

1-1 By: Riddle, et al. (Senate Sponsor - Williams) H.B. No. 839
1-2 (In the Senate - Received from the House March 22, 2005;
1-3 March 30, 2005, read first time and referred to Committee on
1-4 Criminal Justice; May 18, 2005, reported favorably by the
1-5 following vote: Yeas 5, Nays 0; May 18, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the disposition of certain obscene material and child
1-9 pornography.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsections (a), (b), (e), (f), and (g), Article
1-12 18.18, Code of Criminal Procedure, are amended to read as follows:

1-13 (a) Following the final conviction of a person for
1-14 possession of a gambling device or equipment, altered gambling
1-15 equipment, or gambling paraphernalia, for an offense involving a
1-16 criminal instrument, for an offense involving an obscene device or
1-17 material, for an offense involving child pornography, or for an
1-18 offense involving a scanning device or re-encoder, the court
1-19 entering the judgment of conviction shall order that the machine,
1-20 device, gambling equipment or gambling paraphernalia, instrument,
1-21 obscene device or material, child pornography, or scanning device
1-22 or re-encoder be destroyed or forfeited to the state. Not later
1-23 than the 30th day after the final conviction of a person for an
1-24 offense involving a prohibited weapon, the court entering the
1-25 judgment of conviction on its own motion, on the motion of the
1-26 prosecuting attorney in the case, or on the motion of the law
1-27 enforcement agency initiating the complaint on notice to the
1-28 prosecuting attorney in the case if the prosecutor fails to move for
1-29 the order shall order that the prohibited weapon be destroyed or
1-30 forfeited to the law enforcement agency that initiated the
1-31 complaint. If the court fails to enter the order within the time
1-32 required by this subsection, any magistrate in the county in which
1-33 the offense occurred may enter the order. Following the final
1-34 conviction of a person for an offense involving dog fighting, the
1-35 court entering the judgment of conviction shall order that any
1-36 dog-fighting equipment be destroyed or forfeited to the state.
1-37 Destruction of dogs, if necessary, must be carried out by a
1-38 veterinarian licensed in this state or, if one is not available, by
1-39 trained personnel of a humane society or an animal shelter. If
1-40 forfeited, the court shall order the contraband delivered to the
1-41 state, any political subdivision of the state, or to any state
1-42 institution or agency. If gambling proceeds were seized, the court
1-43 shall order them forfeited to the state and shall transmit them to
1-44 the grand jury of the county in which they were seized for use in
1-45 investigating alleged violations of the Penal Code, or to the
1-46 state, any political subdivision of the state, or to any state
1-47 institution or agency.

1-48 (b) If there is no prosecution or conviction following
1-49 seizure, the magistrate to whom the return was made shall notify in
1-50 writing the person found in possession of the alleged gambling
1-51 device or equipment, altered gambling equipment or gambling
1-52 paraphernalia, gambling proceeds, prohibited weapon, obscene
1-53 device or material, child pornography, scanning device or
1-54 re-encoder, criminal instrument, or dog-fighting equipment to show
1-55 cause why the property seized should not be destroyed or the
1-56 proceeds forfeited. The magistrate, on the motion of the law
1-57 enforcement agency seizing a prohibited weapon, shall order the
1-58 weapon destroyed or forfeited to the law enforcement agency seizing
1-59 the weapon, unless a person shows cause as to why the prohibited
1-60 weapon should not be destroyed or forfeited. A law enforcement
1-61 agency shall make a motion under this section in a timely manner
1-62 after the time at which the agency is informed in writing by the
1-63 attorney representing the state that no prosecution will arise from
1-64 the seizure.

2-1 (e) Any person interested in the alleged gambling device or
 2-2 equipment, altered gambling equipment or gambling paraphernalia,
 2-3 gambling proceeds, prohibited weapon, obscene device or material,
 2-4 child pornography, scanning device or re-encoder, criminal
 2-5 instrument, or dog-fighting equipment seized must appear before the
 2-6 magistrate on the 20th day following the date the notice was mailed
 2-7 or posted. Failure to timely appear forfeits any interest the
 2-8 person may have in the property or proceeds seized, and no person
 2-9 after failing to timely appear may contest destruction or
 2-10 forfeiture.

2-11 (f) If a person timely appears to show cause why the
 2-12 property or proceeds should not be destroyed or forfeited, the
 2-13 magistrate shall conduct a hearing on the issue and determine the
 2-14 nature of property or proceeds and the person's interest therein.
 2-15 Unless the person proves by a preponderance of the evidence that the
 2-16 property or proceeds is not gambling equipment, altered gambling
 2-17 equipment, gambling paraphernalia, gambling device, gambling
 2-18 proceeds, prohibited weapon, obscene device or material, child
 2-19 pornography, criminal instrument, scanning device or re-encoder,
 2-20 or dog-fighting equipment and that he is entitled to possession,
 2-21 the magistrate shall dispose of the property or proceeds in
 2-22 accordance with Paragraph (a) of this article.

2-23 (g) For purposes of this article:

2-24 (1) "criminal instrument" has the meaning defined in
 2-25 the Penal Code;

2-26 (2) "gambling device or equipment, altered gambling
 2-27 equipment or gambling paraphernalia" has the meaning defined in the
 2-28 Penal Code;

2-29 (3) "prohibited weapon" has the meaning defined in the
 2-30 Penal Code;

2-31 (4) "dog-fighting equipment" means:

2-32 (A) equipment used for training or handling a
 2-33 fighting dog, including a harness, treadmill, cage, decoy, pen,
 2-34 house for keeping a fighting dog, feeding apparatus, or training
 2-35 pen;

2-36 (B) equipment used for transporting a fighting
 2-37 dog, including any automobile, or other vehicle, and its
 2-38 appurtenances which are intended to be used as a vehicle for
 2-39 transporting a fighting dog;

2-40 (C) equipment used to promote or advertise an
 2-41 exhibition of dog fighting, including a printing press or similar
 2-42 equipment, paper, ink, or photography equipment; or

2-43 (D) a dog trained, being trained, or intended to
 2-44 be used to fight with another dog;

2-45 (5) "obscene device" and "obscene" have the meanings
 2-46 assigned by Section 43.21, Penal Code; ~~[-]~~

2-47 (6) "re-encoder" has the meaning assigned by Section
 2-48 35.58, Business & Commerce Code; ~~[and]~~

2-49 (7) "scanning device" has the meaning assigned by
 2-50 Section 35.58, Business & Commerce Code; and

2-51 (8) "obscene material" and "child pornography"
 2-52 include digital images and the media and equipment on which those
 2-53 images are stored.

2-54 SECTION 2. Article 18.18, Code of Criminal Procedure, is
 2-55 amended by adding Subsection (h) to read as follows:

2-56 (h) No provider of an electronic communication service or of
 2-57 a remote computing service to the public shall be held liable for an
 2-58 offense involving obscene material or child pornography under this
 2-59 section on account of any action taken in good faith in providing
 2-60 that service.

2-61 SECTION 3. The change in law made by this Act applies only
 2-62 to the disposition of obscene material or child pornography seized
 2-63 on or after September 1, 2005. The disposition of obscene material
 2-64 or child pornography seized before September 1, 2005, is covered by
 2-65 the law in effect when the material or pornography was seized, and
 2-66 the former law is preserved for that purpose.

2-67 SECTION 4. This Act takes effect September 1, 2005.

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