

April 16, 2013



House Committee on Agriculture
and Natural Resources
Oregon State Capitol
900 Court Street NE, Room 347
Salem, OR 97301

Re: Animal Legal Defense Fund's Support of HB 2745

Dear House Committee on Agriculture and Natural Resources,

My name is Scott Heiser and I am the Director of the Criminal Justice Program at the Animal Legal Defense Fund. First, we would like to sincerely thank Representatives Gelser and Witt for co-sponsoring HB 2745, which has already received widespread endorsement from the Oregon Veterinary Medical Association (OVMA), the Oregon Humane Society (OHS), the Oregon Animal Control Council (OACC), and the Oregon District Attorneys Association (ODAA).

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. ALDF's Criminal Justice Program includes three attorneys with a combined total of over 60 years of prosecution experience, and provides free training support to prosecutors in partnership with both the National District Attorneys Association (NDAA) and the Association of Prosecuting Attorneys (APA). Before joining ALDF, I served as an Oregon prosecutor for over 17 years, as an elected district attorney for more than eight years, and as the president of the ODAA for a full one-year term.

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HB 2745 is an important bill that simply expands an Oregon citizen's right to abate ongoing acts of animal cruelty as a nuisance, while simultaneously facilitating the more timely rescue of abused and neglected animals. In short, HB 2745 provides an additional tool for combating animal cruelty without making *any* changes to substantive criminal law or the current nuisance abatement procedure at no additional cost to Oregon law enforcement, the indigent defense bar or Oregon's corrections system.

Oregon has a longstanding policy of allowing citizens to enjoin nuisances based on ongoing illegal conduct. ORS 105.550 et seq. Specifically, under existing Oregon law (ORS 105.555 and 105.560) a citizen or business located within a county where there is ongoing criminal conduct related to drugs, prostitution or gambling (the current conduct within the definition of "nuisances") can sue to stop it, regardless of whether a criminal case is filed. HB 2745 would merely add existing animal crimes to this list of crimes qualifying as a "nuisance." Using the civil code to address criminal conduct is a powerful tool to supplement the criminal justice system's response and one that has already passed constitutional muster. State ex rel. Haas v. Club Recreation, 41 Or. App. 557 (1979) (holding that ORS 465.110, the predecessor to ORS 105.550 et seq., is not an unconstitutional circumvention of criminal code, but serves a valid state interest in prohibiting the illegal use of property via application of an equitable civil remedy).

Oregon has long recognized the seriousness of animal cruelty and its impact on humans. These values are codified in ORS Chapter 167 (Oregon's animal cruelty code) and related statutes. *See, e.g.*, ORS 686.442, 686.445 (mandating veterinary reporting of abuse and noting that "there is a direct link between the problems of animal abuse and human abuse"). However, despite Oregon's strong existing animal cruelty laws, there are still holes in our animal protection scheme, a fact that is evidenced almost weekly by news coverage of mass animal neglect cases. The criminal system too often fails suffering animals that must languish in their misery, waiting until enough evidence is gathered to support a probable cause finding and the issuance of a search warrant.

To address this problem, HB 2745 would allow citizens who witness animal cruelty to take *immediate* action to stop such cruelty on a civil law quantum of proof measured by the Oregon State Bar's rules of professional conduct (e.g., Oregon Rule of Professional Conduct § 3.1 requires an attorney to have a non-frivolous basis in law and fact to advance a claim), rather than relying solely on criminal law standards that are less prophylactic and much more reactionary to an already compromised situation (and thus generally much slower). While hardworking law enforcement should and often does investigate animal crimes, the ability to respond to such situations varies from county to county due to limited budgets and resources—both stretched especially thin in these tough financial times. Thus, HB 2745 fills this gap in enforcement by empowering citizens to address ongoing animal suffering in their own communities.

As noted above, a comprehensive civil nuisance abatement structure already exists in Oregon, with a working procedure that ensures due process for defendant owners and safeguards against frivolous claims. HB 2745 would change nothing about this existing nuisance abatement procedure—instead, this bill simply adds existing animal crimes (such as abuse, neglect, fighting and sexual assault) to the current list of illegal acts eligible for treatment under ORS 105.550 et seq.

Civil citizen enforcement is not a new concept in the animal cruelty context; this strategy has been tested and proven to work in other states.¹ As Oprah Winfrey reported in 2005, ALDF employed North Carolina's civil nuisance abatement law, N.C. Gen. Stat. § 19A-1 et seq., to save hundreds of dogs from extreme neglect in deplorable conditions. Further, the notion that civil citizen enforcement plays a vital role in our justice system is evidenced by a host of federal laws, some dating back to the post-Civil War reconstruction era (e.g., the Civil Rights Act of 1871, now codified at 42 U.S.C. § 1983); more recent examples include the Americans with Disabilities

¹ Several other states have implemented civil nuisance abatement schemes to address ongoing criminal conduct through the power of a citizen-initiated enforcement action. *See, e.g.*, Ariz. Rev. Stat. § 12-998, Fla. Stat. Ann. §§ 60.07 & 823.05(1); 42 Pa. Cons. Stat. § 8381 et seq., S.C. Code § 15-43-10 et seq.; La. Rev. Stat. §§ 13:4712 & 13:4722; and Ohio Rev. Code § 3767.03.

Act of 1990, codified at 42 U.S.C. § 12203 and the Fair Housing Amendments Act of 1988, codified at 42 U.S.C § 3613.

Those who make their living by raising, managing or marketing animals (as well as products derived from animals) have nothing to fear in HB 2745—this bill incorporates the existing and far-reaching exemptions for industrial practices and conduct constituting good animal husbandry that is already codified in ORS 167.335.² HB 2745 leaves those protections in full force.

More to the point, Oregon’s “Right to Farm Act,” ORS 30.930 et seq., remains unaltered and protects farmers from nuisance litigation for “farming practices.”³ Simply put, HB 2745 is exclusively focused on unlawful criminal conduct—period.

For those who say this remedy will open the floodgates of specious litigation, there are no known instances of abusing the existing abatement scheme of ORS 105.550 et seq. in drugs, prostitution and gambling cases. Expanding the class of nuisances to include criminal animal abuse will yield the same outcome—no abuse of process—for one simple reason: ORS 105.560(3) contains a prevailing party attorney fees clause, meaning that potential plaintiffs contemplating a case under ORS 105.550 et seq. must do their homework and win the claim, or will be forced to pay

² The listed exemptions found in ORS 167.335 are:

- (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;*
- (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”*

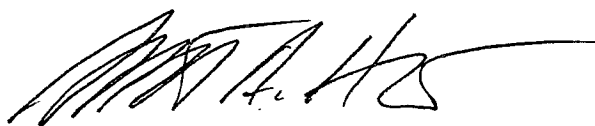
³ ORS 30.930(2) defines “Farming Practice” broadly to mean “a mode of operation on a farm that:

- (a) Is or may be used on a farm of a similar nature;*
- (b) Is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;*
- (c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;*
- (d) Complies with applicable laws; and*
- (e) Is done in a reasonable and prudent manner.”*

the defendant's attorney fees. Practically speaking, a prevailing party attorney fees clause is a substantial and effective deterrent to specious litigation, as evidenced by the lack of abuse under ORS 105.550 et seq. to date. On top of this effective deterrent, as noted above, attorneys are bound by an ethical duty to not file frivolous law suits under Oregon Rule of Professional Conduct § 3.1, and courts may award sanctions under Oregon Rule of Civil Procedure 17 in cases filed for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

HB 2745 is a small change to current law that will mean life or death for suffering animals whose conditions often go undetected or unaddressed for far too long by an overburdened criminal justice system. An Oregon citizen currently has the right to sue and stop drug dealing, prostitution and illegal gambling; there is no good policy reason to refuse to expand this list of crimes to include ongoing acts of criminal animal abuse.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott A. Heiser', with a long horizontal flourish extending to the right.

Scott A. Heiser
Sr. Attorney and Director, Criminal Justice Program
Animal Legal Defense Fund