SENATE BILL No. 377

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1-1; IC 35-45-6-1; IC 35-46.

Synopsis: Animal fighting contests. Defines "baiting" to mean: (1) attacking an animal with violence; (2) provoking an animal; or (3) harassing an animal with another animal; for the purpose of training the animal for or causing the animal to engage in an animal fighting contest. Makes it a Class C felony for a person to do the following: (1) Breed, transfer, or possess an animal for the purpose of baiting the animal or using the animal in an animal fighting contest. (2) Promote or stage a baiting or an animal fighting contest. (3) Allow property to be used to conduct a baiting or an animal fighting contest. (4) Use an animal in a baiting or an animal fighting contest. (5) Attend a baiting or an animal fighting contest. Makes possession of animal fighting paraphernalia: (1) a Class A misdemeanor if the possession is for the purpose of baiting an animal or with the intent to commit certain animal fighting offenses; and (2) a Class C felony if the possession is with the intent to commit certain animal fighting offenses and while also possessing a dog, cock, fowl, hog, or bird bearing an injury consistent with participation in or training for a baiting or an animal fighting contest. Makes neglect of a dependent a Class C felony instead of a Class D felony if the offense involves a violation of the law concerning animal fighting contests. Authorizes the seizure of money and property that is used by a person to commit certain offenses relating to animal fighting contests. Specifies that certain offenses relating to animal fighting contests are considered racketeering activity. Requires a court to order a person who is convicted of certain offenses concerning animal fighting to refrain from: (1) owning, harboring, or training an animal; or (2) residing in a dwelling with another person who owns, harbors, or trains an animal; for ten years after the person is sentenced. Repeals a provision that makes attending a fighting contest involving animals a Class A misdemeanor.

Effective: July 1, 2011.

Arnold

January 11, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

C o p y

Introduced

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 377

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-24-1-1, AS AMENDED BY P.L.143-2009, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(ii) Dealing in methamphetamine (IC 35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(v) Dealing in a schedule V controlled substance (IC 35-48-4-4).
(vi) Dealing in a counterfeit substance (IC 35-48-4-5).
(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
(viii) Possession of methamphetamine (IC 35-48-4-6.1).
(ix) Dealing in paraphernalia (IC 35-48-4-8.5).
(x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars ($100) or more.

(C) Any hazardous waste in violation of IC 13-30-10-1.5.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

C o p y

(A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment, including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two

C o p y

(2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(16) The following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(B) Property constituting, derived from, or traceable to the gross proceeds that a person obtains directly or indirectly as a result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(17) All money and any part of real or personal property, including a vehicle, that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

an offense under IC 35-46-3-8, IC 35-46-3-8.5, IC 35-46-3-9, or IC 35-46-3-9.5 concerning baiting or animal fighting contests.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

C o p y

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).

(2) IC 35-48-4-1.1 (dealing in methamphetamine).

(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 2. IC 35-45-6-1, AS AMENDED BY P.L.143-2009, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

C o p y

(c) "Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or

(2) a union, an association, or a group, whether a legal entity or merely associated in fact.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

(e) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

(1) A provision of IC 23-19, or of a rule or order issued under IC 23-19.

(2) A violation of IC 35-45-9.

(3) A violation of IC 35-47.

(4) A violation of IC 35-49-3.

(5) Murder (IC 35-42-1-1).

(6) Battery as a Class C felony (IC 35-42-2-1).

(7) Kidnapping (IC 35-42-3-2).

(8) Human and sexual trafficking crimes (IC 35-42-3.5).

(9) Child exploitation (IC 35-42-4-4).

(10) Robbery (IC 35-42-5-1).

(11) Carjacking (IC 35-42-5-2).

(12) Arson (IC 35-43-1-1).

(13) Burglary (IC 35-43-2-1).

(14) Theft (IC 35-43-4-2).

(15) Receiving stolen property (IC 35-43-4-2).

(16) Forgery (IC 35-43-5-2).

(17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).

(18) Bribery (IC 35-44-1-1).

(19) Official misconduct (IC 35-44-1-2).

(20) Conflict of interest (IC 35-44-1-3).

(21) Perjury (IC 35-44-2-1).

(22) Obstruction of justice (IC 35-44-3-4).

(23) Intimidation (IC 35-45-2-1).

(24) Promoting prostitution (IC 35-45-4-4).

(25) Professional gambling (IC 35-45-5-3).

C o p y

(26) Maintaining a professional gambling site (IC 35-45-5-3.5(b)).
(27) Promoting professional gambling (IC 35-45-5-4).
(28) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
(29) Dealing in or manufacturing methamphetamine (IC 35-48-4-1.1).
(30) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
(31) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
(32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
(33) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
(34) Money laundering (IC 35-45-15-5).
(35) A violation of IC 35-47.5-5.
(36) A violation of any of the following:
(A) IC 23-14-48-9.
(B) IC 30-2-9-7(b).
(C) IC 30-2-10-9(b).
(D) IC 30-2-13-38(f).
(37) A violation of IC 35-46-3-8, IC 35-46-3-8.5, IC 35-46-3-9, or IC 35-46-3-9.5 concerning baiting or animal fighting contests.

SECTION 3. IC 35-46-1-4, AS AMENDED BY P.L.109-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:
(1) places the dependent in a situation that endangers the dependent's life or health;
(2) abandons or cruelly confines the dependent;
(3) deprives the dependent of necessary support; or
(4) deprives the dependent of education as required by law;
commits neglect of a dependent, a Class D felony.

(b) However, the offense is:
(1) a Class C felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and:
(A) results in bodily injury; ~~or~~
(B) is:
(i) committed in a location where a person is violating IC 35-48-4-1 **or IC 35-48-4-1.1** (delivery, financing, or manufacture of cocaine, methamphetamine, or a narcotic

C o p y

drug); or

(ii) the result of a violation of IC 35-48-4-1 **or IC 35-48-4-1.1** (delivery, financing, or manufacture of cocaine, methamphetamine, or a narcotic drug); **or**

(C) is:

(i) committed in a location where a person is violating IC 35-46-3-9 concerning baiting or animal fighting contests; or

(ii) the result of a violation of IC 35-46-3-9 concerning baiting or animal fighting contests;

(2) a Class B felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and results in serious bodily injury;

(3) a Class A felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) by a person at least eighteen (18) years of age and results in the death of a dependent who is less than fourteen (14) years of age; and

(4) a Class C felony if it is committed under subsection (a)(2) and consists of cruel confinement or abandonment that:

(A) deprives a dependent of necessary food, water, or sanitary facilities;

(B) consists of confinement in an area not intended for human habitation; or

(C) involves the unlawful use of handcuffs, a rope, a cord, tape, or a similar device to physically restrain a dependent.

(c) It is a defense to a prosecution based on an alleged act under this section that:

(1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age with an emergency medical provider who took custody of the child under IC 31-34-2.5 when:

(A) the prosecution is based solely on the alleged act of leaving the child with the emergency medical services provider; and

(B) the alleged act did not result in bodily injury or serious bodily injury to the child; or

(2) the accused person, in the legitimate practice of the accused person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.

(d) Except for property transferred or received:

(1) under a court order made in connection with a proceeding under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5

C o p y

or IC 31-6-5 before their repeal); or

(2) under ~~IC 35-46-1-9(b),~~ **section 9(b) of this chapter;**

a person who transfers or receives any property in consideration for the termination of the care, custody, or control of a person's dependent child commits child selling, a Class D felony.

SECTION 4. IC 35-46-3-4.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4.3. As used in this chapter, "animal fighting paraphernalia" means equipment used:

(1) for baiting animals; or

(2) to **otherwise** train or condition animals for participation in an animal fighting contest.

SECTION 5. IC 35-46-3-4.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 4.4. As used in this chapter, "baiting" means:**

(1) attacking an animal with violence;

(2) provoking an animal; or

(3) harassing an animal with another animal;

for the purpose of training the animal for or causing the animal to engage in an animal fighting contest.

SECTION 6. IC 35-46-3-8, AS AMENDED BY P.L.171-2007, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. A person who knowingly or intentionally **breeds, sells or otherwise transfers,** purchases, **transports,** or possesses an animal for the purpose of:

(1) baiting the animal; or

(2) using the animal in an animal fighting contest;

commits a ~~Class D~~ **Class C** felony.

SECTION 7. IC 35-46-3-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8.5. A person who knowingly or intentionally possesses animal fighting paraphernalia:

(1) for the purpose of baiting an animal; or

(2) with the intent to commit a violation of ~~IC 35-46-3-9~~ **section 9 of this chapter;**

commits possession of animal fighting paraphernalia, ~~a Class B misdemeanor. However, the offense is~~ a Class A misdemeanor. ~~if the person has a prior unrelated conviction under this section.~~

SECTION 8. IC 35-46-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. A person who knowingly or intentionally:

(1) promotes, **advertises, charges an admission fee for,** or stages **a baiting or** an animal fighting contest;

(2) allows property owned or under the control of the person

C o p y

to be used to conduct a baiting or an animal fighting contest;

~~(2)~~ **(3)** uses an animal in a **baiting or an animal** fighting contest; or

~~(3)~~ **(4)** attends **a baiting or** an animal fighting contest; ~~having an animal in the person's possession;~~

commits a ~~Class D~~ **Class C** felony.

SECTION 9. IC 35-46-3-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9.5. A person who knowingly or intentionally:

(1) possesses animal fighting paraphernalia with the intent to commit a violation of ~~IC 35-46-3-9;~~ **section 9 of this chapter;** and

(2) possesses, harbors, or trains a dog, cock, fowl, **hog,** or bird bearing:

(A) a scar;

(B) a wound; or

(C) an injury;

consistent with participation in or training for **a baiting or** an animal fighting contest;

commits ~~promoting an animal fighting contest;~~ a ~~Class D~~ **Class C** felony.

SECTION 10. IC 35-46-3-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 16. Notwithstanding IC 35-38-2-2.3(a)(21), in addition to any other penalty imposed for an offense under this chapter, a court shall order a person who is convicted of committing an offense under section 8, 8.5, 9, or 9.5 of this chapter to refrain from:**

(1) owning, harboring, or training an animal; and

(2) residing in a dwelling with another person who owns, harbors, or trains an animal;

for ten (10) years after the date the person is sentenced for committing the offense.

SECTION 11. IC 35-46-3-10 IS REPEALED [EFFECTIVE JULY 1, 2011].

C o p y