

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas


05/30/09
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

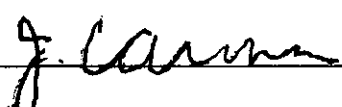
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 1320 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



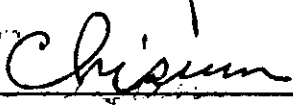
Sells (Chair)



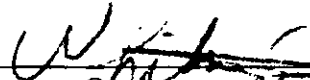
Christian (Chair)

Averitt


Cannon

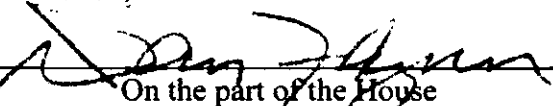
Christen


Christen

Wright


On the part of the Senate

Wright

Wright


On the part of the House

Wright

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

By: _____

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, *including criminal asset forfeiture.*

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

4 (g) For purposes of this article:

5 (1) "criminal instrument" has the meaning defined in
6 the Penal Code;

7 (2) "gambling device or equipment, altered gambling
8 equipment or gambling paraphernalia" has the meaning defined in the
9 Penal Code;

10 (3) "prohibited weapon" has the meaning defined in the
11 Penal Code;

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

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

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

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

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

26 (4-a) "cockfighting equipment" means:

27 (A) equipment used for training or handling a

1 fighting cock, including a cage, decoy, gaff, slasher, pen, house
2 for keeping a fighting cock, feeding apparatus, or training pen;

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

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

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

12 (4-b) "gaff" and "slasher" have the meanings assigned
13 by Section 42.105, Penal Code;

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

16 (6) "re-encoder" has the meaning assigned by Section
17 522.001, Business & Commerce Code;

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

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

23 SECTION 5. Article 59.01(2), Code of Criminal Procedure, as
24 amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B.
25 2278), Acts of the 80th Legislature, Regular Session, 2007, is
26 reenacted and amended to read as follows:

27 (2) "Contraband" means property of any nature,

1 including real, personal, tangible, or intangible, that is:

2 (A) used in the commission of:

3 (i) any first or second degree felony under
4 the Penal Code;

5 (ii) any felony under Section 15.031(b),
6 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
7 31, 32, 33, 33A, or 35, Penal Code;

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

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

14 (B) used or intended to be used in the commission
15 of:

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

18 (ii) any felony under Chapter 483, Health
19 and Safety Code;

20 (iii) a felony under Chapter 153, Finance
21 Code;

22 (iv) any felony under Chapter 34, Penal
23 Code;

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

27 (vi) any felony under Chapter 152, Finance

1 Code;

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

5 (viii) a Class B misdemeanor under Chapter
6 522, Business & Commerce Code; ~~or~~

7 (ix) a Class A misdemeanor under Section
8 35.153, Business & Commerce Code; or

9 (x) any offense under Section 42.105, Penal
10 Code;

11 (C) the proceeds gained from the commission of a
12 felony listed in Paragraph (A) or (B) of this subdivision, a
13 misdemeanor listed in Paragraph (B)(viii) or (x) of this
14 subdivision, or a crime of violence;

15 (D) acquired with proceeds gained from the
16 commission of a felony listed in Paragraph (A) or (B) of this
17 subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of
18 this subdivision, or a crime of violence; or

19 (E) used to facilitate or intended to be used to
20 facilitate the commission of a felony under Section 15.031 or
21 43.25, Penal Code.

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

24 Art. 59.011. COCKFIGHTING CONTRABAND. If property
25 described by Article 59.01(2)(B)(x) is subject to forfeiture under
26 this chapter and Article 18.18, the attorney representing the state
27 may proceed under either provision.

FLOOR AMENDMENT NO. _____ BY: _____
1 Amend ____B. No. _____ by adding the following appropriately
2 numbered SECTIONS to the bill and renumbering subsequent SECTIONS
3 the bill accordingly.

4 SECTION 67. Subsection (d), Article 59.03, Code of
5 Criminal Procedure, is amended to read as follows:

6 (d) A person in the possession of property at the time a
7 peace officer seizes the property under this chapter may at the time
8 of seizure assert the person's interest in or right to the property.
9 Any peace officer, including the [A] peace officer who seizes the
10 property, [under this chapter] may not [at the time of seizure]
11 request, require, or in any manner induce any person, including a
12 person who asserts an interest in or right to the property [seized],
13 to execute a document purporting to waive the person's interest in
14 or rights to [the] property seized under this chapter.

15 SECTION 8. Article 59.03, Code of Criminal Procedure, is
16 amended by adding Subsection (e) to read as follows:

17 (e) At any time before notice is filed under Article
18 59.04(b), an attorney representing the state may not request,
19 require, or in any manner induce any person, including a person who
20 asserts an interest in or right to property seized under this
21 chapter, to execute a document purporting to waive the person's
22 interest in or rights to the property.

23 SECTION 9. Article 59.06, Code of Criminal Procedure, is
24 amended by adding Subsections (c-1), (d-1), and (d-2) and amending
25 Subsections (d) and (g) to read as follows:

26 (c-1) Any postjudgment interest from money, securities,
27 negotiable instruments, stocks or bonds, or things of value, or
28 proceeds from the sale of those items, that are deposited in an
29 interest-bearing bank account under Subsection (c) shall be used

1 for the same purpose as the principal.

2 (d) Proceeds awarded under this chapter to a law enforcement
3 agency or to the attorney representing the state may be spent by the
4 agency or the attorney after a budget for the expenditure of the
5 proceeds has been submitted to the commissioners court or governing
6 body of the municipality. The budget must be detailed and clearly
7 list and define the categories of expenditures, but may not list
8 details that would endanger the security of an investigation or
9 prosecution. Expenditures are subject to the audit and enforcement
10 provisions established under this chapter [article]. A
11 commissioners court or governing body of a municipality may not use
12 the existence of an award to offset or decrease total salaries,
13 expenses, and allowances that the agency or the attorney receives
14 from the commissioners court or governing body at or after the time
15 the proceeds are awarded.

16 (d-1) The head of a law enforcement [the] agency or an
17 attorney representing the state may not use proceeds or property
18 received under this chapter to:

19 (1) contribute to a political campaign;

20 (2) make a donation to any entity, except as provided
21 by Subsection (d-2);

22 (3) pay expenses related to the training or education
23 of any member of the judiciary;

24 (4) pay any travel expenses related to attendance at
25 training or education seminars if the expenses violate generally
26 applicable restrictions established by the commissioners court or
27 governing body of the municipality, as applicable;

28 (5) purchase alcoholic beverages;

29 (6) make any expenditure not approved by the
30 commissioners court or governing body of the municipality, as
31 applicable, if the head of a law enforcement agency or attorney

1 representing the state holds an elective office and:

2 (A) the deadline for filing an application for a
3 place on the ballot as a candidate for reelection to that office in
4 the general primary election has passed and the person did not file
5 an application for a place on that ballot; or

6 (B) during the person's current term of office,
7 the person was a candidate in a primary, general, or runoff election
8 for reelection to that office and was not the prevailing candidate
9 in that election; or

10 (7) [~~the existence of an award to~~] increase a salary,
11 expense, or allowance for an employee of the law enforcement agency
12 or attorney representing the state [~~or agency~~] who is budgeted by
13 the commissioners court or governing body of the municipality
14 unless the commissioners court or governing body first approves the
15 increase [~~expenditure~~].

16 (d-2) The head of a law enforcement agency or an attorney
17 representing the state may use as an official purpose of the agency
18 or attorney proceeds or property received under this chapter to
19 make a donation to an entity that assists in:

20 (1) the detection, investigation, or prosecution of:

21 (A) criminal offenses; or

22 (B) instances of abuse, as defined by Section
23 261.001, Family Code;

24 (2) the provision of:

25 (A) mental health, drug, or rehabilitation
26 services; or

27 (B) services for victims or witnesses of criminal
28 offenses or instances of abuse described by Subdivision (1); or

29 (3) the provision of training or education related to
30 duties or services described by Subdivision (1) or (2).

31 (g)(1) All law enforcement agencies and attorneys

1 representing the state who receive proceeds or property under this
2 chapter shall account for the seizure, forfeiture, receipt, and
3 specific expenditure of all the ~~[such]~~ proceeds and property in an
4 audit, which is to be performed annually by the commissioners court
5 or governing body of a municipality, as appropriate. The annual
6 period of the audit for a law enforcement agency is the fiscal year
7 of the appropriate county or municipality and the annual period for
8 an attorney representing the state is the state fiscal year. The
9 audit must ~~[shall]~~ be completed on a form provided by the attorney
10 general and must include a detailed report and explanation of all
11 expenditures, including salaries and overtime pay, officer
12 training, investigative equipment and supplies, and other items.
13 Certified copies of the audit shall be delivered by the law
14 enforcement agency or attorney representing the state to [~~the~~
15 ~~comptroller's office and~~] the attorney general not later than the
16 60th day after the date on which the annual period that is the
17 subject of the audit ends.

18 (2) If a copy of the audit is not delivered to the
19 attorney general within the period required by Subdivision (1),
20 within five days after the end of the period the attorney general
21 shall notify the law enforcement agency or the attorney
22 representing the state of that fact. On a showing of good cause,
23 the attorney general may grant an extension permitting the agency
24 or attorney to deliver a copy of the audit after the period required
25 by Subdivision (1) and before the 76th day after the date on which
26 the annual period that is the subject of the audit ends. If the law
27 enforcement agency or the attorney representing the state fails to
28 establish good cause for not delivering the copy of the audit within
29 the period required by Subdivision (1) or fails to deliver a copy of
30 an audit within the extension period, the attorney general shall
31 notify the comptroller of that fact.

1 (3) On notice under Subdivision (2) [~~this~~
2 ~~subdivision~~], the comptroller shall perform the audit otherwise
3 required by Subdivision (1). At the conclusion of the audit, the
4 comptroller shall forward a copy of the audit to the attorney
5 general. The law enforcement agency or attorney representing the
6 state is liable to the comptroller for the costs of the comptroller
7 in performing the audit.

8 SECTION ¹⁰~~10~~. Chapter 59, Code of Criminal Procedure, is
9 amended by adding Articles 59.061 and 59.062 to read as follows:

10 Art. 59.061. AUDITS AND INVESTIGATIONS. (a) The state
11 auditor may at any time perform an audit or conduct an
12 investigation, in accordance with this article and Chapter 321,
13 Government Code, related to the seizure, forfeiture, receipt, and
14 specific expenditure of proceeds and property received under this
15 chapter.

16 (b) The state auditor is entitled at any time to access any
17 book, account, voucher, confidential or nonconfidential report, or
18 other record of information, including electronic data, maintained
19 under Article 59.06, except that if the release of the applicable
20 information is restricted under state or federal law, the state
21 auditor may access the information only with the approval of a court
22 or federal administrative agency, as appropriate.

23 (c) If the results of an audit or investigation under this
24 article indicate that a law enforcement agency or attorney
25 representing the state has knowingly violated or is knowingly
26 violating a provision of this chapter relating to the disposition
27 of proceeds or property received under this chapter, the state
28 auditor shall promptly notify the attorney general for the purpose
29 of initiating appropriate enforcement proceedings under Article
30 59.062.

31 Art. 59.062. ENFORCEMENT. (a) In the name of the state,

1 the attorney general may institute in a district court in Travis
2 County or in a county served by the law enforcement agency or
3 attorney representing the state, as applicable, a suit for
4 injunctive relief, to recover a civil penalty, or for both
5 injunctive relief and a civil penalty if the results of an audit or
6 investigation under Article 59.061 indicate that the law
7 enforcement agency or attorney representing the state has knowingly
8 violated or is knowingly violating a provision of this chapter
9 relating to the disposition of proceeds or property received under
10 this chapter.

11 (b) On application for injunctive relief and a finding that
12 the law enforcement agency or attorney representing the state is
13 knowingly violating a provision of this chapter relating to the
14 disposition of proceeds or property received under this chapter,
15 the district court shall grant the injunctive relief the facts may
16 warrant, without requirement for bond.

17 (c) A law enforcement agency or attorney representing the
18 state who knowingly commits a violation described by Subsection (a)
19 is liable to the state for a civil penalty in an amount not to exceed
20 \$100,000 as determined by the district court to be appropriate for
21 the nature and seriousness of the violation. In determining an
22 appropriate penalty for the violation, the court shall consider:

23 (1) any previous violations committed by the agency or
24 attorney;

25 (2) the seriousness of the violation, including the
26 nature, circumstances, extent, and gravity of the violation;

27 (3) the demonstrated good faith of the agency or
28 attorney; and

29 (4) the amount necessary to deter future violations.

30 (d) If the attorney general brings a suit under this article
31 and an injunction is granted or a civil penalty is imposed, the

1 attorney general may recover reasonable expenses, court costs,
2 investigative costs, and attorney's fees.

3 (e) Notwithstanding any other provision of this article, a
4 law enforcement agency or attorney representing the state ordered
5 to pay a civil penalty, expense, cost, or fee under this article
6 shall make the payment out of money available in any fund
7 established by the agency or attorney, as applicable, for the
8 purpose of administering proceeds or property received under this
9 chapter. If sufficient money is not available to make payment in
10 full at the time the court enters an order requiring payment, the
11 agency or attorney shall continue to make payments out of money
12 available in any fund described by this subsection until the
13 payment is made in full.

14 (f) A civil penalty collected under this article shall be
15 deposited to the credit of the drug court account in the general
16 revenue fund to help fund drug court programs established under
17 Chapter 469, Health and Safety Code.

18 (g) A law enforcement agency or attorney representing the
19 state is immune from liability under this article if the agency or
20 attorney reasonably relied on:

21 (1) the advice, consent, or approval of an entity that
22 conducts an audit of the agency or attorney under this chapter; or

23 (2) a written opinion of the attorney general relating
24 to:

25 (A) the statute or other provision of law the
26 agency or attorney is alleged to have knowingly violated; or

27 (B) a fact situation that is substantially
28 similar to the fact situation in which the agency or attorney is
29 involved.

30 ~~SECTION 59-03. The changes in law made by this Act in amending~~
31 ~~Article 59-03, Code of Criminal Procedure, apply only to property~~

in amending
Chapter 42, Penal Code,

H.B. No. 1320

1 SECTION 11. The changes in law made by this Act apply only to
2 an offense committed on or after the effective date of this Act
3 ~~to the forfeiture of property used in the commission of that~~
4 ~~offense.~~ An offense committed before the effective date of this
5 Act, ~~to the forfeiture of property used in the commission of that~~
6 offense, is governed by the law in effect when the offense was
7 committed, and the former law is continued in effect for that
8 purpose. For purposes of this section, an offense was committed
9 before the effective date of this Act if any element of the offense
10 occurred before that date.

~~11 SECTION 9. This Act takes effect September 1, 2004.~~

11 SECTION 12. The change in law made by this Act in amending
12 Article 59.01, Code of Criminal Procedure, applies only to the
13 forfeiture of property used in the commission of an offense
14 committed on or after the effective date of this Act. The
15 forfeiture of property used in the commission of an offense
16 committed before the effective date of this Act is governed by
17 the law in effect when the offense was committed, and the former
18 law is continued in effect for that purpose. For purposes of
19 this section, an offense was committed before the effective date
20 of this Act if any element of the offense occurred before that
21 date.

1 attorney general may recover reasonable expenses, court costs,
2 investigative costs, and attorney's fees.

3 (e) Notwithstanding any other provision of this article, a
4 law enforcement agency or attorney representing the state ordered
5 to pay a civil penalty, expense, cost, or fee under this article
6 shall make the payment out of money available in any fund
7 established by the agency or attorney, as applicable, for the
8 purpose of administering proceeds or property received under this
9 chapter. If sufficient money is not available to make payment in
10 full at the time the court enters an order requiring payment, the
11 agency or attorney shall continue to make payments out of money
12 available in any fund described by this subsection until the
13 payment is made in full.

14 (f) A civil penalty collected under this article shall be
15 deposited to the credit of the drug court account in the general
16 revenue fund to help fund drug court programs established under
17 Chapter 469, Health and Safety Code.

18 (g) A law enforcement agency or attorney representing the
19 state is immune from liability under this article if the agency or
20 attorney reasonably relied on:

21 (1) the advice, consent, or approval of an entity that
22 conducts an audit of the agency or attorney under this chapter; or

23 (2) a written opinion of the attorney general relating
24 to:

25 (A) the statute or other provision of law the
26 agency or attorney is alleged to have knowingly violated; or

27 (B) a fact situation that is substantially
28 similar to the fact situation in which the agency or attorney is
29 involved.

30 SECTION 13. The changes in law made by this Act in amending
31 Article 59.03, Code of Criminal Procedure, apply only to property

1 seized on or after the effective date of this Act. Property seized
2 before the effective date of this Act is covered by the law in
3 effect when the property was seized, and the former law is continued
4 in effect for that purpose. For purposes of this section, property
5 was seized before the effective date of this Act if any portion of
6 the property was seized before that date.

7 SECTION H. (a) Except as provided by Subsection (b) of
8 this section, the changes in law made by this Act in amending
9 Article 59.06, Code of Criminal Procedure, apply to the disposition
10 or use, on or after the effective date of this Act, of proceeds or
11 property received by a law enforcement agency or attorney
12 representing the state under Chapter 59, Code of Criminal
13 Procedure, regardless of whether the receipt of the proceeds or
14 property occurred before, on, or after the effective date of this
15 Act.

16 (b) The changes in law made by this Act in amending
17 Subsection (g), Article 59.06, Code of Criminal Procedure, and
18 adding Articles 59.061 and 59.062, Code of Criminal Procedure,
19 apply to any audit performed on or after the effective date of this
20 Act.

SECTION 15. This Act takes effect September 1, 2009.

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HOUSE VERSION

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, 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) An offense under Subsection (b)(1), (2), (3), or (5) is

SENATE VERSION

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, 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) An offense under Subsection (b)(1), (2), (3), or (5) is

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SECTION 1. Same as House version.

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a state jail felony. An offense under Subsection (b)(4) is a Class A misdemeanor. An offense under Subsection (b)(6) is a Class C misdemeanor.

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

No equivalent provision.

SENATE VERSION

a state jail felony. An offense under Subsection (b)(4) is a Class A misdemeanor. 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 subsection.~~

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

(a) 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, he commits or conspires to commit one or more of the following:

- (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;
- (2) any gambling offense punishable as a Class A misdemeanor;
- (3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;
- (4) unlawful manufacture, transportation, repair, or sale

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Same as House version.

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

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

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

- (1) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;
- (2) Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

SECTION 3. Same as House version.

SECTION 2. Same as House version.

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- (3) Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(1) of that section;
- (4) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;
- (5) Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;
- (6) Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; ~~[or]~~
- (7) Section 42.105, Penal Code, if the offense is punishable as a Class A misdemeanor; or
- ~~(8)~~ Section 521.457, Transportation Code.

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

(a) 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 shall 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. Not later than the 30th day after the final conviction of a person for an offense involving a prohibited weapon, the court entering the judgment of conviction on its own motion, on the motion

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SECTION 4. Same as House version.

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SECTION 3. Same as House version.

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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 shall order that the prohibited weapon be destroyed or forfeited to the law enforcement agency that initiated the complaint. If the court fails to enter the order within the time required by this subsection, any magistrate in the county in which the offense occurred may enter the order. Following the final conviction of a person for an offense involving dog fighting or cockfighting, the court entering the judgment of conviction shall order that any dog-fighting or cockfighting equipment be destroyed or forfeited to the state. Destruction of dogs and cocks, if necessary, must 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. If forfeited, the court shall order the contraband delivered to the state, any political subdivision of the state, or to any state institution or agency. If gambling proceeds were seized, the court shall order them forfeited to the state and shall 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) If there is no prosecution or conviction following seizure, the magistrate to whom the return was made shall notify in writing the person found in possession of the alleged gambling device or equipment, altered

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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. The magistrate, on the motion of the law enforcement agency seizing a prohibited weapon, shall 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. A law enforcement agency shall 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) 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 must appear before the magistrate on the 20th day following the date the notice was mailed or posted. 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) If a person timely appears to show cause why the property or proceeds should not be destroyed or

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forfeited, the magistrate shall conduct a hearing on the issue and determine the nature of property or proceeds and the person's interest therein. 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, the magistrate shall dispose of the property or proceeds in accordance with Paragraph (a) of this article.

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

- (g) For purposes of this article:
- (1) "criminal instrument" has the meaning defined in the Penal Code;
 - (2) "gambling device or equipment, altered gambling equipment or gambling paraphernalia" has the meaning defined in the Penal Code;
 - (3) "prohibited weapon" has the meaning defined in the Penal Code;
 - (4) "dog-fighting equipment" means:
 - (A) equipment used for training or handling a fighting dog, including a harness, treadmill, cage, decoy, pen, house for keeping a fighting dog, feeding apparatus, or

SECTION 5. Same as House version.

SECTION 4. Same as House version.

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training pen;

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

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

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

(4-a) "cockfighting equipment" means:

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

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

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

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

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

(5) "obscene device" and "obscene" have the meanings

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assigned by Section 43.21, Penal Code;

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

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

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

SECTION 5. Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

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

(A) used in the commission of:

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

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

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

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

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

SECTION 6. Same as House version.

SECTION 5. Same as House version.

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- (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
 - (ii) any felony under Chapter 483, Health and Safety Code;
 - (iii) a felony under Chapter 153, Finance Code;
 - (iv) any felony under Chapter 34, Penal Code;
 - (v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
 - (vi) any felony under Chapter 152, Finance Code;
 - (vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;
 - (viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code; ~~or~~
 - (ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code; or
 - (x) any offense under Section 42.105, Penal Code;
- (C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of this subdivision, or a crime of violence;
- (D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of this subdivision, or a crime of violence; or
- (E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or

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43.25, Penal Code.

SECTION 6. Chapter 59, Code of Criminal Procedure, is amended by adding Article 59.011 to read as follows:
Art. 59.011. COCKFIGHTING CONTRABAND. If property described by Article 59.01(2)(B)(x) is subject to forfeiture under this chapter and Article 18.18, the attorney representing the state may proceed under either provision.

No equivalent provision.

No equivalent provision.

SECTION 7. Substantially same as House version.

SECTION __. Subsection (d), Article 59.03, Code of Criminal Procedure, is amended to read as follows:
(d) A person in the possession of property at the time a peace officer seizes the property under this chapter may at the time of seizure assert the person's interest in or right to the property. Any peace officer, including the [A] peace officer who seizes the property, [under this chapter] may not [at the time of seizure] request, require, or in any manner induce any person, including a person who asserts an interest in or right to the property [seized], to execute a document purporting to waive the person's interest in or rights to [the] property seized under this chapter.

SECTION __. Article 59.03, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:
(e) At any time before notice is filed under Article 59.04(b), an attorney representing the state may not

SECTION 6. Same as House version.

SECTION 7. Same as Senate version.

SECTION 8. Same as Senate version.

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request, require, or in any manner induce any person, including a person who asserts an interest in or right to property seized under this chapter, to execute a document purporting to waive the person's interest in or rights to the property.

No equivalent provision.

SECTION __. Article 59.06, Code of Criminal Procedure, is amended by adding Subsections (c-1), (d-1), and (d-2) and amending Subsections (d) and (g) to read as follows:

SECTION 9. Same as Senate version.

(c-1) Any postjudgment interest from money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, that are deposited in an interest-bearing bank account under Subsection (c) shall be used for the same purpose as the principal.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter [~~article~~]. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries,

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expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded.

(d-1) The head of a law enforcement [the] agency or an attorney representing the state may not use proceeds or property received under this chapter to:

(1) contribute to a political campaign;

(2) make a donation to any entity, except as provided by Subsection (d-2);

(3) pay expenses related to the training or education of any member of the judiciary;

(4) pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;

(5) purchase alcoholic beverages;

(6) make any expenditure not approved by the commissioners court or governing body of the municipality, as applicable, if the head of a law enforcement agency or attorney representing the state holds an elective office and:

(A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or

(B) during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing

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candidate in that election; or

(7) ~~[the existence of an award to]~~ increase a salary, expense, or allowance for an employee of the law enforcement agency or attorney representing the state ~~[or agency]~~ who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the increase ~~[expenditure]~~.

(d-2) The head of a law enforcement agency or an attorney representing the state may use as an official purpose of the agency or attorney proceeds or property received under this chapter to make a donation to an entity that assists in:

(1) the detection, investigation, or prosecution of:

(A) criminal offenses; or

(B) instances of abuse, as defined by Section 261.001, Family Code;

(2) the provision of:

(A) mental health, drug, or rehabilitation services; or

(B) services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

(g)(1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the ~~[such]~~ proceeds and property in an audit, which is to be

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performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit must ~~shall~~ be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to ~~the comptroller's office and~~ the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 76th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by

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Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact.

~~(3) On notice under Subdivision (2) [this subdivision], the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.~~

No equivalent provision.

SECTION __. Chapter 59, Code of Criminal Procedure, is amended by adding Articles 59.061 and 59.062 to read as follows:

Art. 59.061. AUDITS AND INVESTIGATIONS. (a) The state auditor may at any time perform an audit or conduct an investigation, in accordance with this article and Chapter 321, Government Code, related to the seizure, forfeiture, receipt, and specific expenditure of proceeds and property received under this chapter.

(b) The state auditor is entitled at any time to access any book, account, voucher, confidential or nonconfidential report, or other record of information, including electronic data, maintained under Article 59.06, except that if the release of the applicable information is restricted under state or federal law, the state auditor may access the information only with the approval of a court or federal administrative agency, as appropriate.

(c) If the results of an audit or investigation under this

SECTION 10. Same as Senate version.

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article indicate that a law enforcement agency or attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the state auditor shall promptly notify the attorney general for the purpose of initiating appropriate enforcement proceedings under Article 59.062.

Art. 59.062. ENFORCEMENT. (a) In the name of the state, the attorney general may institute in a district court in Travis County or in a county served by the law enforcement agency or attorney representing the state, as applicable, a suit for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty if the results of an audit or investigation under Article 59.061 indicate that the law enforcement agency or attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter.

(b) On application for injunctive relief and a finding that the law enforcement agency or attorney representing the state is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the district court shall grant the injunctive relief the facts may warrant, without requirement for bond.

(c) A law enforcement agency or attorney representing the state who knowingly commits a violation described by Subsection (a) is liable to the state for a civil penalty

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in an amount not to exceed \$100,000 as determined by the district court to be appropriate for the nature and seriousness of the violation. In determining an appropriate penalty for the violation, the court shall consider:

(1) any previous violations committed by the agency or attorney;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) the demonstrated good faith of the agency or attorney; and

(4) the amount necessary to deter future violations.

(d) If the attorney general brings a suit under this article and an injunction is granted or a civil penalty is imposed, the attorney general may recover reasonable expenses, court costs, investigative costs, and attorney's fees.

(e) Notwithstanding any other provision of this article, a law enforcement agency or attorney representing the state ordered to pay a civil penalty, expense, cost, or fee under this article shall make the payment out of money available in any fund established by the agency or attorney, as applicable, for the purpose of administering proceeds or property received under this chapter. If sufficient money is not available to make payment in full at the time the court enters an order requiring payment, the agency or attorney shall continue to make payments out of money available in any fund described by this subsection until the payment is made in full.

(f) A civil penalty collected under this article shall be

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deposited to the credit of the drug court account in the general revenue fund to help fund drug court programs established under Chapter 469, Health and Safety Code.
(g) A law enforcement agency or attorney representing the state is immune from liability under this article if the agency or attorney reasonably relied on:
(1) the advice, consent, or approval of an entity that conducts an audit of the agency or attorney under this chapter; or
(2) a written opinion of the attorney general relating to:
(A) the statute or other provision of law the agency or attorney is alleged to have knowingly violated; or
(B) a fact situation that is substantially similar to the fact situation in which the agency or attorney is involved.

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

SECTION 8. Same as House version.

SECTION 11. Similar to House version, but limits the savings provision to changes in law amending Chapter 42, Penal Code, and deletes language referring to the forfeiture of property.

No equivalent provision.

No equivalent provision.

SECTION 12. Splitting the original savings provision between separate bill sections, inserts a savings provision

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No equivalent provision.

SECTION __. The changes in law made by this Act in amending Article 59.03, Code of Criminal Procedure, apply only to property seized on or after the effective date of this Act. Property seized before the effective date of this Act is covered by the law in effect when the property was seized, and the former law is continued in effect for that purpose. For purposes of this section, property was seized before the effective date of this Act if any portion of the property was seized before that date.

regarding the change in law amending Article 59.01, Code of Criminal Procedure, relating to the forfeiture of property used in the commission of an offense.

SECTION 13. Same as Senate version.

No equivalent provision.

SECTION __. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act in amending Article 59.06, Code of Criminal Procedure, apply to the disposition or use, on or after the effective date of this Act, of proceeds or property received by a law enforcement agency or attorney representing the state under Chapter 59, Code of Criminal Procedure, regardless of whether the receipt of the proceeds or property occurred before, on, or after the effective date of this Act.

SECTION 14. Same as Senate version.

(b) The changes in law made by this Act in amending Subsection (g), Article 59.06, Code of Criminal Procedure, and adding Articles 59.061 and 59.062, Code of Criminal Procedure, apply to any audit performed on or after the effective date of this Act.

House Bill 1320
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

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

SENATE VERSION

SECTION 9. Same as House version.

CONFERENCE

SECTION 15. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

**TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives**

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1320 by Christian (Relating to creating an offense for engaging in certain conduct relating to cockfighting and to the criminal and civil consequences of committing that offense, including criminal asset forfeiture.), Conference Committee Report

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code by creating the offense of cockfighting. The offense would be punishable as either a state jail felony, a Class A misdemeanor, or a Class C misdemeanor depending on provisions specified by the bill. The bill would amend the Code of Criminal Procedure by specifying the destruction or forfeiture of cockfighting equipment following the final conviction of a person for the offense of cockfighting, and in adding to property defined as contraband. The bill would also amend the Code of Criminal Procedure relating to the forfeiture of property and the jurisdiction of the attorney representing the state involving such cases. It is estimated implementation of these provisions of the bill would not have a significant impact on the costs of state or local government.

The bill would also amend the Code of Criminal Procedure and provide that the State Auditor may conduct audits and investigations on forfeited proceeds by certain governmental entities and permits the Attorney General to file suit for injunctive relief or recover a civil penalty on violations of criminal asset forfeiture law. According to the Comptroller's office, depending on the number and amount of civil penalties collected, there would be an indeterminate amount of revenue to the state. However, the amount of revenue is not anticipated to be significant. The Office of the Attorney General and the State Auditor's Office indicate that costs associated with implementation of these provisions of the bill could be absorbed within existing state resources.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Local Government Impact

The bill would require all law enforcement agencies who receive proceeds or property from seizures to account for the specific expenditures in an audit on a form provided by the attorney general, including a detailed report and explanation of all expenditures, salaries and overtime pay, training, and equipment and supplies. The audit must be performed annually by the auditing entity of the commissioners court or the governing body of a municipality.

According to the Texas District and County Attorney's Association, and Harris and Ward counties, the fiscal impact is not anticipated to be significant, but would depend on the specifications of the form provided by the attorney general, and the financial reporting systems used by local entities.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, LM