

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 102 entitled
3 “An act relating to forfeiture of property associated with animal fighting and
4 certain regulated drug possession, sale, and trafficking violations” respectfully
5 reports that it has considered the same and recommends that the House propose
6 to the Senate that the bill be amended by striking out all after the enacting
7 clause and inserting in lieu thereof the following:

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

9 § 352. CRUELTY TO ANIMALS

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

11 * * *

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

16 (B) owns, possesses, ships, transports, delivers, or keeps a device,
17 equipment, or implement for the purpose of training or conditioning an animal
18 for participation in animal fighting, or enhancing an animal’s fighting
19 capability.

20 * * *

1 (b) ~~In Notwithstanding any provision of law to the contrary, in~~ addition to
2 seizure of fighting birds or animals involved in a fighting exhibition, a law
3 enforcement officer or humane officer may seize:

4 (1) any equipment associated with that activity;

5 (2) any monies, securities, or other personal property which is used to
6 engage in a violation or further a violation of subdivisions 352(5) and (6) of
7 this title; and

8 ~~(3) monies, securities, or other things of value furnished or intended to~~
9 ~~be furnished by a person to engage in or further a violation of subdivisions~~
10 ~~352(5) and (6) of this title.~~

11 (c) In addition to the imposition of a penalty under this chapter, conviction
12 under this section shall result in forfeiture of all seized fighting animals ~~and~~
13 equipment, and other property subject to seizure under this section. The
14 animals may be destroyed humanely or otherwise disposed of as directed by
15 the court.

16 (d) Property subject to forfeiture under this section may be seized upon
17 process issued by the court having jurisdiction over the property. Seizure
18 without process may be made:

19 (1) incident to a lawful arrest;

20 (2) pursuant to a search warrant; or

1 (b) Any property subject to forfeiture under this subchapter may be seized
2 upon process. Seizure without process may be made when:

3 (1) the seizure is incident to an arrest with probable cause or a search
4 under a valid search warrant;

5 (2) the property subject to seizure has been the subject of a prior
6 judgment in favor of the ~~state~~ State in a forfeiture proceeding under this
7 subchapter; or

8 (3) the seizure is incident to a valid warrantless search.

9 (c) If property is seized without process under subdivision (b)(1) or (3) of
10 this section, the ~~state~~ State shall forthwith petition the court for a preliminary
11 order or process under subsection (a) of this section.

12 (d) ~~All~~ Notwithstanding subsection 4241(b) of this title, all regulated drugs
13 the possession of which is prohibited under this chapter are contraband and
14 shall be automatically forfeited to the state and destroyed.

15 Sec. 6. 18 V.S.A. § 4243 is amended to read:

16 § 4243. ~~PETITION FOR~~ JUDICIAL FORFEITURE PROCEDURE

17 (a) ~~The State~~ Conviction required. An asset is subject to forfeiture by
18 judicial determination under section 4241 of this title and 13 V.S.A. § 364 if a
19 person is convicted of the criminal offense related to the action for forfeiture.

1 ~~(2) a person is not charged with a criminal offense related to the action~~
2 ~~for forfeiture based in whole or in part on the person's agreement to provide~~
3 ~~information regarding the criminal activity of another person.~~

4 (b) Evidence. The State may introduce into evidence in the judicial
5 forfeiture case the fact of a conviction in the Criminal Division.

6 (c) Burden of proof. The State bears the burden of proving by clear and
7 convincing evidence that the property is an instrument of or represents the
8 proceeds of the underlying offense.

9 (d) Notice. Within 60 days from when the seizure occurs, the State shall
10 notify any owners, possessors, and lienholders of the property of the action, if
11 known or readily ascertainable. Upon motion by the State, a court may extend
12 the time period for sending notice for a period not to exceed 90 days for good
13 cause shown.

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

1 (f) Filing of petition. Except as provided in section 4243a of this title, the
2 State shall file a petition for forfeiture of any property seized under section
3 4242 of this title promptly, but not more than 14 days from the date the
4 preliminary order or process is issued. The petition shall be filed in the
5 ~~superior court~~ Superior Court of the county in which the property is located or
6 in any court with jurisdiction over a criminal proceeding related to the
7 property.

8 ~~(b)~~(g) Service of petition. A copy of the petition shall be ~~sent by certified~~
9 ~~mail to~~ served on all persons named in the petition as provided for in **Rule 4 of**
10 the Vermont Rules of Civil Procedure. In addition, the ~~state~~ State shall cause
11 notice of the petition to be published in a newspaper of general circulation in
12 the ~~state~~ State, as ordered by the court. The petition shall state:

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

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

1 ~~Sec. 6. 18 V.S.A. § 4243a is added to read:~~

2 ~~§ 4243a. ADMINISTRATIVE FORFEITURE PROCEDURE~~

3 ~~(a) Scope. Forfeiture of property described in section 4241 of this title and~~
4 ~~in 13 V.S.A. § 364 that does not exceed \$25,000 in value may be~~
5 ~~administratively forfeited under this section.~~

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

15 ~~(c) Content of notice. The notice shall contain:~~

16 ~~(1) a description of the property;~~

17 ~~(2) the date of the seizure; and~~

18 ~~(3) notice of the right to obtain judicial review of the forfeiture and of~~
19 ~~the procedure for obtaining that judicial review.~~

20 ~~(d) Return of property. If notice is not sent in accordance with subsection~~
21 ~~(b) of this section, and no time extension is granted or the extension period has~~

1 ~~expired, the law enforcement agency shall return the property to the person~~
2 ~~from whom the property was seized. An agency's return of property due to~~
3 ~~lack of proper notice does not restrict the agency's authority to commence a~~
4 ~~forfeiture proceeding at a later time. Nothing in this subsection shall require~~
5 ~~the agency to return contraband, evidence or other property that the person~~
6 ~~from whom the property was seized is not entitled to lawfully possess.~~

7 ~~(e) Claims.~~

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

10 ~~(2) A claim under this subsection must be filed within 60 days after~~
11 ~~notice is received.~~

12 ~~(3) A claim shall:~~

13 ~~(A) identify the specific property being claimed;~~

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

15 ~~(C) be made under oath.~~

16 Sec. 7. 18 V.S.A. § 4244 is amended to read:

17 § 4244. FORFEITURE HEARING

18 (a) ~~The court~~ Within 60 days following service of notice of seizure and
19 forfeiture under sections 4243 of this title, a claimant may file a demand for
20 judicial determination of the forfeiture. The demand must be in the form of a
21 civil complaint accompanied by a sworn affidavit setting forth the facts upon

1 which the claimant intends to rely, including, if relevant, the noncriminal
2 source of the asset or currency at issue. The demand must be filed with the
3 court administrator in the county in which the seizure occurred.

4 (b) The Court shall hold a hearing on the petition ~~no less than 14 nor more~~
5 ~~than 30 days after notice. For good cause shown, or on the court's own~~
6 ~~motion, the court may stay the forfeiture proceedings pending resolution of~~
7 ~~related criminal proceedings. If a person named in the petition is a defendant~~
8 ~~in a related criminal proceeding and the proceeding is dismissed or results in a~~
9 ~~judgment of acquittal, the petition shall be dismissed as to the defendant's~~
10 ~~interest in the property~~ as soon as practicable after, and in any event no later
11 than 90 days following, the conclusion of the criminal prosecution.

12 ~~(b)(c)~~ (c) A lienholder who has received notice of a forfeiture proceeding may
13 intervene as a party. If the ~~court~~ Court finds that the lienholder has a valid,
14 good faith interest in the subject property which is not held through a straw
15 purchase, trust or otherwise for the actual benefit of another and that the
16 lienholder did not at any time have knowledge or reason to believe that the
17 property was being or would be used in violation of the law, the ~~court~~ Court
18 upon forfeiture shall order compensation to the lienholder to the extent of the
19 lienholder's interest.

20 (d) The Court shall not order the forfeiture of property if an owner,
21 co-owner, or person who regularly uses the property, other than the defendant,

1 shows by a preponderance of the evidence that the owner, co-owner, or regular
2 user did not consent to or have any express or implied knowledge that the
3 property was being or was intended to be used in a manner that would subject
4 the property to forfeiture, or that the owner, co-owner, or regular user had no
5 reasonable opportunity or capacity to prevent the defendant from using the
6 property.

7 ~~(e)~~(e) 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)~~(f) 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. 8. 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.

21 (b) The proceeds from the sale of forfeited property shall be used first to

1 offset any costs of selling the property, and then, after any liens on the property
2 have been paid in full, applied to payment of seizure, storage, and forfeiture
3 expenses, including animal care expenses related to the underlying violation.

4 Remaining proceeds shall be distributed as follows:

5 (1)(A) Forty percent shall be distributed among:

6 (i) the Office of the Attorney General;

7 ~~(ii) the Office of the Defender General;~~

8 (ii) the Department of State's Attorneys and Sheriffs; and

9 (iii) State and local law enforcement agencies.

10 (B) The Governor's Criminal Justice and Substance Abuse Cabinet is
11 authorized to determine the allocations among the groups listed in subdivision
12 (A) of this subdivision (1), and may only reimburse the prosecutor and law
13 enforcement agencies that participated in the enforcement effort resulting in
14 the forfeiture for expenses incurred, including actual expenses for involved
15 personnel. The proceeds shall be held by the Treasurer until the Cabinet
16 notifies the Treasurer of the allocation determinations, at which time the
17 Treasurer shall forward the allocated amounts to the appropriate agency's
18 operating funds.

19 (2) The remaining 60 percent shall be deposited in the General Fund.

20 **Sec. 9. GOVERNOR'S CRIMINAL JUSTICE AND SUBSTANCE ABUSE**

21 **CABINET; FORFEITURE REPORT**

1 On or before January 15, 2016, the Governor's Criminal Justice and
2 Substance Abuse Cabinet shall report to General Assembly on how the Cabinet
3 allocated forfeiture proceeds under 18 V.S.A. § 4247 and how the disbursed
4 proceeds were spent. The reporting requirement of this section may be
5 satisfied by providing testimony to the House and Senate Committees on
6 Judiciary.

7 Sec. 10. ANIMAL CRUELTY RESPONSE TASK FORCE

8 (a) Creation. There is created a task force to evaluate the state of animal
9 cruelty investigation and response in Vermont, including the resources devoted
10 to animal investigation and response services and to recommend ways to
11 consolidate, collaborate, or reorganize to use more effectively limited resources
12 while improving the response to animal cruelty.

13 (b) Membership. The Task Force shall be composed of the following
14 members:

15 (1) a representative from the Governor's office;

16 (2) a member of the Vermont State Police;

17 (3) a member of the VT Police Chiefs Association;

18 (4) a representative of the VT Animal Control Association;

19 (5) a Humane Officer from a VT humane society focusing on domestic
20 animals;

1 (6) a Humane Officer of a VT humane society focusing on large animals

2 (livestock);

3 (7) a representative of the Vermont Humane Federation;

4 (8) a representative of the Vermont Federation of Dog Clubs;

5 (9) the Executive Director of the Department of State’s Attorneys and

6 Sheriffs or designee;

7 (10) a representative of the Vermont Veterinary Medical Association;

8 (11) a representative of the Vermont Agency of Agriculture, Food and

9 Markets;

10 (12) a representative of the VT Constables Association;

11 (13) a representative of the VT Town Clerks Association; and

12 (14) a representative of the Department for Children and Families.

13 (c) Powers and duties. The Task Force, in consultation with the Office of
14 the Defender General, shall study and make recommendations concerning:

15 (1) training for humane agents, animal control officers, law enforcement
16 officers, and prosecutors;

17 (2) the development of uniform response protocols for receiving,
18 investigating, and following up on complaints of animal cruelty, including
19 sentencing recommendations;

1 (3) the development of a centralized data collection system capable of
2 sharing data collected from both the public and private sectors on animal
3 cruelty complaints and outcomes;

4 (4) funding the various responsibilities that are involved with an animal
5 cruelty investigation, including which State agencies should be responsible for
6 any State level authority and oversight; and

7 (5) any other issue the Task Force determines is relevant to improve the
8 efficiency, process, and results of animal cruelty response actions in Vermont.

9 (d) Report. On or before January 15, 2016, the Task Force shall report its
10 findings and recommendations to the House and Senate Committees on
11 Judiciary.

12 (e) Meetings and sunset.

13 (1) The representative from the Governor's office shall call the first
14 meeting of the Task Force.

15 (2) The Task Force shall select a chair from among its members at the
16 first meeting.

17 (3) The Task Force shall hold its first meeting no later than August 15,
18 2015.

19 (4) Meetings of the Task Force shall be public meetings.

20 (5) The Task Force shall cease to exist on January 16, 2016.

1 Sec. 11. EFFECTIVE DATE

2 This act shall take effect on July 1, 2015.

3

4

5

6

7

8

9 (Committee vote: _____)

10

11

Representative _____

12

FOR THE COMMITTEE