

JUDICIARY SUBCOMMITTEE ON CRIMINAL LAW

Senator Jerry Moran, Chairman

March 17, 1992

HB 2646 - cleanup to the perjury statute.

PROPOSERS

Ron Smith, Kansas Bar Association

OPPOSERS

none appeared

SUBCOMMITTEE RECOMMENDATION: recommend favorable for passage.

HB 2841 - livestock theft; forfeiture proceedings.

PROPOSERS

Representative David Corbin (ATTACHMENT 1)

Brad Lewis, Butler County Livestock Association (ATTACHMENT 2)

Arlan Stackley, El Dorado (ATTACHMENT 3)

Chris Locke, Locke Grass & Cattle (ATTACHMENT 4)

Bill Fuller, Kansas Farm Bureau (ATTACHMENT 5)

Mike Beam, Kansas Livestock Association (ATTACHMENT 6)

Representative Don Rezac

OPPOSERS

none appeared

SUBCOMMITTEE RECOMMENDATION: amend to remove forfeiture of real properties and allow only on felony convictions; recommend favorable as amended. (ATTACHMENT 9)

HB 2526 - penalty assessments for violations of wildlife and parks laws or rules and regulations.

PROPOSERS

Darrell Monte, Kansas Department of Wildlife and Parks (ATTACHMENT 7)

OPPOSERS

none appeared

SUBCOMMITTEE RECOMMENDATION: amend to credit assessments to the park fee fund; recommend favorable for passage as amended.

HB 2861 - unlawful statehouse parking, penalties.

PROPOSERS

Emil Lutz, Kansas Legislative Administrative Services

Captain Terry Scott, Kansas Highway Patrol (ATTACHMENT 8)

OPPOSERS

none appeared

SUBCOMMITTEE RECOMMENDATION: amend to remove House amendments. re warning; recommend favorable for passage as amended.

DAVID R. CORBIN
 REPRESENTATIVE, 75TH DISTRICT
 BUTLER COUNTY



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: ENERGY AND NATURAL RESOURCES
 TRANSPORTATION
 ADMINISTRATIVE RULES AND REGULATIONS

Statement of Representative David R. Corbin before the Kansas Senate
 Subcommittee on Criminal Law on 17 March 1992, in Support of
 H.B. 2841

Thank you, Mr. Chairman, and members of the committee. I am Representative David R. Corbin. I appear here in support of House Bill 2841.

I am here to affirm to you that cattle rustling is alive and well in Kansas. In fact, there are so many livestock thefts in Kansas right now that law enforcement officials at both the state and local levels seem unable to cope with the ever increasing numbers.

In Kansas in 1991 the theft of 885 head of livestock was reported. Of this number, 194 head were returned. In Butler County alone, 163 head were stolen last year, with an estimated value of more than \$80,000.00

While the Class C felony penalty has been removed from the original bill, I believe that law enforcement would be greatly helped if the penalty would be increased from a Class D or Class E felony to a Class C felony.

One of the very important features of this bill is to require the forfeiture of the property used in the stealing of livestock.

Attached is a copy of a report of the number of stray and stolen animals in Kansas for the years from 1976 through 1991.

Attachment

Criminal Law Subcommittee
March 17, 1992
 HOME ADDRESS: BOX 73
 TOWANDA, KS 67144
 316-775-7497

Attachment 1

STRAY AND STOLEN ANIMAL REPORT

	<u>Total no. head reported missing</u>	<u>Total no. head returned to owner or recovered</u>	<u>Total no. of cases handled</u>
11/1/76 to 11/1/77	1205	278	314
11/1/77 to 11/1/78	1617	361	395
11/1/78 to 11/1/79	1809	405	330
11/1/79 to 11/1/80	2344	594	404
11/1/80 to 11/1/81	1299	366	323
11/1/81 to 11/1/82	1842	646	400
11/1/82 to 11/1/83	2057	724	417
11/1/83 to 11/1/84	1483	454	308
11/1/84 to 11/1/85	1510 + 714 pigs	675	365
11/1/85 to 11/1/86	1803 + 316 hogs	460	385
11/1/86 to 11/1/87	1129 + 294 hogs	292	328
11/1/87 to 11/1/88	1290 + 4 goats 5 sheep	135	311
11/1/88 to 11/1/89	992 + 4 sheep 2 horses	201	275
11/1/89 to 11/1/90	666 + 10 pigs	185	226
11/1/90 to 11/1/91	881 + 2 hogs 2 horses	194	276

226 ↓ *16 ↓* *49 ↓*
↑ 109
279

March 17, 1992

Good morning, Ladies and gentleman of the judiciary committee. I am Brad Lewis, President of the Butler County Livestock Association. I'm here today on behalf of our membership and victims of cattle theft to testify on House Bill 2841.

In 1991, 163 head of cattle were stolen from ranches in Butler County. A conservative dollar value of the cattle is \$80,382.56. The reason I said conservative dollar value is that I used the Butler County Sheriff's stolen animal report which has a very brief description of the stolen animal. Some of these cattle were breeding stock whose value is far greater than the price at a local sale barn. The actual number of stolen and missing cattle is much greater than stated above. Some people never call the sheriff because they feel the cattle just got out or the calves are in tall grass and brush and they will show up later. As of today, only three people have been charged for cattle theft; two minors and one adult.

In December, several victims called me about the large number of thefts and were needing the assistance of the Butler County Livestock Association. The board of directors called a meeting with the sheriff's office and the county attorney. The outcome of this meeting was a task force made up of Chuck Fuson, assistant county attorney, Paul Seely owner of El Dorado Livestock Sale Barn, Representative David Corbin, and the Board of Directors.

The task force met and discussed the current penalties for cattle theft being a Class E Felony. The sentence for this is one to three years with a presumption of parole for first time offenders. The

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Attachment 2*

presumption of parole is where we strongly disagree with the current law. One individual in Butler County has been charged with stealing from twenty three different occasions last year. Since this is the first time he has been charged, there is a good chance he will not spend any time for stealing \$40,964.98 of inventory from one family's business (amount he received from sale barns for the stolen cattle). The task force looked at several laws currently on the books and decided to recommend modeling a livestock theft law after the Grain Embezzlement Law. This man has plead guilty and is awaiting sentencing. His victims see him driving around the county in a pickup newer than most of us can afford that was paid for by selling OUR cattle. He could, if he so desired, continue to steal more cattle because he still has possession of his pickup, trailer, and horse. All of these are the "tools of the trade" of a cattle rustler. We feel it is imperative to impound the "tools of the trade" upon their arrest and after the successful conviction, sell such equipment! These recommendations were made to Representative David Corbin and House Bill 2841 is the result of our efforts and that of Representative David Corbin.

The Butler County Livestock Association Board Of Directors have also inquired into the investigations of cattle thefts. We are greatly disappointed with the lack of available manpower our sheriff has. We are even more disappointed with the lack of willingness of the Brand Commissioners to act aggressively in the investigations. We had victims of cattle theft spend their time and money going to sale barns around the state gathering hard evidence and turned this information to the sheriff's office and the Brand Commissioner and no arrest was made. For whatever reason, one individual turned himself in to his attorney and, after consultation, took him to the sheriff. We feel the crimes he committed would still be unsolved today if he

had not turned himself in.

The Kansas Health Department is currently labored with the politically popular Puppy Mill problem. We do agree the Puppy Mill's do need to be policed, but BEEF is one of the largest businesses in the State Of Kansas. The problem of cattle theft deserves more attention than we are currently receiving. In the state of Kansas, whenever a cow is sold in a sale barn twelve cents is collected and turned in to the Health Department for the policing of our industry. The Livestock Industry needs more aggressive investigation from the Brand Commission Division.

According to the Livestock Brand Division, for the state of Kansas, 495 head of cattle were reported stolen in 1991. From this large number, only 43 animals were recovered and few have been charged. There were also 388 head reported just as missing. Of these numbers, 194 head were returned to the owner or recovered. These numbers are artificially low because some people never file a report. In this day and age of computers, computer modems, and fax machines, we are still fighting cattle rustlers like we were fifty years ago. If a rancher turns in a stolen cattle report to the sheriff the morning an animal is missing, it will probably be two weeks before the report gets to the sale barns so they can keep an eye out for the missing livestock. In that length of time, these animals have been sold and are out on grass or hanging from a hook at some meat packers.

There is another problem in are current system: the recovery of stolen animals or money to the victims. One of our victims had cattle stolen in July, August, and again in October and has not recovered any money as of this date. A cattle thief can get paid the day he sells the stolen cattle: the rightful owner is wondering if he will ever

get any money. He also would have been paying taxes on this income; you can bet the cattle rustler won't report his income.

We need House Bill 2841 desperately. Our ranchers cannot "lock the door" at night to protect his business inventory. When cattle are stolen, we have no method in our markets to raise the price on the remainder of our inventory to make up for the lost. We need your help in putting these people out of business.

If you need any additional information or help of any kind, please call me.

Brad Lewis
President,
Butler County Livestock Association
(316) 775-0003

I'm Arlan Stackley and operate a ranch with my wife and son north of El Dorado, in Butler County. The majority of our operation is within a few mile radius with one pasture located eight miles away.

In the fall of 1990 we lost one 600 pound calf from a pasture at the north end of our property and two 450 pound calves from the pasture eight miles from our headquarters.

We check each pasture two times per week. My son and one other cowboy alternate checking pastures. If one of them miscounts hopefully the other one will catch the mistake. We do not have a set time each week to check pastures and in 1991 we were fortunate not losing any cattle to theft.

I described our method of operation to illustrate the impossibility of being able to check each animal everyday, which leaves us subject to theft.

If we are short cattle we check neighboring pastures trying to locate them and a day or two may pass before we notify the sheriff of the loss. This gives the thief plenty of lead time to dispose of the cattle. If the cattle are not hauled out of the area, there are numerous sale barns and small slaughtering plants located close by making it easy to dispose of the stolen cattle.

The livestock industry is very important to Kansas and without stiffer penalties for livestock theft it appears this lucrative thievery will continue unchecked.

It is my understanding a few years ago a person convicted of livestock theft could not be paroled but now parole is at the judges discretion. House bill No. 2841 will make livestock theft a class C felony and subject contraband property to forfeiture. If feel this would be a deterrent to future livestock thefts.

Thank you for letting me appear before you and present my feelings on this matter. I appreciate it very much.

Respectfully,

Arlan Stackley
Route 3, Box 148
El Dorado, KS. 67042
316-321-9269

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Locke Grass & Cattle

Specializing in Cattle Grazing

R.R. #1, Box 274 • El Dorado, Kansas 67042 • (316) 321-4656

March 17, 1992

My wife, Alison and I have four sons ranging from 3 months to 12 years of age. My wife works in the home and I teach school in El Dorado. I started a custom grazing business about four years ago to ensure enough income to support my family.

Last fall we had 26 head of customers cattle stolen out of our pastures. This had quite an impact on our business and put quite a strain on everyone involved. I am in hopes that we can stiffen the penalty so that we can discourage others who have considered it.

This situation has been hard on us financially. The grazing business is not lucrative enough to absorb this kind of losses. Also I can't help but to think that in an indirect way, this problem isn't healthy for my business.

As we graze up to 6,000 head of cattle at a given time, it is impossible to be in every pasture all the time.

The person who took the cattle I was responsible for spent many evenings after dark out on country roads in one of his two trucks after confessing to stealing over 80 head of cattle. I feel after a confession or a conviction, this person had absolutely no business out running around the country after proving himself to be not trustworthy.

We run a very honest business and happen to deal with a product that is worth a lot of money. We can't pass a loss on to anyone in a situation like this. We can only hope that this behavior is discouraged and does not happen.

Thank you,

Chris Locke

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March 17, 1992
Attachment 4*



PUBLIC POLICY STATEMENT

SENATE SUBCOMMITTEE ON CRIMINAL LAW

RE: H.B. 2841 - Establishing penalties for livestock theft

March 17, 1992
Topeka, Kansas

Presented by:
Bill Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Moran and members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We certainly appreciate this opportunity to testify on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

Cattle rustling has been an exciting plot in many stories, books and movies about the "old west" for many decades. Unfortunately, cattle rustling is still big business in many areas. Modern-day rustlers using radio communications, 4-wheel drive pick-ups, stock trailers and portable catch pens can make good money and do cause severe financial losses to many stockmen.

H.B. 2841 is a harsh bill for a serious crime! In Section 1, the original bill established the theft of livestock as a Class C felony. They amended the bill to make the theft of livestock become punishable

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according to the thresholds in the general theft statutes: livestock worth over \$50,000 would be a class D felony; at least \$500 but less than \$50,000 would be a Class E felony; and less than \$500 would be a Class A misdemeanor. Adopted Farm Bureau policy suggests a Class D felony.

Section 2 of the proposal makes the property used, the proceeds gained and any property acquired in the commission of livestock theft to be subject to forfeiture. Property is defined as real, personal, tangible or intangible. This authority to take property will get the attention of potential rustlers and put active rustlers out of business. A rustler could lose his pick-up truck, stock trailer, portable catch pen, horse, stock dog, and even his ranch if the stolen livestock is confined on the premises. We believe this provision authorizing forfeiture of property is the most important section of the bill and will act as a meaningful deterrent.

H.B. 2841 will make a difference in reducing livestock theft. We support strong penalties for this serious crime. Thank you!



6031 S.W. 37th Street • Topeka, Kansas 66614-5128 • Telephone: (913) 273-5115
FAX: (913) 273-3399

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STATEMENT OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE
SENATE JUDICIARY SUBCOMMITTEE ON
CRIMINAL LAW
SENATOR JERRY MORAN, CHAIRMAN
IN SUPPORT OF
HB 2841
PRESENTED BY
MIKE BEAM, EXECUTIVE SECRETARY,
COW/CALF STOCKER DIVISION
MARCH 17, 1992

The Kansas Livestock Association (KLA) is a voluntary trade organization with approximately 9,000 members from across the state. These members are predominately cattle producers. Many operate diversified farming and ranching businesses.

Mr. Chairman and committee members, I'm Mike Beam with the Kansas Livestock Association and we are here today to support House Bill 2841. I want to thank Representative Corbin and the other sponsors for introducing the bill.

Livestock theft, or cattle rustling, has always been an issue with ranchers. In fact, it's said there were two issues which caused a group of cattlemen to meet in Emporia in 1894 to start an organization now called the Kansas Livestock Association. One concern was railroad shipping rates. The other was cattle theft.

Times have changed and virtually all cattle are transported by motor carriers. The issue of theft, however, still haunts our industry and we hope this legislature will be willing to make some changes in the law to help curtail the problem.

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I've attached a statistical report from the Brand Division of the Kansas Animal Health Department. This is the office which registers brands, keeps records of missing livestock, and assists local law enforcement agencies in investigations.

The report indicates they were notified of thefts involving 497 livestock in 1991. (Total number of thefts could be more; this is just cases reported to the department). This is a substantial increase over the last few years.

With conservative estimates, the value of this 497 head would be about \$250,000. On a statewide annual basis it might not sound like a major problem. It is a problem, however, when the theft hits you individually. If I as a producer have seven cow-calf pairs stolen (which can be done with a standard stock trailer and pick-up truck), it's a big financial blow to me. There is not much margin in the cattle business and losing 7 animals in the example I have described really hurts the bottom line. In many instances, the livestock are mortgaged and the owner still has to pay the note.

Originally, the bill defined a livestock theft and classified it as a Class C felony. We still support this provision. Livestock theft investigators will tell you it's difficult to catch a thief. Once one is convicted we want some confidence the thief will be adequately punished for the crime. It can be very discouraging for a stock owner to have a person steal from their herd, be convicted, and be out on the streets in a few weeks.

The bill, as amended by the House, stipulates that law enforcement agencies may confiscate property used in stealing livestock. Proceeds or gains made from the crime are also subject to forfeiture.

In many cases, the "professional" cattle thief has a late model truck and trailer to enable the person in his/her occupation. Let's let the law enforcement agencies confiscate this property. This may offset part of the expense of the investigations and take the tools of the trade away from the criminals.

To close I'd like to thank you, Mr. Chairman and committee members, for considering this legislation. I hope we can work together to pass legislation this year to help address the livestock theft problem. I'd be happy to respond to any questions or comments.

Period	BRANDED ANIMALS				ANIMALS NOT BRANDED			
	Number Missing	Number Returned	Number Stolen	Number Recovered	Number Missing	Number Returned	Number Stolen	Number Recovered
11-1-81 to 11-1-82	920	372	463	185	198	72	261 (160 hogs)	17
11-1-82 to 11-1-83	865	409	419	118	186	100	587	97
11-1-83 to 11-1-84	863	324	260	17	159 (Incl. 1 hog)	44	201 (Includes 15 hogs)	69 (Includes 15 hogs)
11-1-84 to 11-1-85	792	315	251	123	209	100	258 + 714 pigs	137
11-1-85 to 11-1-86	1103	371	352	14	168	69	180 + 316 hogs	6 hogs
11-1-86 to 11-1-87	618	251	196	17	183	10	132 + 294 hogs	14
11-1-87 to 11-1-88	513	76	356	43	122 4 goats	7	299 5 sheep	9
11-1-88 to 11-1-89	494	124	297	48	107	25	94 4 sheep/ 2 horses	4
11-1-89 to 11-1-90	240	120	193	37	120	9	113 + 10 pigs	19
11-1-90 to 11-1-91	243	92	386	30	145	59	111 includes 2 hogs 2 horses	13

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H.B. 2526

Testimony Provided to: House Energy and Natural
Resources Committee

Provided by: Department of Wildlife and Parks

Darrell Monte

March 5, 1991

H.B. 2526 would provide for a penalty assessment in addition to any fines and court costs which are levied for violation of wildlife and parks laws or rules and regulations. The penalty assessment would be not less than 25 percent nor more than 75 percent of the fine or forfeiture including court costs. The maximum could be exceeded by the court for violations involving physical damage to resources or properties or for violations involving illegal killing, injuring or possession of wildlife. For purposes of determining the penalty assessment amount for wildlife violations, wildlife values as established by K.S.A. 1990 Supp. 32-1005 are referenced. The penalty assessment would be credited to the Kansas Department of Wildlife and Parks Penalty Assessment Fund which is created. Funds deposited would be interest bearing and available to the Secretary for projects designed to address problems and expenses relating to or caused by the violations.

H.B. 2526 would also involve amendment to K.S.A. 1990 Supp. 32-1050. This statute provides for a cash bond for certain violations, but the listing of violations covered and the amount specified for the violation is inadequate. It is proposed that the list be expanded to cover the more typical violations that occur and the amounts specified more accurately reflect present fines. Bond amounts for violations not listed could be established by the courts. A penalty assessment of 25 percent would be required as a part of the bond. Currently, personal checks are not authorized as a form of cash bond. It is recommended that personal checks be authorized as a form of payment. Courts accept personal checks as legal tender for payment of fines and court costs, thus should also be accepted as

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legal tender for a cash bond.

K.S.A. 1990 Supp. 32-1054 requires judges or clerks of the court to report trial results and the amount of fine collected, if any. This statute is proposed for amendment to also include information on the amount of penalty assessment collected, if any.

The department is charged with management of the state wildlife and natural resources and for the public enjoyment of those resources including the providing of outdoor recreational opportunities. Financial support has been borne by the public primarily through their purchase of licenses, permits, stamps and other department issues. The same public also withstands the costs associated with law enforcement and for any costs resulting from illegal acts including damages and losses to wildlife and natural resources and to facilities, property and equipment.

Fines levied as a result of illegal acts are deposited in the state general fund and are not available to the department to defray costs of law enforcement or to address damages or losses sustained. Court costs are also assessed by the courts and are retained to cover court expenses.

An increasing number of states have enacted statutes requiring violators to provide a special compensation for use by their state conservation department in addressing damages and losses and to offset costs sustained by the public and the state. This procedure shifts a portion of the financial responsibility to violators for their actions rather than entirely on the public in general, as is the current situation in states such as Kansas.

Records maintained by the Department's Law Enforcement Division show 4,102 citations and convictions in 1989. That number was up slightly from the 3,789 and 3,676 figures for 1988 and 1987 respectively. In 1989, \$192,259 in fines and \$112,561 in court costs were levied. The 1988 and 1987 records reflect \$203,390 and \$172,041 in fines and \$96,020 and \$90,746 in court costs. The average amount of fines levied for the three year period was \$189,230 and \$99,776 was the average amount of court costs

imposed.

Recodification of Wildlife and Parks laws became effective July 1, 1989 and at that time new penalty provisions also became effective. Although 1989 Law Enforcement Division figures do not reflect higher fines, it is estimated that the amount of fines levied will increase as courts become more aware of the greater flexibility they now have. For purposes of estimating the fiscal impact of H.B. 2526, a fine amount of \$210,000 and court costs of \$100,000 are used.

Estimating the amount of penalty assessment revenue is difficult due to the discretion courts may use in imposing a penalty assessment. Based on a minimum 25 percent penalty assessment, the amount would be \$77,500 with a maximum of \$232,500 using a 75 percent penalty assessment. The probable amount of penalty assessment revenue is estimated to be between \$100,000 and \$150,000.

The estimated amount would be revenue to the department and represents a charge to the public. However, it is a charge directed at that portion of the public violating laws of this state and regulations of the department and would be imposed through the courts of this state. Moneys contributed by the vast majority of the public through their various user fees would thus be freed for use on projects intended to benefit their interests.

SUMMARY OF TESTIMONY

Before the Senate Judiciary Subcommittee on Criminal Law

March 17, 1992

House Bill 2861

Presented by the Kansas Highway Patrol

(Captain Terry Scott for Colonel Bert Cantwell)

HB 2861 provides for a progressive fine schedule and removes the \$5.00 maximum fine for parking violations at the statehouse. The Capitol Area Security Patrol requested these changes in an attempt to control the area around the statehouse. It has become readily apparent that the \$5.00 fine is not a deterrent to those who would rather pay a fine than attempt to find a lawful place to park.

As amended by the House, this bill requires a first-time warning for parking violators. Having attempted this in the past and found that warnings served no useful purpose and in fact, appeared to encourage unlawful parking, this practice was halted last year. We would oppose then, the language (lines ~~13~~ & ~~14~~) which reads, "a warning shall be issued to any person upon the first violation of this section."

We believe that a fine must be commensurate with the violation and that it must be realistic if it is to be a deterrent. Five dollars is not realistic in 1992. We further believe that the tiered fine structure is appropriate, resulting in a harsher fine for repeat offenders.

One doesn't have to be a rocket scientist to determine that there is a parking problem at the statehouse. HB 2861 offers an opportunity to address this issue. It is obviously not the solution, however, it will provide some relief for the problem that everyone connected to the capitol building experiences.

We appreciate your support of this legislation.

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Attachment 8 *1/1*

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1992

HOUSE BILL No. 2841

By Representatives Corbin, Baker, Ensminger, Jennison, King,
Lloyd, Mead, Rezac, Roe, Shallenburger and M. Smith

2-3

12 AN ACT concerning ~~crimes, punishments and criminal procedure;~~
13 ~~creating the crime of livestock theft;~~ relating to forfeiture of
14 property; duties and procedures to be followed by law enforce-
15 ment agencies.

16

17 *Be it enacted by the Legislature of the State of Kansas:*

18 Section 1. (a) As used in this act, "livestock" means cattle,
19 swine, sheep, goats, horses and mules and any carcass, skin or
20 part of such animal.

21 (b) Theft of livestock is any of the following acts done with
22 intent to deprive the owner permanently of the possession, use
23 or benefit of the owner's livestock:

24 (1) Obtaining or exerting unauthorized control over the
25 livestock;

26 (2) obtaining, by deception or threat, control over the live-
27 stock; or

28 (3) obtaining control over stolen livestock knowing the live-
29 stock has been stolen by another person.

30 (c) Theft of livestock is a class C felony.

31 (d) Nothing herein shall prohibit the lawful removal of live-
32 stock unlawfully placed or left upon real property.

33 Sec. 2 1. (a) The following property is subject to forfeiture pur-
34 suant to this act:

35 (1) Contraband property used or intended to be used in the
36 commission of theft of livestock;

37 (2) the proceeds gained from the commission of theft of livestock;

38 (3) property acquired with proceeds gained from the commission
39 of theft of livestock;

40 (4) all conveyances, including aircraft, vehicles or, vessels, horses
41 or dogs which are used or intended for the use to transport or in
42 any manner to facilitate the transportation for the purpose of the
43 commission of theft of livestock. No conveyance used by any person

*Forfeiture
only apply to
felony theft.*

personal

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1 as a common carrier in the transportation of business as a common
2 carrier is subject to forfeiture under this section unless it appears
3 that the owner or other person in charge of the conveyance is a
4 consenting party or privy to a violation of this act. No conveyance
5 is subject to forfeiture under this section by reason of any act or
6 omission established by the owners thereof to have been committed
7 or omitted without the owners knowledge or consent. A forfeiture
8 of a conveyance encumbered by a bona fide security interest is
9 subject to the interest of the secured party or parties;

10 (5) all books, records and research products and materials in-
11 cluding microfilm, tapes and data which are used or intended for
12 the use in ~~violation of this act~~ the theft of livestock;

13 (6) everything of value furnished, or intended to be furnished or
14 traded or used as payment or invested for anything of value. It may
15 be presumed that this property was acquired with proceeds gained
16 from the commission of theft of livestock and are subject to forfeiture;

17 (7) (A) All real property, including any building or structure
18 thereon, which is used or intended for the use in ~~violation of this~~
19 ~~act~~ theft of livestock. Real property is not subject to forfeiture under
20 this act by reason of any act or omission committed or omitted
21 without the owners knowledge or consent. A forfeiture of real prop-
22 erty encumbered by a bona fide mortgage or lien is subject to the
23 interest of the secured party or parties.

24 (B) Property subject to forfeiture under this section may be seized
25 by any law enforcement officer upon process issued by any district
26 court having jurisdiction over the property. Seizure by a law en-
27 forcement officer may be made without process if: (i) The seizure is
28 incident to a lawful arrest or a lawful search conducted by a law
29 enforcement officer; (ii) the property subject to seizure has been the
30 subject of a prior judgment in favor of the state or municipality
31 under this act; or (iii) there is probable cause to believe that the
32 property was used in violation of this act.

33 (C) In the event of seizure pursuant to this section, proceedings
34 pursuant to section 3 2 shall be instituted promptly.

35 (D) Property taken or detained under this section shall not be
36 subject to replevin, but is deemed to be in the custody of the law
37 enforcement agency seizing it subject only to the orders of the district
38 court having jurisdiction over the forfeiture proceedings. When prop-
39 erty is seized under this act, the law enforcement agency seizing it
40 may: (i) Place the property under seal; (ii) ~~remove~~ the property to
41 a place designated by it; or (iii) require the board to take custody
42 of the property and remove it to an appropriate location for dis-
43 position in accordance with law.

*delete - Reference
to real property*

*change to
law enforcement agency(s)*

1 (b) Property which is used in the commission of theft of livestock
2 ~~or the proceeds of an above-described felony~~ which has title of
3 ownership with two parties on the title or a cosigner is subject to
4 forfeiture, if one party on the title uses the property in the com-
5 mission of theft of livestock or receives titled property as the proceeds
6 of such felony even if the second party claims that such second party
7 did not have knowledge or involvement in such felony.

8 (c) As used in this section, "contraband act: (a) "Contraband
9 property" means property of any nature including real, personal,
10 tangible or intangible.

11 (b) "Livestock" means cattle, swine, sheep, goats, horses and
12 mules and any carcass, skin or part of such animal.

13 (c) "Theft of livestock" means theft, pursuant to K.S.A. 21-3701,
14 and amendments thereto, in which the property taken was livestock.

15 Sec. 32. (a) The county or district attorney within whose juris-
16 diction there is property which is sought to be forfeited pursuant to
17 section 21, or such attorney as employed by the law enforcement
18 agency and approved by the county or district attorney seeking
19 forfeiture of such property, shall promptly proceed against the prop-
20 erty by filing in the district court having jurisdiction of such property
21 a petition for an order to show cause why the court should not order
22 forfeiture of such property. The petition shall be verified and shall
23 set forth:

24 (1) A statement that the action is brought pursuant to section 2
25 1;

26 (2) the law enforcement agency bringing the action;

27 (3) a description of the property sought to be forfeited;

28 (4) a statement that on or about a date certain the property was
29 used or intended to be used in violation of this act or a violation
30 ~~of this act took place in, upon or by means of the property;~~

31 (5) a statement detailing the facts in support of subsection (a);
32 and

33 (6) a list of all persons known to the law enforcement agency,
34 after diligent search and inquiry, that may claim an ownership in-
35 terest in the property by title, registration or deed or by virtue of
36 a lien allegedly perfected in the manner prescribed by law.

37 (b) Upon receipt of a petition complying with the requirements
38 of subsection (a), the judge of the district court shall issue an order
39 to show cause setting forth a statement that the controlling statutes
40 are section 21 et seq. In addition, the order shall set a date at least
41 41 days from the date of first publication of the order pursuant to
42 subsection (c) for all persons claiming an interest in the property to
43 file such pleadings as they desire as to why the court should not

*delete reference
to real property.*

Sanfructio

*livestock
theft.*

1 order the forfeiture of such property to use, sale or other disposition
2 by the law enforcement agency seeking forfeiture of the property.
3 The court shall further order that all persons who do not appear on
4 that date are deemed to have defaulted and waive any claim to the
5 subject property.

6 (c) The county or district attorney, or such attorney as employed
7 by the law enforcement agency approved by the county or district
8 attorney seeking forfeiture, shall give notice of the forfeiture pro-
9 ceedings by:

10 (1) Causing to be published a copy of the order to show cause
11 once each week for three consecutive weeks in a newspaper having
12 general circulation in the county where the property is located and
13 meeting the requirements of K.S.A. 64-101, and amendments
14 thereto; and

15 (2) sending a copy of the petition and order to show cause by
16 certified mail, return receipt requested, to each person having own-
17 ership of or a security interest in the property if:

18 (A) The property is of a type for which title, registration or deed
19 is required by law;

20 (B) the owner of the property is known in fact to the law en-
21 forcement agency at the time of seizure; or

22 (C) the property is subject to a security interest perfected in
23 accordance with the uniform commercial code. The law enforcement
24 agency shall be obligated only to make diligent search and inquiry
25 as to the owner of the property and if, after diligent search and
26 inquiry, such agency is unable to ascertain the owner, the require-
27 ment of actual notice by mail with respect to persons having per-
28 fected security interest in the property shall not be applicable.

29 (d) At the hearing on the matter, the petitioner shall have the
30 burden to establish by clear and convincing evidence that the prop-
31 erty is subject to forfeiture as provided in section 2 1.

32 (e) The final order of forfeiture by the court shall perfect in the
33 law enforcement agency right, title and interest in and to such
34 property and shall relate back to the date of the seizure.

35 (f) Physical seizure of property shall not be necessary in order
36 to allege in a petition under this section that property is forfeitable.
37 Upon filing the petition, the county or district attorney or the at-
38 torney for the law enforcement agency approved by the county or
39 district attorney seeking forfeiture may also seek such protective
40 orders as necessary to prevent the transfer, encumbrance or other
41 disposal of any property named in the petition. If the property
42 alleged to be forfeitable is real property, the county or district at-
43 torney or the attorney for the law enforcement agency approved by

1 the county or district attorney seeking forfeiture shall cause to be
2 recorded a lis pendens on the property in the county in which the
3 property is located.

4 (g) Unless otherwise stated, proceedings brought pursuant to this
5 section are separate and distinct from and in no way supplemental
6 to or dependent upon the outcome of any criminal charges, indict-
7 ment, complaint or information.

8 Sec. 4 3. (a) Subject to the provisions of subsection (c), if prop-
9 erty forfeited pursuant to section 2 1 is harmful to the public or
10 required by law to be destroyed, the law enforcement agency to
11 which the property is forfeited shall:

12 (1) Require the sheriff of the county to take custody of the prop-
13 erty and remove it to an appropriate location for disposition in ac-
14 cordance with law; or

15 (2) forward it to the Kansas bureau of investigation for disposition.

16 (b) Subject to the provisions of subsection (c), if property forfeited
17 pursuant to section 2 1 is not harmful to the public and is not
18 required by law to be destroyed, the law enforcement agency to
19 which the property is forfeited shall:

20 (1) Sell the property in accordance with subsection (d); or

21 (2) if the property is not subject to a lien which has been pre-
22 served by the court, retain the property for official use.

23 (c) If the property is a controlled substance, the law enforcement
24 agency to which the property is forfeited shall transfer it to another
25 law enforcement agency for use in training canines for detection of
26 controlled substances so long as a record is kept of the substance
27 similar to that required in a chain of custody for evidence handling.

28 (d) If a law enforcement agency desires to sell property forfeited
29 to it pursuant to section 2 1, the agency shall first cause notice of
30 the sale to be made by publication at least once a week for three
31 consecutive weeks in a newspaper having general circulation in the
32 county and meeting the requirements of K.S.A. 64-101, and amend-
33 ments thereto. Such notice shall include the time, place and con-
34 ditions of the sale and a description of the property to be sold. The
35 property shall then be disposed of at public auction to the highest
36 bidder for cash without appraisal.

37 (e) In lieu of the sale of property ordered forfeited pursuant to
38 section 2 1, if the head of the law enforcement agency considers it
39 necessary or expedient, the property may be salvaged unless such
40 property is subject to a lien preserved by the court.

41 (f) Upon the sale of any vessel, motor vehicle or aircraft pursuant
42 to this section, the state shall issue a title certificate to the purchaser.
43 Upon the request of any law enforcement agency which elects to

1 retain titled property after forfeiture, the state shall issue a certificate
2 of title for such property to the agency.

3 Sec. 5 4. The proceeds of any sale pursuant to section 4 3 and
4 any moneys forfeited pursuant to section 2 1 shall be applied: First,
5 to payment of the balance due on any lien preserved by the court
6 in the forfeiture proceedings; second, to payment of the cost incurred
7 by the seizing agency in connection with the storage, maintenance,
8 security and forfeiture of the property; third, to payment of the costs
9 incurred by the county or district attorney or attorney for the law
10 enforcement agency approved by the county and district attorney to
11 which the property is forfeited; and fourth, to payment of costs
12 incurred by the court; and fifth, as restitution to any victim at the
13 discretion of the court]. The remaining proceeds or moneys shall
14 be disposed of as follows: (a) If such agency is a state agency, the
15 entire amount shall be deposited into the forfeiture account for that
16 agency for general law enforcement purposes for that agency; (b) if
17 such agency is a county agency, the entire amount shall be deposited
18 in the county treasury and credited to a special law enforcement
19 fund in the county treasury; and (c) if such law enforcement agency
20 is a city agency, the entire amount shall be deposited in the city
21 treasury and credited to a special law enforcement trust fund in the
22 city treasury. Moneys in the special law enforcement forfeiture fund
23 in the county or city treasury shall be expended only upon appro-
24 priation to the sheriff's office or police department, by the respective
25 board of county commissioners or governing body of the city, to
26 defray the costs of protracted investigations, to provide additional
27 technical equipment or expertise, to provide matching funds to obtain
28 federal grants or for such other law enforcement purposes as the
29 respective board of county commissioners or governing body of the
30 city deems appropriate and shall not be considered a source of
31 revenue to meet normal operating expenses.

32 Sec. 6 5. If more than one law enforcement agency is substan-
33 tially involved in effecting a forfeiture pursuant to section 2 1, the
34 court having jurisdiction over the forfeiture proceeding shall equi-
35 tably distribute the property among such agencies. Any forfeited
36 moneys, or any proceeds remaining after the sale of the property,
37 shall be equitably distributed to the board of county commissioners
38 or the governing body of the city having budgetary control over
39 such agencies for deposit in the respective county or city treasury
40 and credit to the law enforcement trust fund provided in section 5
41 4. Any forfeited moneys, or any proceeds remaining after the sale
42 of the property shall be equitably distributed in the manner as
43 provided in section 5.

1 Sec. 7 6. Any law enforcement agency receiving forfeited prop-
2 erty or proceeds from the sale of forfeited property in accordance
3 with this act shall submit a quarterly report to the entity which has
4 budgetary authority over such agency, which report shall specify,
5 for such period, the type and approximate value of the property
6 received and the amount of any proceeds received. Neither the law
7 enforcement agency nor the entity having budgetary control shall
8 anticipate future forfeitures or proceeds therefrom in the adoption
9 and approval of the budget for the law enforcement agency.
10 Sec. 8 7. This act shall take effect and be in force from and after
11 its publication in the statute book.