

SUBJECT: Third-degree felony for theft of livestock under \$100,000

COMMITTEE: Agriculture — favorable without amendment

VOTE: 8 ayes — Patterson, R. Cuellar, Finnell, Hawley, Rabuck, Rusling, Swinford, Walker,
0 nays
1 absent — King

WITNESSES: For — Charles Carter, Independent Cattlemen's Association of Texas; Durwood Tucker, Texas Farm Bureau
Against — None

BACKGROUND: The Penal Code penalties for theft vary according to the value of the property stolen. Theft of most types of property valued at less than \$1,500 is a misdemeanor offense, and theft of property valued at \$1,500 or more but less than \$20,000 is a state jail felony. The code contains a special provision for theft of livestock, or any part of livestock, worth less than \$20,000, which is a state jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000. Theft of livestock worth more than \$20,000 is punished according to the standard penalties applied to most other types of property. Theft of livestock (and most other types of property) worth \$20,000 or more but less than \$100,000 is a third-degree felony, punishable by two to 10 years in prison and a maximum \$10,000 fine.

DIGEST: HB 1957 would make theft of one or more head of livestock or exotic livestock or exotic fowl or any part of any livestock worth under \$100,000 a third-degree felony. HB 1957 would take effect September 1, 1995.

SUPPORTERS SAY: HB 1957 would restore theft of livestock valued at less than \$20,000 to a third-degree felony, the long-time status it carried before the 1993 Penal Code revision. Theft of any amount of livestock under \$100,000 should be a third-degree felony because livestock are a special, vulnerable class of property. Agriculture is one of Texas' leading industries and the state

should do all it can to help livestock owners protect their property. About 300 to 500 head of livestock are stolen in Texas and Oklahoma each month, according to one estimate.

Because most livestock are kept in open, unmonitored pastures, owners are unable to protect their property with doors, locks and alarm systems. This makes livestock especially vulnerable to thieves, who can simply cut a fence and rustle the livestock. It can be much more difficult to recover livestock than other types of property. Unlike a stolen television set that is found intact and returned to its owner, livestock can be slaughtered and the meat sold, making recovery impossible. Identification and recovery of stolen livestock are also hampered because livestock can be easily moved among counties where the brands may not be registered.

Higher penalties are needed to deter this crime. Under current law, theft of \$15,000 worth of cattle, which could devastate a livestock owner, can be punished only as a state jail felony that requires mandatory probation and may involve no incarceration time. If the law were changed, courts would retain discretion to sentence offenders within the range of third-degree felony punishments, but the offense would be serious enough to have a deterrent effect.

HB 1957 would add exotic livestock and exotic fowl to the theft provisions concerning other livestock to give the owners of exotic animals the same protection as other livestock owners.

**OPPONENTS
SAY:**

HB 1957 would mean that theft of livestock worth \$1 and theft of livestock worth \$99,000 could be punished the same, with the possibility in either case of someone landing in prison for 10 years. Livestock already receive special treatment in the Penal Code; theft of most other types of property valued under \$1,500 is a misdemeanor, while theft of livestock valued under \$1,500 is a state jail felony. The Penal Code was revised two years ago to divert those who steal property of lower value from the state prison system, which was meant to be reserved for those committing violent and more serious crimes. HB 1957 would create a special exception undermining that policy.

The careful balance of offenses and penalties created in the 1993 Penal Code should not be changed. When the Penal Code was revised there was much debate about adding the special provision exempting theft of livestock from the value ladder. Current law represents a compromise; amounts over \$20,000 are subject to increasing penalties as the value of the stolen livestock increases; amounts under \$20,000 are state jail felonies.

Changing the Penal Code for one group would lead to attempts by other interests to insert special provisions into the code. For example, oil companies could argue that their property in oil fields is especially vulnerable to theft and should be protected by special penalties.

OTHER
OPPONENTS
SAY:

Rather than expand a special exception in the new Penal Code for livestock theft, the existing special exception allowing prosecution as a state jail felony for theft of livestock valued under \$1,500 should be repealed. Livestock theft of any value should be treated like any other theft and be subject to the Penal Code value ladder.

NOTES:

A similar bill, SB 689 by Sims, has been referred to the Senate Criminal Justice Committee.