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## WISCONSIN LEGISLATIVE COUNCIL LEGAL MEMORANDUM

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### Management of Chronic Wasting Disease (2001 Wisconsin Act 108)

#### **INTRODUCTION**

This Legal Memorandum summarizes 2001 Wisconsin Act 108, which relates to the management of chronic wasting disease in deer and elk.

Act 108 contains a number of provisions relating to funding the efforts of the Department of Natural Resources (DNR), the Department of Agriculture, Trade and Consumer Protection (DATCP) and the University of Wisconsin's (UW) Veterinary Diagnostic Laboratory to manage and attempt to control chronic wasting disease. The Act also contains provisions that give the DNR and DATCP specific regulatory and management authority related to this disease.

The Act was passed by the Legislature on May 15, 2002 and signed by Governor Scott McCallum on May 19, 2002. It takes effect on May 21, 2002.

#### **BACKGROUND**

Chronic wasting disease is a fatal, transmissible disease of the nervous system of deer and elk. Since 1999, the DNR has been testing white tailed deer killed in the fall gun hunting season for chronic wasting disease. Samples from the 2001 hunt resulted in three positive results in western Dane County. Subsequent testing this

spring revealed that about 3% of the 516 deer sampled in or near where the original three diseased deer were found had the disease. This is the first known instance of chronic wasting disease in a wild deer or elk herd east of the Mississippi River.

At this time, the tests for chronic wasting disease involve the killing of deer or elk and removing and testing a specific, small portion of the brain or a lymph node. There currently is no laboratory or field test to test for the disease in a live animal. In addition, there currently is no treatment or vaccine for the disease; it is always fatal.

In an effort to prevent the spread of the disease to other parts of the state, the DNR, in cooperation with other state and federal agencies, has developed a strategy to kill, to the extent possible, all the deer in a zone surrounding the area where the diseased deer have been found. This zone is a nine-mile radius circle centered on the Dane County-Iowa County boundary just north of Blue Mounds State Park and is referred to as the "eradication zone."

The following state agency web sites provide additional information on chronic wasting disease and the agencies' efforts to control it:

DNR - <http://www.dnr.state.wi.us/org/land/wildlife/whealth/issues/CWD/index.htm>

DATCP - <http://datcp.state.wi.us/ah/agriculture/animals/disease/chronic/>

## **DESCRIPTION OF THE NEW LAW**

### **FUNDING PROVISIONS**

The Act provides funding of \$2,000,100 in fiscal year 2002-03 from the revenues from the wildlife damage surcharge collected on the sale of most hunting licenses to manage and conduct testing for chronic wasting disease in deer and elk and authorizes 3.0 project positions to the DNR.

The Act authorizes the DNR to supplement this funding by up to \$2,000,000 from segregated fund sources upon the approval by the Joint Committee on Finance in a passive review process of an expenditure plan prepared by the DNR. Of this amount, no more than \$1,000,000 may come from wildlife damage surcharge revenues.

The Act directs the DNR to expend approximately \$900,000 of its funding specified above for the purpose of testing for chronic wasting disease by the Veterinary Diagnostic Laboratory. The Act authorizes 6.0 positions at the Veterinary Diagnostic Laboratory for chronic wasting disease testing. The Act also lapses \$800,700 from the current appropriation to the UW System for the Veterinary Diagnostic Laboratory to the state's general fund.

### **MANAGEMENT OF CHRONIC WASTING DISEASE**

The DNR is given express authority to manage and to fund testing for chronic wasting disease. This authority is added to the DNR's broad authority under current statutes to manage fish and game and to prevent the spread of contagious disease in wild animals.

If the DNR designates an area as a chronic wasting disease eradication zone, then the Act requires the DNR to provide adequate notice

and information to the public that the hunting of deer and elk to control the spread of the disease will occur in the zone. The DNR must provide this information prior to the commencement of the hunting in the zone.

### **HUNTING WITH THE AID OF AN AIRCRAFT**

The Act authorizes a state or federal employee or agent, within the scope of his or her employment or agency, to hunt an animal in the wild with the aid of an aircraft. This hunting must be within a DNR-designated chronic wasting disease eradication zone, and the employee or agent must be taking the animal for purposes of testing or removing diseased animals. This authority is an exception to the current statutory prohibition on hunting with the use of an aircraft. "Aircraft" is defined in the statutes to mean any device used or designed for flight in the air. This provision sunsets on June 30, 2004.

The Act also requires the DNR to promulgate rules specifying the conditions under which aircraft may be used for this purpose. The rules may authorize shooting animals using an aircraft only if the DNR considers all other alternatives and determines that the shooting is necessary in order to control the spread of disease in animals.

### **RECREATIONAL AND SUPPLEMENTAL FEEDING OF WILD ANIMALS**

The Act directs the DNR to promulgate rules to regulate the recreational and supplemental feeding of wild animals for purposes other than hunting. (DNR has authority to regulate the use of bait in connection with hunting under current statutes.) These rules sunset on June 30, 2004.

### **HUNTING FROM A VEHICLE, ROADWAY OR MOTORBOAT**

The current statutes prohibit all of the following:

- Carrying a loaded firearm or a strung bow or crossbow in or on a vehicle.
- Carrying a loaded firearm in a motorboat with the motor running.
- Loading or discharging a firearm or shooting a bolt or arrow in or from a vehicle.
- Discharging a firearm or shooting a bolt or an arrow from or across a highway or within 50 feet of the center of a roadway.

In general, the Act makes all of these statutes inapplicable to a state or federal employee or agent, acting within the scope of his or her employment or agency, who is authorized by the DNR to take animals in the wild for testing or removal of diseased animals within DNR-designated chronic wasting disease eradication zone. These exceptions, however, do not authorize these employees or agents to discharge a firearm or shoot a bolt or arrow from a crossbow or bow across a state trunk highway, county trunk highway or paved town highway.

The Act also makes the current prohibitions, described above, on carrying a loaded firearm or a strung bow or crossbow in or on a vehicle and on loading or discharging a firearm or shooting a bolt or arrow in or from a vehicle inapplicable to a landowner, family member of the landowner or employee of the landowner under certain conditions. These conditions are that any of these persons may shoot a wild animal from a farm tractor or an “implement of husbandry” (e.g., a combine) if: (a) the shooting is on the landowner’s land, and (b) the landowner’s land is located in a DNR designated chronic wasting disease eradication zone. Before a landowner, family member or employee could shoot a wild animal under this exception, the person would need to secure any

necessary license required under state game regulations.

These changes in the statutes do not apply after June 30, 2004.

#### **SURVEILLANCE AND TESTING OF CHRONIC WASTING DISEASE**

The Act authorizes DATCP to conduct surveillance testing to determine whether animals have chronic wasting disease if DATCP has a reason to believe the animals have been exposed to chronic wasting disease. This testing authority applies to animals under DATCP’s jurisdiction, including farm-raised deer. DATCP is required to indemnify the owner of an animal that must be killed in order to conduct the testing if federal funds or program revenue funds provided by other state agencies, e.g., the DNR, are available to DATCP for this indemnification. The Act sets limits on the amount of the indemnity which are the same as current statutory limits for reimbursement for condemned livestock.

#### **EFFECTIVE PERIOD OF EMERGENCY RULES**

The Act creates a special provision regarding the effective period of emergency rules promulgated by the DNR and DATCP relating to chronic wasting disease. The DATCP emergency rules took effect on April 9, 2002, and the DNR emergency rules will be promulgated soon. Current statutes limit emergency rules to no more than 270 days (approximately nine months). The Act authorizes the Joint Committee for Review of Administrative Rules to grant any number of extensions to these rules, for periods specified by the committee, except that the emergency rules may not be extended beyond September 1, 2003. Further, the DNR and DATCP are authorized to amend the emergency rules while they are in effect using the procedure for promulgation of emergency rules, and the

amendment remains in effect for the same period as applied to the original emergency rule.

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This Legal Memorandum was prepared on May 22, 2002, by *John Stolzenberg, Staff Scientist, and Mark Patrosky, Senior Staff Attorney.*

Copies of 2001 Wisconsin Act 108 may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400. The Act is also available on the Legislature's web site at <http://www.legis.state.wi.us>.

The memorandum is not a policy statement of the Joint Legislative Council or its staff.

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