

SUBJECT: Allowing humane dispatch of wounded or sick game animals and birds

COMMITTEE: Culture, Recreation, and Tourism — committee substitute recommended

VOTE: 5 ayes — Hilderbran, Kuempel, Baxter, Dukes, Dunnam,
0 nays
2 absent — Gallego, Phillips

WITNESSES: For — Kirby Brown, Texas Wildlife Association
Against — None

BACKGROUND: Parks and Wildlife Code, ch. 61 contains the Texas Wildlife Conservation Act which, in general, regulates the hunting, catching, and possession of game birds, game animals, and other wildlife resources.

Under the act, the Texas Parks and Wildlife Department (TPWD) has authority to issue regulations and proclamations. Violating provisions of the chapter or commission regulations or proclamations are considered Parks and Wildlife class A, B, and C misdemeanors, Parks and Wildlife state jail felonies, or Parks and Wildlife felonies.

DIGEST: CSHB 2555 would make it a defense to prosecution for a violation of the Texas Wildlife Conservation Act, or of a regulation or proclamation issued by TPWD under the act, if a person “dispatched” — humanely killed — a game animal or bird that was, or reasonably appeared to be, dangerously ill or mortally wounded through no fault of the person.

The commission would be authorized to adopt rules to implement CSHB 2555. 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: CSHB 2555 is necessary to provide a way for persons to help sick or wounded game birds or animals without being prosecuted for violating a law or a TPWD regulation. Currently, if a person comes across a sick or

wounded game bird or animal, the person cannot dispatch the animal to relieve its suffering if the animal is out of hunting season or the person does not have a legal weapon. CSHB 2555 would solve this problem by establishing a defense to prosecution for humanely dispatching certain sick or wounded animals. This would relieve persons who wanted to show mercy toward a dying animal from worrying about prosecution.

The restrictions in the bill would ensure that the defense applied only in narrow situations by requiring that the animal or bird be mortally wounded by someone other than the person dispatching it or that it exhibited unusual behavior that might have led it to harm itself, another animal, or a person. By requiring that the animal or bird be wounded by someone else, this defense would be off limits to someone who wounded and subsequently killed a bird or animal while hunting out of season or without a license. The bill also would help protect animals from any additional suffering by requiring a humane method of killing.

As with all defenses to prosecution and criminal laws, law enforcement officers and prosecutors would use their discretion about when the provisions of CSHB 2555 applied. Terms such as "humanely" and "substantial" would be interpreted by prosecutors and, if necessary, courts to ensure that the defense was not abused by lawbreakers, but used to protect suffering animals and persons who help them.

OPPONENTS
SAY:

CSHB 2555 is so broad that it could be used by persons violating Texas' hunting and fishing laws to protect themselves from prosecution. The bill would grant a defense to prosecution in cases in which the animal killed was behaving atypically, something that is open to wide interpretation and could be argued in almost every case in which someone was caught killing an animal out of season, without a license, or beyond the legal limit. It also would require that a reasonable person believe d that the game animal or bird posed a substantial risk to itself, another animal, or a person. The term "substantial" is difficult to pinpoint, and whether an animal truly posed a risk to another animal or human is something that could be argued in almost all cases in which hunters were questioned about their actions.

NOTES:

The committee substitute added the definitions of "game animal" and "game bird" and made other nonsubstantive changes to the original.