

## **BILL ANALYSIS**

Senate Research Center  
77R7492 ATP-D

S.B. 1747  
By: Haywood  
Natural Resources  
3/26/2001  
As Filed

### **DIGEST AND PURPOSE**

Currently, the livestock marketing industry is regulated by the federal Packers and Stockyards Act (7 U.S.C. 228b) (P&S). However, provisions within that Act conflict with state law regarding theft by check and leave livestock auctions vulnerable. While livestock during the marketing process are not perishable in the same sense as crops, they are susceptible to disease, loss of quality, or loss of weight if held at the selling point or market any longer than necessary. Therefore, P&S regulations allow the animals to move to their ultimate destination immediately following the sale but require “prompt payment,” which is defined as “before the close of the next business day following the purchase of the livestock and transfer of possession thereof.” Federal rules further allow a buyer to comply with the prompt payment requirement by mailing a check before the close of the next business day. Either way, the livestock auction does not receive the check until a few days following the sale.

Section 31.03 (Theft) of the Penal Code states that appropriation of property is unlawful if it is without the owner’s effective consent. In the case of the livestock auction, federal rules mandate a slight delay between the sale of the livestock and receipt of the check. However, “effective consent” to release the livestock was secured by representing that payment would be made in accordance with the federal prompt payment requirements.

As proposed, S.B. 1747 amends the Penal Code by adding a provisions that, in the case of livestock, an individual who represents that he will comply with federal prompt payment requirements and fails to pay for the livestock can be prosecuted for theft since effective consent of the livestock owner was gotten by deceit.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 31.03, Penal Code, by amending Subsection (c) and adding Subsection (i), as follows:

(c) Provides that, for purposes of Subsection (b), an actor engaged in the business of buying and selling used or secondhand personal property, or lending money on the security of personal property deposited with the actor (rather than him), is presumed to know upon receipt by the actor of stolen property (other than a motor vehicle subject to Chapter 501, Transportation Code) that the property has been previously stolen from another if certain requirements are met. Provides that, for purposes of Subsection (b), an actor who obtains livestock from a commission merchant by representing that the actor will make prompt payment is presumed to have induced the commission merchant's consent by deception if the actor fails to make full payment in accordance with Section 409, Packers and Stockyards Act, 1921 (7 U.S.C. Section 228b).

(i) Defines, "livestock" and "commission merchant" for purposes of Subsection (c)(9).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2001.