

By: Christian

H.B. No. 1043

A BILL TO BE ENTITLED

AN ACT

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

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;

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) is a Class
9 A misdemeanor. An offense under Subsection (b)(6) is a Class C
10 misdemeanor.

11 (d) It is an affirmative defense to prosecution under
12 Subsection (b)(4) that the actor owns or trains a cock with the
13 intent that the cock be used as a show bird or pet.

14 SECTION 2. Article 14.06(d), Code of Criminal Procedure, is
15 amended to read as follows:

16 (d) Subsection (c) applies only to a person charged with
17 committing an offense under:

18 (1) Section 481.121, Health and Safety Code, if the
19 offense is punishable under Subsection (b)(1) or (2) of that
20 section;

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

23 (3) Section 28.08, Penal Code, if the offense is
24 punishable under Subsection (b)(1) of that section;

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

27 (5) Section 31.04, Penal Code, if the offense is

1 punishable under Subsection (e)(2) of that section;

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

4 (7) Section 42.105, Penal Code, if the offense is
5 punishable as a Class A misdemeanor; or

6 (8) Section 521.457, Transportation Code.

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

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

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

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

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

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

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

1 proceeds in accordance with Paragraph (a) of this article.

2 (g) For purposes of this article:

3 (1) "criminal instrument" has the meaning assigned by
4 ~~[defined in]~~ the Penal Code;

5 (2) "gambling device or equipment, altered gambling
6 equipment or gambling paraphernalia" has the meaning assigned by
7 ~~[defined in]~~ the Penal Code;

8 (3) "prohibited weapon" has the meaning assigned by
9 ~~[defined in]~~ the Penal Code;

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

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

15 (B) equipment used for transporting a fighting
16 dog, including any automobile, or other vehicle, and its
17 appurtenances that ~~[which]~~ are intended to be used as a vehicle for
18 transporting a fighting dog;

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

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

24 (4-a) "cockfighting equipment" means:

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

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

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

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

10 (4-b) "gaff" and "slasher" have the meanings assigned
11 by Section 42.105, Penal Code;

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
15 522.001, Business & Commerce Code;

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

18 (8) "obscene material" and "child pornography"
19 include digital images and the media and equipment on which those
20 images are stored.

21 SECTION 4. Article 59.01(2), Code of Criminal Procedure, as
22 amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357
23 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is
24 reenacted and amended to read as follows:

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

27 (A) used in the commission of:

1 (i) any first or second degree felony under
2 the Penal Code;

3 (ii) any felony under Section 15.031(b),
4 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
5 31, 32, 33, 33A, or 35, Penal Code;

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

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

12 (B) used or intended to be used in the commission
13 of:

14 (i) any felony under Chapter 481, Health
15 and Safety Code (Texas Controlled Substances Act);

16 (ii) any felony under Chapter 483, Health
17 and Safety Code;

18 (iii) a felony under Chapter 153, Finance
19 Code;

20 (iv) any felony under Chapter 34, Penal
21 Code;

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

25 (vi) any felony under Chapter 152, Finance
26 Code;

27 (vii) any felony under Chapter 32, Human

1 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
2 involves the state Medicaid program;

3 (viii) a Class B misdemeanor under Chapter
4 522, Business & Commerce Code;

5 (ix) a Class A misdemeanor under Section
6 306.051, Business & Commerce Code; ~~or~~

7 (x) any offense under Section 42.10, Penal
8 Code;

9 (xi) ~~[(x)]~~ any offense under Section
10 46.06(a)(1) or 46.14, Penal Code;

11 (xii) ~~[(x)]~~ any offense under Chapter 71,
12 Penal Code; or

13 (xiii) any offense under Section 42.105,
14 Penal Code;

15 (C) the proceeds gained from the commission of a
16 felony listed in Paragraph (A) or (B) of this subdivision, a
17 misdemeanor listed in Paragraph (B)(viii), (x), (xi), (xii), or
18 (xiii) ~~[(B)(viii) or (x)]~~ of this subdivision, or a crime of
19 violence;

20 (D) acquired with proceeds gained from the
21 commission of a felony listed in Paragraph (A) or (B) of this
22 subdivision, a misdemeanor listed in Paragraph (B)(viii), (x),
23 (xi), (xii), or (xiii) ~~[(B)(viii) or (x)]~~ of this subdivision, or a
24 crime of violence; or

25 (E) used to facilitate or intended to be used to
26 facilitate the commission of a felony under Section 15.031 or
27 43.25, Penal Code.

1 SECTION 5. Chapter 59, Code of Criminal Procedure, is
2 amended by adding Article 59.012 to read as follows:

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

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

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

21 SECTION 8. This Act takes effect September 1, 2011.