

- SUBJECT:** Penalty for cutting a fence used for livestock
- COMMITTEE:** Agriculture and Livestock — committee substitute recommended
- VOTE:** 9 ayes — Swinford, McReynolds, B. Brown, Christian, Crownover, Green, Hardcastle, Hupp, C. Jones
- 0 nays
- WITNESSES:** For — Alan Day, Bosque County Farm Bureau; Eddie Foreman and Ed Small, Texas & Southwestern Cattle Raisers Association; Gary Phillips, Baylis Farrell; Bill Powers, Texas Farm Bureau
- Against — None
- BACKGROUND:** A state jail felony is punishable by from 180 days to two years in a state jail and an optional fine up to \$10,000.
- Under the Penal Code, sec. 28.03, criminal mischief is punishable as a state jail felony if \$1,500 to \$20,000 worth of damage or destruction to property occurs or if less than \$1,500 worth of damage to a habitation is caused by a firearm or explosive weapon. Damage or destruction of other property worth less than \$1,500 is punishable as a misdemeanor, with the class and penalty depending on a sliding scale of value.
- DIGEST:** CSHB 690 would increase from a misdemeanor to a state jail felony the criminal mischief offense of damaging a fence used in the production of livestock or game animals if the monetary loss was less than \$1,500. The bill would define livestock as cattle, horses, sheep, swine, goats, exotic livestock, or exotic poultry. Game animals would include those defined in the Parks and Wildlife Code.
- CSHB 690 would take effect September 1, 1999, and apply to offenses committed on or after that date.

SUPPORTERS
SAY:

CSHB 690 would make fence cutting punishable as a state jail felony. People usually cut fences for the purpose of poaching or stealing animals. No matter how much the animal is worth or how the animal is killed, this property loss should result in a state jail felony. Cutting a fence, no matter what the intent, ruins the integrity of the fence. Also, a gaping hole or a weak section of fence may allow animals to roam loose onto roads or railways, which could result in serious injury or even the loss of human life.

Fence cutting is a constant problem for farmers and ranchers. Fence cutters are willing to risk the lenient penalty for a misdemeanor. CSHB 690 would make the penalty fit the crime and would act as a deterrent. It would be better to prevent a car or rail accident involving stray livestock than to prosecute for manslaughter after the fact. Although the 1993 Penal Code established broad categories and general provisions, the potential seriousness of this type of crime warrants an exception.

Fence cutting was a third-degree felony before the Penal Code was rewritten in 1993. Because the rewrite did not mention fence cutting specifically, this crime generally became a misdemeanor. CSHB 690 would restore the appropriate penalty for fence cutting.

OPPONENTS
SAY:

CSHB 690 is unnecessary because ample and appropriate laws already exist to combat the results of fence cutting, such as livestock theft and trespassing. For example, the Penal Code punishes as a state jail felony livestock theft of fewer than 10 head valued under \$20,000, and the code provides an even harsher punishment for other livestock theft. Trespassing and trespassing with a deadly weapon already are misdemeanors that carry potential jail time.

CSHB 690 would punish all fence-cutting crimes the same, but some may occur without the intent to poach or take animals. In these cases, a felony punishment of state jail time would be too harsh. Animals rarely would wander onto a road or railway and cause serious injury or death, but if this occurred, the fence cutter would be liable for much more than simply cutting the fence.

The Penal Code was crafted carefully to encompass broad, consistent categories and to eliminate special provisions, and the code should not be distorted with exceptions for special circumstances. The code establishes punishments for many property crimes according to a value ladder that takes

into account the value of the property damage. CSHB 690 would be an inappropriate exception to the value ladder.

NOTES:

The committee substitute modified the original bill's definition of livestock by adding exotic livestock and exotic poultry. It also added game animals as defined in sec. 63.001 of the Parks and Wildlife Code, which includes indigenous mule deer, white-tailed deer, pronghorn antelope, desert bighorn sheep, gray or cat squirrels, fox squirrels or red squirrels, and collared peccary or javelina.