

BILL ANALYSIS

Senate Research Center
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S.B. 939
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Cockfighting has been a crime in Texas for more than 100 years. Under current statute only the individuals who are actively participating in fighting the roosters can be prosecuted for a crime. This means in Texas, it is legal to watch a cockfight, raise birds to fight, or even own paraphernalia used to enhance the fight. S.B. 939 would close this loophole in the current law by enforcing punishment for everyone involved in the cockfights. S.B. 939 will make it illegal to participate in the earnings of a facility where cockfights are held by targeting property owners and event hosts who lease land for cockfights. It will also make it illegal to market, buy, or sell equipment used in the events, attend a cockfight, or possess roosters with the intent of having them fight.

As proposed, S.B. 939 amends current law relating to creating an offense for engaging in certain conduct relating to cockfighting and to the criminal and civil consequences of committing that offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 42, Penal Code, by adding Section 42.105, as follows:

Sec. 42.105. COCKFIGHTING. (a) Defines, in this section, "cock," "cockfighting," "gaff," and "slasher."

(b) Provides that 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, possesses, advertises, or otherwise offers a gaff, slasher, or other sharp implement designed for attachment to a cock with the intent that the implement be used in cockfighting; or
- (6) attends as a spectator an exhibition of cockfighting.

(c) Authorizes that a person be convicted under Subsection (b)(2) or (3) on the basis of uncorroborated testimony of a party to the offense.

(d) Provides that an offense under Subsection (b)(1), (2), (3), or (5) is a state jail felony. Provides that an offense under Subsection (b)(4) is a Class A misdemeanor. Provides that an offense under Subsection (b)(6) is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the person has been previously convicted of an offense under that subdivision.

SECTION 2. Reenacts Section 71.02(a), Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, and amends it as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit certain actions including any offense under Section 42.105. Makes nonsubstantive changes.

SECTION 3. Amends Articles 18.18(a), (b), (e), (f), and (g), Code of Criminal Procedure, as follows:

(a) Provides that following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, for an offense involving an obscene device or material, for an offense involving child pornography, or for an offense involving a scanning device or re-encoder, the court entering the judgment of conviction is required to order that the machine, device, gambling equipment or gambling paraphernalia, instrument, obscene device or material, child pornography, or scanning device or re-encoder be destroyed or forfeited to the state. Requires the court entering the judgment of conviction on its own motion, on the motion of the prosecuting attorney in the case, or on the motion of the law enforcement agency initiating the complaint on notice to the prosecuting attorney in the case if the prosecutor fails to move for the order to, not later than the 30th day after the final conviction of a person for an offense involving a prohibited weapon, order that the prohibited weapon be destroyed or forfeited to the law enforcement agency that initiated the complaint. Authorizes any magistrate in the county in which the offense occurred, if the court fails to enter the order within the time required by this subsection, to enter the order. Requires the court entering the judgment of conviction, following the final conviction of a person for an offense involving dog fighting or cockfighting, to order that any dog-fighting or cockfighting equipment be destroyed or forfeited to the state. Requires destruction of dogs and cocks, if necessary, to be carried out by a veterinarian licensed in this state or, if one is not available, by trained personnel of a humane society or an animal shelter. Requires the court, if forfeited, to order the contraband delivered to the state, any political subdivision of the state, or to any state institution or agency. Requires the court, if gambling proceeds were seized, to order them forfeited to the state and to transmit them to the grand jury of the county in which they were seized for use in investigating alleged violations of the Penal Code, or to the state, any political subdivision of the state, or to any state institution or agency.

(b) Requires the magistrate to whom the return was made, if there is no prosecution or conviction following seizure, to notify in writing the person found in possession of the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, obscene device or material, child pornography, scanning device or re-encoder, criminal instrument, or dog-fighting or cockfighting equipment to show cause why the property seized should not be destroyed or the proceeds forfeited. Requires the magistrate, on the motion of the law enforcement agency seizing a prohibited weapon, to order the weapon destroyed or forfeited to the law enforcement agency seizing the weapon, unless a person shows cause as to why the prohibited weapon should not be destroyed or forfeited. Requires a law enforcement

agency to make a motion under this section in a timely manner after the time at which the agency is informed in writing by the attorney representing the state that no prosecution will arise from the seizure.

(e) Requires any person interested in the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, obscene device or material, child pornography, scanning device or re-encoder, criminal instrument, or dog-fighting or cockfighting equipment seized, to appear before the magistrate on the 20th day following the date the notice was mailed or posted. Provides that failure to timely appear forfeits any interest the person may have in the property or proceeds seized, and no person after failing to timely appear may contest destruction or forfeiture.

(f) Requires the magistrate, if a person timely appears to show cause why the property or proceeds should not be destroyed or forfeited, to conduct a hearing on the issue and determine the nature of property or proceeds and the person's interest therein. Requires the magistrate, unless the person proves by a preponderance of the evidence that the property or proceeds is not gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, gambling proceeds, prohibited weapon, obscene device or material, child pornography, criminal instrument, scanning device or re-encoder, or dog-fighting or cockfighting equipment and that he is entitled to possession, to dispose of the property or proceeds in accordance with Paragraph (a) of this article.

(g) Redefines in this section "criminal instrument," "gambling device or equipment, altered gambling equipment or gambling paraphernalia," and "prohibited weapon," and defines "cockfighting equipment," "gaff," and "slasher."

SECTION 4. Reenacts Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, and amends it to redefine, in this section, "contraband."

SECTION 5. Amends Chapter 59, Code of Criminal Procedure, by adding Article 59.012, as follows:

Art. 59.012. COCKFIGHTING CONTRABAND. Authorizes the attorney representing the state to proceed under either provision, if property described by Article 59.01(2)(B)(xiii) is subject to forfeiture under this chapter and Article 18.18.

SECTION 6. Provides that to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2011.