

By: Christian

H.B. No. 1320

A BILL TO BE ENTITLED

AN ACT

relating to the creation of offenses relating to cockfighting and to the forfeiture of cockfighting equipment.

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

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

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

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

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

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

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

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

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

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

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

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

(5) manufactures, buys, sells, barter, exchanges,

1 possesses, advertises, or otherwise offers a gaff, slasher, or
2 other sharp implement designed for attachment to a cock with the
3 intent that the implement be used in cockfighting; or

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

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

10 SECTION 2. Articles 18.18(a), (b), (e), and (f), Code of
11 Criminal 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, for an offense involving child pornography, or for an
17 offense involving a scanning device or re-encoder, the court
18 entering the judgment of conviction shall order that the machine,
19 device, gambling equipment or gambling paraphernalia, instrument,
20 obscene device or material, child pornography, or scanning device
21 or re-encoder be destroyed or forfeited to the state. Not later
22 than the 30th day after the final conviction of a person for an
23 offense involving a prohibited weapon, the court entering the
24 judgment of conviction on its own motion, on the motion of the
25 prosecuting attorney in the case, or on the motion of the law
26 enforcement agency initiating the complaint on notice to the
27 prosecuting attorney in the case if the prosecutor fails to move for

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

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

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

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

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

1 pornography, criminal instrument, scanning device or re-encoder,
2 or dog-fighting or cockfighting equipment and that he is entitled
3 to possession, the magistrate shall dispose of the property or
4 proceeds in accordance with Paragraph (a) of this article.

5 SECTION 3. Article 18.18(g), Code of Criminal Procedure, as
6 effective April 1, 2009, is amended to read as follows:

7 (g) For purposes of this article:

8 (1) "criminal instrument" has the meaning defined in
9 the Penal Code;

10 (2) "gambling device or equipment, altered gambling
11 equipment or gambling paraphernalia" has the meaning defined in the
12 Penal Code;

13 (3) "prohibited weapon" has the meaning defined in the
14 Penal Code;

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

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

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

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

27 (D) a dog trained, being trained, or intended to

1 be used to fight with another dog;

2 (4-a) "cockfighting equipment" means:

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

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

10 (C) equipment used to promote or advertise an
11 exhibition of cockfighting, including a printing press or similar
12 equipment, paper, ink, or photography equipment; or

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

15 (4-b) "gaff" and "slasher" have the meanings assigned
16 by Section 42.105, Penal Code;

17 (5) "obscene device" and "obscene" have the meanings
18 assigned by Section 43.21, Penal Code;

19 (6) "re-encoder" has the meaning assigned by Section
20 522.001, Business & Commerce Code;

21 (7) "scanning device" has the meaning assigned by
22 Section 522.001, Business & Commerce Code; and

23 (8) "obscene material" and "child pornography"
24 include digital images and the media and equipment on which those
25 images are stored.

26 SECTION 4. The change in law made by this Act applies only
27 to an offense committed on or after the effective date of this Act.

1 An offense committed before the effective date of this Act is
2 covered by the law in effect when the offense was committed, and the
3 former law is continued in effect for that purpose. For purposes of
4 this section, an offense was committed before the effective date of
5 this Act if any element of the offense was committed before that
6 date.

7 SECTION 5. This Act takes effect September 1, 2009.