

SUBJECT: Increasing recreational use liability limitations for landowners

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — Nixon, Gattis, Y. Davis, Hartnett, Rose, Woolley

0 nays

3 absent — Capelo, King, Krusee

WITNESSES: For — Billy Howe, Texas Farm Bureau

Against — Bryan Pope, Texas Trial Lawyers Association

BACKGROUND: Private landowners frequently allow the public to use their land for recreational purposes, such as hunting and fishing. Civil Practices and Remedies Code, ch. 75 addresses the liability of landowners for torts on their land. Sec. 75.003(c) limits liability for landowners, except for governmental units, that do not charge for entry onto their property, have liability insurance coverage for certain types of land, or charge for entry onto their property for recreational purposes but collect fees not more than:

- twice the total amount of taxes imposed on the premises for the previous calendar year; or
- four times the total amount of taxes imposed on the premises for the previous calendar year, for agricultural land.

The statute was amended in 1997 to change the formula from an exemption amount of two times the ad valorem taxes on all land to the current formulas for agricultural and other land.

Liability is not limited under this statute for landowners that have been grossly negligent or acted with malicious intent or in bad faith. Gross negligence is negligence of an aggravated character that greatly exceeds the mere failure to exercise ordinary care.

DIGEST: HB 408 would amend Civil Practices and Remedies Code, sec. 75.003(c) to limit liability for landowners who charged for recreational uses of their property but collected fees not more than 20 times the ad valorem taxes for the previous calendar year, regardless of whether the land was agricultural.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: By increasing liability protections, HB 408 would encourage more landowners to allow more people to use private land for recreational purposes. The vast majority of Texas land is owned privately, and the recreational use of private land, for activities such as hunting, is vital to the economy and conservation. In recent years, there has been a decline in agricultural value and production on much Texas land, and many landowners make a living by leasing their property for recreational use. Surrounding communities also benefit through the increased patronage of stores, restaurants, and motels. Without the recreational use of local land that this bill would facilitate, many rural economies would not be able to survive.

The same owners who lease their land for recreational purposes also are heavily involved in wildlife conservation. Landowners are encouraged to maintain the quality of their land and water resources in order to ensure that their supplies of game are of the grade their customers expect. This maintenance not only protects the game supplies of Texas, but also helps ensure a more plentiful supply of higher quality water. Thus, by encouraging increased recreational use of private land, this bill also supports sound conservation practices.

Landowners need better protection from liability so they can continue the beneficial practice of leasing their properties for recreational use. They should not be held liable for torts that arise from the dangers inherent in recreational activities, such as hunting. This bill would allow landowners to assess more fees, and thus serve more recreational visitors, without incurring additional liability, but it would not protect landowners from liability resulting from gross negligence or malicious intent. Nor would this bill offer protection to wild animal parks, in cases where animals injured visitors, beyond the extent provided under current law.

OPPONENTS
SAY:

This bill could eliminate liability of landowners for violent torts committed on their properties. For example, if a child was mauled by an escaped cheetah on a wild game reserve, operated on private land that yielded recreational income below the limit established by this bill, the landowner would not be held liable for the resulting damages. By giving such a landowner immunity from suit, this bill would discourage landowners from taking basic precautions to ensure that their land was safe. Landowners who make significant amounts of money from recreational activities should be required to take extra precautions to ensure the safety of their customers, not given additional protections from liability.

This bill would exempt from liability those who throw large parties, known as “Raves,” on their land that can result in injuries to others. There are two types of Raves — late night dance clubs that open after midnight and stay open until daylight and large organized events with multiple stages and carnival-type midway sideshows that attract several thousand people. Often Raves are advertised as being alcohol free, but are known to be places where illegal drug distribution and use may be prevalent. Last August in Austin, a young man died due to drug-related causes after having seizures at a Rave. Under this bill, so long as a landowner received less than 20 times his taxes in revenues for the recreational use of his land, he or she would not be liable for injuries or even deaths in similar circumstances.

OTHER
OPPONENTS
SAY:

Many wild animal parks are non-profit organizations and pay taxes under a different standard than most private landowners. Therefore, determining their limitations on liability under this bill would be very difficult.