

By: Chisum

H.B. No. 2840

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of dogs; establishing a defense to  
3 prosecution; limiting liability.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 822.001, Health and Safety Code, is  
6 amended to read as follows:

7 Sec. 822.001. DEFINITIONS. In this Subchapter:

8 (1) "Animal control authority" means a municipal or  
9 county animal control office with authority over the area in which  
10 the dog is kept or the county sheriff in an area that does not have  
11 an animal control office.

12 (2) "Owner" means a person who owns or has custody or  
13 control of the dog.

14 (3) "Secure enclosure" means a fenced area or  
15 structure that is:

16 (A) locked;

17 (B) capable of preventing the entry of the  
18 general public, including children;

19 (C) capable of preventing the escape or release  
20 of the dog placed in the enclosure;

21 (D) clearly marked on all entrances as containing  
22 a dog; and

23 (E) in conformance with the requirements, if any,  
24 for enclosures established by the local animal control authority.

1           (4) [~~2~~] "Serious bodily injury" means an injury  
2 characterized by severe bite wounds or severe ripping and tearing  
3 of muscle that would cause a reasonably prudent person to seek  
4 immediate treatment from a medical professional and that could  
5 ~~[would]~~ require hospitalization without regard to whether the  
6 person actually sought medical treatment.

7           (5) "Unprovoked attack" is an attack by a dog on a  
8 person in a place other than the secure enclosure in which the dog  
9 was being kept.

10           SECTION 2. Subsections (e) and (f), Section 822.003, Health  
11 and Safety Code, are amended to read as follows:

12           (e) The court shall, except as set out in Subsection (f),  
13 ~~[may]~~ order the dog destroyed if the court finds that the dog caused  
14 serious bodily injury to a person by attacking, biting, or mauling  
15 the person. If that finding is not made, the court shall order the  
16 dog released to:

- 17           (1) its owner;
- 18           (2) the person from whom the dog was seized; or
- 19           (3) any other person authorized to take possession of  
20 the dog.

21           (f) The court may not order the dog destroyed if the court  
22 finds that the dog caused the serious bodily injury to a person by  
23 attacking, biting, or mauling the person and:

24           (1) ~~[the dog was being used for the protection of a~~  
25 ~~person or person's property,~~] the attack, bite, or mauling occurred  
26 in the secure ~~[an]~~ enclosure in which the dog was being kept, and~~+~~

27           ~~(A) the enclosure was reasonably certain to~~

1 ~~prevent the dog from leaving the enclosure on its own and provided~~  
2 ~~notice of the presence of a dog, and~~

3 ~~(B)] the injured person [was at least eight years~~  
4 ~~of age, and]~~ was trespassing in the enclosure when the attack, bite,  
5 or mauling occurred;

6 (2) ~~[the dog was not being used for the protection of a~~  
7 ~~person or person's property, the attack, bite, or mauling occurred~~  
8 ~~in an enclosure in which the dog was being kept, and the injured~~  
9 ~~person was at least eight years of age and was trespassing in the~~  
10 ~~enclosure when the attack, bite, or mauling occurred;~~

11 ~~(3)] the attack, bite, or mauling occurred during an~~  
12 arrest or other action of a peace officer while the peace officer  
13 was using the dog for law enforcement purposes; or

14 (3) ~~(4)] the dog was defending a person from an~~  
15 assault or person's property from damage or theft by the injured  
16 person[~~;~~ or

17 ~~(5) the injured person was younger than eight years of~~  
18 ~~age, the attack, bite, or mauling occurred in the secure [an]~~  
19 ~~enclosure in which the dog was being kept, and the enclosure was~~  
20 ~~reasonably certain to keep a person younger than eight years of age~~  
21 ~~from entering].~~

22 SECTION 3. Subchapter A, Chapter 822, Health and Safety  
23 Code, is amended by adding Section 822.006 to read as follows:

24 Sec. 822.006. DEFENDING AGAINST AN UNPROVOKED ATTACK BY A  
25 DOG. (a) A person may use any and all means available to defend  
26 against an unprovoked attack by a dog on that person or another  
27 person, including but not limited to inanimate objects, chemical or

1 other sprays, and electrical shock or stun devices.

2 (b) A person defending against an unprovoked attack by a dog  
3 on that person or another person shall not be liable, in law or  
4 equity, to the owner of the dog for damages to the dog or to the  
5 owner's property. To the extent a person defending against an  
6 unprovoked attack by a dog causes damage to the property of persons  
7 other than the owner, then the owner of the dog shall be liable for  
8 all such damages.

9 (c) The owner of the dog shall be liable for all damages to  
10 any person or property resulting from an unprovoked attack by the  
11 dog.

12 (d) A person defending against an unprovoked attack by a dog  
13 on that person or another person shall not be subject to criminal  
14 prosecution for injury to the dog.

15 SECTION 4. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2005.