

1-1 By: Christian, et al. (Senate Sponsor - Ellis) H.B. No. 1320
1-2 (In the Senate - Received from the House May 6, 2009;
1-3 May 7, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 23, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 23, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1320 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to creating an offense for engaging in certain conduct
1-11 relating to cockfighting and to the criminal and civil consequences
1-12 of committing that offense.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 42, Penal Code, is amended by adding
1-15 Section 42.105 to read as follows:

1-16 Sec. 42.105. COCKFIGHTING. (a) In this section:

1-17 (1) "Cock" means the male of any type of domestic fowl.

1-18 (2) "Cockfighting" means any situation in which one
1-19 cock attacks or fights with another cock.

1-20 (3) "Gaff" means an artificial steel spur designed to
1-21 attach to the leg of a cock to replace or supplement the cock's
1-22 natural spur.

1-23 (4) "Slasher" means a steel weapon resembling a curved
1-24 knife blade designed to attach to the foot of a cock.

1-25 (b) A person commits an offense if the person knowingly:

1-26 (1) causes a cock to fight with another cock;

1-27 (2) participates in the earnings of or operates a
1-28 facility used for cockfighting;

1-29 (3) uses or permits another to use any real estate,
1-30 building, room, tent, arena, or other property for cockfighting;

1-31 (4) owns or trains a cock with the intent that the cock
1-32 be used in an exhibition of cockfighting;

1-33 (5) manufactures, buys, sells, barter, exchanges,
1-34 possesses, advertises, or otherwise offers a gaff, slasher, or
1-35 other sharp implement designed for attachment to a cock with the
1-36 intent that the implement be used in cockfighting; or

1-37 (6) attends as a spectator an exhibition of
1-38 cockfighting.

1-39 (c) An offense under Subsection (b)(1), (2), (3), or (5) is
1-40 a state jail felony. An offense under Subsection (b)(4) is a Class
1-41 A misdemeanor. An offense under Subsection (b)(6) is a Class C
1-42 misdemeanor, except that the offense is a Class A misdemeanor if it
1-43 is shown on the trial of the offense that the person has been
1-44 previously convicted of an offense under that subsection.

1-45 SECTION 2. Section 71.02(a), Penal Code, is amended to read
1-46 as follows:

1-47 (a) A person commits an offense if, with the intent to
1-48 establish, maintain, or participate in a combination or in the
1-49 profits of a combination or as a member of a criminal street gang,
1-50 he commits or conspires to commit one or more of the following:

1-51 (1) murder, capital murder, arson, aggravated
1-52 robbery, robbery, burglary, theft, aggravated kidnapping,
1-53 kidnapping, aggravated assault, aggravated sexual assault, sexual
1-54 assault, forgery, deadly conduct, assault punishable as a Class A
1-55 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
1-56 motor vehicle;

1-57 (2) any gambling offense punishable as a Class A
1-58 misdemeanor;

1-59 (3) promotion of prostitution, aggravated promotion
1-60 of prostitution, or compelling prostitution;

1-61 (4) unlawful manufacture, transportation, repair, or
1-62 sale of firearms or prohibited weapons;

1-63 (5) unlawful manufacture, delivery, dispensation, or

- 2-1 distribution of a controlled substance or dangerous drug, or
 2-2 unlawful possession of a controlled substance or dangerous drug
 2-3 through forgery, fraud, misrepresentation, or deception;
 2-4 (6) any unlawful wholesale promotion or possession of
 2-5 any obscene material or obscene device with the intent to wholesale
 2-6 promote the same;
 2-7 (7) any offense under Subchapter B, Chapter 43,
 2-8 depicting or involving conduct by or directed toward a child
 2-9 younger than 18 years of age;
 2-10 (8) any felony offense under Chapter 32;
 2-11 (9) any offense under Chapter 36;
 2-12 (10) any offense under Chapter 34 or 35;
 2-13 (11) any offense under Section 37.11(a);
 2-14 (12) any offense under Chapter 20A; [~~or~~]
 2-15 (13) any offense under Section 37.10; or
 2-16 (14) any offense under Section 42.105.

2-17 SECTION 3. Article 14.06(d), Code of Criminal Procedure, is
 2-18 amended to read as follows:

2-19 (d) Subsection (c) applies only to a person charged with
 2-20 committing an offense under:

2-21 (1) Section 481.121, Health and Safety Code, if the
 2-22 offense is punishable under Subsection (b)(1) or (2) of that
 2-23 section;

2-24 (2) Section 28.03, Penal Code, if the offense is
 2-25 punishable under Subsection (b)(2) of that section;

2-26 (3) Section 28.08, Penal Code, if the offense is
 2-27 punishable under Subsection (b)(1) of that section;

2-28 (4) Section 31.03, Penal Code, if the offense is
 2-29 punishable under Subsection (e)(2)(A) of that section;

2-30 (5) Section 31.04, Penal Code, if the offense is
 2-31 punishable under Subsection (e)(2) of that section;

2-32 (6) Section 38.114, Penal Code, if the offense is
 2-33 punishable as a Class B misdemeanor; [~~or~~]

2-34 (7) Section 42.105, Penal Code, if the offense is
 2-35 punishable as a Class A misdemeanor; or

2-36 (8) Section 521.457, Transportation Code.

2-37 SECTION 4. Articles 18.18(a), (b), (e), and (f), Code of
 2-38 Criminal Procedure, are amended to read as follows:

2-39 (a) Following the final conviction of a person for
 2-40 possession of a gambling device or equipment, altered gambling
 2-41 equipment, or gambling paraphernalia, for an offense involving a
 2-42 criminal instrument, for an offense involving an obscene device or
 2-43 material, for an offense involving child pornography, or for an
 2-44 offense involving a scanning device or re-encoder, the court
 2-45 entering the judgment of conviction shall order that the machine,
 2-46 device, gambling equipment or gambling paraphernalia, instrument,
 2-47 obscene device or material, child pornography, or scanning device
 2-48 or re-encoder be destroyed or forfeited to the state. Not later
 2-49 than the 30th day after the final conviction of a person for an
 2-50 offense involving a prohibited weapon, the court entering the
 2-51 judgment of conviction on its own motion, on the motion of the
 2-52 prosecuting attorney in the case, or on the motion of the law
 2-53 enforcement agency initiating the complaint on notice to the
 2-54 prosecuting attorney in the case if the prosecutor fails to move for
 2-55 the order shall order that the prohibited weapon be destroyed or
 2-56 forfeited to the law enforcement agency that initiated the
 2-57 complaint. If the court fails to enter the order within the time
 2-58 required by this subsection, any magistrate in the county in which
 2-59 the offense occurred may enter the order. Following the final
 2-60 conviction of a person for an offense involving dog fighting or
 2-61 cockfighting, the court entering the judgment of conviction shall
 2-62 order that any dog-fighting or cockfighting equipment be destroyed
 2-63 or forfeited to the state. Destruction of dogs and cocks, if
 2-64 necessary, must be carried out by a veterinarian licensed in this
 2-65 state or, if one is not available, by trained personnel of a humane
 2-66 society or an animal shelter. If forfeited, the court shall order
 2-67 the contraband delivered to the state, any political subdivision of
 2-68 the state, or to any state institution or agency. If gambling
 2-69 proceeds were seized, the court shall order them forfeited to the

3-1 state and shall transmit them to the grand jury of the county in
3-2 which they were seized for use in investigating alleged violations
3-3 of the Penal Code, or to the state, any political subdivision of the
3-4 state, or to any state institution or agency.

3-5 (b) If there is no prosecution or conviction following
3-6 seizure, the magistrate to whom the return was made shall notify in
3-7 writing the person found in possession of the alleged gambling
3-8 device or equipment, altered gambling equipment or gambling
3-9 paraphernalia, gambling proceeds, prohibited weapon, obscene
3-10 device or material, child pornography, scanning device or
3-11 re-encoder, criminal instrument, or dog-fighting or cockfighting
3-12 equipment to show cause why the property seized should not be
3-13 destroyed or the proceeds forfeited. The magistrate, on the motion
3-14 of the law enforcement agency seizing a prohibited weapon, shall
3-15 order the weapon destroyed or forfeited to the law enforcement
3-16 agency seizing the weapon, unless a person shows cause as to why the
3-17 prohibited weapon should not be destroyed or forfeited. A law
3-18 enforcement agency shall make a motion under this section in a
3-19 timely manner after the time at which the agency is informed in
3-20 writing by the attorney representing the state that no prosecution
3-21 will arise from the seizure.

3-22 (e) Any person interested in the alleged gambling device or
3-23 equipment, altered gambling equipment or gambling paraphernalia,
3-24 gambling proceeds, prohibited weapon, obscene device or material,
3-25 child pornography, scanning device or re-encoder, criminal
3-26 instrument, or dog-fighting or cockfighting equipment seized must
3-27 appear before the magistrate on the 20th day following the date the
3-28 notice was mailed or posted. Failure to timely appear forfeits any
3-29 interest the person may have in the property or proceeds seized, and
3-30 no person after failing to timely appear may contest destruction or
3-31 forfeiture.

3-32 (f) If a person timely appears to show cause why the
3-33 property or proceeds should not be destroyed or forfeited, the
3-34 magistrate shall conduct a hearing on the issue and determine the
3-35 nature of property or proceeds and the person's interest therein.
3-36 Unless the person proves by a preponderance of the evidence that the
3-37 property or proceeds is not gambling equipment, altered gambling
3-38 equipment, gambling paraphernalia, gambling device, gambling
3-39 proceeds, prohibited weapon, obscene device or material, child
3-40 pornography, criminal instrument, scanning device or re-encoder,
3-41 or dog-fighting or cockfighting equipment and that he is entitled
3-42 to possession, the magistrate shall dispose of the property or
3-43 proceeds in accordance with Paragraph (a) of this article.

3-44 SECTION 5. Article 18.18(g), Code of Criminal Procedure, as
3-45 effective April 1, 2009, is amended to read as follows:

3-46 (g) For purposes of this article:

3-47 (1) "criminal instrument" has the meaning defined in
3-48 the Penal Code;

3-49 (2) "gambling device or equipment, altered gambling
3-50 equipment or gambling paraphernalia" has the meaning defined in the
3-51 Penal Code;

3-52 (3) "prohibited weapon" has the meaning defined in the
3-53 Penal Code;

3-54 (4) "dog-fighting equipment" means:

3-55 (A) equipment used for training or handling a
3-56 fighting dog, including a harness, treadmill, cage, decoy, pen,
3-57 house for keeping a fighting dog, feeding apparatus, or training
3-58 pen;

3-59 (B) equipment used for transporting a fighting
3-60 dog, including any automobile, or other vehicle, and its
3-61 appurtenances which are intended to be used as a vehicle for
3-62 transporting a fighting dog;

3-63 (C) equipment used to promote or advertise an
3-64 exhibition of dog fighting, including a printing press or similar
3-65 equipment, paper, ink, or photography equipment; or

3-66 (D) a dog trained, being trained, or intended to
3-67 be used to fight with another dog;

3-68 (4-a) "cockfighting equipment" means:

3-69 (A) equipment used for training or handling a

4-1 fighting cock, including a cage, decoy, gaff, slasher, pen, house
4-2 for keeping a fighting cock, feeding apparatus, or training pen;
4-3 (B) equipment used for transporting a fighting
4-4 cock, including any automobile or other vehicle and its
4-5 appurtenances that are intended to be used as a vehicle for
4-6 transporting a fighting cock;
4-7 (C) equipment used to promote or advertise an
4-8 exhibition of cockfighting, including a printing press or similar
4-9 equipment, paper, ink, or photography equipment; or
4-10 (D) a cock trained, being trained, or intended to
4-11 be used to fight with another cock;
4-12 (4-b) "gaff" and "slasher" have the meanings assigned
4-13 by Section 42.105, Penal Code;
4-14 (5) "obscene device" and "obscene" have the meanings
4-15 assigned by Section 43.21, Penal Code;
4-16 (6) "re-encoder" has the meaning assigned by Section
4-17 522.001, Business & Commerce Code;
4-18 (7) "scanning device" has the meaning assigned by
4-19 Section 522.001, Business & Commerce Code; and
4-20 (8) "obscene material" and "child pornography"
4-21 include digital images and the media and equipment on which those
4-22 images are stored.
4-23 SECTION 6. Article 59.01(2), Code of Criminal Procedure, as
4-24 amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B.
4-25 2278), Acts of the 80th Legislature, Regular Session, 2007, is
4-26 reenacted and amended to read as follows:
4-27 (2) "Contraband" means property of any nature,
4-28 including real, personal, tangible, or intangible, that is:
4-29 (A) used in the commission of:
4-30 (i) any first or second degree felony under
4-31 the Penal Code;
4-32 (ii) any felony under Section 15.031(b),
4-33 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
4-34 31, 32, 33, 33A, or 35, Penal Code;
4-35 (iii) any felony under The Securities Act
4-36 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
4-37 (iv) any offense under Chapter 49, Penal
4-38 Code, that is punishable as a felony of the third degree or state
4-39 jail felony, if the defendant has been previously convicted three
4-40 times of an offense under that chapter;
4-41 (B) used or intended to be used in the commission
4-42 of:
4-43 (i) any felony under Chapter 481, Health
4-44 and Safety Code (Texas Controlled Substances Act);
4-45 (ii) any felony under Chapter 483, Health
4-46 and Safety Code;
4-47 (iii) a felony under Chapter 153, Finance
4-48 Code;
4-49 (iv) any felony under Chapter 34, Penal
4-50 Code;
4-51 (v) a Class A misdemeanor under Subchapter
4-52 B, Chapter 365, Health and Safety Code, if the defendant has been
4-53 previously convicted twice of an offense under that subchapter;
4-54 (vi) any felony under Chapter 152, Finance
4-55 Code;
4-56 (vii) any felony under Chapter 32, Human
4-57 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
4-58 involves the state Medicaid program;
4-59 (viii) a Class B misdemeanor under Chapter
4-60 522, Business & Commerce Code; ~~or~~
4-61 (ix) a Class A misdemeanor under Section
4-62 35.153, Business & Commerce Code; or
4-63 (x) any offense under Section 42.105, Penal
4-64 Code;
4-65 (C) the proceeds gained from the commission of a
4-66 felony listed in Paragraph (A) or (B) of this subdivision, a
4-67 misdemeanor listed in Paragraph (B)(viii) or (x) of this
4-68 subdivision, or a crime of violence;
4-69 (D) acquired with proceeds gained from the

5-1 commission of a felony listed in Paragraph (A) or (B) of this
5-2 subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of
5-3 this subdivision, or a crime of violence; or

5-4 (E) used to facilitate or intended to be used to
5-5 facilitate the commission of a felony under Section 15.031 or
5-6 43.25, Penal Code.

5-7 SECTION 7. Chapter 59, Code of Criminal Procedure, is
5-8 amended by adding Article 59.011 to read as follows:

5-9 Art. 59.011. If property described by Article
5-10 59.01(2)(B)(x) is subject to forfeiture under this chapter and
5-11 Article 18.18, the attorney representing the state may proceed
5-12 under either provision.

5-13 SECTION 8. The changes in law made by this Act apply only to
5-14 an offense committed on or after the effective date of this Act or
5-15 to the forfeiture of property used in the commission of that
5-16 offense. An offense committed before the effective date of this
5-17 Act, or the forfeiture of property used in the commission of that
5-18 offense, is governed by the law in effect when the offense was
5-19 committed, and the former law is continued in effect for that
5-20 purpose. For purposes of this section, an offense was committed
5-21 before the effective date of this Act if any element of the offense
5-22 occurred before that date.

5-23 SECTION 9. This Act takes effect September 1, 2009.

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