

BILL ANALYSIS

Senate Research Center

S.B. 820
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Agriculture, Rural Affairs & Homeland Security
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 820 strengthens the current review, or appeal, process within Texas Parks and Wildlife Department (TPWD) in regard to deer permit revocation or non-renewal of permits and directs TPWD to develop certain criteria prior to deer euthanasia.

The deer breeding industry contributes millions of dollars to the Texas economy and is especially significant to rural communities. Deer breeders and others involved in deer management invest considerable money and time in their work.

The internal review process currently used by TPWD for denying or revoking a deer permit gives TPWD the authority to take such an action based on the allegations of wrong doing, rather than a conviction for a violation of the permit. This puts permit holders at risk of losing their permits, as well as their livelihoods, without an allegation being properly adjudicated by TPWD. Under current TPWD procedures, certain violations can result in a deer being destroyed without the permit holder having had the opportunity to request an appeal or provide proof of an animal's disease status, lineage, or other information. Such alleged violations result in deer being destroyed by TPWD officials without proper due process and determination of the violation.

S.B. 820 amends current law relating to the management, breeding, and destruction of deer and to procedures regarding certain deer permits.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 3 (Section 12.605, Parks and Wildlife Code), SECTION 4 (Section 43.352, Parks and Wildlife Code), SECTION 5 (Section 43.3591, Parks and Wildlife Code), and SECTION 9 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.501(b), Parks and Wildlife Code, as follows:

(b) Authorizes the executive director of the Texas Parks and Wildlife Department (TPWD) (director) to suspend or revoke an original or renewal permit or license issued under this code if it is found, after notice and hearing, that, among other violations, the permittee or licensee made a false or misleading statement in connection with the permittee's or licensee's original or renewal application, rather than his original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the Texas Parks and Wildlife Commission (commission) or its officers or employees.

SECTION 2. Amends Section 12.506, Parks and Wildlife Code, by adding Subsection (c), to provide that this section (Appeal From Suspension, Refusal, or Revocation of License or Permit) does not apply to the appeal of a decision by TPWD refusing to issue or renew a permit to which Subchapter G applies.

SECTION 3. Amends Chapter 12, Parks and Wildlife Code, by adding Subchapter G, as follows:

SUBCHAPTER G. REFUSAL TO ISSUE OR RENEW CERTAIN PERMITS RELATING TO
THE CONTROL, BREEDING, OR MANAGEMENT OF DEER; APPEAL OF CERTAIN
DECISIONS

Sec. 12.601. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to the following permits:

- (1) a trap, transport, and transplant permit under Section 43.061 (Trapping, Transporting, and Transplanting Game Animals and Game Birds; Permit Required) or 43.0611 (Urban White-Tailed Deer Removal; Permit Required);
- (2) a trap, transport, and process permit under Section 43.0612 (Trapping and Transporting Surplus White-Tailed Deer; Permit Required);
- (3) a deer breeder's permit under Subchapter L (Deer Breeder's Permit), Chapter 43;
- (4) a white-tailed deer management permit under Subchapter R (White-Tailed Deer Management Permits), Chapter 43; and
- (5) a mule deer management permit under Subchapter R-1 (Mule Deer Management Permits), Chapter 43.

Sec. 12.602. DEFINITIONS. Defines "applicant" and "final conviction" in this subchapter.

Sec. 12.603. GENERAL CIRCUMSTANCES FOR REFUSAL TO ISSUE OR RENEW PERMIT. Authorizes TPWD to refuse to issue or renew a permit if the applicant fails to submit in a timely manner a completed application on a form supplied by TPWD and all application materials required by TPWD, the required permit fee, accurate reports as applicable, and any additional information that TPWD determines is necessary to process the application.

Sec. 12.604. CONSIDERATIONS FOR ISSUANCE OR RENEWAL OF PERMIT; APPLICANT WITH PRIOR PENALTIES OR CONVICTIONS. (a) Provides that this section applies only to a determination of whether to issue a permit to or renew a permit for an applicant who has a final conviction or has been assessed an administrative penalty for a violation of:

- (1) Subchapter C (Permits for Scientific Research, Zoological Collection, Rehabilitation, and Educational Display), E (Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), L, R, or R-1, Chapter 43;
- (2) a provision of this code not described by Subdivision (1) that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;
- (3) Section 63.002 (Possession of Live Game Animals); or
- (4) the Lacey Act (16 U.S.C. Sections 3371-3378).

(b) Requires TPWD, in determining whether to issue a permit to or renew a permit for an applicant who has a final conviction or has been assessed an administrative penalty, to consider the number of final convictions or administrative penalties; the seriousness of the conduct on which the final conviction or administrative penalty is based; the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted

in a final conviction or administrative penalty described by Subsection (a); the length of time between the most recent final conviction or administrative penalty and the permit application; whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct; whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of the permit history information provided by the applicant; for a renewal, whether the applicant agreed to any special provisions recommended by TPWD as conditions to the expiring permit; and other mitigating factors.

Sec. 12.605. PROCEDURE FOR REFUSAL TO ISSUE OR RENEW PERMIT. (a) Requires TPWD, not later than the 10th day after the date a decision to refuse to issue or renew a permit has been made, to provide to the applicant a written statement of the reasons for the decision.

(b) Requires the commission by rule to adopt procedures consistent with this subchapter for TPWD's review of a refusal to issue or renew a permit.

Sec. 12.606. REVIEW OF REFUSAL TO ISSUE OR RENEW PERMIT. Requires TPWD, in conducting a review of a decision by TPWD to refuse to issue or renew a permit, to consider:

(1) any applicable factors listed under Section 12.604;

(2) the applicant's efforts toward rehabilitation;

(3) whether there is a substantial likelihood that the applicant would repeat the conduct on which the refusal is based;

(4) whether the conduct on which the refusal is based involved a threat to public safety; and

(5) other mitigating factors.

Sec. 12.607. APPEAL OF DEPARTMENT DECISION REFUSING TO ISSUE OR RENEW PERMIT. (a) Provides that venue to appeal a decision of TPWD refusing to issue or renew a permit is a district court in Travis County.

(b) Requires that the appeal be by trial de novo.

SECTION 4. Amends Section 43.352, Parks and Wildlife Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Authorizes TPWD, at the option of the person applying for the issuance or renewal of a permit under this section, to issue a permit that is valid for one year, three years, or five years, rather than authorizing TPWD to issue a permit under this section that is valid for longer than one year.

(c) Provides that a three-year or five-year permit is available only to a person who:

(1) has held a deer breeder's permit for the three consecutive permit years immediately preceding the date of the application for a three-year or five-year permit;

(2) agrees to submit the annual reports required under this subchapter electronically; and

(3) meets any other criteria established by rule of the commission.

(d) Authorizes the commission to adopt rules allowing TPWD to revoke a three-year or five-year permit before the date specified for expiration of the permit if the permit holder fails to submit the annual reports electronically as required.

SECTION 5. Amends Subchapter L, Chapter 43, Parks and Wildlife Code, by adding Section 43.3591, as follows:

Sec. 43.3591. GENETIC TESTING. (a) Defines "DNA," "genetic test," and "RNA" in this section.

(b) Requires TPWD, after an inspection, to notify a deer breeder in writing when TPWD has reason to believe the deer breeder possesses deer that may pose a disease risk to other deer. Requires that the notice include an explanation of the rationale used to establish the disease risk.

(c) Requires TPWD to postpone any actions that may be affected by the test results until the test results are available if genetic testing is timely conducted.

(d) Prohibits the results of genetic testing from being used as evidence to establish a defense against a fine imposed on a deer breeder found guilty of failure to keep records of all deer in a deer breeder facility as required by this subchapter.

(e) Requires the commission to adopt rules as needed to implement this section.

SECTION 6. Amends Chapter 43, Parks and Wildlife Code, by adding Subchapter X, as follows:

SUBCHAPTER X. DEER DISPOSITION PROTOCOL

Sec. 43.951. APPLICABILITY. Provides that this subchapter applies only to the disposition of the following deer:

- (1) deer held at a facility covered by a permit issued under Subchapter L;
- (2) deer on acreage covered by a permit issued under Subchapter R; and
- (3) deer on acreage covered by a permit issued under Subchapter R-1.

Sec. 43.952. DEFINITIONS. Defines "animal health commission," "permit," and "permit holder" in this subchapter.

Sec. 43.953. DESTRUCTION OF DEER. (a) Provides that before any deer are authorized to be destroyed under this subchapter:

- (1) an agent of the Texas Animal Health Commission (TAHC) is authorized to conduct an epidemiological assessment if the assessment can be conducted in a timely manner and contingent on the availability of funding; and
- (2) TPWD is required to consider the results of an assessment, if conducted, under Subdivision (1).

(b) Authorizes deer to which this subchapter applies, to control or prevent the spread of disease, to be destroyed only if TPWD determines that the deer pose a threat to the health of other deer or other species, including humans.

(c) Requires TPWD to carry out an order to destroy deer after notice has been provided to the permit holder under Section 43.954.

Sec. 43.954. NOTICE OF DEER DESTRUCTION. (a) Requires TPWD to provide written notice of an order to destroy deer to a permit holder before TPWD is authorized to destroy any of the deer covered by the permit holder's permit.

(b) Requires that a notice provided under this section be sent by certified mail to the last known address of the permit holder and contain:

(1) the date of destruction, which is prohibited from being sooner than the 10th day after the date of the notice;

(2) an explanation of any access restrictions imposed on the facility or acreage covered by the permit during the destruction of the deer; and

(3) an explanation of the reasons for the destruction, including the results of any epidemiological assessment conducted under Section 43.953(a) applicable to the deer that are the subject of the notice.

(c) Authorizes the permit holder to waive the notice requirements of this section.

Sec. 43.955. COST RECOVERY. Requires the applicable permit holder to pay all costs associated with:

(1) an epidemiological assessment conducted under this subchapter to TAHC; and

(2) the destruction of deer under this subchapter to TPWD.

SECTION 7. (a) Provides that except as provided by Subsection (b) of this section, Subchapter G, Chapter 12, Parks and Wildlife Code, as added by this Act, applies only to an application for the issuance or renewal of a permit submitted to TPWD on or after the effective date of this Act. Provides that an application submitted before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Provides that Section 12.607, Parks and Wildlife Code, as added by this Act, applies only to an appeal of a decision of TPWD refusing to issue or renew a permit that is filed on or after the effective date of this Act. Provides that an appeal filed before the effective date of this Act is governed by the law in effect on the date the appeal was filed, and that law is continued in effect for that purpose.

SECTION 8. Makes application of Section 43.3591(d), Parks and Wildlife Code, as added by this Act, prospective.

SECTION 9. Requires the commission, not later than September 1, 2014, to adopt rules as needed to implement Subchapter G, Chapter 12, Parks and Wildlife Code, as added by this Act.

SECTION 10. Effective date: September 1, 2013.