

BILL ANALYSIS

C.S.H.B. 1026
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Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The deer breeding industry contributes millions of dollars to the Texas economy, and is especially significant to rural communities. Deer breeders and others involved in deer management invest considerable money and time in their work. The internal review process currently used by the Parks and Wildlife Department (TPWD) for denying or revoking a deer permit gives TPWD the authority to take such an action based on the applicant being charged with, rather than convicted of, a violation of the permit. This authorization puts permit holders at risk of losing their permits, as well as their livelihoods, because of mere allegations of such violations. In addition, under current TPWD procedures, certain violations can result in a deer being destroyed without the permit holder having had the opportunity to request an appeal or provide proof of an animal's disease status, lineage, or other information. As a result, several recent allegations of permit violations have resulted in deer being destroyed by TPWD officials.

While recognizing the need to curtail illegal activity and reduce the risk of spreading disease, many permit holders feel the current TPWD internal review process does not afford permit holders adequate protection and needs to be revised to provide due process for permit holders. C.S.H.B. 1026 improves the review process by providing permit holders with certain due process rights.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Parks and Wildlife Commission in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 1026 amends the Parks and Wildlife Code to authorize the Parks and Wildlife Department (TPWD) to refuse to issue or renew a permit relating to the control, breeding, or management of deer if the applicant fails to submit in a timely manner a completed application on a form supplied by TPWD and all application materials required by the department, the required permit fee, accurate reports as applicable, and any additional information the department determines is necessary to process the application. The bill makes these permit provisions applicable to a permit to trap, transport, and transplant game animals, game birds, and, for removal, urban white-tailed deer; a permit to trap, transport, and process surplus white-tailed deer; a deer breeder's permit; and a deer management permit.

C.S.H.B. 1026 makes its provisions relating to the refusal of TPWD to issue or renew a permit based on certain convictions applicable only to a determination by the department of whether to issue a permit to or renew a permit for an applicant who has a final conviction for a violation of any of the following:

- provisions of law relating to certain special licenses and permits for scientific research, zoological collection, rehabilitation, and educational display; trapping, transporting, and transplanting game animals and game birds; deer breeding; and deer management;

- other provisions of law that are punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;
- provisions of law relating to the possession of live game animals; or
- the federal Lacey Act, relating to the control of illegally taken fish and wildlife.

C.S.H.B. 1026 requires TPWD, in determining whether to issue a permit to or renew a permit for an applicant with a final conviction, to consider the number of convictions and the seriousness of each conviction; the existence, number, and seriousness of certain other offenses or violations; the length of time between the most recent final conviction and the permit application; whether the final conviction or other offense or violation was the result of negligence or intentional conduct; the applicant's efforts toward rehabilitation; the accuracy of the permit history information provided by the applicant; and other mitigating factors.

C.S.H.B. 1026 requires TPWD, not later than the 10th day after the date a decision to refuse to issue or renew a permit has been made, to provide to the applicant a written statement of the reasons for the decision. The bill requires the Parks and Wildlife Commission by rule to adopt procedures consistent with the bill's provisions for the department's review of a refusal to issue or renew a permit.

C.S.H.B. 1026 requires TPWD, in conducting a review of a decision by the department to refuse to issue or renew a permit, to consider certain specified factors.

C.S.H.B. 1026 establishes that the revocation or suspension of a permit is governed by general provisions of the code governing the revocation or suspension of licenses or permits, except as follows. The bill establishes that the venue for an appeal of a TPWD decision refusing to renew such a permit or revoking or suspending the permit is a district court in the county where the permitted facility, if applicable, is located, the county where the permittee resides, or Travis County; requires the appeal to be by trial de novo; and makes a conforming change.

C.S.H.B. 1026 requires TPWD to provide notice to the holder of a deer breeder's permit before the department destroys or removes any breeder deer from a permitted facility and to the holder of a deer management permit before the department destroys or removes any deer from the acreage covered by the permit. The bill sets out requirements for the content of the notices and the method of their delivery.

C.S.H.B. 1026 defines "applicant," "final conviction," and "permittee." The bill makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1026 omits a provision included in the original making the original's provisions applicable to any permit related to the control, breeding, or management of deer in Texas.

C.S.H.B. 1026 contains a provision not included in the original defining "applicant." The substitute differs from the original by defining "final conviction" as a final judgment of guilt, the granting of deferred adjudication or pretrial diversion, or the entering of a plea of guilty or nolo contendere, whereas the original defines "finally convicted" to include a final judgment of guilt, deferred adjudication, or a plea of guilty, and specifies that the term does not include a plea of nolo contendere.

C.S.H.B. 1026 contains a provision not included in the original setting out the general circumstances for a refusal by the Parks and Wildlife Department's (TPWD) to issue or renew a permit relating to the control, breeding, or management of deer in Texas.

C.S.H.B. 1026 differs from the original by requiring TPWD, in determining whether or not to refuse to issue a permit to or renew a permit for an applicant with a final conviction, to consider certain factors relating to the applicant's previous violations and final convictions, the applicant's efforts toward rehabilitation, and the accuracy of the permit history information provided by the applicant, whereas the original requires the director of TPWD, before the director is authorized to suspend or revoke a permit or refuse a renewal application, to consider whether the permittee or applicant has been previously finally convicted of an unspecified offense that is a violation of the Parks and Wildlife Code relating to that permit, the seriousness of the previous offense, and whether the offense was the result of negligence or criminal intent and to consider whether any threat to the public safety is posed by the permittee or applicant; 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 commission or its officers or employees; 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; and whether the permittee or applicant is liable to the state for the value of certain items. The substitute contains a provision not included in the original making the substitute's provisions relating to the department's refusal to issue or renew a permit based on certain convictions applicable only to a determination of whether to issue a permit to or renew a permit for an applicant who has a final conviction for a violation of certain state and federal laws.

C.S.H.B. 1026 contains provisions not included in the original relating to the procedure for a refusal to issue or renew a permit and a review of a decision by TPWD to refuse to issue or renew a permit and requiring the Parks and Wildlife Commission by rule to adopt procedures relating to the review.

C.S.H.B. 1026 contains a provision not included in the original specifying that, except as otherwise provided by the substitute's provisions, the revocation or suspension of a permit is governed by general law governing the revocation or suspension of licenses or permits. The substitute differs from the original by including a district court in Travis County in the list of venues for such an appeal.

C.S.H.B. 1026 differs from the original, in provisions relating to the notice TPWD is required to provide to the holder of a deer breeder's permit before the department destroys or removes any breeder deer from a permitted facility and to the holder of a deer management permit before the department destroys or removes any deer from the acreage covered by the permit, by qualifying that the date of destruction or removal provided in the notice is the approximate date of that action, whereas the original does not include that qualification.

C.S.H.B. 1026 contains a saving provision not included in the original. The substitute differs from the original by making conforming changes and changes reflective of certain bill drafting conventions.