

By: Christian, et al.

H.B. No. 1320

Substitute the following for H.B. No. 1320:

By: Gallego

C.S.H.B. No. 1320

A BILL TO BE ENTITLED

AN ACT

1
2 relating to creating an offense for engaging in certain conduct
3 relating to cockfighting and to the criminal and civil consequences
4 of committing that offense.

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

6 SECTION 1. Chapter 42, Penal Code, is amended by adding
7 Section 42.105 to read as follows:

8 Sec. 42.105. COCKFIGHTING. (a) In this section:

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

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

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

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

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

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

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

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

23 (4) owns or trains a cock with the intent that the cock
24 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 2. Section 71.02(a), Penal Code, is amended to read
11 as follows:

12 (a) A person commits an offense if, with the intent to
13 establish, maintain, or participate in a combination or in the
14 profits of a combination or as a member of a criminal street gang,
15 he commits or conspires to commit one or more of the following:

16 (1) murder, capital murder, arson, aggravated
17 robbery, robbery, burglary, theft, aggravated kidnapping,
18 kidnapping, aggravated assault, aggravated sexual assault, sexual
19 assault, forgery, deadly conduct, assault punishable as a Class A
20 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
21 motor vehicle;

22 (2) any gambling offense punishable as a Class A
23 misdemeanor;

24 (3) promotion of prostitution, aggravated promotion
25 of prostitution, or compelling prostitution;

26 (4) unlawful manufacture, transportation, repair, or
27 sale of firearms or prohibited weapons;

1 (5) unlawful manufacture, delivery, dispensation, or
2 distribution of a controlled substance or dangerous drug, or
3 unlawful possession of a controlled substance or dangerous drug
4 through forgery, fraud, misrepresentation, or deception;

5 (6) any unlawful wholesale promotion or possession of
6 any obscene material or obscene device with the intent to wholesale
7 promote the same;

8 (7) any offense under Subchapter B, Chapter 43,
9 depicting or involving conduct by or directed toward a child
10 younger than 18 years of age;

11 (8) any felony offense under Chapter 32;

12 (9) any offense under Chapter 36;

13 (10) any offense under Chapter 34 or 35;

14 (11) any offense under Section 37.11(a);

15 (12) any offense under Chapter 20A; ~~[or]~~

16 (13) any offense under Section 37.10; or

17 (14) any offense under Section 42.105.

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

20 (a) Following the final conviction of a person for
21 possession of a gambling device or equipment, altered gambling
22 equipment, or gambling paraphernalia, for an offense involving a
23 criminal instrument, for an offense involving an obscene device or
24 material, for an offense involving child pornography, or for an
25 offense involving a scanning device or re-encoder, the court
26 entering the judgment of conviction shall order that the machine,
27 device, gambling equipment or gambling paraphernalia, instrument,

1 obscene device or material, child pornography, or scanning device
2 or re-encoder be destroyed or forfeited to the state. Not later
3 than the 30th day after the final conviction of a person for an
4 offense involving a prohibited weapon, the court entering the
5 judgment of conviction on its own motion, on the motion of the
6 prosecuting attorney in the case, or on the motion of the law
7 enforcement agency initiating the complaint on notice to the
8 prosecuting attorney in the case if the prosecutor fails to move for
9 the order shall order that the prohibited weapon be destroyed or
10 forfeited to the law enforcement agency that initiated the
11 complaint. If the court fails to enter the order within the time
12 required by this subsection, any magistrate in the county in which
13 the offense occurred may enter the order. Following the final
14 conviction of a person for an offense involving dog fighting or
15 cockfighting, the court entering the judgment of conviction shall
16 order that any dog-fighting or cockfighting equipment be destroyed
17 or forfeited to the state. Destruction of dogs and cocks, if
18 necessary, must be carried out by a veterinarian licensed in this
19 state or, if one is not available, by trained personnel of a humane
20 society or an animal shelter. If forfeited, the court shall order
21 the contraband delivered to the state, any political subdivision of
22 the state, or to any state institution or agency. If gambling
23 proceeds were seized, the court shall order them forfeited to the
24 state and shall transmit them to the grand jury of the county in
25 which they were seized for use in investigating alleged violations
26 of the Penal Code, or to the state, any political subdivision of the
27 state, or to any state institution or agency.

1 (b) If there is no prosecution or conviction following
2 seizure, the magistrate to whom the return was made shall notify in
3 writing the person found in possession of the alleged gambling
4 device or equipment, altered gambling equipment or gambling
5 paraphernalia, gambling proceeds, prohibited weapon, obscene
6 device or material, child pornography, scanning device or
7 re-encoder, criminal instrument, or dog-fighting or cockfighting
8 equipment to show cause why the property seized should not be
9 destroyed or the proceeds forfeited. The magistrate, on the motion
10 of the law enforcement agency seizing a prohibited weapon, shall
11 order the weapon destroyed or forfeited to the law enforcement
12 agency seizing the weapon, unless a person shows cause as to why the
13 prohibited weapon should not be destroyed or forfeited. A law
14 enforcement agency shall make a motion under this section in a
15 timely manner after the time at which the agency is informed in
16 writing by the attorney representing the state that no prosecution
17 will arise from the seizure.

18 (e) Any person interested in the alleged gambling device or
19 equipment, altered gambling equipment or gambling paraphernalia,
20 gambling proceeds, prohibited weapon, obscene device or material,
21 child pornography, scanning device or re-encoder, criminal
22 instrument, or dog-fighting or cockfighting equipment seized must
23 appear before the magistrate on the 20th day following the date the
24 notice was mailed or posted. Failure to timely appear forfeits any
25 interest the person may have in the property or proceeds seized, and
26 no person after failing to timely appear may contest destruction or
27 forfeiture.

1 (f) If a person timely appears to show cause why the
2 property or proceeds should not be destroyed or forfeited, the
3 magistrate shall conduct a hearing on the issue and determine the
4 nature of property or proceeds and the person's interest therein.
5 Unless the person proves by a preponderance of the evidence that the
6 property or proceeds is not gambling equipment, altered gambling
7 equipment, gambling paraphernalia, gambling device, gambling
8 proceeds, prohibited weapon, obscene device or material, child
9 pornography, criminal instrument, scanning device or re-encoder,
10 or dog-fighting or cockfighting equipment and that he is entitled
11 to possession, the magistrate shall dispose of the property or
12 proceeds in accordance with Paragraph (a) of this article.

13 SECTION 4. Article 18.18(g), Code of Criminal Procedure, as
14 effective April 1, 2009, is amended to read as follows:

15 (g) For purposes of this article:

16 (1) "criminal instrument" has the meaning defined in
17 the Penal Code;

18 (2) "gambling device or equipment, altered gambling
19 equipment or gambling paraphernalia" has the meaning defined in the
20 Penal Code;

21 (3) "prohibited weapon" has the meaning defined in the
22 Penal Code;

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

24 (A) equipment used for training or handling a
25 fighting dog, including a harness, treadmill, cage, decoy, pen,
26 house for keeping a fighting dog, feeding apparatus, or training
27 pen;

1 (B) equipment used for transporting a fighting
2 dog, including any automobile, or other vehicle, and its
3 appurtenances which are intended to be used as a vehicle for
4 transporting a fighting dog;

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

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

10 (4-a) "cockfighting equipment" means:

11 (A) equipment used for training or handling a
12 fighting cock, including a cage, decoy, gaff, slasher, pen, house
13 for keeping a fighting cock, feeding apparatus, or training pen;

14 (B) equipment used for transporting a fighting
15 cock, including any automobile or other vehicle and its
16 appurtenances that are intended to be used as a vehicle for
17 transporting a fighting cock;

18 (C) equipment used to promote or advertise an
19 exhibition of cockfighting, including a printing press or similar
20 equipment, paper, ink, or photography equipment; or

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

23 (4-b) "gaff" and "slasher" have the meanings assigned
24 by Section 42.105, Penal Code;

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

1 522.001, Business & Commerce Code;

2 (7) "scanning device" has the meaning assigned by
3 Section 522.001, 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 5. Article 59.01(2), Code of Criminal Procedure, as
8 amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B.
9 2278), Acts of the 80th Legislature, Regular Session, 2007, is
10 reenacted and amended to read as follows:

11 (2) "Contraband" means property of any nature,
12 including real, personal, tangible, or intangible, that is:

13 (A) used in the commission of:

14 (i) any first or second degree felony under
15 the Penal Code;

16 (ii) any felony under Section 15.031(b),
17 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
18 31, 32, 33, 33A, or 35, Penal Code;

19 (iii) any felony under The Securities Act
20 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

21 (iv) any offense under Chapter 49, Penal
22 Code, that is punishable as a felony of the third degree or state
23 jail felony, if the defendant has been previously convicted three
24 times of an offense under that chapter;

25 (B) used or intended to be used in the commission
26 of:

27 (i) any felony under Chapter 481, Health

1 and Safety Code (Texas Controlled Substances Act);

2 (ii) any felony under Chapter 483, Health
3 and Safety Code;

4 (iii) a felony under Chapter 153, Finance
5 Code;

6 (iv) any felony under Chapter 34, Penal
7 Code;

8 (v) a Class A misdemeanor under Subchapter
9 B, Chapter 365, Health and Safety Code, if the defendant has been
10 previously convicted twice of an offense under that subchapter;

11 (vi) any felony under Chapter 152, Finance
12 Code;

13 (vii) any felony under Chapter 32, Human
14 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
15 involves the state Medicaid program;

16 (viii) a Class B misdemeanor under Chapter
17 522, Business & Commerce Code; ~~[or]~~

18 (ix) a Class A misdemeanor under Section
19 35.153, Business & Commerce Code; or

20 (x) any offense under Section 42.105, Penal
21 Code;

22 (C) the proceeds gained from the commission of a
23 felony listed in Paragraph (A) or (B) of this subdivision, a
24 misdemeanor listed in Paragraph (B)(viii) or (x) of this
25 subdivision, or a crime of violence;

26 (D) acquired with proceeds gained from the
27 commission of a felony listed in Paragraph (A) or (B) of this

1 subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of
2 this subdivision, or a crime of violence; or

3 (E) used to facilitate or intended to be used to
4 facilitate the commission of a felony under Section 15.031 or
5 43.25, Penal Code.

6 SECTION 6. Chapter 59, Code of Criminal Procedure, is
7 amended by adding Article 59.011 to read as follows:

8 Art. 59.011. If property described by Article
9 59.01(2)(B)(x) is subject to forfeiture under this chapter and
10 Article 18.18, the attorney representing the state may proceed
11 under either provision.

12 SECTION 7. The changes in law made by this Act apply only to
13 an offense committed on or after the effective date of this Act or
14 to the forfeiture of property used in the commission of that
15 offense. An offense committed before the effective date of this
16 Act, or the forfeiture of property used in the commission of that
17 offense, is governed by the law in effect when the offense was
18 committed, and the former law is continued in effect for that
19 purpose. For purposes of this section, an offense was committed
20 before the effective date of this Act if any element of the offense
21 occurred before that date.

22 SECTION 8. This Act takes effect September 1, 2009.