

1 S.102

2 Introduced by Senators Sears and Ashe

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedures; animal cruelty; asset forfeiture

6 Statement of purpose of bill as introduced: This bill proposes to create a
7 process for asset forfeiture for persons convicted of using animals in animal
8 fights.

9 An act relating to forfeiture of property associated with an animal fighting
10 exhibition

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 13 V.S.A. § 352 is amended to read:

13 § 352. CRUELTY TO ANIMALS

14 A person commits the crime of cruelty to animals if the person:

15 * * *

16 (5)(A) owns, possesses, keeps, or trains an animal engaged in an
17 exhibition of fighting, or possesses, keeps, or trains any animal with intent that
18 it be engaged in an exhibition of fighting, or permits any such act to be done on
19 premises under his or her charge or control; or

1 animals may be destroyed humanely or otherwise disposed of as directed by
2 the court.

3 (d) Property subject to forfeiture under this subsection may be seized upon
4 process issued by the court having jurisdiction over the property. Seizure
5 without process may be made:

6 (1) incident to a lawful arrest;

7 (2) pursuant to a search warrant; or

8 (3) if there is probable cause to believe that the property was used or is
9 intended to be used in violation of this section.

10 (e) Forfeiture proceedings instituted pursuant to the provisions of this
11 section for property other than animals are subject to the procedures and
12 requirements for forfeiture as set forth in 18 V.S.A. chapter 84, subchapter 2.
13 Sec. 3. 18 V.S.A. § 4241 is amended to read:

14 § 4241. SCOPE

15 (a) The following property shall be subject to this subchapter:

16 * * *

17 (7) All real property, including any right, title, and interest in the whole
18 of any lot or tract of land and any appurtenances or improvements thereto,
19 which is used in any manner or part to commit or to facilitate the commission
20 of a violation of any provision of chapter 84, subchapter 1, of this title.

1 (e) Return of property. If notice is not sent in accordance with subsection
2 (d) of this section, and no time extension is granted or the extension period has
3 expired, the law enforcement agency shall return the property to the person
4 from whom the property was seized. An agency's return of property due to
5 lack of proper notice does not restrict the agency's authority to commence a
6 forfeiture proceeding at a later time. Nothing in this subsection shall require
7 the agency to return contraband, evidence, or other property that the person
8 from whom the property was seized is not entitled to lawfully possess.

9 (f) Filing of petition. Except as provided in section 4243a of this title, the
10 State shall file a petition for forfeiture of any property seized under section
11 4242 of this title promptly, but not more than 14 days from the date the
12 preliminary order or process is issued. The petition shall be filed in the
13 ~~superior court~~ Superior Court of the county in which the property is located or
14 in any court with jurisdiction over a criminal proceeding related to the
15 property.

16 ~~(b)~~(g) Service of petition. A copy of the petition shall be ~~sent by certified~~
17 ~~mail to~~ served on all persons named in the petition as provided for in the
18 Vermont Rules of Civil Procedure. ~~In addition, the state shall cause notice of~~
19 ~~the petition to be published in a newspaper of general circulation in the state,~~
20 ~~as ordered by the court.~~ The petition shall state:

1 (1) the facts upon which the forfeiture is requested, including a
2 description of the property subject to forfeiture, and the type and quantity of
3 regulated drug involved;

4 (2) the names of the apparent owner or owners, lienholders who have
5 properly recorded their interests, and any other person appearing to have an
6 interest; and, in the case of a conveyance, the name of the person holding title,
7 the registered owner, and the make, model, and year of the conveyance.

8 Sec. 5. 18 V.S.A. § 4243a is added to read:

9 § 4243a. ADMINISTRATIVE FORFEITURE PROCEDURE

10 (a) Scope. Forfeiture of property described in section 4241 of this title and
11 in 13 V.S.A. § 364 that does not exceed \$50,000 in value may be
12 administratively forfeited under this section.

13 (b) Notice. Within 60 days from seizure, all persons known to have an
14 ownership, possessory, or security interest in seized property must be notified
15 of the seizure and the intent to forfeit the property. Notice shall be served as
16 provided for in the Vermont Rules of Civil Procedure. If there is reason to
17 believe that notice may have an adverse result, a supervisory law enforcement
18 official of the seizing agency may extend the period for sending notice for a
19 period not to exceed 30 days. Upon motion to the Superior Court by the State,
20 the Court may extend the period for sending notice for a period not to exceed
21 60 days.

1 (c) Content of notice. The notice shall contain:

2 (1) a description of the property;

3 (2) the date of the seizure; and

4 (3) notice of the right to obtain judicial review of the forfeiture and of
5 the procedure for obtaining that judicial review.

6 (d) Return of property. If notice is not sent in accordance with subsection
7 (b) of this section, and no time extension is granted or the extension period has
8 expired, the law enforcement agency shall return the property to the person
9 from whom the property was seized. An agency's return of property due to
10 lack of proper notice does not restrict the agency's authority to commence a
11 forfeiture proceeding at a later time. Nothing in this subsection shall require
12 the agency to return contraband, evidence or other property that the person
13 from whom the property was seized is not entitled to lawfully possess.

14 (e) Claims.

15 (1) Any person claiming property seized under this section may file a
16 claim with the Superior Court.

17 (2) A claim under this subsection must be filed within 60 days after
18 notice is received.

19 (3) A claim shall:

20 (A) identify the specific property being claimed;

21 (B) state the claimant's interest in such property; and

1 (C) be made under oath.

2 Sec. 6. 18 V.S.A. § 4244 is amended to read:

3 § 4244. FORFEITURE HEARING

4 (a) ~~The court~~ Within 60 days following service of notice of seizure and
5 forfeiture under sections 4243 and 4243a of this title, a claimant may file a
6 demand for judicial determination of the forfeiture. The demand must be in
7 the form of a civil complaint accompanied by a sworn affidavit setting forth
8 the facts upon which the claimant intends to rely, including, if relevant, the
9 noncriminal source of the asset or currency at issue. The demand must be filed
10 with the court administrator in the county in which the seizure occurred.

11 (b) Except as provided in section 4243a, the Court shall hold a hearing on
12 the petition no less than 14 nor more than 30 days after notice. For good cause
13 shown, or on the court's own motion, the court may stay the forfeiture
14 proceedings pending resolution of related criminal proceedings. If a person
15 named in the petition is a defendant in a related criminal proceeding and the
16 proceeding is dismissed or results in a judgment of acquittal, the petition shall
17 be dismissed as to the defendant's interest in the property as soon as
18 practicable after, and in any event no later than 90 days following, the
19 conclusion of the criminal prosecution.

20 ~~(b)~~(c) A lienholder who has received notice of a forfeiture proceeding may
21 intervene as a party. If the ~~court~~ Court finds that the lienholder has a valid,

1 good faith interest in the subject property which is not held through a straw
2 purchase, trust or otherwise for the actual benefit of another and that the
3 lienholder did not at any time have knowledge or reason to believe that the
4 property was being or would be used in violation of the law, the ~~court~~ Court
5 upon forfeiture shall order compensation to the lienholder to the extent of the
6 lienholder's interest.

7 ~~(e)~~(d) The proceeding shall be against the property and shall be deemed
8 civil in nature. The ~~state~~ State shall have the burden of proving all material
9 facts by clear and convincing evidence.

10 ~~(d)~~(e) The ~~court~~ Court shall make findings of fact and conclusions of law
11 and shall issue a final order. If the petition is granted, the ~~court~~ Court shall
12 order the property held for evidentiary purposes, delivered to the ~~state treasurer~~
13 State Treasurer, or, in the case of regulated drugs or property which is harmful
14 to the public, destroyed.

15 Sec. 7. 18 V.S.A. § 4247 is amended to read:

16 § 4247. DISPOSITION OF PROPERTY

17 (a) Whenever property is forfeited and delivered to the ~~state treasurer~~ State
18 Treasurer under this subchapter, the ~~state treasurer~~ State Treasurer shall, no
19 sooner than 90 days of the date the property is delivered, sell the property at a
20 public sale held under 27 V.S.A. chapter 13.

1 (b) The proceeds from the sale of forfeited property, after payment of
2 seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens
3 against the property, shall be distributed as follows:

4 (1) Sixty percent of the proceeds shall be forwarded to the State or local
5 law enforcement agency which participated directly or indirectly in the seizure
6 of the forfeited property in accordance with the provisions of this subchapter
7 for deposit into the agency's operating fund. If more than one State or local
8 law enforcement agency participated directly or indirectly in the seizure of the
9 forfeited property, the Treasurer shall, in consultation with the attorney for the
10 State in the case, equitably divide law enforcement's share of the proceeds
11 between the cooperating agencies, taking into consideration:

12 (A) the degree of direct participation of each agency in the law
13 enforcement effort resulting in the forfeiture;

14 (B) the value of law enforcement's share of the proceeds of the
15 forfeited property;

16 (C) the total law enforcement effort with respect to the number of
17 hours expended by the agencies, or origination of information or indispensable
18 assistance by the agencies leading to the forfeiture when hours devoted do not
19 adequately reflect the degree of law enforcement participation; and

20 (D) how the distribution of proceeds may encourage further
21 cooperation between the law enforcement agencies.

1 (2) Twenty percent of the proceeds shall be forwarded to the prosecuting
2 authority that handled the forfeiture for deposit into the agency's operating
3 fund.

4 (3) The remaining 20 percent shall be deposited in the General Fund, to
5 be used exclusively for the creation and implementation of alternative justice
6 programs for which there are written protocol and memoranda of
7 understanding filed with and approved by the Executive Director of the
8 Department of State's Attorneys and Sheriffs' Association.

9 Sec. 8. EFFECTIVE DATE

10 This act shall take effect on passage.