

# Enrolled Senate Bill 6

Sponsored by Senators COURTNEY, PROZANSKI; Senator STEINER HAYWARD

CHAPTER .....

AN ACT

Relating to animals; creating new provisions; amending ORS 87.159, 167.320, 167.322, 167.325, 167.330, 167.332, 167.347 and 167.348; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. The Legislative Assembly finds and declares that:**

- (1) Animals are sentient beings capable of experiencing pain, stress and fear;**
- (2) Animals should be cared for in ways that minimize pain, stress, fear and suffering;**
- (3) The suffering of animals can be mitigated by expediting the disposition of abused animals that would otherwise languish in cages while their defendant owners await trial;**
- (4) The suffering of animals at the hands of unlicensed animal rescue organizations that are unable to provide sufficient food and care for the animals can be reduced by requiring such organizations to comply with regulations;**
- (5) The State of Oregon has an interest in facilitating the mitigation of costs of care incurred by persons and government agencies that provide treatment for impounded animals;**
- (6) Use of preconviction civil remedies is not an affront to the presumption of innocence; and**
- (7) Amendments to current law are needed to ensure that interested parties are afforded adequate notice and an opportunity to be heard and thus cannot unduly delay or impede animal lien foreclosure and preconviction forfeiture processes through unfounded due process claims.**

**SECTION 2. ORS 167.320 is amended to read:**

- 167.320. (1) A person commits the crime of animal abuse in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly:
- (a) Causes serious physical injury to an animal; or
  - (b) Cruelly causes the death of an animal.
- (2) Any practice of good animal husbandry is not a violation of this section.
- (3) Animal abuse in the first degree is a Class A misdemeanor.
- (4) Notwithstanding subsection (3) of this section, animal abuse in the first degree is a Class C felony if:
- (a) The person committing the animal abuse has previously been convicted of [two] **one** or more of the following offenses:
    - (A) Any offense under ORS 163.160, 163.165, 163.175, 163.185 or 163.187 or the equivalent laws of another jurisdiction, if the offense involved domestic violence as defined in ORS 135.230 or the offense was committed against a minor child; or

(B) Any offense under this section or ORS 167.322, or the equivalent laws of another jurisdiction; or

(b) The person knowingly commits the animal abuse in the immediate presence of a minor child. For purposes of this paragraph, a minor child is in the immediate presence of animal abuse if the abuse is seen or directly perceived in any other manner by the minor child.

**(5) When animal abuse in the first degree is a felony, the Oregon Criminal Justice Commission shall classify the offense as crime category 6 of the sentencing guidelines grid.**

**SECTION 3.** ORS 167.322 is amended to read:

167.322. (1) A person commits the crime of aggravated animal abuse in the first degree if the person:

(a) Maliciously kills an animal; or

(b) Intentionally or knowingly tortures an animal.

**(2) Aggravated animal abuse in the first degree is a Class C felony and the Oregon Criminal Justice Commission shall classify the offense as crime category 6 of the sentencing guidelines grid.**

(3) As used in this section:

(a) "Maliciously" means intentionally acting with a depravity of mind and reckless and wanton disregard of life.

(b) "Torture" means an action taken for the primary purpose of inflicting pain.

**SECTION 4.** ORS 167.325 is amended to read:

167.325. (1) A person commits the crime of animal neglect in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in such person's custody or control.

(2) Animal neglect in the second degree is a Class B misdemeanor.

**(3) Notwithstanding subsection (2) of this section, animal neglect in the second degree is a Class C felony if:**

**(a) The person committing the offense has previously been convicted of two or more offenses under this section, ORS 167.330 or the equivalent laws of another jurisdiction;**

**(b) The offense was part of a criminal episode involving 11 or more animals; or**

**(c) The person knowingly commits the offense in the immediate presence of a minor child and the person has one or more previous convictions for an offense involving domestic violence as defined in ORS 135.230. For purposes of this paragraph, a minor child is in the immediate presence of animal neglect if the neglect is seen or directly perceived in any other manner by the minor child.**

**(4) The Oregon Criminal Justice Commission shall classify animal neglect in the second degree under subsection (3) of this section:**

**(a) As crime category 6 if 11 to 40 animals were the subject of the neglect.**

**(b) As crime category 7 if more than 40 animals were the subject of the neglect or if the offense is a felony because of circumstances described in subsection (3)(a) or (c) of this section.**

**SECTION 5.** ORS 167.330 is amended to read:

167.330. (1) A person commits the crime of animal neglect in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in the person's custody or control and the failure to provide care results in serious physical injury or death to the animal.

(2) Animal neglect in the first degree is a Class A misdemeanor.

**(3) Notwithstanding subsection (2) of this section, animal neglect in the first degree is a Class C felony if:**

**(a) The person committing the offense has previously been convicted of one or more offenses under this section, ORS 167.325 or the equivalent laws of another jurisdiction;**

**(b) The offense was part of a criminal episode involving 10 or more animals; or**

(c) The person knowingly commits the offense in the immediate presence of a minor child. For purposes of this paragraph, a minor child is in the immediate presence of animal neglect if the neglect is seen or directly perceived in any other manner by the minor child.

(4) The Oregon Criminal Justice Commission shall classify animal neglect in the first degree under subsection (3) of this section:

(a) As crime category 6 if 10 to 40 animals were the subject of the neglect.

(b) As crime category 7 if more than 40 animals were the subject of the neglect or if the offense is a felony because of circumstances described in subsection (3)(a) or (c) of this section.

**SECTION 6.** ORS 167.332 is amended to read:

167.332. (1) **Except as provided in subsections (3) and (4) of this section:**

(a) In addition to any other penalty imposed by law, a person convicted of violating ORS 167.315, 167.325, 167.330, 167.333, 167.340 or 167.355 or of a misdemeanor under ORS 167.320, may not possess a domestic animal **or any animal of the same genus against which the crime was committed** for a period of five years following entry of the conviction.

[2] (b) In addition to any other penalty imposed by law, a person convicted of violating ORS 167.322, 167.365 or 167.428 or of a felony under ORS 167.320, may not possess a domestic animal **or any animal of the same genus against which the crime was committed** for a period of 15 years following entry of the conviction.

[3] (2) A person who possesses [*a domestic*] **an** animal in violation of this section commits a Class C misdemeanor. When a person is convicted of possessing [*a domestic*] **an** animal in violation of this section, **as part of the sentence** the court may order the removal of [*domestic animals*] **that animal** from the person's residence **and may prohibit the person from possessing any animal of the same genus that the person unlawfully possessed under this section or against which the underlying violation of ORS 167.315, 167.320, 167.322, 167.325, 167.330, 167.333, 167.340, 167.355, 167.365 or 167.428 was committed.**

(3) The animal possession prohibition described in subsection (1) of this section does not apply to a person's first conviction if the person is the owner of a commercial livestock operation and the underlying violation of ORS 167.315, 167.320, 167.322, 167.325, 167.330, 167.333, 167.340, 167.355, 167.365 or 167.428 was committed against livestock.

(4)(a) A person subject to an animal possession prohibition described in subsection (1) of this section may file a motion with the sentencing court requesting a waiver of the prohibition. The person must file a sworn affidavit in support of the motion stating that:

(A) The person's conviction leading to the possession prohibition involved only livestock;

(B) During the two years before the conviction triggering the prohibition, the person was the owner of a commercial livestock operation;

(C) The person has not been convicted, in the previous five years, of a crime involving animals or domestic violence or a crime where the victim was under 18 years of age; and

(D) The person's conviction was the result of:

(i) Criminal liability for the conduct of another person under ORS 161.155 (2)(c);

(ii) Criminal liability of a corporation as described in ORS 161.170, and the person is a corporation; or

(iii) Animal neglect as described in ORS 167.325 or 167.330 and the person's criminal conduct was not knowing or intentional.

(b) When a person files a motion and affidavit described in paragraph (a) of this subsection, the sentencing court shall hold a hearing. At the hearing, the sentencing court shall grant the motion if the person proves by clear and convincing evidence that:

(A) Continued enforcement of the prohibition against possessing livestock would result in substantial economic hardship that cannot otherwise be mitigated;

(B) The person no longer poses any risk to animals; and

(C) The person is capable of providing and willing to provide necessary, adequate and appropriate levels of care for all livestock that would come within the person's custody or control if the petition is granted.

(c) When deciding a motion filed under this subsection, the sentencing court may consider the person's financial circumstances and mental health in determining whether the person is capable of adequately caring for livestock.

(d) If the sentencing court grants the motion described in this subsection, the waiver of the prohibition against possessing animals shall apply only to livestock. The sentencing court shall further order that for five years the person must consent to reasonable inspections by law enforcement and the United States Department of Agriculture to ensure the welfare of the livestock under the person's custody or control. A refusal to consent to a reasonable inspection described in this paragraph is contempt of court and, if the person is found in contempt, shall result in the sentencing court revoking the waiver of the possession prohibition.

(e) As used in this subsection, "commercial livestock operation" means a business engaged in the raising, breeding or selling of livestock for profit.

**SECTION 7.** ORS 167.347 is amended to read:

167.347. (1) If any animal is impounded pursuant to ORS 167.345 and is being held by a county animal shelter or other animal care agency pending outcome of criminal action charging a violation of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428, prior to final disposition of the criminal charge, the county or other animal care agency or, on behalf of the county or other animal care agency, the district attorney, may file a petition in the criminal action requesting that the court issue an order forfeiting the animal to the county or other animal care agency prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and, unless the district attorney has filed the petition on behalf of the county or other animal care agency, the district attorney.

(2)(a) Upon receipt of a petition pursuant to subsection (1) of this section, the court shall set a hearing on the petition. The hearing shall be conducted within 14 days after the filing of the petition, or as soon as practicable.

(b) To provide notice on any potential claimant who may have an interest in any animals impounded pursuant to ORS 167.345 and as an alternate form of service upon a defendant who cannot be personally served as required in subsection (1) of this section, a petitioner may publish notice of the filing of the petition, printed twice weekly for up to 14 consecutive days in a daily or weekly newspaper, as defined in ORS 193.010, published in the county in which the hearing is to be held or, if there is none, in a daily or weekly newspaper, as defined in ORS 193.010, generally circulated in the county in which the hearing is to be held. The notice of the filing of the petition required under this subsection shall contain a description of the impounded animal or animals, the name of the owner or reputed owner thereof, the location from which the animal or animals were impounded and the time and place of the hearing if the hearing has been set at the time of publication, or otherwise the name, address and phone number for the attorney for the petitioner, who shall upon request provide further details on the hearing date, place and time.

(3)[(a)] At a hearing conducted pursuant to subsection (2) of this section, the petitioner shall have the burden of establishing probable cause to believe that the animal was subjected to a violation of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428. **The defendant or any other claimant shall have an opportunity to be heard before the court makes its final finding.** If the court finds that probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner, unless the defendant **or any other claimant**, within 72 hours of the hearing, posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the animal from the date of initial impoundment to the date of trial.

*[(b) Notwithstanding paragraph (a) of this subsection, a court may waive for good cause shown the requirement that the defendant post a security deposit or bond.]*

(4) If a security deposit or bond has been posted in accordance with subsection (3) of this section, and the trial in the action is continued at a later date, any order of continuance shall require the defendant **or any other claimant** to post an additional security deposit or bond in an amount determined by the court that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the petitioner in caring for the animal until the new date of trial.

(5) If a security deposit or bond has been posted in accordance with subsection (4) of this section, the petitioner may draw from that security deposit or bond the actual reasonable costs incurred by the petitioner in caring for the impounded animal from the date of initial impoundment to the date of final disposition of the animal in the criminal action.

(6) The provisions of this section are in addition to, and not in lieu of, the provisions of ORS 167.350 and 167.435 **and ORS chapters 87 and 88.**

**SECTION 8.** ORS 167.348 is amended to read:

167.348. (1) If an animal is forfeited according to the provisions of ORS 167.347 or 167.350, the agency to which the animal was forfeited may place the animal with a new owner. The agency *[shall]* **may** give placement preference to any person or persons who had prior contact with the animal, including but not limited to family members and friends of the former owner whom the agency determines are capable of providing necessary, adequate and appropriate levels of care for the animal. **The agency may not, however, place the animal with family members or friends of the former owner who aided or abetted the criminal conduct underlying the forfeiture or had knowledge of the criminal conduct and failed to intervene.** As a condition of placement, the agency shall require the new owner to execute an agreement to provide minimum care to the animal. The agreement must indicate that allowing the former owner to possess the animal constitutes a crime.

(2) Notwithstanding subsection (1) of this section, the agency may not place the animal with any person who resides with the former owner.

**SECTION 9.** ORS 87.159 is amended to read:

87.159. (1) A person who, or governmental agency that, transports, pastures, feeds, cares for or provides treatment to an animal that has been impounded under ORS 167.345 has a lien on the animal in the possession of the person or governmental agency for the reasonable charges for transportation, pasturage, feed, care or treatment provided by the person or governmental agency, and the person or governmental agency may retain possession of the animal until those charges are paid.

**(2)(a) Within 30 days of impoundment of any animal or animals as is authorized under ORS 167.345, any person who has an ownership interest in any impounded animal may file a written petition, verified under oath, demanding a hearing before the circuit court. The petition shall specifically identify the petitioner's ownership interest in the animal or animals. The petition shall further specifically articulate the petitioner's challenge to the probable cause justifying the impoundment that resulted in the lien attaching under subsection (1) of this section or the amount of the charges associated with that lien. The petitioner shall serve a true copy of the petition on the lien holder, the peace officer who impounded the animals and the district attorney, who shall be captioned as the respondents.**

**(b) Upon receipt of a petition in compliance with this subsection, the circuit court shall hold the hearing within 14 days, or as soon as practicable, wherein the respondents shall demonstrate by a preponderance of the evidence that impoundment of the animal was based on probable cause and that the lien amount claimed accurately reflects the reasonable charges authorized and accruing under subsection (1) of this section.**

**(c) If the court finds that impoundment of an animal under ORS 167.345 was:**

**(A) Based on probable cause and that the lien amount accurately reflects the reasonable charges authorized and accruing under subsection (1) of this section, then the court shall deny the petition, award reasonable attorney fees to the respondents and direct the foreclosure to proceed.**

(B) Based on probable cause but that the lien amount does not accurately reflect the reasonable charges authorized and accruing under subsection (1) of this section, then the court shall enter an order modifying the lien amount to accurately state the reasonable charges authorized and accruing under subsection (1) of this section, award reasonable attorney fees to the respondents and direct the foreclosure to proceed.

(C) Without probable cause, then the court may enter an order striking the lien created under subsection (1) of this section and may, but only if a final judgment is entered in the defendant's favor in the criminal case related to the impoundment under ORS 167.345, order an impounded animal returned to its lawful owner. To prevent the lawful owner or any other claimant from being unjustly enriched while having been relieved of the duty to provide an impounded animal with minimum care, any court order directing return of an impounded animal shall include an award to the respondents of the full costs of providing care to the animal.

(d) A person's failure to file a written petition within 30 days of impoundment of an animal or animals shall constitute a waiver of the right to file a petition under this subsection and the foreclosure shall proceed without judicial review in the manner provided in ORS 87.172 to 87.212. The court may extend the 30-day period to file a written petition by an additional 15 days only if the petitioner did not have actual notice of the impoundment and the court makes findings, on the record and in writing, that there are exceptional and compelling circumstances justifying the extension.

**SECTION 10.** (1) As used in this section and section 11 of this 2013 Act:

(a) "Animal" means any nonhuman mammal, bird, reptile, amphibian or fish.

(b) "Animal rescue entity" means an individual or organization, including but not limited to an animal control agency, humane society, animal shelter, animal sanctuary or boarding kennel not subject to ORS 167.374, but excluding a veterinary facility, that keeps, houses, and maintains in its custody 10 or more animals and that solicits or accepts donations in any form.

(c) "Enforcing agency" means the agency that operates a city or county dog licensing and control program under ORS 609.035 to 609.110 or under any city or county ordinances or regulations that operate in lieu of ORS 609.035 to 609.110, or any other agency designated the enforcing agency by the city or county governing body.

(2) Any animal rescue entity shall comply with all of the following record-keeping requirements:

(a) Maintain a record for each animal that identifies:

(A) The date of birth for the animal or, if the date of birth is unknown, the approximate age of the animal;

(B) The date the animal rescue entity acquired possession, control or charge of the animal and the source of the animal;

(C) The number of offspring the animal produced while in the possession or control of the animal rescue entity, if applicable;

(D) The disposition the animal rescue entity makes of each animal possessed by, controlled by or in the charge of the animal rescue entity, including the date of disposition, manner of disposition and the name and address for any individual or organization taking possession, control or charge of an animal;

(E) The source of the animal, date of acquisition, age, sex, breed type and weight of the animal at intake; and

(F) A photograph of the animal taken within 24 hours of intake by the animal rescue entity.

(b) Permit an authorized representative of the enforcing agency to inspect records of the animal rescue entity required by this subsection and furnish reports and information required by the enforcing agency, as provided under section 11 of this 2013 Act.

(3) An animal rescue entity shall comply with the following licensing requirements:

(a) The entity shall obtain a license issued by the enforcing agency in accordance with this section and any rules or policies adopted by the enforcing agency; and

(b) The entity shall pay a reasonable fee, as determined by the enforcing agency, for a license or an annual renewal of the license to provide for the actual cost of enforcing this section and section 11 of this 2013 Act.

(4) The enforcing agency may not issue or renew a license under this section unless the animal rescue entity is in compliance with this section and section 11 of this 2013 Act.

(5) An animal rescue entity may transfer a license issued under this section to another person with the written consent of the enforcing agency, provided that the transferee otherwise qualifies to be licensed as an animal rescue entity under this section and rules applicable to the transferee and does not have a certified unpaid debt to the state. The transferee shall submit a signed release to the enforcing agency permitting the performance of a background investigation of the transferee, and the enforcing agency shall conduct the background investigation.

(6) An applicant for a license issued under this section shall demonstrate that the animal rescue entity that is the subject of the application complies with all standards imposed under applicable law.

(7) Any animal rescue entity is subject to inspection by the enforcing agency as provided in section 11 of this 2013 Act.

(8)(a) A violation of this section may result in imposition of civil penalties to be determined by the enforcing agency, including but not limited to impoundment of all animals under the animal rescue's control, the revocation of the animal rescue's license to operate animal rescue operations and a civil penalty of not more than \$500 for each violation.

(b) Before a civil penalty may be imposed under this section, the enforcing agency shall adopt rules or policies that:

(A) Ensure that a person who is the subject of an alleged violation receives notice of the allegations and potential imposition of civil penalties;

(B) Allow for an opportunity for a hearing prior to the imposition of civil penalties; and

(C) Allow for the opportunity for judicial review of the imposition of civil penalties.

(9) Moneys raised by the enforcing agency under this section are dedicated to and shall be used for enforcing agency operations undertaken pursuant to this section and section 11 of this 2013 Act.

**SECTION 11.** (1) Whenever an authorized representative of an enforcing agency is advised or has reason to believe that an animal rescue entity is operating without a license, the authorized representative may visit and conduct an on-site investigation of the premises of the animal rescue entity. The purpose of an investigation under this section is to determine whether the animal rescue entity is subject to the requirements of section 10 of this 2013 Act.

(2) At any reasonable time, an authorized representative of an enforcing agency, a law enforcement agency or the United States Department of Agriculture may conduct an on-site investigation of the premises of any licensed animal rescue entity to determine whether the entity is in compliance with section 10 of this 2013 Act.

(3) An authorized representative of the enforcing agency or a law enforcement agency shall conduct an on-site investigation of the premises of any licensed animal rescue entity if the agency receives a complaint about the animal rescue entity related to the failure to comply with the requirements of section 10 of this 2013 Act that the agency determines is credible and serious. The investigation by the agency shall be limited to determining if the animal rescue entity has failed to comply with the requirements of section 10 of this 2013 Act.

(4) Any state agency that receives a complaint about a licensed animal rescue entity shall notify the enforcing agency about the complaint and any subsequent action taken by the state agency based on that complaint.

(5) A licensed animal rescue entity shall permit an authorized representative of the enforcing agency to inspect records of the animal rescue entity and shall furnish any reports and information required by the enforcing agency.

(6) If, during the course of an inspection made under this section, the enforcing agency finds evidence of animal cruelty in violation of ORS 167.310 to 167.351, 167.352, 167.355 or 167.360 to 167.372, the enforcing agency shall seize the evidence and report the violation to law enforcement. Evidence of animal cruelty found through a valid inspection under this section shall be presumed admissible in any subsequent criminal proceeding.

**SECTION 12.** This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate July 1, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House July 6, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State