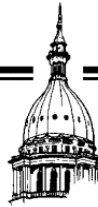




Senate Fiscal Agency
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BILL



ANALYSIS

Telephone: (517) 373-5383
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Senate Bills 171 and 172 (as reported without amendment)
Sponsor: Senator Phil Pavlov (S.B. 171)
Senator Tom Casperson (S.B. 172)
Committee: Outdoor Recreation and Tourism

Date Completed: 3-13-13

RATIONALE

Several parts of the Natural Resources and Environmental Protection Act regulate the taking of game in the State, provide for the protection of threatened and endangered animals, and prescribe criminal, civil, and administrative penalties for violations. The potential sanctions include payment of restitution to the State for an animal that is illegally killed, possessed, purchased, or sold. The amount of restitution ranges from \$100 to \$1,500 per animal, depending on the type. For a deer, the restitution value is \$1,000. The sanctions also include a prohibition against the offender's possession of a hunting license for three years. Some people believe that the restitution amount and the license sanction do not adequately penalize people who illegally take a large antlered deer, or a "big buck", which can be particularly attractive to poachers, or provide an adequate deterrent. For these violations, it has been suggested that the State should require an additional amount of restitution, which would increase as the size of the animal increased, as well as a longer license prohibition period.

Another issue related to poaching involves recreational trespass. This occurs when a person goes onto someone else's property to engage in a recreational activity, including hunting, without the owner's permission. The Act allows the landowner to bring an action and recover up to \$250 or actual damages, whichever is greater, from the violator. The Act also prescribes a misdemeanor penalty for someone convicted of recreational trespass. Again, some people believe that neither the maximum amount of civil damages nor the criminal

fine is adequate to punish offenders who commit hunting violations on private property, or to deter would-be violators.

CONTENT

Senate Bill 171 would amend Part 401 (Wildlife Conservation) of the Natural Resources and Environmental Protection Act to do the following:

- **Require a person to pay restitution to the State for illegally killing, possessing, purchasing, or selling an antlered white-tailed deer with a gross score of more than 100 inches, based on antler measurements, in addition to the restitution that currently must be paid for illegally taken deer.**
- **Increase the hunting license prohibition period for illegally killing, possessing, purchasing, or selling wildlife, if the violation involved an antlered white-tailed deer with a gross score of more than 100 inches.**

Senate Bill 172 would amend Part 731 (Recreational Trespass) of the Act to increase the amount of damages that a property owner may recover in an action against a recreational trespasser, and increase the fine that may be imposed on a person convicted of violating Part 731.

The bills are tie-barred to each other.

Senate Bill 171

Restitution

The Act prescribes penalties for a violation of Parts 401 and 365 (Endangered Species Protection). In addition to these penalties, an individual convicted of illegally killing, possessing, purchasing, or selling game or a protected animal must reimburse the State for its value as set forth in Part 401. For deer, the specified reimbursement rate is \$1,000 per animal.

Under the bill, in addition to the established restitution value for deer, an individual convicted of illegally killing, possessing, purchasing, or selling an antlered white-tailed deer with a gross score of more than 100 inches also would have to pay a restitution value that was equal to [(gross score-100)² x \$1.65].

"Gross score" would mean the number derived by calculating the measurements of the antlers of a white-tailed deer. The bill prescribes procedures for taking the measurements, and states that the measurements could be taken at any time.

Part 401 contains provisions regarding payment and collection of the restitution value for illegally killing, possessing, purchasing, or selling game or protected animals, and requires the restitution collected to be deposited in the Game and Fish Protection Fund. Under the bill, these provisions also would apply with respect to the additional restitution for an antlered white-tailed deer with a gross score of more than 100 inches.

License Prohibition

Under Part 401, a person is guilty of a misdemeanor punishable by imprisonment and/or a fine, plus the costs of prosecution, for the illegal possession or taking of deer, bear, wild turkey, wolf, elk, moose, or a designated protected animal, or the illegal purchase or sale of game or a protected animal. In addition, the violator may not secure or possess a hunting license of any kind during the remainder of the year in which he or she is convicted and the next three calendar years.

Under the bill, an individual convicted of illegally killing, possessing, purchasing, or

selling an antlered white-tailed deer with a gross score of more than 100 inches could not secure or possess a hunting license of any kind for an additional two calendar years for a first offense, and an additional seven years for a second or subsequent offense, after the initial license prohibition period.

Senate Bill 172

Part 731 prohibits a person from entering or remaining upon another person's property, other than farm property or a wooded area connected to farm property, to engage in any recreational activity or trapping without the owner's consent, if the property is fenced or enclosed and is maintained in a manner intended to exclude intruders; or is posted in a conspicuous manner against entry. A person may not enter or remain upon farm property or a connected wooded area for a recreational activity or trapping without the owner's consent whether or not the property or wooded area is fenced, enclosed, or posted. Part 731 also prohibits a person from discharging a firearm within the right-of-way of a public highway adjoining or abutting any platted property, fenced, enclosed, or posted property, or farm property or a connected wooded area, without the abutting property owner's consent. In addition, a person may not remove, deface, or destroy a sign or poster that has been posted against entry.

The owner of property on which a violation of Part 731 is committed, or his or her lessee, may bring an action against the violator for \$250 or actual property damage, whichever is greater, and actual and reasonable attorney fees. The bill would increase the amount to the greater of \$750 or actual property damage, as well as attorney fees.

An individual who violates Part 731 is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of at least \$100 but not more than \$500. The bill would increase the minimum and maximum fine amounts to \$250 and \$750, respectively.

The penalty for a second or subsequent violation of Part 731 within three years of a previous violation is imprisonment for up to 90 days and/or a fine of at least \$100 but not more than \$1,000. In addition, if the

violator is licensed to hunt, fish, or trap in Michigan, the court may order the person's license revoked. The court also may order the person not to seek or possess a license for up to three years. The bill would increase the minimum fine to \$500 and the maximum fine to \$1,500.

MCL 324.40119 (S.B. 171)
324.73109 & 324.73110 (S.B. 172)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In addition to contributing millions of dollars to the State and local economies, hunting is important to many people on a personal level. For some individuals and families, the opening day of the firearm deer season is as traditional as Thanksgiving, and hunting gives residents and nonresidents an opportunity to enjoy the State's natural beauty. Venison is a mainstay of many people's diets, and surplus deer can be donated to food banks. When people poach deer, they are literally stealing the State's natural resources, and depriving others of the opportunity to experience a legitimate hunt.

Evidently, poachers who pursue trophy deer will commit multiple violations to do so, such as using spotlights, hunting at night, and trespassing. While many hunters might commit a minor violation, such as not wearing an orange hat, serious poachers commit flagrant offenses. Although poachers might claim that they need the meat, they will pass up unantlered deer or deer with small antlers in order to stalk a big buck. In some cases, such a deer is legendary among local hunters, who might spend years pursuing the animal legally until it is taken down by a poacher.

The current penalties are not strong enough to punish violators or to prevent future offenses. In terms of the restitution value, there is no differentiation between an antlerless deer and a big buck, which actually rewards violators who poach trophy deer. Senate Bill 171 would rectify this by requiring the payment of additional restitution for an antlered white-tailed deer that had a gross score of more than 100

inches, with the restitution amount increasing according to the size of the score. For example, the restitution would be \$660 for a deer with a gross score of 120; \$1,485 for a deer with a gross score of 130; and \$2,640 for a deer with a gross score of 140. These amounts would be on top of the \$1,000 in restitution required under current law.

The scoring method described in the bill reflects the Boone and Crockett system, which is very precise and well respected. This method measures key antler parameters, based on mass, beam length, tine length, and inside spread. Although the system also applies deductions for asymmetry, the "gross score" reflects the score without deductions. For purposes of the bill, the amount of the additional restitution would be based strictly on the size of the deer, and could be quite significant for a very large animal.

The bill also would deter poaching by providing for additional periods of time during which a violator would be prohibited from obtaining a hunting license of any kind. Including the three-year period under current law, a first-time violator would be prevented from hunting for five years, and a second or subsequent offender could not get a hunting license for 10 years.

Response: In the calculation of a deer's gross score, the bill would allow the measurements to be taken at any time, but the Boone and Crockett scoring method requires a 60-day drying period. This discrepancy could lead to challenges by violators. In addition, the Boone and Crockett scoring method is very complex. According to the Department of Natural Resources (DNR), courts in Ohio have found it convoluted, and DNR officials might not have the expertise to use it. Although an additional restitution requirement could help combat poaching, perhaps a simpler scoring method would be preferable.

There also is some concern that courts might be reluctant to impose large amounts of restitution for killing a deer illegally, especially when they are imposing smaller fines for other types of crimes, such as driving under the influence or assault and battery. If a court cannot "buy into" the concept of restitution, an offender might avoid conviction altogether.

Supporting Argument

Senate Bill 172 would strengthen the law by increasing the civil damage award and the criminal fines for recreational trespass. Currently, unless actual damages exceed \$250, that is the maximum amount a landowner may recover from someone who trespasses on his or her land to hunt (or engage in other recreational activity). The property owner, however, has invested in the land and might have made substantial improvements to it for his or her own use and enjoyment. Under the bill, an owner could recover \$750 without having to show actual damages, or could recover actual damages if they were higher. The increased criminal fines also would put more teeth into the law, for first-time violators and repeat offenders.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 171

The bill would have a small, but likely positive effect on State finances, and no fiscal impact on local units of government. The bill would require individuals convicted of illegally taking, purchasing, possessing, or selling white-tailed deer to pay restitution calculated on the gross score of the deer, in addition to any other penalties prescribed by law. It is unknown how much revenue would be raised by the additional restitution, but the bill would require that revenue to be deposited in the Game and Fish Protection Fund.

Senate Bill 172

The bill would increase criminal fines for violations of Part 731 as well as fines for second or subsequent violations (as described above). Revenue from these increased fines would benefit public libraries.

Fiscal Analyst: Dan O'Connor
Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.