

1-1 By: Chisum (Senate Sponsor - Averitt) H.B. No. 2840
1-2 (In the Senate - Received from the House April 28, 2005;
1-3 April 29, 2005, read first time and referred to Committee on
1-4 Criminal Justice; May 20, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2840 By: Seliger

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of dogs; establishing a defense to
1-11 prosecution; limiting liability.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 822.001, Health and Safety Code, is
1-14 amended to read as follows:

1-15 Sec. 822.001. DEFINITIONS. In this Subchapter:

1-16 (1) "Animal control authority" means a municipal or
1-17 county animal control office with authority over the area in which
1-18 the dog is kept or the county sheriff in an area that does not have
1-19 an animal control office.

1-20 (2) "Owner" means a person who owns or has custody or
1-21 control of the dog.

1-22 (3) "Secure enclosure" means a fenced area or
1-23 structure that is:

1-24 (A) locked;

1-25 (B) capable of preventing the escape or release
1-26 of the dog placed in the enclosure;

1-27 (C) clearly marked on all entrances as containing
1-28 a dog; and

1-29 (D) in conformance with the requirements, if any,
1-30 for enclosures established by the local animal control authority.

1-31 (4) ~~(2)~~ "Serious bodily injury" means an injury
1-32 characterized by severe bite wounds or severe ripping and tearing
1-33 of muscle that would cause a reasonably prudent person to seek
1-34 immediate treatment from a medical professional and that could
1-35 ~~would~~ require hospitalization without regard to whether the
1-36 person actually sought medical treatment.

1-37 (5) "Unprovoked attack" is an attack by a dog on a
1-38 person in a place other than the secure enclosure in which the dog
1-39 was being kept that is not in response to:

1-40 (A) the dog being tormented, abused, or assaulted
1-41 by the person whom the dog attacked;

1-42 (B) pain or injury; or

1-43 (C) an assault or attempted assault on another
1-44 person by the person whom the dog attacked.

1-45 SECTION 2. Section 822.003(f), Health and Safety Code, is
1-46 amended to read as follows:

1-47 (f) The court may not order the dog destroyed if the court
1-48 finds that the dog caused the serious bodily injury to a person by
1-49 attacking, biting, or mauling the person and:

1-50 (1) ~~[the dog was being used for the protection of a~~
1-51 ~~person or person's property,] the attack, bite, or mauling occurred~~
1-52 ~~in the secure [an] enclosure in which the dog was being kept, and[+~~

1-53 ~~[(A) the enclosure was reasonably certain to~~
1-54 ~~prevent the dog from leaving the enclosure on its own and provided~~
1-55 ~~notice of the presence of a dog, and~~

1-56 ~~[(B) the injured person [was at least eight~~
1-57 ~~years of age, and] was trespassing in the enclosure when the attack,~~
1-58 ~~bite, or mauling occurred;~~

1-59 (2) ~~[the dog was not being used for the protection of a~~
1-60 ~~person or person's property, the attack, bite, or mauling occurred~~
1-61 ~~in an enclosure in which the dog was being kept, and the injured~~
1-62 ~~person was at least eight years of age and was trespassing in the~~
1-63 ~~enclosure when the attack, bite, or mauling occurred;~~

2-1 [~~3~~] the attack, bite, or mauling occurred during an
2-2 arrest or other action of a peace officer while the peace officer
2-3 was using the dog for law enforcement purposes; or

2-4 (3) [~~4~~] the dog was defending a person from an
2-5 assault or person's property from damage or theft by the injured
2-6 person[~~, or~~

2-7 [~~5~~] ~~the injured person was younger than eight years~~
2-8 ~~of age, the attack, bite, or mauling occurred in an enclosure in~~
2-9 ~~which the dog was being kept, and the enclosure was reasonably~~
2-10 ~~certain to keep a person younger than eight years of age from~~
2-11 ~~entering].~~

2-12 SECTION 3. Subchapter A, Chapter 822, Health and Safety
2-13 Code, is amended by adding Section 822.006 to read as follows:

2-14 Sec. 822.006. DEFENDING AGAINST UNPROVOKED ATTACK BY DOG.

2-15 (a) A person may use any reasonable means available to defend
2-16 against an unprovoked attack by a dog on that person or another
2-17 person, including but not limited to inanimate objects, chemical or
2-18 other sprays, and electrical shock or stun devices.

2-19 (b) A person defending against an unprovoked attack by a dog
2-20 on that person or another person shall not be liable, in law or
2-21 equity, to the owner of the dog for damages to the dog or to the
2-22 owner's property. To the extent a person defending against an
2-23 unprovoked attack by a dog causes damage to the property of persons
2-24 other than the owner, the owner of the dog shall be liable for all
2-25 such damages.

2-26 (c) The owner of the dog shall be liable for all damages to
2-27 any person or property resulting from an unprovoked attack by the
2-28 dog.

2-29 (d) A person defending against an unprovoked attack by a dog
2-30 on that person or another person shall not be subject to criminal
2-31 prosecution for injury to the dog.

2-32 SECTION 4. This Act takes effect immediately if it receives
2-33 a vote of two-thirds of all the members elected to each house, as
2-34 provided by Section 39, Article III, Texas Constitution. If this
2-35 Act does not receive the vote necessary for immediate effect, this
2-36 Act takes effect September 1, 2005.

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