

By: Phillips

H.B. No. 1026

Substitute the following for H.B. No. 1026:

By: Price

C.S.H.B. No. 1026

A BILL TO BE ENTITLED

1

AN ACT

2 relating to procedures relating to the issuance and renewal of, and  
3 certain notice requirements associated with, certain deer permits.

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

5 SECTION 1. Section 12.501(b), Parks and Wildlife Code, is  
6 amended to read as follows:

7 (b) Except as provided by Subchapter G, the ~~[The]~~ director  
8 may suspend or revoke an original or renewal permit or license  
9 issued under this code if it is found, after notice and hearing,  
10 that:

11 (1) the permittee or licensee has been finally  
12 convicted of a violation of this code or proclamation or regulation  
13 adopted under this code relating to the permit or license to be  
14 suspended or revoked;

15 (2) the permittee or licensee violated a provision of  
16 this code or proclamation or regulation adopted under this code  
17 relating to the permit or license to be suspended or revoked;

18 (3) the permittee or licensee made a false or  
19 misleading statement in connection with the permittee's or  
20 licensee's ~~[his]~~ original or renewal application, either in the  
21 formal application itself or in any other written instrument  
22 relating to the application submitted to the commission or its  
23 officers or employees;

24 (4) the permittee or licensee is indebted to the state

1 for taxes, fees, or payment of penalties imposed by this code or by  
2 a commission rule relating to a permit or license to be suspended or  
3 revoked; or

4 (5) the permittee or licensee is liable to the state  
5 under Section 12.301.

6 SECTION 2. Section 12.506, Parks and Wildlife Code, is  
7 amended by adding Subsection (c) to read as follows:

8 (c) This section does not apply to a permit to which  
9 Subchapter G applies.

10 SECTION 3. Section 12.508(b), Parks and Wildlife Code, is  
11 amended to read as follows:

12 (b) Except as provided by Subchapter G, the ~~The~~ department  
13 may refuse to issue or transfer an original or renewal license,  
14 permit, or tag if the applicant or transferee:

15 (1) has been finally convicted of a violation under  
16 this code or a rule adopted or a proclamation issued under this  
17 code;

18 (2) is liable to the state under Section 12.301; and

19 (3) has failed to fully pay the amount due under  
20 Section 12.301 after the department has issued notice of liability  
21 to the applicant or transferee.

22 SECTION 4. Chapter 12, Parks and Wildlife Code, is amended  
23 by adding Subchapter G to read as follows:

24 SUBCHAPTER G. REFUSAL TO ISSUE OR RENEW AND APPEAL OF CERTAIN  
25 DECISIONS REGARDING CERTAIN PERMITS RELATING TO THE CONTROL,  
26 BREEDING, OR MANAGEMENT OF DEER

27 Sec. 12.601. APPLICABILITY OF SUBCHAPTER. This subchapter

1 applies only to the following permits:

2 (1) a trap, transport, and transplant permit under  
3 Section 43.061 or 43.0611;

4 (2) a trap, transport, and process permit under  
5 Section 43.0612;

6 (3) a deer breeder's permit under Subchapter L,  
7 Chapter 43; and

8 (4) a deer management permit under Subchapter R,  
9 Chapter 43.

10 Sec. 12.602. DEFINITIONS. In this subchapter:

11 (1) "Applicant" means a person who has applied for a  
12 new or renewal permit.

13 (2) "Final conviction" means a final judgment of  
14 guilt, the granting of deferred adjudication or pretrial diversion,  
15 or the entering of a plea of guilty or nolo contendere.

16 (3) "Permittee" means a person to whom a permit has  
17 been issued, including each member of a partnership or association,  
18 an agent acting on behalf of a partnership or association, each  
19 officer of a corporation, and the owner of a majority of a  
20 corporation's corporate stock.

21 Sec. 12.603. GENERAL CIRCUMSTANCES FOR REFUSAL TO ISSUE OR  
22 RENEW PERMIT. The department may refuse to issue or renew a permit  
23 if the applicant fails to submit in a timely manner the following:

24 (1) a completed application on a form supplied by the  
25 department and all application materials required by the  
26 department;

27 (2) the required permit fee;

1           (3) accurate reports as applicable; and

2           (4) any additional information that the department  
3 determines is necessary to process the application.

4           Sec. 12.604. REFUSAL TO ISSUE OR RENEW PERMIT BASED ON  
5 CERTAIN CONVICTIONS. (a) This section applies only to a  
6 determination of whether to issue a permit to or renew a permit for  
7 an applicant who has a final conviction for a violation of:

8           (1) Subchapter C, E, L, or R, Chapter 43;

9           (2) a provision of this code not described by  
10 Subdivision (1) that is punishable as a Class A or B Parks and  
11 Wildlife Code misdemeanor, a Parks and Wildlife Code state jail  
12 felony, or a Parks and Wildlife Code felony;

13           (3) Section 63.002; or

14           (4) the Lacey Act (16 U.S.C. Sections 3371-3378).

15           (b) In determining whether to issue a permit to or renew a  
16 permit for an applicant with a final conviction, the department  
17 shall consider:

18           (1) the number of convictions and the seriousness of  
19 each conviction;

20           (2) the existence, number, and seriousness of offenses  
21 or violations other than offenses or violations that resulted in a  
22 final conviction described by Subsection (a);

23           (3) the length of time between the most recent final  
24 conviction and the permit application;

25           (4) whether the final conviction or other offense or  
26 violation was the result of negligence or intentional conduct;

27           (5) the applicant's efforts toward rehabilitation;

1           (6) the accuracy of the permit history information  
2 provided by the applicant; and

3           (7) other mitigating factors.

4           Sec. 12.605. PROCEDURE FOR REFUSAL TO ISSUE OR RENEW  
5 PERMIT. (a) Not later than the 10th day after the date a decision  
6 to refuse to issue or renew a permit has been made, the department  
7 shall provide to the applicant a written statement of the reasons  
8 for the decision.

9           (b) The commission by rule shall adopt procedures  
10 consistent with this subchapter for the department's review of a  
11 refusal to issue or renew a permit.

12           Sec. 12.606. REVIEW OF REFUSAL TO ISSUE OR RENEW PERMIT. In  
13 conducting a review of a decision by the department to refuse to  
14 issue or renew a permit, the department shall consider:

15           (1) whether the conduct on which the refusal is based  
16 was negligent or intentional;

17           (2) for a refusal based on conduct that is a violation  
18 of a provision listed in Section 12.604(a), whether the applicant  
19 has a final conviction based on the conduct;

20           (3) the seriousness of an offense described by  
21 Subdivision (2) for which the applicant was finally convicted;

22           (4) whether the conduct on which the refusal was based  
23 was committed or omitted by the applicant, an agent of the  
24 applicant, or both;

25           (5) for a renewal, whether the applicant agreed to any  
26 special conditions recommended by the department in lieu of a  
27 decision to refuse to issue or renew the expiring permit;

1           (6) whether there is a substantial likelihood that the  
2 applicant would repeat the conduct on which the refusal is based;

3           (7) whether the conduct on which the refusal is based  
4 involved a threat to public safety; and

5           (8) other mitigating factors.

6           Sec. 12.607. APPEAL OF DEPARTMENT DECISION TO REVOKE,  
7 SUSPEND, OR REFUSE PERMIT. (a) Except as provided by this section,  
8 the revocation or suspension of a permit is governed by Subchapter  
9 F.

10           (b) Venue for an appeal from a decision of the department  
11 refusing to issue or renew a permit or revoking or suspending a  
12 permit is a district court in:

13           (1) the county where the permitted facility, if  
14 applicable, is located;

15           (2) the county where the permittee resides; or

16           (3) Travis County.

17           (c) The appeal shall be by trial de novo.

18           SECTION 5. Subchapter L, Chapter 43, Parks and Wildlife  
19 Code, is amended by adding Section 43.370 to read as follows:

20           Sec. 43.370. NOTICE OF DEPARTMENT DESTRUCTION OR REMOVAL OF  
21 DEER. (a) The department must provide notice to a deer breeder  
22 before the department destroys or removes any breeder deer from a  
23 facility permitted under this subchapter.

24           (b) A notice provided under this section must be sent by  
25 certified mail to the last known address of the deer breeder and  
26 must contain:

27           (1) a short statement identifying the deer to be

1 destroyed or removed;

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

5 (3) the reasons for the destruction or removal.

6 SECTION 6. Subchapter R, Chapter 43, Parks and Wildlife  
7 Code, is amended by adding Section 43.6055 to read as follows:

8 Sec. 43.6055. NOTICE OF DEPARTMENT DESTRUCTION OR REMOVAL  
9 OF DEER. (a) The department must provide notice to a permit holder  
10 before the department destroys or removes any deer from the acreage  
11 covered by the permit.

12 (b) A notice provided under this section must be sent by  
13 certified mail to the last known address of the permit holder and  
14 must contain:

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

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

20 (3) the reasons for the destruction or removal.

21 SECTION 7. (a) Except as provided by Subsection (b) of  
22 this section, the changes in law made by this Act apply only to a  
23 permit to which Subchapter G, Chapter 12, Parks and Wildlife Code,  
24 as added by this Act, applies that is issued or renewed on or after  
25 the effective date of this Act. A permit issued or renewed before  
26 the effective date of this Act is governed by the law as it existed  
27 immediately before the effective date of this Act, and that law is

1 continued in effect for that purpose.

2 (b) Section 12.607, Parks and Wildlife Code, as added by  
3 this Act, applies only to an appeal from a decision of the Parks and  
4 Wildlife Department refusing to issue or renew a permit or revoking  
5 or suspending a permit that is filed on or after the effective date  
6 of this Act. An appeal filed before the effective date of this Act  
7 is governed by the law in effect on the date the appeal was filed,  
8 and that law is continued in effect for that purpose.

9 SECTION 8. This Act takes effect September 1, 2011.