

SUBJECT: Revising conditions for destruction of a dog for certain unprovoked attacks

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 5 ayes — Swinford, Gattis, Cook, Farrar, Wong

0 nays

4 absent — Miller, J. Keffer, Martinez Fischer, Villarreal

WITNESSES: For — Ron Bullock, AECT; Mindy Ellmer

Against — None

On — Robert Trimble, Texas Humane Legislation

BACKGROUND: Health and Safety Code, sec. 822.003(e), requires a justice, county or municipal court to issue a warrant and order the animal control authority to seize a dog that has caused death or serious bodily injury by attacking, biting, or mauling a person. Within 10 days of issuing the warrant, the court must hold a hearing to determine whether the dog caused the injury or death. The court must order the dog destroyed if it finds the attack, biting, or mauling caused the death of the victim, and may order the dog destroyed if it finds that it caused serious bodily injury.

Under Health and Safety Code, sec. 822.003(f), the court may not order the dog destroyed if it finds that:

- the dog was being used for the protection of a person or the person's property, the attack occurred in an enclosure in which the dog was being kept, and the injured person was at least eight years of age and was trespassing in the enclosure when the incident occurred;
- the attack occurred during an arrest or other action of a peace officer while the dog was being used for law enforcement purposes;
- the attack occurred while the dog was defending a person from an assault or person's property from damage or theft by the injured person; or

- the injured person was younger than eight years old and the attack occurred in an enclosure in which the dog was being kept that was reasonably certain to keep children under eight from entering.

DIGEST:

HB 2840 would require a court to order a dog to be destroyed if it found that the dog caused serious bodily injury to a person by attacking, biting, or mauling the person.

The bill would amend Health and Safety Code, sec. 822.003(f), to specify that a court could not order a dog destroyed if:

- the injury resulted from an attack that occurred in the secure enclosure in which the dog was being kept and the injured person was trespassing in the enclosure when the attack occurred;
- the attack occurred during an arrest or other action of a peace officer while the dog was being used for law enforcement purposes; or
- the attack occurred while the dog was defending a person from an assault or person's property from damage or theft by the injured person.

The bill would specify that a person could use any and all means available to defend against an unprovoked attack by a dog on that person or another person, including but not limited to inanimate objects, chemical or other sprays, and electrical shock or stun devices. A person defending against such an attack would not be liable, in law or equity, to the owner of the dog for damages to the dog or the owner's property. The dog owner would be liable for all damages to any person or property resulting from an unprovoked attack by a dog. A person defending against an unprovoked attack would not be subject to criminal prosecution for injury to the dog.

An unprovoked attack would be defined as an attack by a dog on a person in a place other than the secure enclosure in which the dog was being kept.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS
SAY:

HB 2840 would protect the public from unprovoked attacks by dogs and make owners more accountable when their dog caused serious bodily injury in an attack that occurred outside of a secure enclosure.

Unprovoked attacks continue to be a threat to public utility and postal workers doing their jobs, as well as to joggers, bicyclists, and other members of the public. Each year in Texas, almost 400,000 people are bitten by dogs, and one-fourth of these dog bites require medical attention. Insurance companies pay an estimated \$250 million per year in dog bite liability claims. The bill would make it clear that dog owners and not attack victims are liable for any damages caused by unprovoked dog attacks, and that utility and postal workers and members of the public have the right to use any means necessary to defend themselves against unprovoked attacks.

By requiring that a dog that has caused serious bodily injury be destroyed, the bill would ensure that a dog capable of serious injury, including injuries to a child within the dog's enclosure, did not hurt anyone else. This stiffer penalty would send a strong message to dog owners that they must control their dogs when the dogs are outside of secure enclosures. This provision would apply only to a dog in a secure enclosure if the dog caused serious bodily injury to a child and would not be imposed if the dog were protecting a person or property.

The bill would not create a leash law or eliminate due process for dog owners if their animal bit or attacked someone. It would not give the general public the freedom to harm or abuse dogs, and it would not single out a particular breed. The bill would maintain most of the protections in current law for dog owners to advocate for their animals if they unfairly were accused of causing bodily injury when responding appropriately to danger.

**OPPONENTS
SAY:**

HB 2840 would go too far by requiring that a court order a dog to be destroyed if it found that a dog had caused serious bodily injury in any unprovoked attack that occurred outside of the dog's secure enclosure. The court should continue to have discretion in these situations because the injury, while serious, may not justify destroying the dog. If the dog presented a serious risk to others, the court still could order that the dog be destroyed.

The description of an "unprovoked attack" is too broad and could apply even to situations in which a dog was being abused or tormented and was protecting itself in response. Most dogs do not attack people unless provoked, and they should not have to be destroyed because they responded naturally to abuse or torture.

The bill would effectively create a leash law by establishing the possibility of death for a dog that attacked a bicyclist, postal or utility worker, or other member of the public outside of its secure enclosure. Most dog owners would not want to risk this consequence even if the chance of their dog engaging in such an attack were minimal. While the bill doesn't single out a particular breed of dog, it would affect breeds that may respond more aggressively to perceived threats, such as the arrival of a utility or postal worker. These dogs could be unfairly targeted for natural responses to danger.

NOTES:

The author plans to offer floor amendments that would retain current statutory language stating that a court may, rather than shall, order a dog destroyed if it causes serious bodily injury and defining an unprovoked attack as one that is not in response to the dog being tormented, abused or assaulted by the person whom the dog attacked; to pain or injury; or to an assault or attempted assault on another person by the person whom the dog attacked.