

- SUBJECT:** Defense for action against predatory animals
- COMMITTEE:** Agriculture and Livestock — committee substitute recommended
- VOTE:** 9 ayes — Patterson, R. Cuellar, Finnell, Hawley, King, Rabuck, Rusling, Swinford, Walker
- 0 nays
- WITNESSES:** For — Charles Carter, Independent Cattlemen’s Association; Durwood Tucker, Texas Farm Bureau; Thomas Massey
- Against — Ellis Gilleland
- BACKGROUND:** Penal Code sec. 42.09, cruelty to animals, includes as a criminal offense killing, injuring or administering poison to an animal (except most types of livestock) that belongs to another person when the act is done without legal authorization or the owner’s consent. An animal is defined as a domesticated living creature and wild living creature previously captured, not an uncaptured wild creature or a wild creature captured as a result of the conduct involved in the offense. The offense is a class A misdemeanor, with a maximum penalty of one year in jail and a \$4,000 fine.
- It is a defense to prosecution if the animal killed or injured was discovered on the defendant’s property in the act of killing or injuring livestock (goats, sheep, cattle, horses, swine or poultry) or immediately thereafter, if the animal is killed at the time it is discovered.
- DIGEST:** CSHB 1562 would amend the defense to killing, injuring or poisoning an animal to eliminate the requirement that the action against the animal be taken at the time of discovery that it is killing or injuring livestock. It also would add exotic livestock and exotic fowl to the list of types of livestock that are covered by the defense to prosecution. CSHB 1562 would take effect September 1, 1995.

SUPPORTERS  
SAY:

CSHB 1562 is necessary to deal with the problem of animals, usually dogs, that are seen killing livestock on a person's land, leave before the landowner can act against them, then return and again threaten livestock. Current law requires that action against the animal be taken only when the animal is caught in the act, which too greatly restricts landowners from protecting their livestock.

It is not always possible for livestock owners to act when a predatory animal is discovered. The livestock owner may not be armed or may not be able to get close enough to the predatory animal to take action. It is unreasonable to expect landowners to be fully armed at all times to protect their livestock against predatory animals. In addition, many persons do not want to kill or injure a dog or other animal the first time it is discovered on their property, but instead want to notify the animals' owner and give the owner a chance to control the animal. CSHB 1562 would give landowners the ability to protect their livestock by taking action if a predatory animal returns to their property.

CSHB 1562 would not change the actions that can be taken under current law nor the conditions that must be met before those actions can be taken; it only addresses the time frame in which a livestock owner would have to act. Actions could only be taken against known predators that have been discovered in the act of, or immediately after, killing or injuring livestock. No action could be taken under CSHB 1562 against an animal that simply roams onto another's property.

CSHB 1562 would not be abused by landowners. No landowner wants to kill an animal, possibly one belonging to a neighbor, unless the animal is predatory and the landowner sees no alternative. The defense applies only to animals that kill or injure livestock, not animals that have caused no harm.

Requiring notification of an animal's owner or local law enforcement before action is taken against a predatory animal would be unreasonable, as owners may be unknown or impossible to find, as in the case of wild dogs, and law enforcement officers may be distant and already overburdened. The predatory animal could cause more damage while the notification was pending. It is not practical to expect law enforcement officers to attend to

calls concerning predatory animals when they are often needed to protect human life. Also, current law does not require notification before taking action against a predatory animal.

OPPONENTS  
SAY:

Landowners should be allowed to kill or injure animals only when the animals pose an immediate threat to livestock. The current condition that the action be taken only at the time of discovery ensures that animals are killed only if they are caught in the act of killing livestock, or immediately thereafter. This allows drastic action to be taken against an animal that is a danger to livestock but rightly protects animals that are not causing an immediate problem. Just because an animal is on someone's property — even an animal has previously killed livestock — does not mean it is about to kill again or that other livestock are in danger.

If an animal is not an immediate threat to livestock, action other than killing or injuring the animal may be taken. For example, the animal's owner, local law enforcement officers or animal control officers can be contacted. In addition, the legal system should be used to settle disputes between livestock owners and animal owners.

CSHB 1562 could lead to the death of harmless animals that are mistaken for predatory animals. Once a black Labrador retriever is seen killing livestock, for instance, any other black Lab might become a target of an unhappy landowner.

OTHER  
OPPONENTS  
SAY:

CSHB 1562 should impose restrictions, such as requiring notifying the owner or local law enforcement before acting against an animal.

NOTES:

The original bill would have allowed livestock owners to take action against animals on or off of their property if the animal had been previously discovered killing or injuring livestock *and* the animal's owner had been notified. The committee substitute eliminated the notification requirement and added exotic livestock and exotic fowl to the list of types of livestock covered by CSHB 1562.