

**SUBJECT:** Creating an offense for failure to promptly pay for delivered livestock

**COMMITTEE:** Criminal Jurisprudence — favorable, with amendment

**VOTE:** 5 ayes — Hinojosa, Keel, Talton, Garcia, Shields

0 nays

4 absent — Dunnam, Green, Kitchen, Martinez Fischer

**SENATE VOTE:** On final passage, April 11 – 29-0, on Local and Uncontested Calendar

**WITNESSES:** For — Don Ward, Livestock Marketing Association of Texas

Against — None

**BACKGROUND:** Under the federal Packers and Stockyards Act (7 U.S.C. §228b), a packer, market agency, or dealer purchasing livestock is required to deliver to the seller or duly authorized representative in person, by wire transfer, or by mail the full amount of the purchase price before the close of the next business day following the purchase and transfer of livestock. If the buyer delays or attempts to delay the payment, the buyer can be subject to a maximum \$10,000 fine.

Under 7 U.S.C. §191, “packer” is defined as any person engaged in the business of buying livestock for slaughter, manufacturing or preparing meats for sale or shipment, or marketing meats or livestock products as a wholesale broker, dealer, or distributor. Subsection 201 defines “market agency” as a person engaged in the business of buying or selling livestock on a commission basis or furnishing stockyard services and “dealer” as a person, not a market agency, engaged in the business of buying or selling livestock. All of these people are subject to the Packers and Stockyards Act, sec. 409.

Texas Agriculture Code, sec. 147.001 defines “livestock” as including cattle, hogs, sheep, goats, mules, horses, and jacks and jennets (male and female donkeys). “Commission merchant” means a livestock commission merchant or a livestock auction commission merchant.

Penal Code, sec. 31.03 defines theft offenses. Punishment for theft ranges from a class C misdemeanor (punishable by a maximum fine of \$500) for property valued at less than \$50 to a first-degree felony (punishable by life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) for property valued at \$200,000 or more. The minimum punishment for theft of a cow, horse, sheep, pig, hog, goat, or exotic livestock or fowl 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).

**DIGEST:**

SB 1747, as amended, would amend the Penal Code to extend the definition of theft to a person subject to the federal Packers and Stockyards Act who, when obtaining livestock from a commission merchant, represented that the person would make prompt payment and then failed to do so. Full payment would have to be made in accordance with 7 U.S.C. §228b. “Livestock” and “commission merchant” would have the meanings assigned by Agriculture Code, sec. 147.001.

The bill would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

This bill would close a loophole between state and federal law. Federal law allows commissioned buyers at livestock auctions to take possession of the animals immediately following a sale, but allows the buyer to delay payment to the seller until the close of the next business day, which can include mailing a check by that time. Under federal law, this time delay is not considered to be an extension of credit. State courts, however, view the delay as an extension of credit to the buyer, and never mailing a check or sending a bad check cannot be prosecuted as theft. In these cases, auction houses have little recourse for recovering the tens of thousands of dollars they could lose in these situations.

SB 1747 would apply only to commissioned buyers, packers, and market agencies covered by the federal Packers and Stockyards Act, people who were allowed to take possession of livestock immediately upon its sale and who could make payment later without an extension of credit. The bill would not affect farmers and ranchers in Texas not subject to this federal regulation.

This bill would not subject to prosecution buyers who made a late payment or

wrote a bad check and wanted to make immediate restitution. Auction houses are more interested in recovering their money than in having people prosecuted. Usually, they already send notice immediately to the buyer that payment has not been received or that the check did not clear.

**OPPONENTS  
SAY:**

This bill would create an offense without requiring that sufficient intent be shown that the buyer meant to steal the livestock. The current statute defining theft by check requires sellers to notify check writers that they have 10 days after being informed that the check bounced to pay the seller in full before they can be prosecuted. This bill should provide a similar notification provision to livestock buyers. It seems unreasonably harsh to charge someone with a felony offense when the person just made a late payment on livestock or accidentally wrote a bad check and was not given an opportunity to remedy the situation.

**NOTES:**

The committee amendment would require that a buyer be subject to the federal Packers and Stockyards Act, sec. 409.