

By: Van de Putte

S.B. No. 641

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prosecution and punishment of certain offenses
3 prohibiting animal fighting.

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

5 SECTION 1. Sections 42.10(a), (c), (d), and (e), Penal
6 Code, are amended to read as follows:

7 (a) A person commits an offense if he intentionally or
8 knowingly:

9 (1) causes a dog to fight with another dog;

10 (2) ~~[for a pecuniary benefit causes a dog to fight with~~
11 ~~another dog,~~

12 ~~[(3)]~~ participates in the earnings of or operates a
13 facility used for dog fighting;

14 (3) ~~[(4)]~~ uses or permits another to use any real
15 estate, building, room, tent, arena, or other property for dog
16 fighting;

17 (4) ~~[(5)]~~ owns or trains a dog with the intent that the
18 dog be used in an exhibition of dog fighting; or

19 (5) ~~[(6)]~~ attends as a spectator an exhibition of dog
20 fighting.

21 (c) A conviction under ~~[Subdivision (2), (3), or (4) of]~~
22 Subsection (a)(2) or (3) ~~[(a)]~~ may be had upon the uncorroborated
23 testimony of a party to the offense.

24 (d) It is a defense to prosecution under ~~[Subdivision (1) or~~

1 ~~(2) of]~~ Subsection (a)(1) [~~(a)~~] that the actor caused a dog to fight
2 with another dog to protect livestock, other property, or a person
3 from the other dog, and for no other purpose.

4 (e) An offense under [~~Subdivision (1) or (5) of]~~ Subsection
5 (a)(4) or (5) [~~(a)~~] is a Class A misdemeanor. An offense under
6 [~~Subdivision (2), (3), or (4) of]~~ Subsection (a)(1), (2), or (3)
7 [~~(a)~~] is a state jail felony. [~~An offense under Subdivision (6) of~~
8 ~~Subsection (a) is a Class C misdemeanor.~~]

9 SECTION 2. Chapter 42, Title 9, Penal Code, is amended by
10 adding Section 42.14 to read as follows:

11 Sec. 42.14. COCKFIGHTING. (a) In this section:

12 (1) "Cock" means the male of any type of domestic fowl.

13 (2) "Cockfighting" means any situation in which one
14 cock attacks or fights with another cock.

15 (3) "Gaff" means an artificial steel spur designed to
16 attach to the leg of a cock to replace or supplement the cock's
17 natural spur.

18 (4) "Slasher" means a steel weapon resembling a curved
19 knife blade designed to attach to the foot of a cock.

20 (b) A person commits an offense if the person knowingly:

21 (1) causes a cock to fight with another cock;

22 (2) participates in the earnings of or operates a
23 facility used for cockfighting;

24 (3) uses or permits another to use any real estate,
25 building, room, tent, arena, or other property for cockfighting;

26 (4) owns, possesses, or trains a cock with the intent
27 that the cock be used in an exhibition of cockfighting;

1 (5) manufactures, buys, sells, barter, exchanges,
2 possesses, advertises, or otherwise offers a gaff, slasher, or
3 other sharp implement designed for attachment to a cock with the
4 intent that the implement be used in cockfighting; or

5 (6) attends as a spectator an exhibition of
6 cockfighting.

7 (c) An offense under Subsection (b)(1), (2), (3), or (5) is
8 a state jail felony. An offense under Subsection (b)(4) or (6) is a
9 Class A misdemeanor.

10 SECTION 3. Articles 18.18(a), (b), (e), (f), and (g),
11 Criminal Code of Procedure, are amended to read as follows:

12 (a) Following the final conviction of a person for
13 possession of a gambling device or equipment, altered gambling
14 equipment, or gambling paraphernalia, for an offense involving a
15 criminal instrument, for an offense involving an obscene device or
16 material, or for an offense involving a scanning device or
17 re-encoder, the court entering the judgment of conviction shall
18 order that the machine, device, gambling equipment or gambling
19 paraphernalia, instrument, obscene device or material, or scanning
20 device or re-encoder be destroyed or forfeited to the state. Not
21 later than the 30th day after the final conviction of a person for
22 an offense involving a prohibited weapon, the court entering the
23 judgment of conviction on its own motion, on the motion of the
24 prosecuting attorney in the case, or on the motion of the law
25 enforcement agency initiating the complaint on notice to the
26 prosecuting attorney in the case if the prosecutor fails to move for
27 the order shall order that the prohibited weapon be destroyed or

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

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

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

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

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

1 cockfighting equipment and that he is entitled to possession, the
2 magistrate shall dispose of the property or proceeds in accordance
3 with Paragraph (a) of this article.

4 (g) For purposes of this article:

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

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

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

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

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

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

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

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

26 (4-a) "cockfighting equipment" means:

27 (A) equipment used for training or handling a

1 fighting cock, including a cage, decoy, gaff, slasher, pen, house
2 for keeping a fighting cock, feeding apparatus, or training pen;

3 (B) equipment used for transporting a fighting
4 cock, including any automobile or other vehicle and its
5 appurtenances that are intended to be used as a vehicle for
6 transporting a fighting cock;

7 (C) equipment used to promote or advertise an
8 exhibition of cockfighting, including a printing press or similar
9 equipment, paper, ink, or photography equipment; or

10 (D) a cock trained, being trained, or intended to
11 be used to fight with another cock;

12 (5) "obscene device" and "obscene" have the meanings
13 assigned by Section 43.21, Penal Code.

14 (6) "re-encoder" has the meaning assigned by Section
15 35.58, Business & Commerce Code; and

16 (7) "scanning device" has the meaning assigned by
17 Section 35.58, Business & Commerce Code.

18 SECTION 4. The change in law made by this Act applies only
19 to an offense committed on or after the effective date of this Act.
20 An offense committed before the effective date of this Act is
21 covered by the law in effect when the offense was committed, and the
22 former law is continued in effect for that purpose. For purposes of
23 this section, an offense was committed before the effective date of
24 this Act if any element of the offense was committed before that
25 date.

26 SECTION 5. This Act takes effect September 1, 2005.