

BILL ANALYSIS

C.S.S.B. 820
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Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The deer breeding industry is a significant contributor to the Texas economy, particularly in rural communities, with deer breeders and others in the deer management business investing considerable money, time, and work in the management of deer. However, interested parties contend that the process used by the Parks and Wildlife Department to deny or revoke a deer permit does not adequately protect the due process rights of a permit holder. Interested parties also contend that there is no clear procedure for the destruction of deer. These parties assert that the procedures for permit refusal or revocation and the procedures for deer destruction should be revised to better protect permit holder rights. C.S.S.B. 820 seeks to address these and other concerns by providing for changes to the state's regulation of deer-related activities.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Parks and Wildlife Commission in SECTIONS 3, 4, 5, and 9 of this bill.

ANALYSIS

C.S.S.B. 820 amends the Parks and Wildlife Code to authorize the Parks and Wildlife Department (TPWD) to refuse to issue or renew a trap, transport, and transplant permit for game animals and game birds; a trap, transport, and transplant permit for the removal of urban white-tailed deer; a trap, transport, and process permit for surplus white-tailed deer; a deer breeder's permit; a white-tailed deer management permit; or a mule deer management permit if the applicant fails to submit in a timely manner the following: a completed application on a form supplied by TPWD, 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. The bill requires TPWD to consider certain factors in determining whether to issue or renew such a permit for an applicant who has a final conviction or has been assessed an administrative penalty for a violation of specified Parks and Wildlife Code provisions or a violation of the federal Lacey Act.

C.S.S.B. 820 requires TPWD, not later than the 10th day after the date a decision to refuse to issue or renew such a permit has been made, to provide to the applicant a written statement of the reasons for the decision. The bill requires the Parks and Wildlife Commission by rule to adopt procedures consistent with the bill's provisions for TPWD's review of a refusal to issue or renew a permit and requires TPWD to consider specified factors in conducting such a review. The bill sets out provisions relating to the appeal of a TPWD decision refusing to issue or renew a permit under the bill's provisions and exempts the appeal of such a decision from certain other appeal procedures. The bill requires the commission to adopt rules not later than September 1, 2014, as needed to implement the bill's provisions relating to refusal to issue or renew such permits.

C.S.S.B. 820 authorizes TPWD to issue a deer breeder's permit that is valid for one year, three years, or five years at the option of the person applying for the issuance or renewal of the permit, rather than authorizing TPWD to issue a deer breeder's permit that is valid for longer than one

year. The bill makes a three-year or five-year permit available only to a person who 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, who agrees to submit electronically the annual reports required for the holder of a deer breeder's permit, and who meets any other criteria established by Parks and Wildlife Commission rule. The bill 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.

C.S.S.B. 820 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 and requires the notice to include an explanation of the rationale used to establish the disease risk. The bill requires TPWD, if genetic testing is timely conducted, to postpone any actions that may be affected by the test results until the test results are available. The bill prohibits the use of the results of genetic testing 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. The bill requires the Parks and Wildlife Commission to adopt rules as needed to implement the bill's provisions governing genetic testing.

C.S.S.B. 820 authorizes an agent of the Texas Animal Health Commission to conduct an epidemiological assessment before any deer held at a deer breeding facility, deer on acreage covered by a white-tailed deer management permit, or deer on acreage covered by a mule deer management permit may be destroyed, if the assessment can be conducted in a timely manner and contingent on the availability of funding. The bill requires TPWD, before any such deer may be destroyed, to consider the results of the epidemiological assessment, if conducted. The bill authorizes the destruction of such deer to control or prevent the spread of disease only if TPWD determines that the deer pose a threat to the health of other deer or other species, including humans. The bill requires TPWD to carry out an order to destroy deer after notice has been provided to the applicable permit holder.

C.S.S.B. 820 requires TPWD to provide written notice of an order to destroy deer to a permit holder before TPWD may destroy any of the deer covered by the permit holder's permit. The bill sets out requirements relating to the method of delivery and content of the notice. The bill authorizes the permit holder to waive the notice requirements. The bill requires the applicable permit holder to pay all costs associated with an epidemiological assessment conducted under the bill's provisions to the Texas Animal Health Commission and to pay all costs associated with the destruction of deer to TPWD.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 820 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subsection (b), Section 12.501, Parks and Wildlife Code, is amended to read as follows:

(b) Except as provided by Subchapter G, the [The] director may suspend or

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 12.501(b), Parks and Wildlife Code, is amended to read as follows:

(b) The director may suspend or revoke an original or renewal permit or license

revoke an original or renewal permit or license issued under this code if it is found, after notice and hearing, that:

- (1) the permittee or licensee has been finally convicted of a violation of this code or proclamation or regulation adopted under this code relating to the permit or license to be suspended or revoked;
- (2) the permittee or licensee violated a provision of this code or proclamation or regulation adopted under this code relating to the permit or license to be suspended or revoked;
- (3) the permittee or licensee made a false or misleading statement in connection with the permittee's or licensee's ~~[his]~~ original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission or its officers or employees;
- (4) the permittee or licensee is indebted to the state for taxes, fees, or payment of penalties imposed by this code or by a commission rule relating to a permit or license to be suspended or revoked; or
- (5) the permittee or licensee is liable to the state under Section 12.301.

SECTION 2. Section 12.506, Parks and Wildlife Code, is amended by adding Subsection (c) to read as follows:

(c) This section does not apply to a permit to which Subchapter G applies.

SECTION 3. Subsection (b), Section 12.508, Parks and Wildlife Code, is amended to read as follows:

(b) Except as provided by Subchapter G, the ~~[The]~~ department may refuse to issue or transfer an original or renewal license, permit, or tag if the applicant or transferee:

- (1) has been finally convicted of a violation under this code or a rule adopted or a proclamation issued under this code;
- (2) is liable to the state under Section 12.301; and
- (3) has failed to fully pay the amount due under Section 12.301 after the

issued under this code if it is found, after notice and hearing, that:

- (1) the permittee or licensee has been finally convicted of a violation of this code or proclamation or regulation adopted under this code relating to the permit or license to be suspended or revoked;
- (2) the permittee or licensee violated a provision of this code or proclamation or regulation adopted under this code relating to the permit or license to be suspended or revoked;
- (3) the permittee or licensee made a false or misleading statement in connection with the permittee's or licensee's ~~[his]~~ original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission or its officers or employees;
- (4) the permittee or licensee is indebted to the state for taxes, fees, or payment of penalties imposed by this code or by a commission rule relating to a permit or license to be suspended or revoked; or
- (5) the permittee or licensee is liable to the state under Section 12.301.

SECTION 2. Section 12.506, Parks and Wildlife Code, is amended by adding Subsection (c) to read as follows:

(c) This section does not apply to the appeal of a decision by the department refusing to issue or renew a permit to which Subchapter G applies.

No equivalent provision.

department has issued notice of liability to the applicant or transferee.

SECTION 4. Chapter 12, Parks and Wildlife Code, is amended by adding Subchapter G to read as follows:

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

Sec. 12.601. APPLICABILITY OF SUBCHAPTER.

Sec. 12.602. DEFINITIONS. In this subchapter:

(1) "Applicant" means a person who has applied for a new or renewal permit.

(2) "Final conviction" means a final judgment of guilt, the granting of deferred adjudication or pretrial diversion, or the entering of a plea of guilty or nolo contendere.

(3) "Permittee" means a person to whom a permit has been issued, including each member of a partnership or association, an agent acting on behalf of a partnership or association, each officer of a corporation, and the owner of a majority of a corporation's corporate stock.

Sec. 12.603. GENERAL CIRCUMSTANCES FOR REFUSAL TO ISSUE OR RENEW PERMIT.

Sec. 12.604. REFUSAL TO ISSUE OR RENEW PERMIT BASED ON CERTAIN PENALTIES OR CONVICTIONS.

(a) 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, E, 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

SECTION 3. Chapter 12, Parks and Wildlife Code, is amended by adding Subchapter G to read 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.

Sec. 12.602. DEFINITIONS. In this subchapter:

(1) "Applicant" means a person who has applied for a new or renewal permit.

(2) "Final conviction" means a final judgment of guilt, the granting of deferred adjudication or pretrial diversion, or the entering of a plea of guilty or nolo contendere.

Sec. 12.603. GENERAL CIRCUMSTANCES FOR REFUSAL TO ISSUE OR RENEW PERMIT.

Sec. 12.604. CONSIDERATIONS FOR ISSUANCE OR RENEWAL OF PERMIT; APPLICANT WITH PRIOR PENALTIES OR CONVICTIONS.

(a) 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, E, 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; or
(4) the Lacey Act Amendments of 1981
(16 U.S.C. Sections 3371-3378).

(b) 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, the department shall consider:
(1) the number of convictions or
administrative penalties and the
seriousness of each conviction;

(2) 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);
(3) the length of time between the most
recent final conviction or administrative
penalty and the permit application;
(4) whether the final conviction,
administrative penalty, or other offense
or violation was the result of negligence
or intentional conduct;
(5) the applicant's efforts toward
rehabilitation;

(6) the accuracy of the permit history
information provided by the applicant;
and

(7) other mitigating factors.

Sec. 12.605. PROCEDURE FOR
REFUSAL TO ISSUE OR RENEW
PERMIT.

Sec. 12.606. REVIEW OF REFUSAL
TO ISSUE OR RENEW PERMIT. In
conducting a review of a decision by the
department to refuse to issue or renew a
permit, the department shall consider:

Parks and Wildlife Code felony;
(3) Section 63.002; or
(4) the Lacey Act (16 U.S.C. Sections
3371-3378).

(b) 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, the department shall consider:
(1) the number of final convictions or
administrative penalties;
(2) the seriousness of the conduct on
which the final conviction or
administrative penalty is based;
(3) 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);
(4) the length of time between the most
recent final conviction or administrative
penalty and the permit application;
(5) whether the final conviction,
administrative penalty, or other offense
or violation was the result of negligence
or intentional conduct;

(6) whether the final conviction or
administrative penalty resulted from
conduct committed or omitted by the
applicant, an agent of the applicant, or
both;

(7) the accuracy of the permit history
information provided by the applicant;
(8) for a renewal, whether the applicant
agreed to any special provisions
recommended by the department as
conditions to the expiring permit; and
(9) other mitigating factors.

Sec. 12.605. PROCEDURE FOR
REFUSAL TO ISSUE OR RENEW
PERMIT.

Sec. 12.606. REVIEW OF REFUSAL
TO ISSUE OR RENEW PERMIT. In
conducting a review of a decision by the
department to refuse to issue or renew a
permit, the department shall consider:
(1) any applicable factors listed under
Section 12.604;
(2) the applicant's efforts toward

(1) whether the conduct on which the refusal is based was negligent or intentional;

(2) for a refusal based on conduct that is a violation of a provision listed in Section 12.604(a), whether the applicant has a final conviction or has been assessed an administrative penalty based on the conduct;

(3) the seriousness of an offense or violation described by Subdivision (2) for which the applicant was finally convicted or assessed an administrative penalty;

(4) whether the conduct on which the refusal was based was committed or omitted by the applicant, an agent of the applicant, or both;

(5) for a renewal, whether the applicant agreed to any special conditions recommended by the department in lieu of a decision to refuse to issue or renew the expiring permit;

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

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

(8) other mitigating factors.

Sec. 12.607. APPEAL OF DEPARTMENT DECISION TO REVOKE, SUSPEND, OR REFUSE PERMIT. (a) Except as provided by this section, the revocation or suspension of a permit is governed by Subchapter F.

(b) Venue for appealing a decision of the department refusing to issue or renew a permit or revoking or suspending a permit is a district court in Travis County.

(c) The appeal shall be by trial de novo.

SECTION 5. Subchapter L, Chapter 43, Parks and Wildlife Code, is amended by adding Section 43.370 to read as follows:

Sec. 43.370. NOTICE OF DEPARTMENT DESTRUCTION OR REMOVAL OF DEER. (a) The department must provide notice to a deer

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) Venue to appeal a decision of the department refusing to issue or renew a permit is a district court in Travis County.

(b) The appeal shall be by trial de novo.

(See SECTION 6 below.)

breeder before the department destroys or removes any breeder deer from a facility permitted under this subchapter.

(b) A notice provided under this section must be sent by certified mail to the last known address of the deer breeder and must contain:

(1) a short statement identifying the specific deer to be destroyed or removed;

(2) the approximate date of destruction or removal, which may not be sooner than the 10th day after the date of the notice; and

(3) the reasons for the destruction or removal.

(c) The deer breeder may waive the 10-day waiting period required under Subsection (b)(2).

SECTION 6. Subchapter R, Chapter 43, Parks and Wildlife Code, is amended by adding Section 43.6055 to read as follows:

(See SECTION 6 below.)

Sec. 43.6055. NOTICE OF DEPARTMENT DESTRUCTION OR REMOVAL OF DEER. (a) The department must provide notice to a permit holder before the department destroys or removes any deer from the acreage covered by the permit.

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

(1) a short statement identifying the specific deer to be destroyed or removed;

(2) the approximate date of destruction or removal, which may not be sooner than the 10th day after the date of the notice; and

(3) the reasons for the destruction or removal.

(c) The permit holder may waive the 10-day waiting period required under Subsection (b)(2).

SECTION 7. Subchapter R-1, Chapter 43, Parks and Wildlife Code, is amended by adding Section 43.6255 to read as follows:

(See SECTION 6 below.)

Sec. 43.6255. NOTICE OF DEPARTMENT DESTRUCTION OR REMOVAL OF DEER. (a) The

department must provide notice to a permit holder before the department destroys or removes any deer from the acreage covered by the permit.

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

(1) a short statement identifying the specific deer to be destroyed or removed;

(2) the approximate date of destruction or removal, which may not be sooner than the 10th day after the date of the notice; and

(3) the reasons for the destruction or removal.

(c) The permit holder may waive the 10-day waiting period required under Subsection (b)(2).

No equivalent provision.

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

(b) At the option of the person applying for the issuance or renewal of a permit under this section, the [The] department may issue a permit [~~under this section~~] that is valid for [~~longer than~~] one year, three years, or five years.

(c) 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) The commission may adopt rules allowing the department 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.

No equivalent provision.

SECTION 5. Subchapter L, Chapter 43, Parks and Wildlife Code, is amended by adding Section 43.3591 to read as follows:

Sec. 43.3591. GENETIC TESTING. (a)

In this section:

(1) "DNA" means deoxyribonucleic acid.

(2) "Genetic test" means a laboratory analysis of a deer's genes, gene products, or chromosomes that:

(A) analyzes the deer's DNA, RNA, proteins, or chromosomes; and

(B) is performed to determine genetically the deer's ancestral lineage or descendants.

(3) "RNA" means ribonucleic acid.

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

(c) If genetic testing is timely conducted, the department must postpone any actions that may be affected by the test results until the test results are available.

(d) The results of genetic testing may not be 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) The commission shall adopt rules as needed to implement this section.

(See SECTIONS 5, 6, and 7 above.)

SECTION 6. Chapter 43, Parks and Wildlife Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. DEER DISPOSITION PROTOCOL

Sec. 43.951. APPLICABILITY. 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. In this subchapter:

(1) "Animal health commission" means the Texas Animal Health Commission.

(2) "Permit" means a permit issued

under Subchapter L, R, or R-1.

(3) "Permit holder" means a person to whom a permit is issued under Subchapter L, R, or R-1.

Sec. 43.953. DESTRUCTION OF DEER. (a) Before any deer may be destroyed under this subchapter:

(1) an agent of the animal health commission may conduct an epidemiological assessment:

(A) if the assessment can be conducted in a timely manner; and

(B) contingent on the availability of funding; and

(2) the department must consider the results of an assessment, if conducted, under Subdivision (1).

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

(c) The department shall 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) The department must provide written notice of an order to destroy deer to a permit holder before the department may destroy any of the deer covered by the permit holder's permit.

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

(1) the date of destruction, which may not be 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) The permit holder may waive the notice requirements of this section.

Sec. 43.955. COST RECOVERY. The applicable permit holder shall pay all costs associated with:

- (1) an epidemiological assessment conducted under this subchapter to the animal health commission; and
- (2) the destruction of deer under this subchapter to the department.

SECTION 8. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act apply only to a permit to which Subchapter G, Chapter 12, Parks and Wildlife Code, as added by this Act, applies that is issued or renewed on or after the effective date of this Act. A permit issued or renewed 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) Section 12.607, Parks and Wildlife Code, as added by this Act, applies only to an appeal from a decision of the Parks and Wildlife Department refusing to issue or renew a permit or revoking or suspending a permit that is filed on or after the effective date of this Act. 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.

No equivalent provision.

No equivalent provision.

SECTION 7. (a) 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 the Parks and Wildlife Department on or after the effective date of this Act. 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) Section 12.607, Parks and Wildlife Code, as added by this Act, applies only to an appeal of a decision of the Parks and Wildlife Department refusing to issue or renew a permit that is filed on or after the effective date of this Act. 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. Section 43.3591(d), Parks and Wildlife Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

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

SECTION 9. This Act takes effect
September 1, 2013.

SECTION 10. Same as engrossed
version.