

By: Phillips

H.B. No. 1614

Substitute the following for H.B. No. 1614:

By: Kuempel

C.S.H.B. No. 1614

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the management, breeding, and destruction of deer and
3 to procedures regarding 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) The director may suspend or revoke an original or
8 renewal permit or license issued under this code if it is found,
9 after notice and hearing, that:

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

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

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

23 (4) the permittee or licensee is indebted to the state
24 for taxes, fees, or payment of penalties imposed by this code or by

1 a commission rule relating to a permit or license to be suspended or
2 revoked; or

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

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

7 (c) This section does not apply to the appeal of a decision
8 by the department refusing to issue or renew a permit to which
9 Subchapter G applies.

10 SECTION 3. Chapter 12, Parks and Wildlife Code, is amended
11 by adding Subchapter G to read as follows:

12 SUBCHAPTER G. REFUSAL TO ISSUE OR RENEW CERTAIN PERMITS RELATING TO
13 THE CONTROL, BREEDING, OR MANAGEMENT OF DEER; APPEAL OF CERTAIN
14 DECISIONS

15 Sec. 12.601. APPLICABILITY OF SUBCHAPTER. This subchapter
16 applies only to the following permits:

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

19 (2) a trap, transport, and process permit under
20 Section 43.0612;

21 (3) a deer breeder's permit under Subchapter L,
22 Chapter 43;

23 (4) a white-tailed deer management permit under
24 Subchapter R, Chapter 43; and

25 (5) a mule deer management permit under Subchapter
26 R-1, Chapter 43.

27 Sec. 12.602. DEFINITIONS. In this subchapter:

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

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

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

9 (1) a completed application on a form supplied by the
10 department and all application materials required by the
11 department;

12 (2) the required permit fee;

13 (3) accurate reports as applicable; and

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

16 Sec. 12.604. CONSIDERATIONS FOR ISSUANCE OR RENEWAL OF
17 PERMIT; APPLICANT WITH PRIOR PENALTIES OR CONVICTIONS. (a) This
18 section applies only to a determination of whether to issue a permit
19 to or renew a permit for an applicant who has a final conviction or
20 has been assessed an administrative penalty for a violation of:

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

22 (2) a provision of this code not described by
23 Subdivision (1) that is punishable as a Class A or B Parks and
24 Wildlife Code misdemeanor, a Parks and Wildlife Code state jail
25 felony, or a Parks and Wildlife Code felony;

26 (3) Section 63.002; or

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

1 (b) In determining whether to issue a permit to or renew a
2 permit for an applicant who has a final conviction or has been
3 assessed an administrative penalty, the department shall consider:

4 (1) the number of final convictions or administrative
5 penalties;

6 (2) the seriousness of the conduct on which the final
7 conviction or administrative penalty is based;

8 (3) the existence, number, and seriousness of offenses
9 or violations other than offenses or violations that resulted in a
10 final conviction or administrative penalty described by Subsection
11 (a);

12 (4) the length of time between the most recent final
13 conviction or administrative penalty and the permit application;

14 (5) whether the final conviction, administrative
15 penalty, or other offense or violation was the result of negligence
16 or intentional conduct;

17 (6) whether the final conviction or administrative
18 penalty resulted from conduct committed or omitted by the
19 applicant, an agent of the applicant, or both;

20 (7) the accuracy of the permit history information
21 provided by the applicant;

22 (8) for a renewal, whether the applicant agreed to any
23 special provisions recommended by the department as conditions to
24 the expiring permit; and

25 (9) other mitigating factors.

26 Sec. 12.605. PROCEDURE FOR REFUSAL TO ISSUE OR RENEW
27 PERMIT. (a) Not later than the 10th day after the date a decision

1 to refuse to issue or renew a permit has been made, the department
2 shall provide to the applicant a written statement of the reasons
3 for the decision.

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

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

10 (1) any applicable factors listed under Section
11 12.604;

12 (2) the applicant's efforts toward rehabilitation;

13 (3) whether there is a substantial likelihood that the
14 applicant would repeat the conduct on which the refusal is based;

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

17 (5) other mitigating factors.

18 Sec. 12.607. APPEAL OF DEPARTMENT DECISION REFUSING TO
19 ISSUE OR RENEW PERMIT. (a) Venue to appeal a decision of the
20 department refusing to issue or renew a permit is a district court
21 in Travis County.

22 (b) The appeal shall be by trial de novo.

23 SECTION 4. Subchapter L, Chapter 43, Parks and Wildlife
24 Code, is amended by adding Section 43.3591 to read as follows:

25 Sec. 43.3591. GENETIC TESTING. (a) In this section:

26 (1) "DNA" means deoxyribonucleic acid.

27 (2) "Genetic test" means a laboratory analysis of a

1 deer's genes, gene products, or chromosomes that:

2 (A) analyzes the deer's DNA, RNA, proteins, or
3 chromosomes; and

4 (B) is performed to determine genetically the
5 deer's ancestral lineage or descendants.

6 (3) "RNA" means ribonucleic acid.

7 (b) After an inspection, the department shall notify a deer
8 breeder in writing when the department has reason to believe the
9 deer breeder possesses deer that may pose a disease risk to other
10 deer. The notice must include an explanation of the rationale used
11 to establish the disease risk.

12 (c) If genetic testing is timely conducted, the department
13 must postpone any actions that may be affected by the test results
14 until the test results are available.

15 (d) The results of genetic testing may not be used as
16 evidence to establish a defense against a fine imposed on a deer
17 breeder found guilty of failure to keep records of all deer in a
18 deer breeder facility as required by this subchapter.

19 (e) The commission shall adopt rules as needed to implement
20 this section.

21 SECTION 5. Chapter 43, Parks and Wildlife Code, is amended
22 by adding Subchapter X to read as follows:

23 SUBCHAPTER X. DEER DISPOSITION PROTOCOL

24 Sec. 43.951. APPLICABILITY. This subchapter applies only
25 to the disposition of the following deer:

26 (1) deer held at a facility covered by a permit issued
27 under Subchapter L;

1 (2) deer on acreage covered by a permit issued under
2 Subchapter R; and

3 (3) deer on acreage covered by a permit issued under
4 Subchapter R-1.

5 Sec. 43.952. DEFINITIONS. In this subchapter:

6 (1) "Permit" means a permit issued under Subchapter L,
7 R, or R-1.

8 (2) "Permit holder" means a person to whom a permit is
9 issued under Subchapter L, R, or R-1.

10 Sec. 43.953. DESTRUCTION OF DEER. (a) Before any deer may
11 be destroyed under this subchapter:

12 (1) an agent of the Texas Animal Health Commission may
13 conduct an epidemiological assessment:

14 (A) if the assessment can be conducted in a
15 timely manner; and

16 (B) contingent on the availability of funding;
17 and

18 (2) the department must consider the results of an
19 assessment, if conducted, under Subdivision (1).

20 (b) To control or prevent the spread of disease, deer to
21 which this subchapter applies may be destroyed only if the
22 department determines that the deer pose a threat to the health of
23 other deer or other species, including humans.

24 (c) The department shall carry out an order to destroy deer
25 after notice has been provided to the permit holder under Section
26 43.954.

27 Sec. 43.954. NOTICE OF DEER DESTRUCTION. (a) The

1 department must provide notice of an order to destroy deer to a
2 permit holder before the department may destroy any of the deer
3 covered by the permit holder's permit.

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

7 (1) the date of destruction, which may not be sooner
8 than the 10th day after the date of the notice;

9 (2) an explanation of any access restrictions imposed
10 on the facility or acreage covered by the permit during the
11 destruction of the deer; and

12 (3) an explanation of the reasons for the destruction,
13 including the results of any epidemiological assessment conducted
14 under Section 43.953(a) applicable to the deer that are the subject
15 of the notice.

16 (c) The permit holder may waive the notice requirements of
17 this section.

18 Sec. 43.955. COST RECOVERY. The applicable permit holder
19 shall pay all costs associated with:

20 (1) an epidemiological assessment conducted under
21 this subchapter; and

22 (2) the destruction of deer under this subchapter to
23 the department.

24 SECTION 6. (a) Except as provided by Subsection (b) of this
25 section, Subchapter G, Chapter 12, Parks and Wildlife Code, as
26 added by this Act, applies only to an application for the issuance
27 or renewal of a permit submitted to the Parks and Wildlife

1 Department on or after the effective date of this Act. An
2 application submitted before the effective date of this Act is
3 governed by the law as it existed immediately before the effective
4 date of this Act, and that law is continued in effect for that
5 purpose.

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

13 SECTION 7. Section 43.3591(d), Parks and Wildlife Code, as
14 added by this Act, applies only to an offense committed on or after
15 the effective date of this Act. An offense committed before the
16 effective date of this Act is governed by the law in effect on the
17 date the offense was committed, and the former law is continued in
18 effect for that purpose. For purposes of this section, an offense
19 was committed before the effective date of this Act if any element
20 of the offense occurred before that date.

21 SECTION 8. Not later than September 1, 2014, the Parks and
22 Wildlife Commission shall adopt rules as needed to implement
23 Subchapter G, Chapter 12, Parks and Wildlife Code, as added by this
24 Act.

25 SECTION 9. This Act takes effect September 1, 2013.