

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 641
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Water & Rural Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, ownership of dangerous wild animals is by and large regulated by municipalities with little regulation by the state. The animals listed in S.B. 641 can quickly outgrow an individual owner's ability to provide adequate living conditions, and the result is that the animal is improperly fed, cared for, and housed—jeopardizing the animal's welfare and public safety. S.B. 641 addresses the issue of the ownership of dangerous wild animals by requiring individuals who own these animals to have a USDA Class A, B, or C license (breeder, dealer, or exhibitor, respectively) and meet other requirements of the bill. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 641 amends current law relating to dangerous wild animals, provides penalties, creates a criminal offense, and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 5 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 822, Health and Safety Code, by adding Subchapter F, as follows:

SUBCHAPTER F. REGULATION OF DANGEROUS WILD ANIMALS

Sec. 822.151. DEFINITIONS. Defines "animal control authority," "animal shelter," "commission," "dangerous wild animal," "owner," "person," and "wildlife sanctuary."

Sec. 822.152. DANGEROUS WILD ANIMALS PROHIBITED; EXCEPTIONS. (a) Prohibits a person, except as provided by this section, from owning, possessing, selling, transferring, breeding, or having custody or control of a dangerous wild animal.

(b) Provides that the prohibition under Subsection (a) does not apply to:

(1) a county, municipality, or agency of this state, an agency of the United States, or an agent or official of a county, municipality, or agency acting in the agent's or official's official capacity;

(2) a research facility as defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132(e)), that is licensed by the secretary of the United States Department of Agriculture (USDA) under that Act;

(3) a person holding a Class "A," Class "B," or Class "C" license issued by the United States secretary of agriculture under the Animal Welfare Act (7 U.S.C. Section 2132 et seq.) if the person complies with Section 822.153;

(4) an institution accredited by the Association of Zoos and Aquariums or the Zoological Association of America;

- (5) a wildlife sanctuary;
- (6) a veterinary hospital providing treatment to a dangerous wild animal;
- (7) a person who holds a rehabilitation permit issued under Subchapter C (Permits For Scientific Research, Zoological Collection, Rehabilitation, and Educational Display), Chapter 43, Parks and Wildlife Code, while rehabilitating the dangerous wild animal;
- (8) a college or university that began displaying a dangerous wild animal as a mascot before September 1, 2019, and does not allow direct contact between the public and the mascot;
- (9) an animal shelter temporarily housing a dangerous wild animal seized under Section 822.156 or the written request of an animal control authority or a law enforcement agency acting under this subchapter; or
- (10) an owner lawfully in possession of a dangerous wild animal before September 1, 2019, if the owner complies with Section 822.154.

Sec. 822.153. REGULATION OF CERTAIN LICENSE HOLDERS. Authorizes a person described by Section 822.152(b)(3) to possess a dangerous wild animal if:

- (1) the person's license described by that subdivision is in good standing;
- (2) the person has not been convicted of or fined for an offense involving the abuse or neglect of any animal under local, state, or federal law;
- (3) none of the person's employees with responsibility for the security or care of the dangerous wild animal have been convicted of or fined for an offense described by Subdivision (2);
- (4) the person has not been cited by the USDA under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) within the preceding three years for failure to allow a facility inspection or for interference with a facility inspection;
- (5) the person has not been cited in an inspection report by the USDA under the Animal Welfare Act for any violations during the preceding three years relating to a dangerous wild animal's health and safety being jeopardized by inappropriate veterinary care, inappropriate handling of the animal causing stress or trauma to the animal or a threat to public safety, inappropriate provision of food, water, shelter, or space, or any infraction cited as a direct violation;
- (6) the person has not received any official notice of warning or entered into stipulations, consent decrees, or settlements with the USDA during the preceding five years;
- (7) the person discloses any known pending investigation of the person by the USDA;
- (8) the person maintains liability insurance in an amount not less than \$100,000 for each occurrence of property damage, bodily injury, or death caused by a dangerous wild animal possessed by the person;
- (9) the person has not had a license or permit for the care, possession, exhibition, propagation, or sale of animals revoked or suspended by any local, state, or federal agency; and

(10) the person has a written plan, including proposals for training staff on methods of safe recapture, filed with the appropriate animal control authority for the quick and safe recapture or destruction for each of the person's dangerous wild animals if the animal escapes.

Sec. 822.154. REGULATION OF CERTAIN OWNERS; REGISTRATION; FEE. (a) Authorizes an owner described by Section 882.152(b)(10) to possess a dangerous wild animal if the owner:

(1) has veterinary records or acquisition papers that establish ownership of the dangerous wild animal before September 1, 2019;

(2) has not been convicted of an offense involving cruelty to an animal;

(3) has not has a license or permit relating to the care, possession, exhibition, breeding, or sale of a dangerous wild animal revoked or suspended by any local, state, or federal agency;

(4) has developed and is prepared to implement an emergency plan for responding to the escape of or an attack by the dangerous wild animal and has provided the plan to the Health and Human Services Commission (HHSC) and the animal control authority at the time the owner registers the animal under Subsection (b);

(5) has provided a list of the owner's dangerous wild animals to HHSC and the animal control authority;

(6) does not acquire by any means, including through purchase, donation, or breeding, an additional dangerous wild animal on or after September 1, 2019;

(7) does not allow direct contact between the public and the dangerous wild animal;

(8) registers the dangerous wild animal with HHSC as required by Subsection (b);

(9) notifies HHSC of any attack of a human by the animal not later than 48 hours after the attack; and

(10) immediately notifies HHSC and local law enforcement of any escape of the animal from the owner's custody.

(b) Requires an owner described by Section 822.152(b)(10) to annually register the owner's dangerous wild animal with HHSC on a form provided by HHSC and pay the registration fee established by HHSC.

(c) Authorizes HHSC to establish and charge a reasonable registration fee in an amount sufficient to cover the cost of administering this subchapter.

Sec. 822.155. LIABILITY. (a) Provides that an owner described by Section 822.155(b)(10) is liable for all costs incurred in apprehending and confining a dangerous wild animal that escapes the owner's custody.

(b) Provides that HHSC, a local law enforcement agency, or an employee of HHSC or the agency is not liable to an owner described by Subsection 822.152(b)(10) for damages arising from the escape of the owner's dangerous wild animal, including liability for property damage, injury, or death caused by the animal or for injury to or the death of the animal.

Sec. 822.156. SEIZURE OF DANGEROUS WILD ANIMAL; HEARING. (a) Requires a justice court, county court, or county court at law in the county in which the dangerous wild animal is located, on a showing of probable cause that a dangerous wild animal is owned, possessed, held in custody, or controlled in violation of this subchapter, to order an animal control authority or a peace officer located in the county to seize the dangerous wild animal, issue a warrant authorizing the animal's seizure, and schedule a hearing to be held on a date not later than the 10th day after the date the warrant is issued to determine whether a violation of this subchapter occurred and the final disposition of the dangerous wild animal.

(b) Requires the person executing a warrant described by Subsection (a)(2) to serve written notice of the hearing described by Subsection (a)(3) to the owner of the dangerous wild animal at the time the warrant is executed.

(c) Requires the animal control authority or peace officer to seize the dangerous wild animal and provide for the impoundment of the animal in secure and humane conditions until a court determines the disposition of the animal and issues appropriate orders. Provides that this subsection does not prevent an animal control authority or peace officer from impounding an animal on the property in which the animal is located at the time of the seizure.

(d) Requires a court on finding that a violation of this subchapter occurred to assess against the owner of a seized dangerous wild animal the reasonable costs of caring for the animal, including boarding and veterinary costs.

(e) Requires a court, on finding that a violation of this subchapter occurred, to determine the estimated costs likely to be incurred by an animal control authority, law enforcement agency, wildlife sanctuary, or zoo accredited by the Association of Zoos and Aquariums or the Zoological Association of America to house and care for a dangerous wild animal during the appeal process.

(f) Requires the court at the time of entering the judgment, after making the determination under Subsection (e), to set the amount of bond for an appeal equal to the sum of:

(1) the amount of the costs ordered under Subsection (d); and

(2) the amount of the estimated costs determined under Subsection (e).

(g) Prohibits a court from requiring a person to provide a bond in an amount greater than or in addition to the amount determined by the court under Subsection (f) to perfect an appeal.

Sec. 822.157. DISPOSITION OF CERTAIN DANGEROUS WILD ANIMALS. (a) Requires the court, if a court finds that a person has kept a dangerous wild animal in violation of this subchapter, to divest the person's ownership of the animal and order ownership of the animal to vest in the animal control authority.

(b) Requires the animal control authority to make a reasonable effort to place the animal in the custody of a wildlife sanctuary or an accredited zoo. Authorizes the animal control authority, if the animal control authority is unable to place the animal with a wildlife sanctuary or an accredited zoo, to humanely euthanize the animal in compliance with state and federal law.

Sec. 822.158. CIVIL PENALTY. (a) Provides that a person who violates this subchapter is liable to the county in which the violation occurs for a civil penalty of not less than \$200 and not more than \$2,000 for each animal with respect to which there is a violation and for each day that the violation continues.

(b) Authorizes a county in which the violation occurs to sue to collect a civil penalty under this section. Authorizes a civil penalty collected under this subsection to be retained by the county.

(c) Authorizes a county that sues under Subsection (b) to also recover the reasonable costs of investigation, reasonable attorney's fees, and other costs incurred by the county or an animal control authority.

Sec. 822.159. INJUNCTION. Authorizes a county in which a dangerous wild animal is located or in which a person who is harmed or threatened with harm by a violation of this subchapter to sue an owner of a dangerous wild animal to enjoin a violation of this subchapter.

Sec. 822.160. OFFENSE; PENALTY. (a) Provides that a person commits an offense if the person violates this subchapter. Provides that each animal with respect to which there is a violation and each day that a violation continues is a separate offense.

(b) Provides that an offense under this section is a Class A misdemeanor.

SECTION 2. Amends Section 42.01(e), Penal Code, to provide that it is a defense to prosecution for an offense under Subsection (a)(7) (relating to the discharge of a firearm in a public place other than a public road or a sport shooting range) or (9) (relating to the discharge of a firearm on or across a public road) that the person who discharged the firearm had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.151, rather than by Section 822.101 (Definitions), Health and Safety Code.

SECTION 3. Amends Section 42.092(d), Penal Code, to make a conforming change.

SECTION 4. Repealer: Subchapter E (Dangerous Wild Animals), Chapter 822, Health and Safety Code, effective January 1, 2020.

SECTION 5. (a) Provides that the repeal by this Act of Section 822.113, Health and Safety Code, does not apply to an offense committed under that section before the effective date of the repeal. Provides that an offense committed before the effective date of the repeal is governed by the law as it existed on the date the offense was committed, and that the former law is continued in effect for that purpose. Provides that for purposes of this subsection an offense was committed before that date of the repeal if any element of the offense occurred before that date.

(b) Makes application of Section 822.160, Health and Safety Code, as added by this Act, prospective. Provides that for purposes of this subsection an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(c) Requires the executive commissioner of HHSC to adopt rules, establish the fees, and prescribe the application form necessary to implement Subchapter F, Chapter 882, Health and Safety Code, as added by this Act, not later than November 1, 2019.

(d) Provides that, notwithstanding Subchapter F, Chapter 882, Health and Safety Code, as added by this Act, an owner of a dangerous wild animal is not required to comply with Subchapter F, Chapter 822, Health and Safety Code, as added by this Act, or rules adopted under that subchapter until January 1, 2020.

SECTION 6. Effective date, except as otherwise provided by this Act: September 1, 2019.