

BILL ANALYSIS

Senate Research Center
82R3063 SLB-D

S.B. 252
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Agriculture & Rural Affairs
2/9/2011
As Filed

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.

As proposed, S.B. 252 amends current law relating to the review, notice, and hearing requirements associated with certain deer permits.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

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. REVOCATION, SUSPENSION, OR REFUSAL OF 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
- (5) any other permit related to the control, breeding, or management of deer in this state.

Sec. 12.602 **REVOCATION, SUSPENSION, OR REFUSAL OF PERMIT.** (a) Defines, in this subchapter, "finally convicted" and "permittee."

(b) Authorizes the director to suspend or revoke a permit to which this subchapter applies, or to refuse an application to renew a permit to which this subchapter applies, after notice and hearing as provided by Section 12.502 (Notice; Hearing) and after considering:

- (1) whether the permittee or applicant has been previously finally convicted of an offense that is a violation of this code or a proclamation issued or a regulation adopted under this code relating to the permit to be suspended, revoked, or refused, the seriousness of the previous offense, and whether the offense was the result of negligence or criminal intent;
- (2) any threat to the public safety posed by the permittee or applicant;
- (3) whether the permittee or applicant made a false or misleading statement in connection with the permittee's or applicant's original or renewal application, including in the application form and in any other written instrument relating to the application submitted to the Texas Parks and Wildlife Commission (commission) or its officers or employees;
- (4) whether the permittee or applicant is indebted to the state for taxes, fees, or payment of penalties imposed by this code or by a commission rule relating to the permit to be suspended, revoked, or refused;
- (5) whether the permittee or applicant is liable to the state under Section 12.301 (Liability for Value of Fish Shellfish, Reptile, Amphibian, Bird, or Animal); and
- (6) any mitigating factors.

Sec. 12.603. APPEAL FROM REVOCATION, SUSPENSION, OR REFUSAL OF PERMIT. (a) Provides that venue for an appeal from an order of TPWD refusing to renew a permit or revoking or suspending a permit to which this subchapter applies is a district court in the county where the permitted facility, if applicable, is located, or the county where the permittee resides.

(b) Requires that the appeal 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 permittee 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 permittee and to contain:

(1) a short statement identifying the specific deer to be destroyed or removed;

(2) the date of destruction or removal, which may not be sooner than the 10th day after the date of the notice; and

(3) a detailed explanation of 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 specific deer to be destroyed or removed;

(2) the date of destruction or removal, which may not be sooner than the 10th day after the date of the notice; and

(3) a detailed explanation of the reasons for the destruction or removal.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2011.