SUBJECT: Limiting liability of owners of land used for recreation

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — T. Hunter, Culberson, Moffat, Tillery, Zbranek

0 nays

4 absent — Hilbert, Alvarado, Hartnett, Sadler

WITNESSES: For — Arthur W. Nagel, Riverside and Landowners Protection Coalition; Ted Lee Eubanks, National Audubon Society; Deborah Slator Gillan, Landowners Advisory Committee-Texas Parks and Wildlife Department; John W. Cliburn, Private Land Advisory Board-Texas Parks and Wildlife Department

Against — Mike Slack, Texas Trial Lawyers Association

On — None

BACKGROUND: According to Chapter 75 of the Civil Practices and Remedies Code, all landowners who open up their land to others for recreational use are exempt from any duty of care to those they have admitted to their land. This limitation of liability to persons permitted on the land only applies when the landowner does not charge for entry onto the premises or the landowner charges but does not collect more than twice the total property tax assessment for the land per year. Chapter 75 does not limit the liability of a landowner who is grossly negligent, acted with malicious intent or acted in bad faith.

DIGEST: CSHB 2085 would allow private landowners to be immune from liability if they carried insurance of $500,000 per person or $1 million per occurrence for bodily injury and $100,000 for property damage. If a landowner carried insurance in these amounts, the landowner would be excused from any liability beyond such amounts.

CSHB 2085 would make Chapter 75 of the Civil Practices and Remedies Code applicable to governmental units and would make a conforming change to the tort claims act.

This bill would take immediate effect if approved by two-thirds of the membership of each house and would apply to a cause of action that accrues on or after its effective date.

SUPPORTERS SAY:

The liability of landowners who allow persons to use their land for recreational use is already limited for those who do not charge for entry or who do not collect more than twice the total property tax assessment for the land per year. CSHB 2085 would allow landowners to limit their liability in another way, by taking out an insurance policy. To ensure that landowners are responsible, the bill would force landowners to either obtain insurance of up to $1 million or else be subjected to unlimited liability. The bill would help some people recover for injuries in certain situations because more landowners would have insurance. The $1 million limitation would not effect most injured parties because injuries and damages are seldom greater than $1 million.

Chapter 75 of the Civil Practices and Remedies Code had been construed by some courts as limiting the liability of governmental units. However, in 1994, the Texas Supreme Court, in a unanimous decision, *Dallas v. Mitchell*, 870 S.W.2d 21 (Tex. 1994), expressly overruled those cases and held that Chapter 75 did not relieve a governmental unit of any liability under the Tort Claims Act. The change that this bill would make in limiting the liability of a governmental unit that maintains land for recreational purposes is simply a return to the way that the law was before the *Dallas v. Mitchell* case. There is no reason that a governmental unit should be more liable than a private landowner for property used for recreational purposes.

OPPONENTS SAY:

Landowners are in a better position than anyone else to know what the dangers on their land might be. Landowners who permit others to use their land and even charge persons for the use of the land should not be able to simply ignore dangerous conditions because they have insurance. At the very least, the landowner should be held to the same standard as if the persons on the land were the guests of the landowner.

Currently, if the landowner is a governmental unit, that landowner owes the persons on the land the same duty of care that a private landowner owes guests (licensees). That duty requires landowners to warn guests about conditions on the land that the landowner knows about but that the guests might not necessarily know about. This standard should remain intact for governmental units so that injuries like the one in the *Mitchell* case, where a boy riding his bike in a park fell off a 20 foot drop into a creek bed because the City of Dallas failed to place any warnings near the site that was under construction.

NOTES: The committee substitute to HB 2085 added a section that would allow a landowner who maintains liability insurance in the manner provided in the bill to use the protections of the bill.