

Enrolled
House Bill 2529

Sponsored by Representative GELSER; Representative WITT (at the request of Scott Heiser)

CHAPTER

AN ACT

Relating to crimes involving animals; creating new provisions; amending ORS 133.377, 133.379, 167.345, 167.347 and 167.350; and repealing ORS 167.375.

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

SECTION 1. ORS 167.345 is amended to read:

167.345. (1) As used in this section, "peace officer" has the meaning given that term in ORS 161.015.

(2) If there is probable cause to believe that any animal is being subjected to treatment in violation of ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428**, a peace officer, after obtaining a search warrant or in any other manner authorized by law, may enter the premises where the animal is located to provide the animal with food, water and emergency medical treatment and may impound the animal. If after reasonable effort the owner or person having custody of the animal cannot be found and notified of the impoundment, the notice shall be conspicuously posted on the premises and within 72 hours after the impoundment the notice shall be sent by certified mail to the address, if any, where the animal was impounded.

(3) A peace officer is not liable for any damages for an entry under subsection (2) of this section, unless the damages were caused by the unnecessary actions of the peace officer that were intentional or reckless.

(4)(a) A court may order an animal impounded under subsection (2) of this section to be held at any animal care facility in the state. A facility receiving the animal shall provide adequate food and water and may provide veterinary care.

(b) A court may order a fighting bird impounded under subsection (2) of this section to be held on the property of the owner, possessor or keeper of the fighting bird in accordance with ORS 167.433.

SECTION 2. 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, [or] 167.340, **167.355, 167.365 or 167.428**, prior to final disposition of the criminal charge, the county or other animal care agency 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 the district attorney.

(2) 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.

(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, [or] 167.340, **167.355, 167.365 or 167.428**. If the court finds that probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner, unless the defendant, 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 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.

SECTION 3. ORS 167.350 is amended to read:

167.350. (1) In addition to and not in lieu of any other sentence it may impose, a court may require a defendant convicted under ORS 167.315 to 167.333, [or] 167.340, **167.355 or 167.365** to forfeit any rights of the defendant in the animal subjected to the violation, and to repay the reasonable costs incurred by any person or agency prior to judgment in caring for each animal subjected to the violation.

(2) When the court orders the defendant's rights in the animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to the county or an appropriate animal care agency for further disposition in accordance with accepted practices for humane treatment of animals. This subsection does not limit the right of the person or agency to whom rights are granted to resell or otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a transfer of ownership.

(3) In addition to and not in lieu of any other sentence it may impose, a court may order the owner or person having custody of an animal to repay the reasonable costs incurred by any person or agency in providing minimum care to the animal.

(4) A court may order a person convicted under ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428** to participate in available animal cruelty prevention programs or education programs, or both, or to obtain psychological counseling for treatment of mental health disorders that, in the court's judgment, contributed to the commission of the crime. The person shall bear any costs incurred by the person for participation in counseling or treatment programs under this subsection.

(5) ORS 131.550 to 131.600 do not apply to the forfeiture of an animal subjected to a violation of ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428**. Any such animal is subject to forfeiture as provided in subsections (1) to (3) of this section **or, if the animal is a fighting bird, as provided in ORS 167.435.**

SECTION 4. ORS 133.377 is amended to read:

133.377. (1) Any person violating ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428** may be arrested and held without warrant, in the same manner as in the case of persons found breaking the peace.

(2) The person making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owners of the animals found in the charge of the person arrested, and

shall properly care and provide for such animals until the owners or their duly authorized agents take charge of them; provided, such owners or agents shall claim and take charge of the animals within 60 days from the date of said notice.

(3) The person making such arrest shall have a lien upon the animals for the expense of such care and provisions.

(4) Any peace officer who cares or provides for an animal pursuant to this section and any person into whose care an animal is delivered by a peace officer acting under this section shall be immune from civil or criminal liability based upon an allegation that such care was negligently provided.

SECTION 5. ORS 133.379 is amended to read:

133.379. (1) It shall be the duty of any peace officer to arrest and prosecute any violator of ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428** for any violation which comes to the knowledge or notice of the officer.

(2) All fines and forfeitures collected for violations of ORS 167.315 to 167.333, [or] 167.340, **167.355, 167.365 or 167.428**, except for forfeitures of the animal as provided under ORS 167.350 or **167.435**, shall be paid into the county treasury of the county in which it is collected, and placed to the credit of the county school fund.

SECTION 6. The amendments to ORS 133.377, 133.379, 167.345, 167.347 and 167.350 by sections 1 to 5 of this 2009 Act apply to violations of ORS 167.355, 167.365 or 167.428 committed on or after the effective date of this 2009 Act.

SECTION 7. ORS 167.375 is repealed.

Passed by House March 31, 2009

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Chief Clerk of House
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Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Passed by Senate June 3, 2009

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President of Senate

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State