

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 with the intent that it be used to train or condition an
18 animal for participation in animal fighting, or enhance an animal’s fighting
19 capability.

20 * * *

1 Sec. 2. 13 V.S.A. § 353 is amended to read:

2 (a) Penalties.

3 (1) Except as provided in subdivision (3) or (4) of this subsection,
4 cruelty to animals under section 352 of this title shall be punishable by a
5 sentence of imprisonment of not more than one year, or a fine of not more than
6 \$2,000.00, or both. Second and subsequent convictions shall be punishable by
7 a sentence of imprisonment of not more than two years or a fine of not more
8 than \$5,000.00, or both.

9 (2) Aggravated cruelty under section 352a of this title shall be
10 punishable by a sentence of imprisonment of not more than three years or a
11 fine of not more than \$5,000.00, or both. Second and subsequent offenses shall
12 be punishable by a sentence of imprisonment of not more than five years or a
13 fine of not more than \$7,500.00, or both.

14 (3) An offense committed under subdivision 352(5)(A) or (6) of this title
15 shall be punishable by a sentence of imprisonment of not more than five years,
16 or a fine of not more than \$5,000.00, or both.

17 * * *

18 Sec. 3. 13 V.S.A. § 364 is amended to read:

19 § 364. ANIMAL FIGHTS

20 (a) A person who participates in a fighting exhibition of animals shall be in
21 violation of subdivisions 352(5) and (6) of this title.

1 (b) In addition to seizure of fighting birds or animals involved in a fighting
2 exhibition, a law enforcement officer or humane officer may seize any
3 equipment, ~~associated with that activity~~ personal property, monies, securities,
4 or other things of value used to engage in a violation or further a violation of
5 subdivisions 352(5) and (6) of this title.

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

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

14 (1) incident to a lawful arrest;

15 (2) pursuant to a search warrant; or

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

18 (e) Forfeiture proceedings instituted pursuant to the provisions of this
19 section for property other than animals are subject to the procedures and
20 requirements for forfeiture as set forth in 18 V.S.A. chapter 84, subchapter 2.

21 Sec. 4. 18 V.S.A. § 4241 is amended to read:

1 § 4241. SCOPE

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

3 * * *

4 (7) Any property seized pursuant to 13 V.S.A. § 364.

5 ~~(b) This subchapter shall not apply to any property used or intended for use~~
6 ~~in an offense involving two ounces or less of marijuana or in connection with~~
7 ~~hemp or hemp products as defined in 6 V.S.A. § 562. This subchapter shall~~
8 ~~apply to property for which forfeiture is sought in connection with:~~

9 (1) a violation under chapter 84, subchapter 1 of this title that carries by
10 law a maximum penalty of ten years' incarceration or greater; or

11 (2) a violation of 13 V.S.A. § 364.

12 Sec. 5. 18 V.S.A. § 4242 is amended to read:

13 § 4242. SEIZURE

14 * * *

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

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

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

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

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

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

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

9 § 4243. ~~PETITION FOR~~ JUDICIAL FORFEITURE PROCEDURE

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

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

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

18 (d) Notice. Within 60 days from when the seizure occurs, the State shall
19 notify any owners, possessors, and lienholders of the property of the action, if
20 known or readily ascertainable. Upon motion by the State, a court may extend

1 the time period for sending notice for a period not to exceed 90 days for good
2 cause shown.

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

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

18 ~~(b)~~(g) Service of petition. A copy of the petition shall be sent by certified
19 mail to served on all persons named in the petition as provided for in Rule 4 of
20 the Vermont Rules of Civil Procedure. In addition, the state State shall cause

1 notice of the petition to be published in a newspaper of general circulation in
2 the ~~state~~ State, as ordered by the court. The petition shall state:

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

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

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

11 § 4244. FORFEITURE HEARING

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

19 (b) The Court shall hold a hearing on the petition ~~no less than 14 nor more~~
20 ~~than 30 days after notice. For good cause shown, or on the court's own~~
21 ~~motion, the court may stay the forfeiture proceedings pending resolution of~~

1 ~~related criminal proceedings. If a person named in the petition is a defendant~~
2 ~~in a related criminal proceeding and the proceeding is dismissed or results in a~~
3 ~~judgment of acquittal, the petition shall be dismissed as to the defendant's~~
4 ~~interest in the property as soon as practicable after, and in any event no later~~
5 ~~than 90 days following, the conclusion of the criminal prosecution.~~

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

14 (d) The Court shall not order the forfeiture of property if an owner,
15 co-owner, or person who regularly uses the property, other than the defendant,
16 shows by a preponderance of the evidence that the owner, co-owner, or regular
17 user did not consent to or have any express or implied knowledge that the
18 property was being or was intended to be used in a manner that would subject
19 the property to forfeiture, or that the owner, co-owner, or regular user had no
20 reasonable opportunity or capacity to prevent the defendant from using the
21 property.

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

4 ~~(d)~~(f) The ~~court~~ Court shall make findings of fact and conclusions of law
5 and shall issue a final order. If the petition is granted, the ~~court~~ Court shall
6 order the property held for evidentiary purposes, delivered to the ~~state treasurer~~
7 State Treasurer, or, in the case of regulated drugs or property which is harmful
8 to the public, destroyed.

9 Sec. 8. 18 V.S.A. § 4247 is amended to read:

10 § 4247. DISPOSITION OF PROPERTY

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

15 (b) The proceeds from the sale of forfeited property shall be used first to
16 offset any costs of selling the property, and then, after any liens on the property
17 have been paid in full, applied to payment of seizure, storage, and forfeiture
18 expenses, including animal care expenses related to the underlying violation.

19 Remaining proceeds shall be distributed as follows:

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

21 (i) the Office of the Attorney General;

1 (o) A law enforcement or prosecution agency conducting forfeitures under
2 this section may accept, receive, and disburse in furtherance of its duties and
3 functions under this section any appropriations, grants, and donations made
4 available by the state of Vermont and its agencies, the federal government and
5 its agencies, any municipality or other unit of local government, or private or
6 civil sources.

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.

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6 (Committee vote: _____)

7

8

Representative _____

9

FOR THE COMMITTEE