

**S.102 (animal fighting; asset forfeiture) – comparison of House & Senate versions
Prepared for the Committee of Conference, May 8, 2015**

Sec. No.	House	Senate	Comments
Title 13; Cruelty to Animals			
House: 1 Senate: 1	<p>§ 352. CRUELTY TO ANIMALS</p> <p>A person commits the crime of cruelty to animals if the person:</p> <p align="center">* * *</p> <p>(5)(A) owns, possesses, keeps, or trains an animal engaged in an exhibition of fighting, or possesses, keeps, or trains any animal with intent that it be engaged in an exhibition of fighting, or permits any such act to be done on premises under his or her charge or control; <u>or</u></p> <p>(B) owns, possesses, ships, transports, delivers, or keeps a device, equipment, or implement <u>with the intent that it be used to train or condition an animal for participation in animal fighting, or enhance an animal's fighting capability.</u></p> <p align="center">* * *</p>	<p>§ 352. CRUELTY TO ANIMALS</p> <p>A person commits the crime of cruelty to animals if the person:</p> <p align="center">* * *</p> <p>(5)(A) owns, possesses, keeps, or trains an animal engaged in an exhibition of fighting, or possesses, keeps, or trains any animal with intent that it be engaged in an exhibition of fighting, or permits any such act to be done on premises under his or her charge or control; <u>or</u></p> <p>(B) owns, possesses, ships, transports, delivers, or keeps a device, equipment, or implement <u>for the purpose of training or conditioning an animal for participation in animal fighting, or enhancing an animal's fighting capability.</u></p> <p align="center">* * *</p>	House version adds intent element to the new cruelty to animals provision. In the House version, the owner/possessor of the equipment must have the intent to use the equipment to train/condition an animal for fighting.
Penalties			
House: 2 Senate: n/a	<p>§ 353. DEGREE OF OFFENSE; SENTENCING UPON CONVICTION</p> <p>(a) Penalties.</p> <p>(1) Except as provided in subdivision (3) or (4) of this subsection, cruelty to animals under section 352 of this title shall be punishable by a sentence of imprisonment of not more than one year, or a fine of not more than \$2,000.00, or both. Second and subsequent</p>	n/a	House version lowers the penalty for the new animal cruelty crime from a felony to a misdemeanor.

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	<p>convictions shall be punishable by a sentence of imprisonment of not more than two years or a fine of not more than \$5,000.00, or both.</p> <p>(2) Aggravated cruelty under section 352a of this title shall be punishable by a sentence of imprisonment of not more than three years or a fine of not more than \$5,000.00, or both. Second and subsequent offenses shall be punishable by a sentence of imprisonment of not more than five years or a fine of not more than \$7,500.00, or both.</p> <p>(3) An offense committed under subdivision 352(5)(A) or (6) of this title shall be punishable by a sentence of imprisonment of not more than five years, or a fine of not more than \$5,000.00, or both.</p> <p style="text-align: center;">* * *</p>		
Animal Fights			
<p>House: 3 Senate: 2</p>	<p>§ 364. ANIMAL FIGHTS</p> <p>(a) A person who participates in a fighting exhibition of animals shall be in violation of subdivisions 352(5) and (6) of this title.</p> <p>(b) In addition to seizure of fighting birds or animals involved in a fighting exhibition, a law enforcement officer or humane officer may seize any equipment, associated with that activity <u>personal property, monies, securities, or other things of value used to engage in a violation or further a violation of subdivisions 352(5) and (6) of this title.</u></p> <p style="text-align: center;">* * *</p>	<p>§ 364. ANIMAL FIGHTS</p> <p>(a) A person who participates in a fighting exhibition of animals shall be in violation of subdivisions 352(5) and (6) of this title.</p> <p>(b) In <u>Notwithstanding any provision of law to the contrary, in</u> addition to seizure of fighting birds or animals involved in a fighting exhibition, a law enforcement officer or humane officer may seize:</p> <p style="padding-left: 2em;">(1) any equipment associated with that activity;</p> <p style="padding-left: 2em;">(2) <u>any other personal property which is used to engage in a violation or further a violation</u></p>	<p>House version distills (b)(1) – (3) of Senate version into one subsection (b). This results in one substantive change to this subsection. Because the House version removes the “furnished or intended to be furnished” language, under the House version law enforcement may only seize that property which is used to engage</p>

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		<p>of subdivisions 352(5) and (6) of this title; and (3) monies, securities, or other things of value furnished or intended to be furnished by a person to engage in or further a violation of subdivisions 352(5) and (6) of this title.</p> <p style="text-align: center;">* * *</p>	<p>in a violation of the animal fighting statute, and not property that is intended to be used to engage in a violation.</p>
Title 18; Scope			
<p>House: 4 Senate: 3</p>			<p>House & Senate versions identical.</p>
Seizure			
<p>House: 5 Senate: 4</p>			<p>House & Senate versions identical.</p>
Judicial Forfeiture			
<p>House: 6 Senate: 5</p>	<p>(a) The State Conviction required. An asset <u>is subject to forfeiture by judicial determination</u> <u>under section 4241 of this title and 13 V.S.A. §</u> <u>364 if a person is convicted of the criminal</u> <u>offense related to the action for forfeiture.</u></p> <p style="text-align: center;">* * *</p>	<p>(a) The State Conviction required. An asset is <u>subject to forfeiture by judicial determination</u> <u>under section 4241 of this title and 13 V.S.A. §</u> <u>364 if:</u></p> <p style="padding-left: 40px;">(1) a person is convicted of the criminal <u>offense related to the action for forfeiture; or</u></p> <p style="padding-left: 40px;">(2) a person is not charged with a criminal <u>offense related to the action for forfeiture based</u> <u>in whole or in part on the person's agreement to</u> <u>provide information regarding the criminal</u> <u>activity of another person.</u></p> <p style="text-align: center;">* * *</p>	<p>Under House version, assets are subject to forfeiture only if the person is convicted of the criminal offense underlying the forfeiture.</p> <p>Under Senate version, assets are subject to forfeiture if person is convicted or if person makes an agreement with the prosecutor.</p>

Administrative Forfeiture		
House: n/a Senate: 6	[House removed.]	<p><u>§ 4243a. ADMINISTRATIVE FORFEITURE PROCEDURE</u></p> <p><u>(a) Scope. Forfeiture of property described in section 4241 of this title and in 13 V.S.A. § 364 that does not exceed \$25,000 in value may be administratively forfeited under this section.</u></p> <p><u>(b) Notice. Within 60 days from seizure, all persons known to have an ownership, possessory, or security interest in seized property must be notified of the seizure and the intent to forfeit the property. Notice shall be served as provided for in the Vermont Rules of Civil Procedure. If there is reason to believe that notice may have an adverse result, a supervisory law enforcement official of the seizing agency may extend the period for sending notice for a period not to exceed 30 days. Upon motion to the Superior Court by the State, the Court may extend the period for sending notice for a period not to exceed 60 days.</u></p> <p><u>(c) Content of notice. The notice shall contain:</u></p> <ol style="list-style-type: none"> <u>(1) a description of the property;</u> <u>(2) the date of the seizure; and</u> <u>(3) notice of the right to obtain judicial review of the forfeiture and of the procedure for obtaining that judicial review.</u> <p><u>(d) Return of property. If notice is not sent in accordance with subsection (b) of this section, and no time extension is granted or the extension period has expired, the law enforcement agency shall return the property to the person from whom</u></p>

Under House version, there is no process for administrative forfeiture, only judicial forfeiture.

		<p><u>the property was seized. An agency’s return of property due to lack of proper notice does not restrict the agency’s authority to commence a forfeiture proceeding at a later time. Nothing in this subsection shall require the agency to return contraband, evidence or other property that the person from whom the property was seized is not entitled to lawfully possess.</u></p> <p><u>(e) Claims.</u></p> <p><u>(1) Any person claiming property seized under this section may file a claim with the Superior Court.</u></p> <p><u>(2) A claim under this subsection must be filed within 60 days after notice is received.</u></p> <p><u>(3) A claim shall:</u></p> <p><u>(A) identify the specific property being claimed;</u></p> <p><u>(B) state the claimant’s interest in such property; and</u></p> <p><u>(C) be made under oath.</u></p>	
Forfeiture Hearing			
<p>House: 7 Senate: 7</p>			<p>House & Senate versions identical.</p>

Disposition of Property		
<p>House: 8 Senate: 8</p>	<p>§ 4247. DISPOSITION OF PROPERTY * * *</p> <p><u>(b) The proceeds from the sale of forfeited property shall be used first to offset any costs of selling the property, and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses, including animal care expenses related to the underlying violation. Remaining proceeds shall be distributed as follows:</u></p> <p><u>(1)(A) Forty percent shall be distributed among:</u></p> <p style="padding-left: 40px;"><u>(i) the Office of the Attorney General;</u></p> <p style="padding-left: 40px;"><u>(ii) the Department of State’s Attorneys and Sheriffs; and</u></p> <p style="padding-left: 40px;"><u>(iii) State and local law enforcement agencies.</u></p> <p><u>(B) The Governor’s Criminal Justice and Substance Abuse Cabinet is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1), and may only reimburse the prosecutor and law enforcement agencies that participated in the enforcement effort resulting in the forfeiture for expenses incurred, including actual expenses for involved personnel. The proceeds shall be held by the Treasurer until the Cabinet notifies the Treasurer of the allocation determinations, at which time the Treasurer shall forward the allocated amounts to the appropriate agency’s operating funds.</u></p>	<p>§ 4247. DISPOSITION OF PROPERTY * * *</p> <p><u>(b) The proceeds from the sale of forfeited property shall be used first to offset any costs of selling the property, and then, after any liens on the property have been paid in full, applied to payment of seizure, storage, and forfeiture expenses, including animal care expenses related to the underlying violation. Remaining proceeds shall be distributed as follows:</u></p> <p><u>(1)(A) Fifty percent shall be distributed among:</u></p> <p style="padding-left: 40px;"><u>(i) the Office of the Attorney General;</u></p> <p style="padding-left: 40px;"><u>(ii) the Office of the Defender General;</u></p> <p style="padding-left: 40px;"><u>(iii) the Department of State’s Attorneys and Sheriffs; and</u></p> <p style="padding-left: 40px;"><u>(iv) State and local law enforcement agencies.</u></p> <p><u>(B) The Governor’s Criminal Justice and Substance Abuse Cabinet is authorized to determine the allocations among the groups listed in subdivision (A) of this subdivision (1), and may only reimburse the prosecutor and law enforcement agencies that participated in the enforcement effort resulting in the forfeiture for expenses incurred, including actual expenses for involved personnel. The proceeds shall be held by the Treasurer until the Cabinet notifies the Treasurer of the allocation determinations, at which time the Treasurer shall forward the</u></p>

House version splits the proceeds 40/60 between criminal justice system and general fund. Senate version split is 50/50.

House version removes Defender General from list of offices eligible for proceeds allocated by the Cabinet.

	<p>(2) The remaining 60 percent shall be deposited in the General Fund.</p> <p>(c) The State Treasurer shall report annually to the House and Senate Committees on Appropriations on the amount of proceeds collected from the sale of forfeited property under this subchapter, the reimbursements made in accordance with subdivision (b)(1)(B) of this section, and the allocations of net proceeds made by the Governor’s Criminal Justice and Substance Abuse Cabinet in accordance with subdivision (b)(1) of this section.</p>	<p>allocated amounts to the appropriate agency’s operating funds.</p> <p>(2) The remaining 50 percent shall be deposited in the General Fund.</p>	<p>House version adds new language requiring the Treasurer to report to the legislature on the proceeds collected and allocated under this section.</p>
Immobilization and Forfeiture Proceedings			
<p>House: 9 Senate: n/a</p>	<p>§ 1213c. IMMOBILIZATION AND FORFEITURE PROCEEDINGS</p> <p style="text-align: center;">* * *</p> <p>(o) A law enforcement or prosecution agency conducting forfeitures under this section may accept, receive, and disburse in furtherance of its duties and functions under this section any appropriations, grants, and donations made available by the state of Vermont and its agencies, the federal government and its agencies, any municipality or other unit of local government, or private or civil sources.</p>	<p>[Senate did not amend 23 V.S.A. § 1213c.]</p>	<p>House version adds new language to motor vehicle forfeiture statute allowing law enforcement to receive appropriations and grants to use to conduct motor vehicle forfeitures.</p>

Session Law; Animal Cruelty Task Force			
House: 10 Senate: 9	<p><u>(b) Membership. The Task Force shall be composed of the following members:</u> * * *</p> <p><u>(15) a representative of the VT Federation of Sportsmen's Clubs.</u> * * *</p> <p><u>(c) Powers and duties. The Task Force, in consultation with the Office of the Defender General, shall study and make recommendations concerning:</u> * * *</p> <p><u>(3) the development of a centralized data collection system capable of sharing data collected from both the public and private sectors on animal cruelty substantiated reports and outcomes;</u></p>	<p><u>(c) Powers and duties. The Task Force, in consultation with the Office of the Defender General, shall study and make recommendations concerning:</u> * * *</p> <p><u>(3) the development of a centralized data collection system capable of sharing data collected from both the public and private sectors on animal cruelty complaints and outcomes;</u></p>	<p>House version adds one additional member to the task force: a representative of the VT Federation of Sportsmen's Clubs.</p> <p>House version changes the directive to the Task Force regarding the development of a centralized data collection system.</p>
Effective Date			
House: 11 Senate: 10	July 1, 2015	July 1, 2015	