

AN ACT

relating to the disposition of certain obscene material and child pornography.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a), (b), (e), (f), and (g), Article 18.18, Code of Criminal Procedure, are amended to read as follows:

(a) Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, for an offense involving an obscene device or material, for an offense involving child pornography, or for an offense involving a scanning device or re-encoder, the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, instrument, obscene device or material, child pornography, or scanning device or re-encoder be destroyed or forfeited to the state. Not later than the 30th day after the final conviction of a person for an offense involving a prohibited weapon, the court entering the judgment of conviction on its own motion, on the motion of the prosecuting attorney in the case, or on the motion of the law enforcement agency initiating the complaint on notice to the prosecuting attorney in the case if the prosecutor fails to move for the order shall order that the prohibited weapon be destroyed or forfeited to the law enforcement agency that initiated the

1 complaint. If the court fails to enter the order within the time
2 required by this subsection, any magistrate in the county in which
3 the offense occurred may enter the order. Following the final
4 conviction of a person for an offense involving dog fighting, the
5 court entering the judgment of conviction shall order that any
6 dog-fighting equipment be destroyed or forfeited to the state.
7 Destruction of dogs, if necessary, must be carried out by a
8 veterinarian licensed in this state or, if one is not available, by
9 trained personnel of a humane society or an animal shelter. If
10 forfeited, the court shall order the contraband delivered to the
11 state, any political subdivision of the state, or to any state
12 institution or agency. If gambling proceeds were seized, the court
13 shall order them forfeited to the state and shall transmit them to
14 the grand jury of the county in which they were seized for use in
15 investigating alleged violations of the Penal Code, or to the
16 state, any political subdivision of the state, or to any state
17 institution or agency.

18 (b) If there is no prosecution or conviction following
19 seizure, the magistrate to whom the return was made shall notify in
20 writing the person found in possession of the alleged gambling
21 device or equipment, altered gambling equipment or gambling
22 paraphernalia, gambling proceeds, prohibited weapon, obscene
23 device or material, child pornography, scanning device or
24 re-encoder, criminal instrument, or dog-fighting equipment to show
25 cause why the property seized should not be destroyed or the
26 proceeds forfeited. The magistrate, on the motion of the law
27 enforcement agency seizing a prohibited weapon, shall order the

1 weapon destroyed or forfeited to the law enforcement agency seizing
2 the weapon, unless a person shows cause as to why the prohibited
3 weapon should not be destroyed or forfeited. A law enforcement
4 agency shall make a motion under this section in a timely manner
5 after the time at which the agency is informed in writing by the
6 attorney representing the state that no prosecution will arise from
7 the seizure.

8 (e) Any person interested in the alleged gambling device or
9 equipment, altered gambling equipment or gambling paraphernalia,
10 gambling proceeds, prohibited weapon, obscene device or material,
11 child pornography, scanning device or re-encoder, criminal
12 instrument, or dog-fighting equipment seized must appear before the
13 magistrate on the 20th day following the date the notice was mailed
14 or posted. Failure to timely appear forfeits any interest the
15 person may have in the property or proceeds seized, and no person
16 after failing to timely appear may contest destruction or
17 forfeiture.

18 (f) If a person timely appears to show cause why the
19 property or proceeds should not be destroyed or forfeited, the
20 magistrate shall conduct a hearing on the issue and determine the
21 nature of property or proceeds and the person's interest therein.
22 Unless the person proves by a preponderance of the evidence that the
23 property or proceeds is not gambling equipment, altered gambling
24 equipment, gambling paraphernalia, gambling device, gambling
25 proceeds, prohibited weapon, obscene device or material, child
26 pornography, criminal instrument, scanning device or re-encoder,
27 or dog-fighting equipment and that he is entitled to possession,

1 the magistrate shall dispose of the property or proceeds in
2 accordance with Paragraph (a) of this article.

3 (g) For purposes of this article:

4 (1) "criminal instrument" has the meaning defined in
5 the Penal Code;

6 (2) "gambling device or equipment, altered gambling
7 equipment or gambling paraphernalia" has the meaning defined in the
8 Penal Code;

9 (3) "prohibited weapon" has the meaning defined in the
10 Penal Code;

11 (4) "dog-fighting equipment" means:

12 (A) equipment used for training or handling a
13 fighting dog, including a harness, treadmill, cage, decoy, pen,
14 house for keeping a fighting dog, feeding apparatus, or training
15 pen;

16 (B) equipment used for transporting a fighting
17 dog, including any automobile, or other vehicle, and its
18 appurtenances which are intended to be used as a vehicle for
19 transporting a fighting dog;

20 (C) equipment used to promote or advertise an
21 exhibition of dog fighting, including a printing press or similar
22 equipment, paper, ink, or photography equipment; or

23 (D) a dog trained, being trained, or intended to
24 be used to fight with another dog;

25 (5) "obscene device" and "obscene" have the meanings
26 assigned by Section 43.21, Penal Code; ~~[-]~~

27 (6) "re-encoder" has the meaning assigned by Section

1 35.58, Business & Commerce Code; [~~and~~]

2 (7) "scanning device" has the meaning assigned by
3 Section 35.58, Business & Commerce Code; and

4 (8) "obscene material" and "child pornography"
5 include digital images and the media and equipment on which those
6 images are stored.

7 SECTION 2. Article 18.18, Code of Criminal Procedure, is
8 amended by adding Subsection (h) to read as follows:

9 (h) No provider of an electronic communication service or of
10 a remote computing service to the public shall be held liable for an
11 offense involving obscene material or child pornography under this
12 section on account of any action taken in good faith in providing
13 that service.

14 SECTION 3. The change in law made by this Act applies only
15 to the disposition of obscene material or child pornography seized
16 on or after September 1, 2005. The disposition of obscene material
17 or child pornography seized before September 1, 2005, is covered by
18 the law in effect when the material or pornography was seized, and
19 the former law is preserved for that purpose.

20 SECTION 4. This Act takes effect September 1, 2005.

H.B. No. 839

President of the Senate

Speaker of the House

I certify that H.B. No. 839 was passed by the House on March 21, 2005, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 839 was passed by the Senate on May 23, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor