



March 25, 2013

Senate Committee on Judiciary
Oregon State Capitol
900 Court Street NE, Room 331
Salem, OR 97301

Re: Animal Legal Defense Fund's Support of SB 6

Dear Senate Judiciary Committee,

The Animal Legal Defense Fund (ALDF), founded in 1979, is a national, nonprofit organization of attorneys specializing in the protection of animals and working to ensure the enforcement of existing animal protection laws within the United States. Thank you for the opportunity to express our support for SB 6, a significant improvement to current animal cruelty laws in three distinct ways: increased penalties and revised sentencing guidelines for animal cruelty, clarification and expedition of the pre-conviction forfeiture process for victim animals, and mandatory licensing and recordkeeping requirements for animal rescues in Oregon.

1. Increased Penalties and Revised Sentencing Guidelines

Under current Oregon law, an enraged man who lights his girlfriend's cat on fire in front of their child would *never* see a ~~prison~~ SM prison cell, even if convicted of aggravated animal abuse; a hoarder of over 100 dogs who neglects them to the point of starvation could

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only be convicted of a misdemeanor; and someone convicted of abandoning their horses to starve and die could be banned from owning dogs, cats and rabbits for the next five years—but is free to own more horses. SB 6 (sections 2-6) would correct these shortcomings in our current cruelty laws.

Since the enactment of Oregon's animal cruelty code in 1985, animal neglect has taken a backseat to abuse in terms of punishment. Current law classifies even severe animal neglect as only a misdemeanor, ORS 167.330, compared to aggravated abuse or first-degree abuse with aggravating factors, which are felonies, ORS 167.322, 167.320. However, our courts and the public have come to recognize neglect over the past few decades as a serious crime with serious consequences for the animal victims, from starvation to mass hoarding. In fact, some scholars assert that neglect is even more egregious for the animals involved because their suffering is protracted over a longer period of time. *See, e.g.,* Bruce A. Wagman, Sonia S. Waisman & Pamela D. Frasch, *Animal Law: Cases and Materials*, 123 (4th ed. Carolina Academic Pr. 2010). Moreover, animal neglect too often goes hand in hand with other human-victim crimes, like child neglect and elder abuse—an unfortunate reality that Oregon recognized by mandating veterinary reporting of abuse. ORS 686.442, 686.445.

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Just two months ago, Oregon officials uncovered one of the most egregious mass neglect cases in the state's history: a Marion County group posing as a "rescue" held over 100 emaciated dogs captive in a dark facility. Under current law, neglecting that many dogs to the point of starvation is *only a misdemeanor*—but SB 6 would make such mass neglect a felony, under the aggravating factor of neglecting 10 or more animals. The bill would also raise neglect to a felony if committed in the presence of a child or if the abuser has past cruelty convictions.

Current law also fails to properly punish animal abusers; perpetrators of felony-level offenses receive *no prison time* given Oregon's current sentencing guidelines. SB 6 would change that, requiring that felony animal abuse is a category 6 offense and aggravated felony abuse a category 7 (both requiring prison time). In addition, SB 6 would ensure that convicted abusers are banned from possessing the types of animals they harmed—current law limits possession bans to domestic animals, yet many convictions result from cruelty to non-domestic animals such as equines.

2. Pre-Conviction Forfeiture: Avoiding Re-Victimization

As the Oregon Court of Appeals recently recognized, animals are victims of crimes and are sentient beings capable of feeling pain and suffering. *State v. Nix*, 251 Or. App. 449, 283 P.3d 442 (2012) rev. granted, ___ Or. ____ (March 7, 2013). Yet

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our current criminal system too often re-victimizes these animals by forcing them to languish in cages as evidence while their defendant owners await trial. SB 6 (sections 7-8) would mitigate these animals' pre-trial suffering by further expediting their disposition to loving homes, sound public policy that is already embodied in Oregon law thanks to State v. Branstetter, 181 Or. App. 57 (2002) and Oregon Constitution, Article XV, section 10 (as amended by the passage of Measure 53 in 2008—exempting animal cruelty cases from the constitutional restraints placed on pre-conviction forfeiture cases generally).

SB 6 (section 7) would amend ORS 167.347 to clarify the due process defendants and third-party claimants receive in pre-conviction forfeiture proceedings, to ensure the efficacy of this process for both humans and animals involved by removing any ambiguity about how to impart notice to potential third-party claimants who are asserting a legal interest in the impounded animals so that their interests may be heard and addressed by the court. The existing language in ORS 167.347 ensures that caregiving entities that expend time, money and other resources to care for impounded animals are rightfully reimbursed for the costs of this care, as these costs can be a huge financial burden to such caregivers; Section 7 of SB 6 simply ensures that all parties with



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an interest in the impounded animals have notice and an opportunity to be heard in the pre-conviction forfeiture hearing.

Section 8 of SB 6 is a related due process clarification, which creates an express opportunity for a claimant to secure judicial review of the validity and amount of the possessory chattel lien that attaches under existing Oregon law (ORS 87.159) prior to commencement of a non-judicial foreclosure proceeding.

3. Licensing for All Rescues: Creating Transparency

A Marion County case from January 2013 (involving allegations of animal neglect at Willamette Animal Rescue) sparked public awareness that mass animal neglect too often occurs behind closed doors. The third component of SB 6 (sections 9 and 10) addresses the fraudulent animal “rescues” problem by creating licensing, recordkeeping and inspection requirements that will enable regulators to inspect, detect and thus prevent fraudulent animal rescues from operating in Oregon. A similar approach is already embodied in Oregon law and used to regulate (and thus prevent abuse in) the child daycare setting. ORS 657A.390 *et seq.* The approach is simple: By mandating licensing, recordkeeping and inspection of animal rescue entities, large and small, from shelters to sanctuaries, regulators can act sooner and would not be forced to wait for the situation to deteriorate to the point of cases like the recent Marion County matter. To be sure, the



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recordkeeping requirement will require more paperwork for these rescues—but this small “cost” of added paperwork is far outweighed by the greater good of ensuring that these establishments are operating legitimately and in the best interest of the animals involved.

Significantly, this bill does not allow a rescue to simply pay a fee and be considered “legit.” The inspection provision in SB 6 grants the enforcing body access to the rescues and can therefore note any neglect or other cruelty taking place. Opponents of SB 6 may argue that this bill does not do enough to prevent cruelty and instead only burdens hard-working, legitimate rescues with more paperwork. However, like puppy mill laws in Oregon and other states across the country that require similar regulatory scrutiny and recordkeeping, this bill helps create *transparency* between rescues and the public eye.

Under SB 6, no longer could animals sent to sham rescues be neglected for months (if not years) without detection. Regulators could now enter the premises at any reasonable time if they reasonably believe the entity is not in compliance with the licensure or recordkeeping requirements, or if they receive a “credible and serious” complaint from a citizen about the rescue. Once validly on the premises, the agency *must* report “plain view” evidence of cruelty violations to law enforcement, and such

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evidence will be presumed permissible in a criminal proceeding (which is consistent with existing Oregon case law—Nelson v. Lane County, 304 Or. 97 (1987)). While the enforcing agency will not be entering for the purpose of investigating criminal cruelty, the agency must report abuse when they see it (a much needed correction when compared to the federal Animal Welfare Act and the USDA inspector's lack of communication with state law enforcement after discovered ongoing criminal neglect)—adding a much-needed prophylactic measure to combat situations like Marion County. Sections 9 and 10 of SB 6 are intended to be fully compliant with the holding in State v. Anderson, 304 Or. 139 (1987) (inspections for a noncriminal, legitimate regulatory purpose are permissible regulatory intrusions).

4. The Concerns of Agriculture/Hunters/Wildlife Managers

The agriculture/hunting and wildlife management lobbies have nothing to fear in SB 6. This bill does nothing to erode any of the existing exemptions protecting application of Oregon's animal cruelty laws to agriculture operations, lawful hunting or lawful wildlife management practices. ORS 167.335 remains in full force and effect, exempting:

- (1) The treatment of livestock being transported by owner or common carrier;
- (2) Animals involved in rodeos or similar exhibitions;
- (3) Commercially grown poultry;
- (4) Animals subject to good animal husbandry practices;

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- (5) The killing of livestock according to the provisions of ORS 603.065;
- (6) Animals subject to good veterinary practices as described in ORS 686.030;
- (7) Lawful fishing, hunting and trapping activities;
- (8) Wildlife management practices under color of law;
- (9) Lawful scientific or agricultural research or teaching that involves the use of animals;
- (10) Reasonable activities undertaken in connection with the control of vermin or pests; and
- (11) Reasonable handling and training techniques.

CONCLUSION

This Legislature can ensure that cases like the Marion County “rescue” do not happen again—by mandating that severe abuse and mass neglect means actual prison time, that animals do not languish cages prior to trial, and that all animal rescue entities in Oregon require licensure and regulatory inspection. Senate Bill 6 embodies several key improvements to Oregon’s current animal laws, ensuring that these crimes are taken seriously and animal victims receive the justice they deserve.

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Sincerely,

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