department may issue a permit for the management of the wild
16 white-tailed deer population on acreage enclosed by a fence capable
17 of retaining white-tailed deer (under reasonable and ordinary
18 circumstances) and capable of preventing entry by a white-tailed
19 deer.

20 (b) The deer managed under the permit remain the property of
21 the people of the state, and the holder of the permit is considered
22 to be managing the population on behalf of the state.

23 (c) If a special season with a special bag limit is
24 established by the commissionerer for holders of a deer management

1 permit, the holder of the permit may not receive compensation for
2 granting any other person permission to kill a wild deer during that
3 special season on the acreage covered by the permit.

4 Sec. 40.002 [~~43.602~~]. MANAGEMENT PLAN. (a) The holder of
5 a deer management permit must annually submit a deer management
6 plan for approval or disapproval of the department. The management
7 plan must provide for specific management practices to be applied
8 to the deer population on the acreage, which may include, in
9 addition to other practices:

10 (1) the temporary detention within an enclosure on the
11 acreage covered by the permit of wild white-tailed deer for the
12 purpose of propagation with other wild deer, and the release of
13 those deer on that acreage;

14 (2) the killing of wild deer in open seasons
15 established by the commissioner in a number set in the management
16 plan; or

17 (3) the killing of wild deer during a special season
18 having a special bag limit established by the commission for this
19 permit.

20 (b) [~~A management plan approved by the department must be~~
21 ~~consistent with the regulatory responsibilities of the commission~~
22 ~~under Chapter 61.~~]

23 [~~(c)~~] A management plan may not authorize the killing of
24 wild deer within an enclosure designed for the temporary detention
25 of wild deer under Subsection (a)(1).

26 Sec. 40.003 [~~43.603~~]. CONDITIONS; DURATION; FEE. (a) A
27 permit issued under this subchapter is subject to conditions

1 established by the commission, including conditions governing:

2 (1) the number of deer that may be killed on the
3 property by a single person;

4 (2) the number and type of deer that may be killed or
5 taken under the permit; and

6 (3) the number, type, and length of time that deer may
7 be temporarily detained in an enclosure.

8 (b) The permit is valid for a period prescribed by the
9 department of not less than one year.

10 (c) The department shall set a fee for the issuance or
11 renewal of a permit in an amount not to exceed \$1,000.

12 Sec. 40.004 [~~43.604~~]. INSPECTION. An authorized employee
13 of the department may inspect at any time without warrant the
14 records required by Section 40.005 [~~43.605~~] and the acreage for
15 which the permit is issued for the purpose of determining the permit
16 holder's compliance with the management plan.

17 Sec. 40.005 [~~43.605~~]. RECORDS. The holder of a permit
18 issued under this subchapter shall maintain, in a form prescribed
19 by the department, an accurate record showing:

20 (1) the number of white-tailed deer taken during the
21 general open seasons and during any special seasons;

22 (2) the number of white-tailed deer temporarily
23 detained and released during the permit period; and

24 (3) any other information required by the department
25 that reasonably relates to the activities covered by the permit.

26 Sec. 40.006 [~~43.606~~]. APPLICATION OF GENERAL LAWS. Except
27 as expressly provided by this subchapter and the terms and

1 conditions of the permit and management plan, the general laws and
2 regulations of this state applicable to white-tailed deer apply to
3 deer on the acreage covered by the permit. This subchapter does not
4 restrict or prohibit the use of high fences on acreage not covered
5 by a management plan.

6 Sec. 40.007 [~~43.607~~]. PENALTY. (a) A person commits an
7 offense if the person:

8 (1) violates a provision of this subchapter or a
9 regulation of the department adopted under this subchapter;

10 (2) violates a condition of permit imposed under
11 Section 40.003 [~~43.603~~] (a);

12 (3) fails to maintain records required by Section
13 40.005 [~~43.605~~]; or

14 (4) kills or allows to be killed a deer temporarily
15 detained under Section 40.002 [~~43.602~~] (a)(1).

16 (b) An offense under Subsections (a)(1)-(3) is a Class C
17 [~~Parks and Wildlife Code~~] misdemeanor.

18 (c) An offense under Subsection (a)(4) is a Class A [~~Parks
19 and Wildlife Code~~] misdemeanor.

20 SECTION 3. Subchapter L, Chapter 43, Parks and Wildlife
21 Code, is transferred to Chapter 40, Agriculture Code, and
22 redesignated as Subchapter B, Chapter 40, Agriculture Code, and
23 amended to read as follows:

24 SUBCHAPTER B [~~L~~]. SCIENTIFIC BREEDERS PERMIT

25 Sec. 40.101 [~~43.351~~]. DEFINITIONS. In this subchapter:

26 (1) "Scientific breeder" means a person holding a
27 valid scientific breeder's permit.

1 (2) "Captivity" means the keeping of an animal in an
2 enclosure suitable for and capable of retaining the animal it is
3 designed to retain at all times under reasonable and ordinary
4 circumstances and to prevent entry by another animal.

5 Sec. 40.102 [~~43.352~~]. PERMIT AUTHORIZED. The department
6 shall issue a permit to a qualified person to possess white-tailed
7 deer or mule deer for propagation, management, and scientific
8 purposes.

9 Sec. 40.103 [~~43.353~~]. PERMIT IS DEFENSE. In any
10 prosecution for the unlawful possession or transportation of
11 white-tailed deer or mule deer, the possession of a permit issued
12 under this subchapter to the accused is a complete defense if the
13 conduct was authorized under the terms of the permit.

14 Sec. 40.104 [~~43.354~~]. APPLICATION. The application for a
15 scientific breeder's permit must be made under oath and must state
16 the purpose of possession or transportation of white-tailed deer or
17 mule deer.

18 Sec. 40.105 [~~43.355~~]. CONDITIONS OF PERMIT; EXPIRATION;
19 FEES. (a) The department shall issue the scientific breeder's
20 permit under conditions determined by the commission, including
21 specifying the number of white-tailed deer or mule deer that may be
22 possessed and providing for an endorsement by a certified wildlife
23 biologist.

24 (b) A scientific breeder's permit is valid only during the
25 yearly period for which the permit is issued without regard to the
26 date on which the permit is acquired. Each yearly period begins on
27 September 1 or on another date set by the commission and extends

1 through August 31 of the next year or another date set by the
2 commission.

3 (c) The fee for a scientific breeder's permit is \$50 or an
4 amount set by the commission, whichever amount is more.

5 Sec. 40.106 [~~43.356~~]. SERIAL NUMBER. (a) The department
6 shall issue a serial number to the applicant at the time of the
7 first issuance of a scientific breeder's permit to the applicant.
8 The same serial number shall be assigned to the permittee whenever
9 he holds a scientific breeder's permit.

10 (b) The scientific breeder shall place a suitable permanent
11 tag bearing the scientific breeder's serial number on the ear of
12 each white-tailed deer or mule deer possessed by the scientific
13 breeder and shall place on the white-tailed deer or mule deer any
14 other identification marking prescribed by the commission.

15 Sec. 40.107 [~~43.357~~]. PERMIT PRIVILEGES; REGULATIONS.

16 (a) The holder of a valid scientific breeder's permit may:

17 (1) engage in the business of breeding white-tailed
18 deer in the immediate locality for which the license was issued; and

19 (2) sell or hold in captivity white-tailed deer or
20 mule deer for the purpose of propagation or sale.

21 (b) The commission may make regulations governing:

22 (1) the possession of white-tailed deer and mule deer
23 for scientific, management, and propagation purposes; and

24 (2) the recapture of lawfully possessed white-tailed
25 deer or mule deer that have escaped from a facility of a scientific
26 breeder.

27 Sec. 40.108 [~~43.358~~]. INSPECTION. An authorized employee

1 of the department may inspect at any time and without warrant:

2 (1) any pen, coop, or enclosure holding white-tailed
3 deer or mule deer; or

4 (2) any records required to be maintained under
5 Section 40.109 [~~43.359~~](a).

6 Sec. 40.109 [~~43.359~~]. REPORTS. (a) A scientific breeder
7 shall maintain an accurate record of white-tailed deer and mule
8 deer acquired, purchased, propagated, sold, or disposed of and any
9 other information required by the department that reasonably
10 relates to the regulation of scientific breeders. The record shall
11 be maintained on a form provided by the department.

12 (b) A scientific breeder shall report the information
13 maintained under Subsection (a) to the department in the time and
14 manner required by commission proclamation.

15 Sec. 40.110 [~~43.360~~]. ENCLOSURE SIZE. A single enclosure
16 for white-tailed deer or mule deer may not contain more than 320
17 acres.

18 Sec. 40.111 [~~43.361~~]. SHIPMENT OF WHITE-TAILED DEER.

19 (a) A common carrier may not accept a live white-tailed deer or
20 mule deer unless the shipment is made by a holder of a scientific
21 breeder's permit or by a person holding a permit under Subchapter C
22 of Chapter 43, Parks and Wildlife Code [~~of this code~~].

23 (b) No person, except a scientific breeder, his authorized
24 agent, or a person holding a permit under Subchapter C of Chapter
25 43, Parks and Wildlife Code [~~of this code~~], may transport or ship a
26 live white-tailed deer or mule deer unless he obtains a permit for
27 shipment or transportation from the department.

1 Sec. 40.112 [~~43.362~~]. PURCHASE AND SALE OF LIVE
2 WHITE-TAILED DEER AND MULE DEER. (a) Only white-tailed deer and
3 mule deer that are in a healthy condition may be sold, bartered, or
4 exchanged, or offered for sale, barter, or exchange, by a
5 scientific breeder.

6 (b) Except as provided by Subchapter C, Chapter 43, Parks
7 and Wildlife Code, no person may purchase or accept in this state a
8 live white-tailed deer or mule deer unless the person obtains a
9 permit for purchasing from the department and:

10 (1) the white-tailed deer or mule deer is properly
11 marked as required by Section 40.106 [~~43.356~~] (b) of this code; or

12 (2) the white-tailed deer or mule deer is delivered by
13 a common carrier from outside this state.

14 (c) No person may release into the wild a white-tailed deer
15 or mule deer unless all visible markings required by Section 40.106
16 [~~43.356~~] (b) have been removed.

17 Sec. 40.113 [~~43.363~~]. SALE DURING OPEN SEASON. (a) During
18 an open season for taking the white-tailed deer or mule deer or
19 during a period of 10 days before an open season, no scientific
20 breeder may release into the wild or sell or ship to a person other
21 than a person holding a scientific breeder's permit, a white-tailed
22 deer or mule deer and no person in this state, other than a
23 scientific breeder, may purchase from a scientific breeder in this
24 state a white-tailed deer or mule deer unless the scientific
25 breeder:

26 (1) has removed immediately above the pedicel the
27 antlers of a male white-tailed deer or mule deer to be sold or

1 shipped; and

2 (2) has given written notice of the sale to the
3 department.

4 (b) The commission shall make regulations governing notice
5 and approval of the sale or shipment of white-tailed deer and mule
6 deer under this section.

7 Sec. 40.114 [~~43.364~~]. USE OF PURCHASED WHITE-TAILED DEER
8 AND MULE DEER. White-tailed deer and mule deer may be purchased or
9 received in this state only for the purpose of liberation for
10 stocking purposes or holding for propagation purposes. All
11 white-tailed deer or mule deer and increase from the white-tailed
12 deer or mule deer are under the full force of the laws of this state
13 pertaining to white-tailed deer and mule deer, and those deer may be
14 held in captivity for propagation in this state only after a
15 scientific breeder's permit is issued by the department under this
16 subchapter.

17 Sec. 40.115 [~~43.365~~]. PROHIBITED ACTS. It is an offense if
18 a scientific breeder:

19 (1) takes, traps, or captures or attempts to take,
20 trap, or capture white-tailed deer or mule deer from the wild;

21 (2) allows the hunting or killing of a white-tailed
22 deer or mule deer held in captivity under the provisions of this
23 subchapter; or

24 (3) fails to furnish to [~~a game warden commissioned~~
25 ~~by~~] the department records required to be maintained under Section
26 40.109 [~~43.359~~](a).

27 Sec. 40.116 [~~43.366~~]. APPLICATION OF GENERAL LAWS. In

1 order that native species may be preserved, white-tailed deer and
2 mule deer held under a scientific breeder's permit are subject to
3 all laws and regulations of this state pertaining to white-tailed
4 deer or mule deer except as specifically provided in this
5 subchapter. However, it is specifically provided that this
6 subchapter may not be construed to restrict or prohibit the use of
7 high fences.

8 Sec. 40.117 [~~43.367~~]. PENALTY. A person who violates a
9 provision of this subchapter, the conditions of a permit, or a
10 regulation of the commission issued under this subchapter or who
11 fails to file a full and complete report as required by Section
12 40.109 [~~43.359~~] of this code commits an offense that is a Class C
13 [~~Parks and Wildlife Code~~] misdemeanor.

14 SECTION 4. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2005.