

**OVERVIEW OF LIVESTOCK OPEN RANGE AND FENCING LAWS:
DISPELLING THE MYTHS OF STOCK LAWS AND FENCING**

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OVERVIEW OF LIVESTOCK OPEN RANGE AND FENCING LAWS: DISPELLING THE MYTHS OF STOCK LAWS AND FENCING

I. INTRODUCTION

Texas Attorney General Greg Abbott issued an opinion in 2003 stating, "Texas in general still uses open range law for its livestock."¹ For most, this may sound surprising because many associate the open range and free ranging livestock with a bygone time when the West was still wild and cattle drives were commonplace. Others may simply question the relevance of an Attorney General opinion on this topic. However, for those evaluating liability in a personal injury case involving an accident between a motorist and livestock, the question of whether Texas is still an open range state becomes very important.

Unfortunately, it is not uncommon for an animal, such as a horse or a cow, to wander onto a roadway, whereby an unsuspecting motorist strikes it. The crashes frequently cause severe property damage, bodily injury, and even death to the motorist. According to the Texas Department of Public Safety, there were over 7,289 collisions and twenty fatalities resulting from crashes between motorists and animals 2009. The immediate reaction to such an accident is "who is liable?" Specifically, the question focuses on whether the animal's owner bears any liability. The answer is: "Well, it depends."

II. HISTORY OF OPEN RANGE IN TEXAS

In England, it was historically held that an owner of livestock was strictly liable for any damages to persons or property done by his livestock straying onto the property of another.² This type of legal doctrine was an impediment to the livestock industry by restricting livestock movement across a region, while also causing extreme financial hardship to a livestock owner by requiring an owner to construct the strongest possible fences. For these reasons, the concept of strict liability was unsuited for rural areas of the United States, especially Texas. As livestock became a major industry essential to a state's economy, a different perspective was embraced.

Since becoming a state in 1845, Texas has always been considered an open range state. In 1893,

the Texas Supreme Court opined in *Clarendon Land, Investment & Agency Co. v. McClelland*,³ that "[i]t is the right of every owner of domestic animals in this state...to allow them to run at large."⁴ The Court further held, "the burden rests upon the landowner to exclude from his land the stock of other persons, by throwing around such land a fence sufficient to prevent entry thereon by all such stock not of a fence-breaking or vicious disposition."⁵ In what is now a one hundred and eighteen-year-old opinion, the *Clarendon* case is still the seminal open range case and it is still controlling authority in Texas. Thus, Abbott's comment was not only accurate, but it also reinforced what case law has stated for over a century - Texas is still an open range state.

III. EXCEPTIONS TO THE OPEN RANGE DOCTRINE

The breadth of the open range doctrine is not without its limitations. Rather, there are two exceptions to the open range doctrine. These exceptions, statutory in nature, constitute a livestock owner's only duty to restrain animals from roaming at large.

A. "Stock Law" Exception

The first exception to the open range doctrine concerns what are commonly referred to as "stock laws". A stock law is a specific law that prohibits the open running of an enumerated type of livestock in a county or portion of a county.

Chapter 143 of the Agriculture Code permits local elections to adopt a law (a.k.a. "stock law"), where a person may not permit any animal of the class mentioned in the proclamation to run at large in the county or area in which the election was held.⁶ A typical stock law will prohibit horses, mules, donkeys, sheep, goats, and cattle from running at large. Most elections for stock laws occurred between 1910 and 1930. Once enacted, the region covered by the stock law is effectively changed from "open range" to "closed range."

For example, in Jones County, the stock law enacted in 1909 reads (as written in long-hand cursive):

¹ Texas Attorney General Opinion No. GA-0093, 2003 WL 22027178 (2003); see also *Gibbs vs. Jackson*, 990 S.W.2d 745 (Tex. 1999)(delivered by then Supreme Court Justice and future Texas Attorney General Greg Abbott).

² Dawson, Robert, *Horse Law – Good Fences Make Good Neighbors*, published by The University of Vermont.

³ 23 S.W. 576 (Tex. 1893).

⁴ *Clarendon Land Investment & Agency Co. v. McClelland*, 23 S.W. 576 (Tex. 1893).

⁵ *Id.*

⁶ TEX. AGRIC. CODE §143.021-082 (Vernon 2010).

It shall be unlawful to permit to run at large any horses, mules, jacks, jennets and cattle, within the limits of said Jones County, Texas.

As expressly provided by the Code, some counties in Texas have enacted countywide stock laws, yet others have chosen to elect stock laws only in certain precincts or areas within the county. In Knox County, for example, there is no stock law in the northernmost area of the county. However, the southern half is a patchwork of different stock laws, the boundaries of which are difficult to delineate. One stock law is defined by the boundaries of the voting precinct, while another relies upon a metes and bounds description. Hypothetically, an owner could permit his animal to roam at large on a farm-to-market road or even on another's property in the northern region of the county, yet not in the southern region.

It should be noted however that not every stock law enacted is enforceable. Specifically, Chapter 143 has separate subsections providing for elections concerning cattle or domestic turkeys (subchapter D), hogs (subchapter C), and horses, mules, jacks, jennets, donkeys, hops, sheep or goats (subchapter B).⁷ Thus, to be proper, a ballot regarding a stock law for livestock covered in one subsection, should not be combined with a ballot for another type of animal covered by another subsection. For example, in Gonzales County, residents presented two petitions to the commissioners' court for local stock law elections.⁸ One petition concerned cattle and the other concerned "horses, mules, jacks, jennets, donkeys, hogs, sheep, or goats."⁹ At the election, the two items were joined together on a single ballot, giving voters the option of voting "For" or "Against" the single proposition.¹⁰ Following a request to the Attorney General of Texas regarding its validity, Greg Abbott stated "a local option stock law election, in which a single ballot proposition combines proposals from a petition to restrain cattle and from a petition to restrain horses and other animals, is invalid."¹¹ This opinion could affect many stock laws that have otherwise been considered valid for decades.

Unfortunately, there is no statewide index that traces the counties or areas where stock laws have been passed. Rather, the results of local stock law

elections are recorded in the minutes of the county commissioners' court for that specific county. Thus, an attorney may have to review several decades' worth of commissioners' court records in order to locate the results of a stock law election. Obviously, this can be a tedious and time-consuming venture.

However, some shortcuts do exist. Many county clerks, especially those in predominately rural counties, are often able to direct individuals to the applicable stock law or laws for their respective counties. Another quick resource is the county attorney. Based upon the frequency of the requests, Jones County Attorney Chad Cowan keeps a copy of the record showing that in 1909 voters approved a county-wide stock law in Jones County. Cowan says, "my office typically receives one to two calls a month from someone asking if Jones County is 'closed range'." He adds that the typical caller is either a rancher or a lawyer. Finally, the county sheriff's office can sometimes be informative as well.

The most comprehensive known list of stock laws enacted in Texas has been compiled by Texas attorney, and "Equine Law Blog" author, Alison Rowe. Her firm has obtained nearly every stock law in the State. For a nominal fee, her firm will provide a copy of a stock law or laws, if any, for the county in question.¹²

Lastly, the Code prohibits the following counties from conducting countywide elections on the running at large of cattle: Andrew, Coke, Culberson, Hardin, Hemphill, Hudspeth, Jasper, Jefferson, Kenedy, Kinney, LaSalle, Loving, Motley, Newton, Presidio, Roberts, Schleicher, Terry, Tyler, Upton, Wharton, or Yoakum.¹³

B. "Highway" Exception

The second exception to the open range doctrine is what this author refers to as the "highway" exception. The Texas Agriculture Code states "[a] person who owns or has responsibility for the control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit the animal to traverse or roam at large, unattended, on the right-of-way of a highway."¹⁴

The statute defines a "highway" as "a U.S. highway or a state highway in this state, but does not include a numbered farm-to-market road."¹⁵

⁷ *Id.*

⁸ Texas Attorney General Opinion No. GA-0093, 2003 WL 22027178 (2003).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Rowe, Alison, *Equine Law Blog*, <http://equinelaw.alisonrowe.com>

¹³ TEX. AGRIC. CODE § 143.072 (Vernon 2010).

¹⁴ TEX. AGRIC. CODE § 143.102 (Vernon 2010)(emphasis added).

¹⁵ *Id.* at § 143.101.

Therefore, all U.S. and state highways in Texas are considered closed ranged. Conversely, the 40,000-plus miles of farm-to-market roads in Texas are unaffected by this statute, save and except one in Newton County.¹⁶

However, the statute does not extend the “highway” exception to the herding or movement of livestock “from one location to another by herding, leading, or driving the livestock on, along, or across a highway.”¹⁷

IV. TORT LIABILITY

Interest regarding “open range” verse “closed range” usually arises in situations following motor vehicle collisions with livestock. It is not uncommon for the collision to have fatal results for both the motorist and the livestock. The issue becomes “who has a duty?”

A. Liability of Livestock Owner

The mere presence of livestock on a highway does not create a presumption of negligence by itself.¹⁸ Specifically, the Texas Supreme Court has held that neither the ownership of livestock nor the ownership or premises where the livestock was housed was maintained created a rebuttable presumption that the presence of livestock on a highway was due to the negligence of either owner.¹⁹

In order to establish liability in tort, a plaintiff must establish both the existence and the violation of a duty owed to the plaintiff by the defendant.²⁰ In 1999, the Texas Supreme Court revisited the Texas open range doctrine and ultimately refused to impose a new common law duty that would require the owners of animals to prevent their animals from roaming at large.²¹ The Court reaffirmed earlier holdings that stated a duty was only created by either the “stock law” exception or the “highway” exception.²²

¹⁶ *Id.* (note however that the term “highway” includes “the portion of Recreation Road Number 255 that is located in Newton County between State Highway Number 87 and the boundary line with Jasper County”).

¹⁷ *Id.* at § 143.104 (Vernon 2010).

¹⁸ *McNeal v. Thomas*, 2005 Tex. App. LEXIS 1338 (Tex. App. Corpus Christi Feb. 17, 2005).

¹⁹ *Beck v. Sheppard*, 566 S.W.2d 569, 572 (Tex. 1978).

²⁰ *Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d 523, 525 (Tex. 1990) (citing *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987)).

²¹ *Gibbs v. Jackson*, 990 S.W.2d 745 (Tex. 1999).

²² *Gibbs*, 990 S.W.2d at 746; see also *McNeal v. Thomas*, 2005 Tex. App. LEXIS 1338 (Tex. App. Corpus Christi

1. Duty Created by a Stock Law

As discussed, the first inquiry into the existence of a duty should be to determine whether the area of collision is open or closed range. This analysis starts with determining whether a stock law has been passed. A stock law creates a duty upon which a negligence action can be based.

If a stock law has passed, thus rendering the area “closed range”, the analysis focuses on the language of the stock law. Generally all stock laws make it unlawful “to permit” the enumerated livestock from running at large. Chapter 143 also references the term “permit.” Thus, the issue becomes how “permit” is defined.

In 2010, the Beaumont Court of Appeals became the first court to define the term “permit” as referenced in a stock law case.²³ Like many other stock laws, the Jefferson County stock law in question prohibited a livestock owner to “permit” livestock from running at large in the county. The Court, taking liberty to impute Legislative intent, defined the term “permit” to mean “to consent to expressly or formally,” or to mean “to give leave” in the context of a stock law.²⁴ This definition, the Court held, is the common meaning of the word “permit”. The court declined to construe “permit” to mean “made possible”.²⁵ To date, this opinion has not been cited by another court.

2. Duty Created by the Highway Exception

The second inquiry is usually the most obvious – whether the collision occurred on a U.S. or state highway. Like a stock law, the highway exception also creates a legal duty. Admittedly, few livestock owners “knowingly” permit their animals to roam at large, especially near a U.S. or state highway. Thus, imparting this *mens rea* upon a livestock owner can be difficult to achieve. There are numerous cases where a motion for summary judgment was a successful mechanism for a defendant in a civil suit.²⁶

3. No Duty per Open Range Doctrine

In situations where there is no stock law, and the collision occurs somewhere other than a U.S. or state

Feb. 17, 2005).

²³ *Rose v. Hebert Heirs*, 305 S.W.3d 874 (Tex. App. Beaumont 2010, *no pet. history*).

²⁴ *Id.* at 881.

²⁵ *Id.*

²⁶ See generally *McNeal v. Thomas*, 2005 Tex. App. LEXIS 1338 (Tex. App. Corpus Christi Feb. 17, 2005)(affirming trial court’s order granting motion for summary judgment).

highway (i.e. farm-to-market road) there is no duty to prevent livestock from roaming at large.²⁷ In *Gibbs*, the Texas Supreme Court held that there was no responsibility of an individual to keep livestock off farm-to-market roads that were not subject to a local stock law.²⁸ Therefore, in the absence of a duty to restrain livestock by either a stock law or the “highway” exception, no liability can be imposed upon a livestock owner.

4. Breach of Duty

Whether under the statutory prohibition against livestock running at large on state or federal highways or under a local option stock law, some fault must be attributed to the owner of an animal that strayed onto a highway for liability to attach.²⁹ As a practical matter, owners construct fences, build gates, and take other measures to prevent the loss or theft of livestock. However, the-grass-is-always-greener-on-the-other-side-of-the-fence mentality seems to motivate livestock, especially cattle, to escape their confinement. Considering this practical reality, plaintiff attorneys often argue that knowledge of frequent escapes, improperly secured gates, or known weak areas in fences all establish that an animal's owner fault in allowing his animal to roam at large.³⁰

Some areas to investigate for evidence that a livestock owner “permitted” the livestock to roam in violation of a stock law or “knowingly permitted” the livestock to roam in violation of the “highway” exception are as follows:

- Weak, damaged or downed fences;
- Open or poorly secured gates;
- Repairs, or lack thereof, to fences and gates;
- Age of fence and gates;
- Absence of locks on gates;
- Quality of materials used in construction of fence and gate;
- Absence of cattle guards at gates;
- Presence or absence of adequate food and water for the livestock within the confinement;
- Presence of third parties who might have entered enclosure and not secured gate (i.e. hunters);
- Amount of traffic through gates;

- Frequency of other loose livestock in area and attributed to same livestock owner;
- Frequency of inspections to fences, gates, and livestock;
- Evidence of knowledge of loose livestock by livestock owner preceding collision;
- Actions, or lack thereof, by livestock owner upon learning of loose livestock.

Probably the best summary regarding livestock owner liability was recently published by the State Bar of Texas in a 2010 article entitled, “*AGRICULTURAL LAW: WHERE'S THE BEEF?: LEGAL ISSUES IN THE TEXAS CATTLE INDUSTRY*”, by authors Davis LeBas and John Huffaker. LeBas and Huffaker, both former chairs of the State Bar Agriculture Law Committee, wrote they believe the following situations would be resolved in the following ways:

1. *Accident occurs in an "open range" county on a U.S. or state highway. The party that controls the livestock or the real estate may be held liable if the party "knowingly" permitted the cattle to get on the roadway.*
2. *Accident occurs in a county that has adopted a stock law on a U.S. or state highway. The party that controls the livestock or the real estate may be held liable if the party "knowingly" permitted the cattle to get on the highway.*
3. *Accident occurs in an "open range" county on a farm-to-market road or smaller roadway. The party that controls the livestock or the real estate has no duty to prevent livestock from entering the roadway by their natural behavior.*
4. *Accident occurs in a county that has adopted a stock law on a farm to-market or smaller roadway. The party that controls the livestock or the real estate may be held liable if the party "negligently" permitted the cattle to get on the highway.³¹*

5. Limited Liability

Lastly, there is limited liability per statute to a landowner whose livestock escape due to an act or omission of a firefighter or a peace officer. Generally, this arises when firefighters or law enforcement cut or remove gates and fences to enter property to address an emergency, such as a grass fire. Prior to 2009, that event provided little defense to a landowner whose

²⁷ *Gibbs*, 990 S.W. 3d at 750.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See generally *Britt v. Jones*, 2009 Tex. App. LEXIS 7519 (Tex. App. Houston 14th Dist. Sept. 22, 2009)(affirming a summary judgment by noting that plaintiff had presented no evidence that defendant's fences were down or that the gate was open).

³¹ Lebas, David & Huffaker, John, *Agricultural Law: Where's the Beef?: Legal Issues in the Texas Cattle Industry*, 73 B.J. 400 (May 2010).

livestock escaped the confinement. However, since September 1, 2009, acts by firefighters and peace officers does limit an owner's liability. Specifically, Texas Civil Practice and Remedies Code §75.006 states:

*"[a] landowner is not liable for damages arising from an incident or accident caused by livestock of the landowner due to an act or omission of a firefighter or a peace officer who has entered the landowner's property with or without the permission of the landowner, regardless of whether the damage occurs on the landowner's property."*³²

B. Liability of Motorist

Conversely, sometimes the livestock owner seeks to recover damages to his injured or killed livestock following an accident with a motorist. If the accident occurs on a U.S. or state highway, Chapter 143 provides immunity to the motorist except in two scenarios.

A person whose vehicle strikes, kills, injures, or damages an unattended animal running at large on a highway is not liable for damages to the animal except as a finding of:

- (1) *gross negligence* in the operation of the vehicle; or
- (2) *wilful intent* to strike, kill, injure, or damage the animal.³³

V. FENCING LAWS

A. A "Sufficient" Fence

"It is obvious that no wall can be built around the field of the law that will keep all lawyers within it and all laymen outside it. This calls to mind the remarks of Baron Bramwell in the case of Child v. Hearn, 9 L. R. Ex. 176, 181 (1874). There, a railway's fence was defective and defendant's pigs strayed and did mischief to a trolley car. The decision was that the barrier should have been sufficient to prevent the incursions, not of all pigs, but of pigs of "average vigour and obstinacy". "Nor do we lay down", said the learned Baron,

*"that there must be a fence so close and strong that no pig could push through it, or so high that no horse or bullock could leap it. One could scarcely tell the limits of such a requirement, for the strength of swine is such that they would break through almost any fence, if there were a sufficient inducement on the other side. But the company are bound to put up such a fence that a pig not of a peculiarly wandering disposition, nor under any excessive temptation, will not get through it."*³⁴

In an effort to curb the harsh strict liability rules of the English courts, the Texas Legislature enacted statutes which were more accommodating to the booming livestock economy. One such law was the "sufficient" fence law.³⁵ This law reinforced the open range philosophy and held that a livestock owner was not responsible for damage to another's property (presumably crops) unless the livestock entered land enclosed by a legal fence. Thus, the legislature imposed the burden on property owners to fence livestock "out", rather than on livestock owners to fence them "in". If the property owner had a "sufficient" fence and if another's livestock still entered and caused damage, then the property owner could pursue a claim for damages against the livestock owner.

Chapter 143 established the requirements for a sufficient fence:

(b) *In order to be sufficient, a fence must be at least four feet high and comply with the following requirements:*

- (1) *a barbed wire fence must consist of three wires on posts no more than 30 feet apart, with one or more stays between every two posts;*
- (2) *a picket fence must consist of pickets that are not more than six inches apart;*
- (3) *a board fence must consist of three boards not less than five inches wide and one inch thick; and*
- (4) *a rail fence must consist of four rails.*

It is not uncommon in a liability action against a livestock owner following a collision to reference

³² TEX. CIV. PRAC. & REM. CODE §75.006(Vernon 2010)(enacted September 1, 2009).

³³ TEX. AGRIC. CODE § 143.103 (Vernon 2010)(emphasis added).

³⁴ *Blair v. Motor Carriers Service Bureau*, 40 Pa. D. & C. 413, 1941 WL 2839 (Phila. Co. 1939).

³⁵ TEX. AGRIC. CODE § 143.028 (Vernon 2010)(containing the revisor's notes that the term "sufficient" fence is used to replace "lawful" fence).

these fence requirements. The typical argument is that if the livestock owner did not have a “sufficient” fence, then that evidence establishes negligence and therefore liability. However, the legal fence requirements are meant to fence livestock “out”, not “in”.³⁶ Therefore, any reference to these fencing standards in regards to a liability analysis following a collision between livestock and a motorist is irrelevant and not applicable as a matter of law.³⁷

B. Wildlife Fences

Another fence issue arising when a land owner constructs a fence, aka “high fence”, to restrict the movement of animals within the fence, both domesticated and wild. This act is permissible regardless of whether it restricts the movement of wild animals.

Texas Parks and Wildlife Code, Section 1.013 states:

*FENCES. This code does not prohibit or restrict the owner or occupant of land from constructing or maintaining a fence of any height on the land owned or occupied, and an owner or occupant who constructs such a fence is not liable for the restriction of the movement of wild animals by the fence. The existence of a fence does not affect the status of wild animals as property of the people of this state.*³⁸

The statute further defines “wild,” as:

*“when used in reference to an animal, means a species, including each individual of a species, that normally lives in a state of nature and is not ordinarily domesticated. This definition does not include exotic livestock defined by Section 161.001(a)(4), Agriculture Code.”*³⁹

While a “high fence” is generally not problematic for a neighboring land owner, it usually becomes a concern when the “high fence” owner uses a type of one-way gate or ramp, along with food or bait, to entice wild game into the high fence area. This act, though seemingly un-neighborly, does not violate Texas fencing provisions. According to the Texas

Parks and Wildlife Department, this act is not illegal and the agency has no power to regulate or restrict it.

The ability of a land owner to construct a fence is further reinforced in § 251.006 of the Agriculture Code, entitled “Agricultural Improvements”:

(a) *An owner, lessee, or occupant of agricultural land is not liable to the state, a governmental unit, or the owner, lessee, or occupant of other agricultural land for the construction or maintenance on the land of an agricultural improvement if the construction is not expressly prohibited by statute or a governmental requirement in effect at the time the improvement is constructed. Such an improvement does not constitute a nuisance.*⁴⁰

...

(2) *“Agricultural improvement” includes pens, barns, fences, and other improvements designed for the sheltering, restriction, or feeding of animal... (emphasis added).*⁴¹

VI. CRIMINAL LAW IMPLICATIONS

In a few situations, the relationship between open range and fencing laws have criminal law implications. The statutes regarding possible criminal law violations are found in both the Texas Agriculture Code and the Texas Penal Code.

A. Violation of Agriculture Code

Chapter 143 provides that several acts are considered a Class C misdemeanor. In Texas, a class C is the lowest form of criminal offense, the violation of which carries no risk of jail time and a fine up to \$500.00.⁴² The statute delineates the following acts as violations:

(a) *A person commits an offense if the person knowingly:*

(1) *turns out or causes to be turned out on land that does not belong to or is not under the control of the person an animal that is prohibited from running at large under this subchapter;*

³⁶ *Harlow vs. Hayes*, 991 S.W.2d 24 (Tex. App. – Amarillo 1998, *pet. denied*).

³⁷ *Id.* at 29.

³⁸ TEX. PARKS & WILD CODE §1.013 (Vernon 2010).

³⁹ *Id.*

⁴⁰ TEX. AGRI. CODE §251.006 (Vernon 2010).

⁴¹ *Id.* (emphasis added).

⁴² TEX. PENAL CODE § 12.33 (Vernon 2010).

- (2) *fails or refuses to keep up an animal that is prohibited from running at large under this subchapter;*
- (3) *allows an animal to trespass on the land of another in an area or county in which the animal is prohibited from running at large under this subchapter; or*
- (4) *as owner, agent, or person in control of the animal, permits an animal to run at large in an area or county in which the animal is prohibited from running at large under this subchapter.*⁴³

mad cow disease, the offense is increased to a first degree felony.⁴⁷

VII. CONCLUSION

In summary, Texas is still open range. However, U.S. and state highways in Texas are closed range. Areas where a legally-enacted stock law has passed are closed range. Thus, application of the two statutory exceptions quickly moves Texas from an "open range" state, to a "generally open, but not everywhere, and probably not where the accident occurred - range" state.

Chapter 143 also makes it a violation to knowingly allow livestock to run at large in violation of the "highway" exception. It too is a Class C offense and it is a separate offense for "each day that an animal is permitted to roam at large in violation of Section 143.102 of this code."⁴⁴

B. Violation of the Penal Code

To alter or remove a fence used to confine livestock is a state jail felony. Specifically, it is criminal mischief if,

a person commits an offense if, without the consent of the owner;

- (a) *he intentionally or knowingly damages or destroys the tangible property of the owner;*
- (b) *he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person*⁴⁵

If the pecuniary loss to the owner of the property is less than \$1,500.00, but the property damaged was a fence used for the production or containment of "cattle, bison, horses, sheep, swine, goats, exotic poultry," then the offense is a state jail felony⁴⁶ If the offense results in the release or introduction of bovine spongiform encephalopathy, commonly known as

⁴³ TEX. AGRIC. CODE § 143.034 (Vernon 2010).

⁴⁴ *Id.* at 143.108 .

⁴⁵ TEX. PENAL CODE §28.03 (Vernon 2010).

⁴⁶ *Id.* at § 28.03(b)(4)(C) (Vernon 2010).

⁴⁷ *Id.* at § 28.03(i)(Vernon 2010).

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