



# Ohio Legislative Service Commission

## Bill Analysis

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### Proposed Sub. H.B. 260

129th General Assembly  
(LSC 129 1099-1)

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#### BILL SUMMARY

- Prohibits a person from knowingly engaging in cockfighting, a violation of which is a fourth degree misdemeanor.
- Prohibits a person from knowingly doing any of the following: (1) using or possessing with intent to use any device or substance intended to enhance a rooster's ability to fight or to inflict injury upon another rooster, (2) wagering money or anything else of value upon the results of a cockfighting event, (3) paying money or giving anything else of value in exchange for admission to a cockfight or be present at a cockfight, (4) receiving money or anything else of value in exchange for the admission of another person to a cockfight or for another person to be present at a cockfight, or (5) permitting or causing a minor to be present at an exhibition of a cockfight or to be involved in a cockfight.
- Provides an affirmative defense to a charge of engaging in cockfighting or any of the five prohibitions described in the preceding dot point that the person's conduct occurred solely for the purpose of or in support of breeding roosters for poultry shows in which a rooster is judged by the rooster's physical appearance.
- Requires a peace officer to confiscate any equipment or devices used in training roosters for the purpose of cockfighting or as part of cockfighting.
- Requires the proceeds from the sale of any equipment, devices, or other items involved in a cockfighting offense and the cash that is confiscated and forfeited, if any, to be used to pay the costs incurred by the impounding animal shelter in caring for or euthanizing a rooster involved in the offense.
- Requires the court to order any proceeds and any cash that remain after the costs described in the preceding dot point are paid to be equally distributed between and transferred to a local 4-H youth development program to be used for educational

purposes and to the local law enforcement agency substantially involved in the investigation of the offense.

- Replaces the term "fighting dog" with "fighting animal" and includes a rooster that a peace officer has probable cause to believe has been, is, or is intended to be used in cockfighting within the definition of "fighting animal."
- Permits a peace officer to seize and impound a rooster that the peace officer has probable cause to believe has been involved in a cockfighting violation.
- Permits the humane destruction of a rooster described in the preceding dot point under either of the following circumstances: (1) during its seizure if it is necessary because the rooster is suffering, or (2) at any time during its impoundment if a licensed veterinarian determines it to be necessary because the rooster is suffering.
- Applies additional existing procedures and requirements that apply to the seizure, impoundment, and disposition of a companion animal to the seizure, impoundment, and disposition of a rooster that a peace officer has probable cause to believe has been, is, or is intended to be used in cockfighting.

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## CONTENT AND OPERATION

### Prohibition on cockfighting

#### Current law

Current law prohibits any person from knowingly engaging in or being employed at "cockfighting," bearbaiting, or pitting an animal against another; from receiving money for the admission of another to a place kept for such purpose; and from using, training, or possessing any animal for seizing, detaining, or mistreating a domestic animal. Any person who knowingly purchases a ticket of admission to such a place, is present at such a place, or witnesses such spectacle is an aider and abettor.<sup>1</sup> A person who violates this prohibition is guilty of a fourth degree misdemeanor.<sup>2</sup>

#### Operation of the bill

The bill removes the prohibitions related to cockfighting from the offense described under "**Current law**," above, leaves the prohibitions and penalties involving bearbaiting and pitting an animal against another intact with technical changes, and

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<sup>1</sup> R.C. 959.15.

<sup>2</sup> R.C. 959.99(C).

creates a new section and penalty scheme for the prohibitions related to cockfighting. The bill prohibits a person from knowingly engaging in cockfighting.<sup>3</sup> Whoever violates this new prohibition is guilty of a first degree misdemeanor.<sup>4</sup>

Additionally, the bill prohibits a person from knowingly doing any of the following:<sup>5</sup>

(1) Using or possessing with intent to use any device or substance intended to enhance a rooster's ability to fight or to inflict injury upon another rooster;

(2) Wagering money or anything else of value upon the results of a cockfighting event;

(3) Paying money or giving anything else of value in exchange for admission to a cockfight or be present at a cockfight;

(4) Receiving money or anything else of value in exchange for the admission of another person to a cockfight or for another person to be present at a cockfight;

(5) Permitting or causing a minor to be present at an exhibition of a cockfight or to be involved in a cockfight.

Whoever violates any of the five new prohibitions listed in the preceding paragraph is guilty of a fifth degree felony on the first offense and a third degree felony on each subsequent offense.<sup>6</sup> A peace officer (see "**Definitions**," below) must confiscate any equipment or devices used in training roosters for the purpose of cockfighting or as part of cockfighting.<sup>7</sup> If any equipment, devices, or other items involved in such an offense are confiscated, forfeited, and sold or if any cash is confiscated and forfeited, the proceeds from the sale and the cash that is confiscated and forfeited, if any, must be used to pay the costs incurred by the impounding animal shelter in caring for or euthanizing a rooster involved in the offense. The court must order any proceeds and any cash that remain after those costs are paid to be equally distributed between and transferred to a local 4-H youth development program to be used for educational

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<sup>3</sup> R.C. 959.151(A).

<sup>4</sup> R.C. 959.99(I)(1).

<sup>5</sup> R.C. 959.151(B).

<sup>6</sup> R.C. 959.99(I)(2).

<sup>7</sup> R.C. 959.152.

purposes and to the local law enforcement agency substantially involved in the investigation of the offense.<sup>8</sup>

It is an affirmative defense to a charge of engaging in cockfighting or of violating any of the five other new prohibitions described in the second preceding paragraph that the person's conduct occurred solely for the purpose of or in support of breeding roosters for poultry shows in which a rooster is judged by the rooster's physical appearance.<sup>9</sup>

## **Fighting animals – definition, seizure, and impoundment**

### **Current law – fighting dogs**

Under current law, a "fighting dog" means a dog that a peace officer has probable cause to believe has been, is, or is intended to be used in dogfighting in violation of R.C. 959.16 (see "**Related offense – dogfighting**," below). A peace officer is authorized to seize and cause to be impounded with an impounding entity (see "**Definitions**," below) a fighting dog that the peace officer has probable cause to believe is involved in a dogfighting violation in violation of R.C. 959.16.<sup>10</sup> Additionally, a fighting dog that is so seized may be humanely destroyed under either of the following circumstances: (1) during its seizure if it is necessary because the fighting dog is suffering, or (2) at any time during its impoundment if a licensed veterinarian determines it to be necessary because the fighting dog is suffering.<sup>11</sup>

### **Operation of the bill – fighting animals**

The bill replaces the term "fighting dog" with "fighting animal" in the provisions discussed above under "**Current law – fighting dogs**." The bill replaces the definition of "fighting dog" with a definition of "fighting animal." The bill includes within the definition of "fighting animal" (1) a rooster that a peace officer has probable cause to believe has been, is, or is intended to be used in cockfighting and (2) the language from the current definition of a "fighting dog" that is described above under "**Current law – fighting dogs**."<sup>12</sup> A peace officer may seize and cause to be impounded with an impounding agency such a rooster if the peace officer has probable cause to believe that

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<sup>8</sup> R.C. 959.99(I)(2).

<sup>9</sup> R.C. 959.151(C).

<sup>10</sup> R.C. 959.161(A)(1) and (B).

<sup>11</sup> R.C. 959.161(C).

<sup>12</sup> R.C. 959.161(A)(1).

the rooster has been involved in a cockfighting-related violation (a violation of R.C. 959.151 – see "**Operation of the bill**" under "**Prohibition on cockfighting**," above).<sup>13</sup>

Additionally, a rooster that is seized and caused to be impounded as described in the preceding paragraph may be humanely destroyed under either of the following circumstances (same circumstances for which a fighting dog may be so destroyed under current law): (1) during its seizure if it is necessary because the rooster is suffering, or (2) at any time during its impoundment if a licensed veterinarian determines it to be necessary because the rooster is suffering.<sup>14</sup>

## **Procedures and requirements for impounding and disposition of fighting animal**

### **Current procedures and requirements made applicable to fighting animals**

Current law, unchanged by the bill, provides procedures and requirements that apply to the seizure, impoundment, and disposition of a companion animal. Some of these procedures and requirements also apply under current law and the bill to the seizure, impoundment, and disposition of a fighting dog. The bill applies these procedures and requirements to "fighting animals," thus increasing the scope of these procedures and requirements to include a rooster that a peace officer has probable cause to believe has been, is, or is intended to be used in cockfighting.<sup>15</sup> These procedures and requirements are described below; for purposes of the application of these procedures and requirements, all references to "impounding entity" and "peace officer" have the same meanings as in "**Definitions**," below.

### **Notice of seizure and impoundment**

A peace officer that has seized and impounded a fighting animal must give written notice of the seizure and impoundment to the owner, keeper, or harbinger of the fighting animal that was seized and impounded. If the peace officer is unable to give the notice to the owner, keeper, or harbinger of the fighting animal, the peace officer must post the notice on the door of the residence or in another conspicuous place on the premises at which the fighting animal was seized. The notice must include a statement that a hearing will be held not later than ten days after the notice is provided or at the next available court date to determine whether the peace officer had probable cause to seize the fighting animal and, if applicable, to determine the amount of a bond or cash

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<sup>13</sup> R.C. 959.161(B).

<sup>14</sup> R.C. 959.161(C).

<sup>15</sup> R.C. 959.161(D).

deposit that is needed to provide for the fighting animal's care and keeping for not less than 30 days beginning on the date on which the fighting animal was impounded.<sup>16</sup>

### **Probable cause hearing**

Not later than ten days after notice is provided as described above or at the next available court date, the court must hold a hearing to determine whether the peace officer impounding a fighting animal had probable cause to seize the fighting animal. If the court determines that probable cause exists, the court must determine the amount of a bond or cash deposit that is needed to provide for the fighting animal's care and keeping for not less than 30 days beginning on the date on which the fighting animal was impounded.<sup>17</sup>

If the court determines that probable cause does not exist, the court immediately must order the impounding entity to return the fighting animal to its owner if possible. If the fighting animal cannot be returned because it has died as a result of neglect or other misconduct by the impounding entity or if the fighting animal is injured as a result of neglect or other misconduct by the impounding entity, the court must order the impounding entity to pay the owner an amount determined by the court to be equal to the reasonable market value of the fighting animal at the time that it was impounded plus statutory interest from the date of the impoundment or an amount determined by the court to be equal to the reasonable cost of treatment of the injury to the fighting animal, as applicable. The requirement regarding the payment of the reasonable market value of the fighting animal does not apply in the case of a dog that was not registered at the time it was seized and impounded.<sup>18</sup>

### **Posting of bond or cash deposit**

If the court determines that probable cause exists and determines the amount of a bond or cash deposit, the case must continue, and the owner must post a bond or cash deposit to provide for the fighting animal's care and keeping for not less than 30 days beginning on the date on which the fighting animal was impounded. The owner may renew a bond or cash deposit by posting, not later than ten days following the expiration of the period for which a previous bond or cash deposit was posted, a new bond or cash deposit in an amount that the court, in consultation with the impounding entity, determines is sufficient to provide for the fighting animal's care and keeping for not less than 30 days beginning on the date on which the previous period expired. If no

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<sup>16</sup> R.C. 959.161(D), by reference to R.C. 959.132(C) (not in the bill).

<sup>17</sup> R.C. 959.161(D), by reference to R.C. 959.132(E)(1) (not in the bill).

<sup>18</sup> R.C. 959.161(D), by reference to R.C. 959.132(E)(2) (not in the bill).

bond or cash deposit is posted or if a bond or cash deposit expires and is not renewed, the impounding entity may determine the disposition of the fighting animal unless the court issues an order that specifies otherwise.<sup>19</sup>

### **Penalties**

If a person is convicted of a dogfighting-related or cockfighting-related offense or of attempting to do so, the court may impose the following additional penalties against the person:

(1) A requirement that the person pay for the costs incurred by the impounding entity in caring for a fighting animal involved in the applicable offense, provided that the costs were incurred during the fighting animal's impoundment. A bond or cash deposit posted may be applied to the costs.

(2) An order permanently terminating the person's right to possession, title, custody, or care of the fighting animal that was involved in the offense. If the court issues such an order, the court must order the disposition of the fighting animal.<sup>20</sup>

### **Requirements upon "not guilty" finding**

If a person is found not guilty of committing a dogfighting-related or cockfighting-related offense, the court must immediately order the impounding entity to return the animal that is the subject of the original charges to its owner if possible and to return the entire amount of any bond or cash deposit posted. If the animal cannot be returned or is injured as a result of neglect or other misconduct by the impounding entity, the court must order the impounding entity to pay the owner an amount determined by the court to be equal to the reasonable market value of the animal at the time that it was impounded plus statutory interest from the date of the impoundment or an amount determined by the court to be equal to the reasonable cost of treatment of the injury to the animal, as applicable. The requirements regarding the return of a bond or cash deposit and the payment of the reasonable market value of the animal or of the reasonable cost of treatment do not apply in the case of a dog that was not registered at the time it was seized and impounded.<sup>21</sup>

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<sup>19</sup> R.C. 959.161(D), by reference to R.C. 959.132(E)(3) (not in the bill).

<sup>20</sup> R.C. 959.161(D), by reference to R.C. 959.132(F) (not in the bill).

<sup>21</sup> R.C. 959.161(D), by reference to R.C. 959.132(G) (not in the bill).

## Related offense – dogfighting

Existing law, unchanged by the bill, prohibits any person from knowingly doing any of the following:<sup>22</sup>

- (1) Promoting, engaging in, or being employed at dogfighting;
- (2) Receiving money or anything else of value for the admission of another person to a dogfighting event or a place kept for dogfighting;
- (3) Selling, purchasing, possessing, or training a dog for dogfighting;
- (4) Using, training, or possessing a dog for seizing, detaining, or maltreating a domestic animal;
- (5) Paying money or giving anything else of value in exchange for admission to or being present at a dogfight;
- (6) Witnessing a dogfight if it is presented as a public spectacle.

A violation of any of the six prohibitions listed in the preceding paragraph is a fourth degree felony on the first offense and a third degree felony on each subsequent offense.<sup>23</sup>

## Definitions

As used in the provisions of the bill dealing with fighting animals:

**"Impounding entity"** means the entity that has possession of an impounded fighting animal during its impoundment.<sup>24</sup>

**"Peace officer"** includes a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to R.C. 737.04; member of a police force employed by a metropolitan housing authority; member of a police force employed by a regional transit authority; state university law enforcement officer; enforcement agent of the Department of Public Safety; employee of the Department of Taxation to whom investigation powers have been delegated; employee of the Department of Natural

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<sup>22</sup> R.C. 959.16(A) (not in the bill).

<sup>23</sup> R.C. 959.99(H).

<sup>24</sup> R.C. 959.161(A)(2).



Resources who is a natural resources law enforcement staff officer, a forest officer, a preserve officer, a wildlife officer, a park officer, or a state watercraft officer; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; veterans' home police officer; special police officer employed by a port authority; police constable of any township; police officer of a township or joint police district; a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations and that is required to be under a security program and is governed by aviation security rules of the Transportation Security Administration of the United States Department of Transportation; the House of Representatives Sergeant at Arms if the House of Representatives Sergeant at Arms has arrest authority; and an Assistant House of Representatives Sergeant at Arms; officer or employee of the Bureau of Criminal Identification and Investigation who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to R.C. 109.54 or 109.541; a state fire marshal law enforcement officer; and, for the purpose of arrests within those areas and the filing of and service of process relating to those offenses witnessed or investigated by them, the Superintendent and troopers of the State Highway Patrol.<sup>25</sup>

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## HISTORY

| ACTION     | DATE     |
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| Introduced | 06-14-11 |

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<sup>25</sup> R.C. 959.152, by reference to R.C. 959.161, by reference to R.C. 2935.01(B) (not in the bill).

