

BILL ANALYSIS

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C.S.S.B. 252
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Agriculture & Rural Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Parks and Wildlife Department's (TPWD) current internal review process for denying or revoking a deer permit needs to be strengthened to best protect due process of deer permit holders who are at risk of losing their permits for allegations of permit violations. Deer breeders and others in the management business invest considerable money, time, and work in the management of deer. In addition, the industry is a multi-million dollar contributor to the Texas economy and is especially important to rural communities. While no one condones illegal activity nor wants to risk spreading disease, many permit holders believe that TPWD's internal review process for alleged violations does not afford permit holders adequate protection. Some permit holders feel that their livelihoods and necessary business practices for appropriate deer management are at risk under current guidelines that allow TPWD to delay or deny permits based upon an allegation of, rather than a conviction for, a violation.

In addition, under current procedures, certain violations can result in deer being destroyed without the permit holder having an opportunity to seek an appeal or provide proof of disease status, lineage, et cetera. Over the past year, there have been several instances where violations also triggered deer being destroyed by TPWD officials. Disease monitoring is required by law to track chronic wasting disease. However, the disease has not been found in Texas deer after several years of intensive testing and monitoring. By contrast, cattle are tracked in Texas by the Texas Animal Health Commission as part of monitoring for tuberculosis, a highly contagious disease known to exist in Texas cattle. The penalty for illegal movements is a monetary fine with stronger actions if determined necessary, including quarantine. A stronger appeal system to protect due process rights for the deer permit holder as well as the development of standards prior to disposition of the deer in question will better serve the industry and the state.

C.S.S.B. 252 amends current law relating to procedures relating to the issuance and renewal of, and certain notice requirements associated with, certain deer permits.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

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

(b) Creates an exception as provided by Subchapter G to the authority of the executive director of the Texas Parks and Wildlife Department (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 the permittee or licensee has taken certain actions or meets certain conditions. Makes conforming and nonsubstantive changes.

SECTION 2. Amends Section 12.506, Parks and Wildlife Code, by adding Subsection (c), to provide that this section does not apply to a permit to which Subchapter G applies.

SECTION 3. Amends Section 12.508(b), Parks and Wildlife Code, to authorize the Texas Parks and Wildlife Department (TPWD), except as provided by Subchapter G, to refuse to issue or

transfer an original or renewal license, permit, or tag if the applicant or transferee commits certain violations.

SECTION 4. Amends Chapter 12, Parks and Wildlife Code, by adding Subchapter G, 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.** Provides that this subchapter applies 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 deer management permit under Subchapter R (Deer Management Permits); Chapter 43; and

Sec. 12.602 **DEFINITIONS.** (a) Defines, in this subchapter, "applicant," "final conviction," and "permittee."

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 the following:

- (1) a completed application on a form supplied by TPWD and all application materials required by TPWD;
- (2) the required permit fee;
- (3) accurate reports as applicable; and
- (4) any additional information that TPWD determines is necessary to process the application.

Sec. 12.604. **REFUSAL TO ISSUE OR RENEW PERMIT BASED ON CERTAIN 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 for a violation of:

- (1) Subchapters C (Permits for Scientific Research, Zoological Collection, Rehabilitation, and Educational Display), E (Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), L, or R, Chapter 43 (Special Licenses and Permits);
- (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 with a final conviction, to consider:

(1) the number of convictions 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 described by Subsection (a);

(3) the length of time between the most recent final conviction and the permit application;

(4) whether the final conviction or other offense or violation was the result of negligence or international conduct;

(5) the applicant's efforts toward rehabilitation;

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

(7) other mitigation 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 Texas Parks and Wildlife 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 review of a decision by TPWD to refuse to issue or renew a permit, to consider:

(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 based on the conduct;

(3) the seriousness of an offense described by Subdivision (2) for which the applicant was finally convicted;

(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 TPWD 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) Provides that except as provided by this section, the revocation or suspension of a permit is governed by Subchapter F.

(b) Venue for an appeal from a decision of TPWD refusing to issue or renew a permit or revoking or suspending a permit is a district court in:

- (1) the county where the permitted facility, if applicable, is located;
- (2) the county where the permittee resides; or
- (3) Travis County.

(c) Requires the appeal to be by trial de novo.

SECTION 5. Amends Subchapter L, Chapter 43, Parks and Wildlife Code, by adding Section 43.370, as follows:

Sec. 43.370. NOTICE OF DEPARTMENT DESTRUCTION OR REMOVAL OF DEER. (a) Requires TPWD to provide notice to a deer breeder before TPWD destroys or removes any breeder deer from a facility permitted under this subchapter.

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

- (1) a short statement identifying the 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.

SECTION 6. Amends Subchapter R, Chapter 43, Parks and Wildlife Code, by adding Section 43.6055, as follows:

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

- (1) a short statement identifying the 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.

SECTION 7. (a) Makes application of this Act, except as provided by Subsection (b) of this section, only to a permit to which Subchapter G, Chapter 12, Parks and Wildlife Code, as added by this Act applies, prospective.

(b) Makes application of Section 12.607, Parks and Wildlife Code, as added by this Act, prospective.

SECTION 8. Effective date: September 1, 2011.