

1 HB74
2 126203-1
3 By Representative Barton
4 RFD: Judiciary
5 First Read: 01-MAR-11

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8 SYNOPSIS: Existing law prohibits cock fights and fines
9 a person convicted of cock fighting not less than
10 twenty dollars nor more than fifty dollars.

11 This bill would make it a Class A
12 misdemeanor upon a first conviction for a person to
13 do any of the following: Sell or train a cock with
14 the intent that the cock will fight another cock;
15 cause any cock to fight with another cock or cause
16 cocks to injure each other for amusement or gain;
17 own, manage, operate, finance, commercially
18 advertise, promote, sell admission tickets to, or
19 employ persons at any facility for the purpose of
20 cockfighting; possess or use any device or
21 substance intended to enhance the ability of a cock
22 to fight; wager money or anything of value on the
23 results of a cockfight; pay or receive money or
24 anything of value for admission to cock fights;
25 permit or cause a minor to do certain acts relating
26 to cockfighting; or knowingly permit any act in
27 violation of the above. Upon a second or subsequent

1 conviction of the above acts it would be a Class C
2 felony.

3 This bill would make it a Class A
4 misdemeanor for a person to do any of the
5 following: Be knowingly present, as a spectator, at
6 a place where preparations are being made for an
7 exhibition of cockfighting with the intent to be
8 present at the preparations; be knowingly present
9 at an exhibition or to knowingly aid or abet
10 another in the exhibition.

11 This bill would require persons who
12 regularly keep cocks to register the location of
13 the cocks with the Alabama Department of
14 Agriculture and Industries for the purpose of
15 disease control.

16 This bill would provide confiscation
17 procedures for fighting cocks and would define
18 terms.

19 This bill would also provide additional
20 fines and forfeiture of certain property and
21 profits and would provide procedures for filing a
22 report on seizures of cocks found to be fighting
23 and for destroying cocks found to be fighting.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a
2 new or increased expenditure of local funds from
3 becoming effective with regard to a local
4 governmental entity without enactment by a 2/3 vote
5 unless: it comes within one of a number of
6 specified exceptions; it is approved by the
7 affected entity; or the Legislature appropriates
8 funds, or provides a local source of revenue, to
9 the entity for the purpose.

10 The purpose or effect of this bill would be
11 to require a new or increased expenditure of local
12 funds within the meaning of the amendment. However,
13 the bill does not require approval of a local
14 governmental entity or enactment by a 2/3 vote to
15 become effective because it comes within one of the
16 specified exceptions contained in the amendment.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To amend Section 13A-12-4 of the Code of Alabama
23 1975, relating to cockfighting; and to add Sections 13A-12-4.1
24 and 13A-12-4.2 to the Code of Alabama 1975; to make it a Class
25 A misdemeanor upon a first conviction and a Class C felony
26 upon a second or subsequent conviction of certain acts
27 relating to cockfighting; to make it a Class A misdemeanor to

1 be present at cockfights under certain conditions; to require
2 the registration of the location of certain cocks; to provide
3 confiscation procedures for fighting cocks, define terms,
4 provide additional fines and forfeiture of certain property
5 and profits, and provide procedures for filing a report on
6 seizures of cocks found to be fighting and for destroying
7 cocks found to be fighting; and in connection therewith to
8 have as its purpose or effect the requirement of a new or
9 increased expenditure of local funds within the meaning of
10 Amendment 621 of the Constitution of Alabama of 1901, now
11 appearing as Section 111.05 of the Official Recompilation of
12 the Constitution of Alabama of 1901, as amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Section 13A-12-4, Code of Alabama 1975,
15 is amended to read as follows:

16 "§13A-12-4.

17 ~~"Any person who keeps a cockpit or who in any public~~
18 ~~place fights cocks shall, on conviction, be fined not less~~
19 ~~than \$20.00 nor more than \$50.00.~~

20 "(a) (1) Upon a first conviction, it shall be a Class
21 A misdemeanor for any person to do any of the following:

22 "a. To sell a cock with the intent that the cock
23 will fight another cock or train a cock with the intent that
24 the cock will fight another cock.

25 "b. For amusement or gain, to cause any cock to
26 fight with another cock or cause any cock to injure another
27 cock.

1 "c. To own, manage, or operate any facility or
2 property for the purpose of cockfighting, or to finance,
3 commercially advertise, promote, sell admission tickets, or
4 employ persons for the same.

5 "d. To possess or use any device or substance
6 intended to enhance the ability of a cock to fight or inflict
7 injury on another cock with the intent the device or substance
8 be used for such purposes.

9 "e. To wager money or anything of value on the
10 result of such fighting.

11 "f. To pay or receive money or anything of value for
12 the admission of a person to a place for cock fighting.

13 "g. To permit or cause a minor to do either of the
14 following:

15 "1. Attend an exhibition of the fighting of any
16 cock.

17 "2. Undertake or be involved in any act described in
18 this subsection.

19 "h. To knowingly permit any act in violation of
20 subdivision (1).

21 "(2) A second or subsequent conviction of this
22 subsection shall be a Class C felony.

23 "(b) It shall be a Class A misdemeanor for any
24 person to be knowingly present, as a spectator, at any place,
25 building, or tenement where preparations are being made for a
26 cockfight with the intent to be present at the cockfight, to

1 be knowingly present at the cockfight, or to knowingly aid or
2 abet another in the cockfight.

3 "(c) Any cock used to fight another cock in
4 violation of subsection (a) shall be confiscated as contraband
5 by the sheriff or other law enforcement officer incident to a
6 lawful arrest or search warrant, or both, and shall not be
7 returned to the owner, trainer, or possessor of the cock until
8 a hearing has been conducted or otherwise pursuant to Section
9 13A-12-4.2.

10 "(d) Any person who regularly keeps cocks shall
11 register the location of the cocks with the Alabama Department
12 of Agriculture and Industries for the purpose of disease
13 control.

14 "(e) For purposes of this section and Sections
15 13A-12-4.1 and 13A-12-4.2, the following terms have the
16 following meanings:

17 "(1) COCK. A male chicken.

18 "(2) COCKFIGHTING. An intentional fight between two
19 or more cocks. The term does not include conduct which is
20 otherwise permitted under the agricultural or animal husbandry
21 laws, customs, or practices of this state or of the United
22 States not specifically prohibited by this section or other
23 laws, which include, but are not limited to, conditioning of
24 poultry for general health purposes.

25 " (3) TRAIN. To intentionally develop the skills of
26 a cock for the purpose of fighting, injuring, or killing
27 another cock."

1 Section 2. Sections 13A-12-4.1 and 13A-12-4.2 are
2 added to the Code of Alabama 1975, to read as follows:

3 §13A-12-4.1.

4 Any person found to be in violation of subsection
5 (a) of Section 13A-12-4 shall be subject to all of the
6 following:

7 (1) In addition to any other penalties provided by
8 law, a fine of ten thousand dollars (\$10,000) is imposed for
9 conviction of a Class A misdemeanor and a fine of twenty
10 thousand dollars (\$20,000) is imposed for conviction of a
11 Class C felony.

12 (2) Forfeiture of all profits resulting from the
13 cockfighting as well as any property, real or personal, that
14 is a proceed of profits derived from the cockfighting,
15 traceable to the cockfighting, or used to facilitate the
16 cockfighting.

17 (3) Forfeiture of any interest in any property, real
18 or otherwise, used directly in connection with the
19 cockfighting.

20 §13A-12-4.2.

21 (a) Upon seizure of any cock under subsection (c) of
22 Section 13A-12-4, the law enforcement officer making the
23 seizure shall report the seizure and the facts connected
24 therewith to the state veterinarian or his or her designee,
25 the district attorney, or other prosecuting official in the
26 judicial circuit. The law enforcement agency shall provide the
27 state veterinarian or his or her designee a reasonable period

1 of time to arrive and test the involved cocks for disease
2 before transporting or destroying any cocks on the premises to
3 prevent any possible transmission of disease. The report shall
4 contain a full description of the cocks seized and detained,
5 the name of the person in whose possession it was found, the
6 name of the person making claim to the cocks, or any interest
7 therein, if the name is known or can be ascertained, the date
8 of seizure, and a statement of the circumstances surrounding
9 the seizing of the cocks. The district attorney or other
10 prosecuting officer of the judicial circuit upon receiving the
11 report shall within three business days institute, or cause to
12 be instituted, condemnation proceedings in the circuit court,
13 on the civil docket.

14 (b) A veterinarian, upon delivery of the seized
15 cocks to his or her office, or should one not be willing or
16 available, an animal shelter or at any time thereafter, after
17 consulting with the state veterinarian or his or her designee,
18 may destroy or order the destruction of any cock that is in
19 his or her opinion injured, diseased past recovery, lacks any
20 useful purpose due to training or viciousness, or whose
21 continued existence is inhumane and destruction is necessary
22 to relieve pain or suffering. A veterinarian shall not be held
23 civilly or criminally liable for any actions taken under this
24 section performed in good faith.

25 (c) A cock confiscated pursuant to subsection (c) of
26 Section 13A-12-4 shall be taken to a veterinarian, or should
27 one not be willing or available an animal shelter, pending

1 condemnation proceedings. The court shall set a condemnation
2 hearing date not more than 30 days from the filing of the
3 application and shall give notice of the same to the owners of
4 the cock. The state shall have the burden to prove by a
5 preponderance of the evidence that the confiscated cock was
6 used in violation of Section 13A-12-4.

7 (1) Upon a finding by the court that the cock was so
8 used, the cock shall remain in the custody of a veterinarian,
9 or should one not be willing or available, an animal shelter.
10 It shall be within the sole discretion of the veterinarian or
11 animal shelter to determine whether the cock is diseased,
12 injured, or lacks any useful purpose due to training or
13 viciousness, and if so, a veterinarian may humanely destroy or
14 order the destruction of such cock.

15 (2) Expenses incurred in connection with the
16 housing, care, or upkeep of a cock by any person, firm,
17 partnership, corporation, or other entity after seizure of the
18 cock pursuant to subsection (c) of Section 13A-12-4 shall be
19 taxed against the owner. In the event that no owner of the
20 seized animals can be identified, the property owner or
21 operator of the real property used for cockfighting shall be
22 the presumptive owner of the cock. In the event that the owner
23 is not charged with violating Section 13A-12-4 or is acquitted
24 of violating that section, this subsection shall not apply if
25 the court has also found by a preponderance of the evidence
26 that the cock seized was not used in connection with
27 cockfighting.

1 (3) If, after a hearing, the state is unable to
2 prove by a preponderance of the evidence that the confiscated
3 cock was used in violation of Section 13A-12-4, then the
4 seized cock shall remain in the custody of the veterinarian or
5 animal shelter pending the outcome of any criminal proceedings
6 brought against the owners of the cock.

7 (d) If any cock owner is acquitted of all criminal
8 charges under Section 13A-12-4, and the cock seized has not
9 been destroyed under subsection (b), or used in violation of
10 Section 13A-12-4 as determined by the court under subsection
11 (c), the cock shall be returned to the owner.

12 Section 3. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

20 Section 4. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.