

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Criminal Code of 1961 is amended by  
5 adding Article 37.5 as follows:

6 (720 ILCS 5/Art. 37.5 heading new)

7 ARTICLE 37.5. ANIMAL FIGHTING; FORFEITURE

8 (720 ILCS 5/37.5-5 new)

9 Sec. 37.5-5. Legislative declaration. The General  
10 Assembly finds that the forfeiture of real property that is  
11 used or intended to be used in connection with any show,  
12 exhibition, program or other activity featuring or otherwise  
13 involving a fight between an animal and any other animal or  
14 human or the intentional killing of any animal for the  
15 purpose of sport, wagering or entertainment, will have a  
16 significant beneficial effect in deterring the rising  
17 incidence of those activities within this State, as well as  
18 other crimes that frequently occur in partnership with animal  
19 fighting, such as illegal gambling, possession of narcotics,  
20 and weapons violations.

21 (720 ILCS 5/37.5-10 new)

22 Sec. 37.5-10. Applicability. A person who commits a  
23 felony violation of Section 4.01 of the Humane Care for  
24 Animals Act or a felony violation of Section 26-5 of this  
25 Code shall forfeit (i) any moneys, profits, or proceeds the  
26 person acquired in whole or in part, as a result of  
27 committing the violation and (ii) any real property or  
28 interest in real property that the sentencing court  
29 determines the person acquired in whole or in part, as a

1 result of committing the violation or the person maintained  
 2 or used in whole or in part, to facilitate, directly or  
 3 indirectly, the commission of the violation. The person shall  
 4 forfeit any interest in, securities, or claim against, or  
 5 contractual right of any kind that affords the person a  
 6 source of influence over, any enterprise that the person has  
 7 established, operated, controlled, conducted, or participated  
 8 in conducting if the person's relations to or connection with  
 9 the interest, security, or claim, or contractual right,  
 10 directly or indirectly, in whole or in part, is traceable to  
 11 any thing or benefit that the person has obtained or acquired  
 12 as a result of a felony violation of Section 4.01 of the  
 13 Humane Care for Animals Act or a felony violation of Section  
 14 26-5 of this Code.

15 (720 ILCS 5/37.5-15 new)

16 Sec. 37.5-15. Real property forfeiture.

17 (a) Following the arrest of a person or persons for any  
 18 felony offense under Section 4.01 of the Humane Care for  
 19 Animals Act or a felony offense under Section 26-5 of this  
 20 Code, the State's Attorney of the county in which it occurred  
 21 or the Attorney General may seek forfeiture of the real  
 22 property associated with the offense, whether the real  
 23 property belongs to the person organizing the show,  
 24 exhibition, program, or other such activity described in  
 25 subsections (a) through (g) of Section 4.01 of the Humane  
 26 Care for Animals Act or Section 26-5 of this Code or to any  
 27 other person participating in the activity described in  
 28 subsections (a) through (g) of Section 4.01 of the Humane  
 29 Care for Animals Act or Section 26-5 of this Code, who is  
 30 related to the organization and operation of the activity or  
 31 to any person who knowingly allowed the activities to occur  
 32 on his or her premises.

33 (b) Real property includes any land, home, house,

1 apartment, building, garage, site, structure, or facility,  
 2 whether enclosed or not, and any part or section of any land,  
 3 home, house, apartment, building, garage, site, structure, or  
 4 facility and any right title, or interest in the whole of any  
 5 lot or tract of land and any appurtenances or improvements on  
 6 the land. Real property includes, but is not limited to, any  
 7 leasehold or possessory interest or beneficial interest in a  
 8 land trust.

9 (720 ILCS 5/37.5-20 new)

10 Sec. 37.5-20. Procedure. Proceedings instituted under  
 11 this Article shall be subject to and conducted in accordance  
 12 with the procedures set forth in this Section.

13 (a) Notice to owner or interest holder. Whenever notice  
 14 of pending forfeiture or service of a lis pendens is required  
 15 under the provisions of this Article, the notice or service  
 16 shall be given as follows:

17 (1) If the owner's or interest holder's name and  
 18 current address are known, then by either personal  
 19 service or mailing a copy of the notice by certified  
 20 mail, return receipt requested, to that address. For  
 21 purposes of notice under this Section if a person has  
 22 been arrested for the conduct giving rise to the  
 23 forfeiture, then the address provided to the arresting  
 24 agency at the time of arrest shall be deemed to be that  
 25 person's known address. Provided, however, if an owner or  
 26 interest holder's address changes prior to the effective  
 27 date of the notice of pending forfeitures, the owner or  
 28 interest holder shall promptly notify the seizing agency  
 29 of the change in address or, if the owner or interest  
 30 holder's address changes subsequent to the effective date  
 31 of the notice of pending forfeitures, the owner or  
 32 interest holder shall promptly notify the State's  
 33 Attorney or Attorney General of the change in address; or

1           (2) If the owner's or interest holder's address is  
2           not known, and is not on record as provided in paragraph  
3           (1), then by publication for 3 successive weeks in a  
4           newspaper of general circulation in the county in which  
5           the seizure occurred; or

6           (3) Notice served under this Article is effective  
7           upon personal service, the last date of publication, or  
8           the mailing of written notice, whichever is earlier.

9           (b) Probable cause hearing. In an action brought by the  
10          People of the State of Illinois under this Section, in which  
11          a restraining order, injunction, prohibition, lis pendens, or  
12          other action in connection with any property or interest  
13          subject to forfeiture under this Article is sought, the  
14          circuit court presiding over the trial of the person charged  
15          with a felony violation of Section 4.01 of the Humane Care  
16          for Animals Act or a felony offense under Section 26-5 of  
17          this Code shall first determine whether there is probable  
18          cause to believe that the person so charged has committed a  
19          felony offense under Section 4.01 of the Humane Care for  
20          Animals Act or a felony offense under Section 26-5 of this  
21          Code and whether the property or interest, is subject to  
22          forfeiture under this Article. To make that determination  
23          before entering an order in connection with that property or  
24          interest, the court shall conduct a hearing without a jury,  
25          at which the People must establish that there is: (i)  
26          probable cause that the person charged committed a felony  
27          offense under Section 4.01 of the Humane Care for Animals Act  
28          or a felony offense under Section 26-5 of this Code and (ii)  
29          probable cause that the property or interest may be subject  
30          to forfeiture under this Article. The hearing may be  
31          conducted simultaneously with a preliminary hearing, if the  
32          prosecution is commenced by information or complaint, or by  
33          motion of the People at any stage in the proceedings. The  
34          court may accept, at a preliminary hearing, (i) the filing of

1 an information charging that the defendant committed a felony  
2 offense under Section 4.01 of the Humane Care for Animals Act  
3 or a felony offense under Section 26-5 of this Code or (ii)  
4 the return of an indictment by a grand jury charging that the  
5 defendant committed a felony offense under Section 4.01 of  
6 the Humane Care for Animals Act or a felony offense under  
7 Section 26-5 of this Code as sufficient evidence of probable  
8 cause that the person committed the offense.

9 (1) Upon making a finding of probable cause, the  
10 circuit court shall enter a restraining order,  
11 injunction, lis pendens, or prohibition or shall take  
12 other action in connection with the property or other  
13 interest subject to forfeiture under this Article as is  
14 necessary to insure that the property is not removed from  
15 the jurisdiction of the court, concealed, destroyed, or  
16 otherwise disposed of by the owner of that property or  
17 interest before a forfeiture hearing under this Article.  
18 The State's Attorney shall file a certified copy of the  
19 restraining order, injunction, or other prohibition with  
20 the recorder or registrar of title of each county in  
21 which the property may be located. An injunction,  
22 restraining order, or other prohibition issued under this  
23 Section does not affect the rights of any bonafide  
24 purchaser, mortgagee, judgment creditor, or other lien  
25 holder that arose before the date the certified copy is  
26 filed.

27 (2) The court may at any time, on verified petition  
28 by the defendant, conduct a hearing to determine whether  
29 all or any portion of the property or interest, which the  
30 court previously determined to be subject to forfeiture  
31 or subject to any restraining order, injunction, lis  
32 pendens, prohibition, or other action, should be  
33 released. The court may in its discretion release the  
34 property to the defendant for good cause shown.

1 (720 ILCS 5/37.5-25 new)

2 Sec. 37.5-25. Forfeiture hearing. If real property is  
3 subject to seizure for felony violations under Section 4.01  
4 of the Humane Care for Animals Act or felony violations under  
5 Section 26-5 of this Code, upon conviction, the State's  
6 Attorney or Attorney General may commence an action by  
7 petition in the sentencing court anytime following sentencing  
8 of the defendant. The sentencing court shall conduct a  
9 hearing to determine whether any property or property  
10 interest of the defendant, profits, or proceeds is subject to  
11 forfeiture under this Article. At the forfeiture hearing the  
12 People have the burden of establishing, by a preponderance of  
13 the evidence, that the property or property interest is  
14 subject to forfeiture.

15 (1) All property declared forfeited under this  
16 Article vests in this State on the date of the commission  
17 of the conduct giving rise to forfeiture together with  
18 the proceeds of the property after that time. Any such  
19 property or proceeds subsequently transferred to any  
20 person remain subject to forfeiture and thereafter shall  
21 be ordered forfeited unless the transferee claims and  
22 establishes in a hearing under the provisions of this  
23 Article that the transferee's interest is exempt.

24 (2) If the State does not show by a preponderance  
25 of the evidence or a claimant has established by  
26 preponderance of evidence that the claimant has an  
27 interest that is exempt under this Article, the court  
28 shall order the interest in the property returned or  
29 conveyed to the claimant and shall order all other  
30 property forfeited to the State. If the State does show  
31 by a preponderance of the evidence that the property  
32 interest is subject to forfeiture, and the claimant does  
33 not establish by a preponderance of evidence that the  
34 claimant has an interest that is exempt under this

1 Article, the court shall order all real property  
2 forfeited to the State.

3 (3) A defendant convicted in any criminal  
4 proceeding is precluded from later denying the essential  
5 allegations of the criminal offense of which the  
6 defendant was convicted in any proceeding under this  
7 Article regardless of the pendency of an appeal from that  
8 conviction. However, evidence of the pendency of an  
9 appeal is admissible.

10 (720 ILCS 5/37.5-30 new)  
11 Sec. 37.5-30. Exemptions from forfeiture.

12 (a) A property interest is exempt from forfeiture under  
13 this Article if its owner or interest holder establishes by a  
14 preponderance of evidence that the owner or interest holder:

15 (1) in the case of real property is not legally  
16 accountable for the conduct giving rise to the  
17 forfeiture, or did not solicit, conspire, or attempt to  
18 commit the conduct giving rise to the forfeiture; and

19 (2) had not acquired and did not stand to acquire  
20 proceeds from the conduct giving rise to its forfeiture  
21 other than as an interest holder in an arms length  
22 commercial transaction; and

23 (3) does not hold the property for the benefit of  
24 or as a nominee for any person whose conduct gave rise to  
25 its forfeiture, and, if the owner or interest holder  
26 acquired the interest through any such person, the owner  
27 or interest holder acquired it as a bona fide purchaser  
28 for value without knowingly taking part in the conduct  
29 giving rise to the forfeiture; and

30 (4) that the owner or interest holder acquired the  
31 interest:

32 (i) before the commencement of the conduct  
33 giving rise to its forfeiture and the person whose

1           conduct gave rise to its forfeiture did not have the  
 2           authority to convey the interest to a bona fide  
 3           purchaser for value at the time of the conduct; or  
 4           (ii) after the commencement of the conduct  
 5           giving rise to its forfeiture, and the owner or  
 6           interest holder acquired the interest as a  
 7           mortgagee, secured creditor, lienholder, or bona  
 8           fide purchaser for value without knowledge of the  
 9           conduct which gave rise to the forfeiture; and  
 10           (iii) in the case of real estate, before the  
 11           filing in the office of the recorder of the county  
 12           in which the real estate is located of a notice of a  
 13           lis pendens notice.

14           (5)(A) With respect to a property interest in  
 15           existence at the time the illegal conduct giving rise to  
 16           the forfeiture took place,

17           (i) did not know of the conduct giving rise to  
 18           forfeiture; or  
 19           (ii) upon learning of the conduct giving rise  
 20           to the forfeiture, did all that reasonably could be  
 21           expected under the circumstances to terminate such  
 22           use of the property.

23           (B)(i) For the purposes of this paragraph (5),  
 24           ways in which a person may show that he or she did  
 25           all that reasonably could be expected may include  
 26           demonstrating that he or she, to the extent  
 27           permitted by law:

28           (I) gave timely notice to an appropriate  
 29           law enforcement agency of information that led  
 30           the person to know the conduct giving rise to a  
 31           forfeiture would occur or has occurred; and

32           (II) in a timely fashion revoked or made a  
 33           good faith attempt to revoke permission for  
 34           those engaging in such conduct to use the



1           property or took reasonable actions in  
 2           consultation with a law enforcement agency to  
 3           discourage or prevent the illegal use of the  
 4           property.

5           (ii) A person is not required by this  
 6           subparagraph to take steps that the person  
 7           reasonably believes would be likely to subject any  
 8           person (other than the person whose conduct gave  
 9           rise to the forfeiture) to physical danger.

10          (b) If the court determines, in accordance with this  
 11          Section, that an innocent owner has a partial interest in  
 12          property otherwise subject to forfeiture, or a joint tenancy  
 13          or tenancy by the entirety in that property, the court may  
 14          enter an appropriate order:

- 15           (1) severing the property;
- 16           (2) transferring the property to the State with a  
 17           provision that the State compensate the innocent owner to  
 18           the extent of his or her ownership interest once a final  
 19           order of forfeiture has been entered and the property has  
 20           been reduced to liquid assets; or

21           (3) permitting the innocent owner to retain the  
 22           property subject to a lien in favor of the State to the  
 23           extent of the forfeitable interest in the property.

24          (c) In this Section, the term "owner":

25           (1) means a person with an ownership interest in  
 26           the specific property sought to be forfeited, including a  
 27           leasehold, lien, mortgage, recorded security interest, or  
 28           valid assignment of an ownership interest; and

29           (2) does not include:

30           (i) a person with only a general unsecured  
 31           interest in, or claim against, the property or  
 32           estate of another;

33           (ii) a bailee unless the bailor is identified  
 34           and the bailee shows a colorable legitimate interest

1           in the property seized; or  
 2                   (iii) a nominee who exercises no dominion or  
 3           control over the property.

4           (720 ILCS 5/37.5-35 new)

5           Sec. 37.5-35. Settlement of claims. Notwithstanding  
 6           other provisions of this Article, the State's Attorney and a  
 7           claimant of seized property may enter into an agreed upon  
 8           settlement concerning the property subject to forfeiture in  
 9           such an amount and upon such terms as are set out in writing  
 10          in a settlement agreement.

11          (720 ILCS 5/37.5-40 new)

12          Sec. 37.5-40. Judicial review. If property has been  
 13          declared forfeited under this Article, any person who has an  
 14          interest in the property declared forfeited may, within 30  
 15          days of the effective date of the notice of the declaration  
 16          of forfeiture, file a claim and cost bond and apply to the  
 17          court for reconsideration based upon his or her interest in  
 18          the property.

19          (720 ILCS 5/37.5-45 new)

20          Sec. 37.5-45. Disposal of property. Real property taken  
 21          or detained under this Section is not subject to replevin,  
 22          but is deemed to be in the custody of the Director of State  
 23          Police subject only to the order and judgments of the circuit  
 24          court having jurisdiction over the forfeiture proceedings and  
 25          the decisions of the State's Attorney or Attorney General  
 26          under this Article.

27               (1) When property is forfeited under this Article,  
 28               the Director of State Police shall sell all such property  
 29               and shall distribute the proceeds of the sale, together  
 30               with any moneys forfeited or seized in accordance with  
 31               paragraph (2).

1           (2) All monies and the sale proceeds of all other  
2 property forfeited and seized under this Article shall be  
3 distributed as follows:

4           (A) 65% shall be distributed to the local,  
5 municipal, county, or State law enforcement agency  
6 or agencies that conducted or participated in the  
7 investigation resulting in the forfeiture. The  
8 distributions shall bear a reasonable relationship  
9 to the degree of direct participation of the law  
10 enforcement agency in the effort resulting in the  
11 forfeiture, taking into account the total value of  
12 the property forfeited and the total law enforcement  
13 effort with respect to the violation of the law upon  
14 which the forfeiture is based.

15           (B) 12.5% shall be distributed to the Office  
16 of the State's Attorney of the county in which the  
17 prosecution resulting in the forfeiture was  
18 instituted for use in the enforcement of laws,  
19 including animal fighting.

20           (C) 12.5% shall be distributed to the Illinois  
21 Department of Agriculture for use of expenses  
22 incurred in the investigation, prosecution, and  
23 appeal of cases arising under laws governing animal  
24 fighting.

25           (D) 10% shall be retained by the Department of  
26 State Police for expenses related to the  
27 administration and sale of seized and forfeited  
28 property.

29           Section 99. Effective date. This Act takes effect upon  
30 becoming law.