

- SUBJECT:** Penalty for criminal trespass near borders of agricultural land
- COMMITTEE:** Agriculture and Livestock — committee substitute recommended
- VOTE:** 8 ayes — Patterson, Finnell, Hawley, King, Rabuck, Rusling, Swinford, Walker
- 0 nays
- 1 absent — R. Cuellar
- WITNESSES:** For — Arthur W. Nagel, Riverside and Landowners Protection Coalition, Inc.; Ed Small, Texas and Southwestern Cattle Raisers Association; Deborah B. Mitchell, Texas Wildlife Association; Charles Carter, Independent Cattlemen's Association of Texas; Tommy Engelke, Texas Agricultural Cooperative Council
- Against — None
- BACKGROUND:** Entering or remaining on the land or building of another person without consent constitutes criminal trespass if the trespasser was notified that entry was forbidden or was notified to leave but refused. Notice may be written or oral communication, fencing or other enclosure, a posted sign or the presence of a crop grown for human consumption. Criminal trespass is a Class B misdemeanor, with a maximum penalty of 180 days in jail and a \$2,000 fine. It is a Class A misdemeanor, maximum penalty of one year in jail and a \$4,000 fine, to trespass in a habitation or a shelter or while carrying deadly weapon.
- DIGEST:** CSHB 556 would reduce to a Class C misdemeanor the offense of criminal trespass on agricultural land for persons apprehended within 100 feet of the land's boundary. The offense would be a Class A misdemeanor if the person carried a weapon. CSHB 556 would take effect September 1, 1995.
- SUPPORTERS SAY:** CSHB 556 would help law enforcement officials appropriately charge trespassers who have inadvertently wandered a few feet onto agricultural land. Creating a less serious, and more easily enforced, offense than the current criminal trespass statute would cover cases when people with no

criminal intentions enter agricultural land to look at a wildflower, relieve themselves or have a picnic. These "accidental" or "recreational" trespassers can pose a serious problem for landowners whose property is next to a county road or a river. Trespassers sometimes leave trash, destroy land or crops or even camp on private land. Some penalty should apply to these trespassers, especially repeat offenders, but making the offense a Class B misdemeanor, with possible jail time, is too much. A Class C misdemeanor, with a maximum penalty of a \$500 fine, is more appropriate.

At present, minor trespass offenses are often dismissed because of the time, effort and money needed to prosecute Class B misdemeanors, which must go through the county courts. In county court the defendants, often tourists or travellers, must return for trial to a court of record and possibly be assigned a court-appointed attorney. Reducing the penalty to a Class C misdemeanor would allow these cases to be tried in municipal or justice of the peace courts, which are less formal, have less crowded dockets and generally do not require that defendants have an attorney.

The new offense would apply only to those who knew entry was prohibited because they had received clear notice, such as a sign or a fence, that they were trespassing. The bill also would create a generous 100-foot buffer on which people could accidentally trespass before they become subject to tougher Class B misdemeanor penalties.

CSHB 556 would not affect those who have a legitimate easement or right of way to land. But no exemptions should be created for special circumstances because all persons, even neighbors, should have permission before entering another's private property. The handling of stray livestock is already covered under the estray laws.

**OPPONENTS
SAY:**

The careful balance of offenses and penalties created in the 1993 Penal Code should not be distorted with exceptions for every conceivable fact situation. The new Penal Code was carefully crafted to encompass establish broad language and eliminate special provisions.

Although CSHB 556 would reduce the penalty for those who trespass within 100 feet of the border of agricultural land, it could also increase the

possibility that tourists or travellers would be prosecuted for an innocent transgression. Serious offenses should be prosecuted as Class B misdemeanors, and minor offenses not be worth the effort to prosecute should more appropriately be dismissed.

The 100-foot zone set up by CSHB 556 would be difficult to pinpoint, and this fuzziness could lead to selective enforcement of the different levels of offenses.

OTHER
OPPONENTS
SAY:

The trespass statutes should contain an exemption for neighboring landowners who want to retrieve their stray livestock before any harm is done to neighboring property.

NOTES:

The committee substitute eliminated from the original version exceptions to the offense for those with adjoining agricultural land who enter the land to retrieve livestock, prevent harm to livestock or repair property commonly owned or used.

CSHB 556's companion bill, SB 199 by Wentworth and Sims, has been referred to the Senate Criminal Justice Committee.