

SUBJECT: Landowner right to a lien resulting from damage to a fence with a vehicle

COMMITTEE: Business and Industry — favorable, with amendments

VOTE: 8 ayes — Giddings, Elkins, Bailey, Martinez, Solomons, Taylor, Vo,
Zedler

0 nays

1 absent — Bohac

WITNESSES: For — Tamara Holdsworth, for Bodie Davidson, Andy Brown, and Robert Paysinger; Joe Peters

Against — None

On — Bobby J. Johnson, Texas Department of Transportation, UTR

DIGEST: HB 2289 would amend Property Code, ch. 70 to state that a person who owned real property in this state that was enclosed by a fence or other structure obviously designed to exclude intruders or to contain livestock could obtain a judgment from a court entitling the landowner to a lien against the motor vehicle of a person who damaged the fence with the motor vehicle. The lien would apply if the person who damaged the fence owned the motor vehicle or had the consent of the vehicle's owner to drive the vehicle at the time the person damaged the fence.

The amount of a landowner's lien would be the lesser of:

- the fair market value of the motor vehicle on the date the landowner's fence was damaged; or
- the actual cost incurred by the landowner to repair the fence and to recapture the escaped livestock, if any livestock or other animals escaped as a direct result of damage to the fence.

A landowner's lien would attach only to a motor vehicle that damaged a fence as described above. Under the bill, a landowner could perfect a lien in the manner provided by Transportation Code, ch. 501, subch. F. A lien

would not expire and would be discharged only when the landowner received payment of the lien.

The bill also would amend Local Government Code, ch. 370 to require a peace officer employed by a political subdivision who investigated or responded to an incident in which a motor vehicle damaged a fence, if the peace officer believed that the fence was intended to contain livestock, to determine immediately the owner of the land and notify the owner of the extent of the damage.

The bill would take effect September 1, 2005, and would apply only to damage to a fence or other enclosure that was caused on or after that date.

**SUPPORTERS
SAY:**

HB 2289 would allow landowners who have sustained damage to a fence because of a motorist crashing through it to obtain from a court a lien against the motor vehicle abandoned on the property. The bill would require a peace officer employed by a political subdivision, if the officer believed that the fence enclosed livestock, to determine immediately the owner of the land where the damage occurred and notify the owner of the damage.

Over the past several years, landowners with property adjacent to highways and county roads in southwest Texas have had problems with motorists crashing through their fences and abandoning vehicles in the brush or pasture. This usually occurs because the United States Border Patrol or other law enforcement officials are pursuing the motorists. Landowners rarely are reimbursed for the costs to repair the damaged fences caused by these pursuits. If livestock or game animals escape through a damaged fence, a landowner can incur additional expenses. In addition, the landowner is liable for livestock that gets on the highway. By enabling the landowner to pursue a lien through court and requiring a peace officer to notify the landowner immediately, the bill would grant the landowner a form of equitable relief and protection from future liability.

Concerns about notice provisions in the bill could be addressed with an amendment to require a landowner who wanted to be notified of fence damage to provide an agency or department employing peace officers with the landowner's name, address, and telephone number and the location and a description of the landowner's property.

An amendment also could establish that a peace officer would not be liable to a landowner or any other person for damage resulting from the peace officer's failure to notify.

OPPONENTS
SAY:

By placing the duty on a peace officer to determine immediately the owner of the land on which fence damage occurred and to notify that owner, HB 2289 could create an unreasonable expectation unless the officer had contact information for the landowner. A more practical approach would be to require landowners to give contact information to local authorities. This would be particularly useful for absentee landowners who could be difficult to notify. The bill should not create any potential liability for a peace officer who failed to notify the landowner as specified.

NOTES:

The committee amendment specified that the landowner could obtain a judgment from a court entitling the landowner to a lien on the vehicle that damaged the landowner's fence.

The author plans to offer two floor amendments. One would require landowners to provide specified contact information to agencies or departments employing peace officers. The other would shield a peace officer from liability to a landowner or any other person for damage resulting from the officer's failure to notify about a damaged fence.