Texas Beekeepers Association

March 11, 2021

The Honorable Andrew Murr
Texas House of Representatives
Via Hand Delivery

Re: HB 365 - Relating to the limitation of liability for farm animal activities.

Dear Representative Murr:

Texas beekeepers very much appreciate your willingness to include ***apiculture*** in HB 365. We believe the changes you are proposing to Chapter 87 of the Texas Civil Practice and Remedies Code will also provide an important benefit for Texas beekeepers.

While the USDA includes "honey bees" as "livestock" in some instances, it is not clearly established that is the case in Texas statutes. The Texas Agriculture Code Sec. 1.003. defines "Livestock" as "cattle, horses, mules, asses, sheep, goats, llamas, alpacas, exotic livestock, including elk and elk hybrids, and hogs, unless otherwise defined." Chapter 131 of the Texas Agriculture Code, which regulates beekeeping, is under "Title 6. Production, Processing, and Sale of Animal Products, Subtitle **A. Bees and Nonlivestock Animal Industry**, Chapter 131. Bees and Honey."

Therefore, we offer the two proposed changes to HB 365 redlined on the attached bill text excerpt, which we believe will be sufficient to incorporate apiculture and related activities into the statute. If you have other thoughts or questions about these proposed changes, please let us know.

Again, thank you for your consideration.

Sincerely,

Leesa Hyder

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TBA is one of the largest state beekeeping association in the U.S. with over 1,100 members and more than 50 local beekeeping associations from all over Texas. TBA represents all scales of beekeepers from the large migratory folks with thousands of colonies, to the small-scale backyard beekeepers, and those in between. Texas ranked 6th in the nation in honey production in 2019, with over 130,000 producing colonies. Texas is a great beekeeping state!

By: Murr H.B. No. 365

A BILL TO BE ENTITLED

AN ACT

relating to the limitation of liability for farm animal activities.

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

SECTION 1. Chapter 87, Liability Arising From Farm Animals, Civil Practice and Remedies Code, is amended to read as follows:

(1) "Engages in a farm animal activity" means riding, handling, training, driving, loading, unloading, feeding, vaccinating, exercising, weaning, transporting, producing, herding, corralling, branding, dehorning, health management activities, assisting in the medical treatment of, being a passenger on, or assisting a participant or sponsor with a farm animal. The term includes management of a show involving farm animals as well as routine or customary activities on a farm to handle and manage farm animals. The term does not include being a spectator at a farm animal activity unless the spectator is in an unauthorized area and in immediate proximity to the farm animal activity.

(2) "Equine animal" means a horse, pony, mule, donkey, or hinny.

(2-a) "Farm" means: any real estate, land area,

facility, or ranch used in whole or in part for raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, agriculture, apiculture or aquacultural operation. For purposes of this Chapter, "farm" and "ranch" shall be interchangeable and the act shall apply to either or both.

(2-b) "Farm animal" means:

(A) an equine animal;

(B) a bovine animal;

(C) a sheep or goat;

(D) a pig or hog;

(E) a ratite, including an ostrich, rhea, or emu; ~~or~~

(F) a chicken or other fowl; or~~.~~

(G) honey bees kept in managed colonies.

(3) "Farm animal activity" means:

(A) a farm animal show, fair, competition, performance, rodeo, event, or parade that involves any farm animal;

(B) training or teaching activities involving a farm animal;

(C) owning, raising, boarding, pasturing a farm animal, including daily care;

(D) riding, inspecting, evaluating, handling, transporting, loading, or unloading a farm animal belonging to

195 S.W.3d 96
Supreme Court of Texas.

Curtis R. WILHELM, Petitioner,
v.
Dora Elia FLORES, Respondent.

No. 04–0208.
|
June 9, 2006.

Synopsis

Background: Deceased worker's estate and his four adult children brought negligence action against beekeeper and others, after worker died from anaphylactic shock caused by bee stings. The 370th District Court, Hidalgo County, Noe Gonzalez, J., entered judgment on jury verdict for plaintiffs. Beekeeper appealed. The Corpus Christi-Edinburg Court of Appeals, 133 S.W.3d 726, affirmed in part, reversed in part, and rendered.

Holding: On petition for review, the Supreme Court held that beekeeper did not owe worker, a commercial buyer's employee, any duty to warn him of dangers associated with bee stings or to protect worker from being stung.

Reversed.

West Headnotes (1)

[1] **Animals** Other Particular Animals

Seller of hived bees did not owe a commercial buyer's employee any duty to warn him of dangers associated with bee stings or to protect employee from being stung; beekeeper did not control buyer's employee, danger of being stung was obvious, and it would have been buyer's responsibility, not beekeeper's, to warn employee of the danger of an allergic reaction, if employee was not already aware of it.

13 Cases that cite this headnote

Attorneys and Law Firms

***97** Bruce W. Hodge, Hodge James & Garza, L.L.P., Harlingen, Guy H. Allison, Corpus Christi, Dana R. Allison, Brownsville, The Allison Law Firm, William L. Hubbard, McAllen, for Petitioner.

Francisco J. Rodriguez, Rodriguez Tovar & De Los Santos, LLP, Keith C. Livesay, Livesay Law Office, McAllen, Rogelio Garcia, Houston, for Respondent.

Opinion

PER CURIAM.

The issue in this case is whether a seller of hived bees owes a commercial buyer's employees or agents any duty to warn them of the dangers associated with bee stings or to protect them from being stung. The court of appeals held that such a duty exists. 133 S.W.3d 726, 734 (Tex.App.—Corpus Christi 2003). We disagree.

Petitioner Curtis Wilhelm kept bees as a hobby, but he decided to sell his fourteen hives to John Black, a commercial beekeeper. Black inspected the hives and bought them, then returned the next day with two men to load them onto a trailer and take them away. (Wilhelm estimated that each hive was about three feet tall, contained thousands of bees, and weighed 200 pounds.) One of the men, Alejandro Mercado, was Black's employee, and the other, Santos Flores, Sr., was a friend Black and Mercado recruited for the job (the record is unclear whether he was actually hired). Black knew of the danger of an allergic reaction to bee stings, and he provided protective suits, hats, veils, and gloves for himself and his men. Wilhelm accompanied them, wearing his own protective gear, but he did not assist in the work. There is no evidence that Wilhelm controlled Black's work or had the right to do so. Black directed the work of Mercado and Flores. When several hives had been loaded, Flores walked away from the area and disappeared into some brush. Mercado speculated that he had gone to smoke a cigarette or relieve himself. When he emerged a few minutes later, his veil was open and he was yelling for help, complaining of being stung. Within minutes, he suffered an allergic reaction and died.

Flores's statutory beneficiaries, respondents in this Court, sued Black and Wilhelm. The jury: found that Black and Wilhelm negligently caused Flores's death and were equally responsible; did not find that Flores was negligent; found

actual damages of $1,591,000; and assessed punitive damages of $75,000 against Black and Wilhelm each. The trial court rendered judgment on the verdict, holding Black and Wilhelm jointly and severally liable for the actual damages.

***98** Only Wilhelm appealed. The court of appeals summarized respondents' claims as follows:

> (1) failure to have a reasonable safety program; (2) failure to ensure Flores was tested for bee sting allergy; (3) failure to provide proper protective equipment and instructions on how to use such equipment; (4) failure to warn Flores of the dangerousness of honeybees and Africanized bees; and (5) failure to provide Flores with proper and timely medical attention.

133 S.W.3d at 733. The court of appeals concluded:

> After considering the evidence herein and weighing the risk, foreseeability, and likelihood of injury from a bee sting against the social utility of the actor's conduct, the magnitude of the burden of guarding against the injury, and the consequences of placing the burden on [Wilhelm], we hold the evidence is both legally and factually sufficient to support the jury's finding that [Wilhelm] had a duty to warn Flores of the dangers associated with bee stings, including the danger of an adverse allergic reaction, and that appellant breached that duty.

Id. at 734.

Had Wilhelm hired Black as an independent contractor to move the beehives, Wilhelm would have owed Flores no duty of care because Wilhelm did not control Flores, Black did. *E.g., Dow Chemical Co. v. Bright,* 89 S.W.3d 602, 608 (Tex.2002). Nor would Wilhelm, as occupier of the premises where the beehives were kept, have owed an independent contractor's employees a duty to warn them about being stung, since that danger was obvious. *E.g., Shell Oil Co. v. Khan,* 138 S.W.3d 288, 295 (Tex.2004). It would have been Black's responsibility, not Wilhelm's, to warn Flores of the danger of an allergic reaction, if Flores was not already aware of it. *Id.* But Black was merely a buyer of the bees; he was not Wilhelm's independent contractor, and Wilhelm owed Black's employees no greater duty than if he had been.

We conclude that Wilhelm owed Flores no duty as alleged by respondents. Accordingly, we grant Wilhelm's petition for review, and without hearing argument, Tex. R. App. P. 59.1, reverse the judgment of the court of appeals and render judgment that respondents take nothing.

All Citations

195 S.W.3d 96, 49 Tex. Sup. Ct. J. 709

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