

SUBJECT: Penalty for criminal trespass on agricultural land

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 8 ayes — Swinford, McReynolds, B. Brown, Crownover, Green, Hardcastle, Hupp, C. Jones

0 nays

1 absent — Christian

WITNESSES: For — Charles Carter, Independent Cattlemen’s Association of Texas; Bill Powers, Texas Farm Bureau

Against — None

BACKGROUND: Sec. 30.05 of the Penal Code defines criminal trespass as entering or remaining on the land or in the building of another person without consent when the trespasser has been notified that entry is forbidden or has been notified to leave but has refused. Notice may be in the form of written or oral communication, fencing or other enclosure, a posted sign, or the presence of a crop grown for human consumption.

Trespassing is a Class B misdemeanor unless the trespasser intrudes in a habitation or carries a deadly weapon, in which case the offense is a Class A misdemeanor. A Class B misdemeanor carries a maximum penalty of 180 days in jail and a \$2,000 fine, and may not be tried in a justice-of-the-peace (JP) court. A Class C misdemeanor carries a maximum fine of \$500 and no jail time, and may be tried in a JP court.

DIGEST: HB 436 would amend the Penal Code to reduce the offense of criminal trespass to a Class C misdemeanor for persons apprehended on agricultural land within 100 feet of the land’s boundary and who were notified that entry was forbidden but failed to leave. If the person carried a deadly weapon or entered a home, the offense would remain a Class A misdemeanor.

Agricultural land would have the meaning assigned by the Civil Practice and

Remedies Code, sec. 75.001, which generally is land suitable for use in production of food or crops, for forestry and the growing of trees, or for domestic or native farm or ranch animals kept for use or profit.

HB 436 would take effect September 1, 1999, and apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 436 would help law enforcement officials appropriately charge trespassers who have wandered inadvertently onto agricultural land. The bill would create a 100-foot buffer zone into which people could trespass accidentally before they became subject to the tougher Class B misdemeanor penalties. Once a trespasser has gone more than 100 feet onto another's property, the intent to trespass is clear and warrants a stronger penalty.

The lesser charge for recreational or accidental trespassing would allow such cases to be tried in JP court, which is generally less formal and has a less crowded docket than a county court. This would benefit both the defendants, who often are tourists, and prosecutors, who would save the additional expense and effort associated with county court.

Boaters who pull onto a creek shore would not be trespassing because the shore area of a navigable creek is public domain.

**OPPONENTS
SAY:**

The state should not change criminal trespassing penalties simply to prosecute a few more accidental or recreational trespassers. The law should remain consistent for trespassing no matter how far onto the property the trespasser goes. Although HB 436 would reduce the penalty for those who trespass no more than 100 feet inside the border of agricultural land, it could increase the possibility that tourists or travelers would be prosecuted for innocent transgressions. Serious offenses should be prosecuted as Class B misdemeanors, and minor offenses more appropriately should be dismissed.

The 100-foot buffer zone set up by HB 436 would be difficult to delineate, and this difficulty could lead to selective enforcement.

NOTES:

During the 1997 legislative session, an identical bill, HB 192 by B. Turner, passed the House on the Local and Consent Calendar, but died in the Senate Criminal Justice Committee. A similar bill, HB 556 by B. Turner, passed the House during the 1995 session, but died in the Senate Criminal Justice

Committee.