

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.