

# Senate Bill 6

Sponsored by Senators COURTNEY, PROZANSKI

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Increases punishment for animal neglect in first degree to maximum of five years' imprisonment, \$125,000 fine, or both, and, for repeat animal neglect offenders or animal neglect offenses involving 10 or more animals, to maximum of 10 years' imprisonment, \$250,000 fine, or both. Increases punishment for animal neglect in second degree to maximum of one year's imprisonment, \$6,250 fine, or both, and, for repeat animal neglect offenders or animal neglect offenses involving 10 or more animals, to maximum of five years' imprisonment, \$125,000 fine, or both. Expands types of animals that persons convicted of specified offenses against animals are prohibited from possessing.

Modifies animal impoundment process and process by which liens for care of animals may be foreclosed upon to minimize periods during which animals are impounded.

Requires animal rescue entities to obtain licenses, maintain specified records and permit inspections by enforcing agencies. Establishes civil penalties for licensure, recordkeeping or operations violations.

## A BILL FOR AN ACT

1  
2 Relating to animals; creating new provisions; and amending ORS 87.159, 167.320, 167.322, 167.325,  
3 167.330, 167.332 and 167.347.

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

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

5  
6 **(1) Animals are sentient beings capable of experiencing pain, stress and fear;**

7 **(2) Animals should be cared for in ways that minimize pain, stress, fear and suffering;**

8 **(3) The suffering of animals can be mitigated by expediting the disposition of abused an-**  
9 **imals that would otherwise languish in cages while their defendant owners await trial;**

10 **(4) The State of Oregon has an interest in facilitating the mitigation of costs of care in-**  
11 **curring by persons and government agencies that provide treatment for impounded animals;**

12 **(5) Use of preconviction civil remedies is not an affront to the presumption of innocence;**  
13 **and**

14 **(6) Amendments to current law are needed to ensure that interested parties are afforded**  
15 **adequate notice and an opportunity to be heard and thus cannot unduly delay or impede an-**  
16 **imal lien foreclosure and preconviction forfeiture processes through unfounded due process**  
17 **claims.**

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

18  
19 167.320. (1) A person commits the crime of animal abuse in the first degree if, except as other-  
20 wise authorized by law, the person intentionally, knowingly or recklessly:

21 (a) Causes serious physical injury to an animal; or

22 (b) Cruelly causes the death of an animal.

23 (2) Any practice of good animal husbandry is not a violation of this section.

24 (3) Animal abuse in the first degree is a Class A misdemeanor.

25 (4) Notwithstanding subsection (3) of this section, animal abuse in the first degree is a Class C

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 felony if:

2 (a) The person committing the animal abuse has previously been convicted of [two] **one** or more  
3 of the following offenses:

4 (A) Any offense under ORS 163.160, 163.165, 163.175, 163.185 or 163.187 or the equivalent laws  
5 of another jurisdiction, if the offense involved domestic violence as defined in ORS 135.230 or the  
6 offense was committed against a minor child; or

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

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

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

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

15 167.322. (1) A person commits the crime of aggravated animal abuse in the first degree if the  
16 person:

17 (a) Maliciously kills an animal; or

18 (b) Intentionally or knowingly tortures an animal.

19 (2) Aggravated animal abuse in the first degree is a Class C felony **and the Oregon Criminal**  
20 **Justice Commission shall classify the offense as crime category 7 of the sentencing guide-**  
21 **lines grid.**

22 (3) As used in this section:

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

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

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

27 167.325. (1) A person commits the crime of animal neglect in the second degree if, except as  
28 otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal  
29 negligence fails to provide minimum care for an animal in such person's custody or control.

30 (2) Animal neglect in the second degree is a Class [B] A misdemeanor.

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

33 **(a) The person committing the offense has previously been convicted of one or more of-**  
34 **fenses under this section, ORS 167.330 or the equivalent laws of another jurisdiction;**

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

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

39 **(4) When animal neglect in the second degree is a felony, the Oregon Criminal Justice**  
40 **Commission shall classify the offense as crime category 6 if 10 to 40 animals were the subject**  
41 **of the neglect, crime category 7 if 41 to 80 animals were the subject of the neglect and crime**  
42 **category 8 if 81 or more animals were the subject of the neglect. Nothing in this subsection**  
43 **is intended to limit or prohibit the prosecution of animal neglect for each individual animal.**

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

45 167.330. (1) A person commits the crime of animal neglect in the first degree if, except as oth-

erwise 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] **Class C felony**.

(3) **Notwithstanding subsection (2) of this section, animal neglect in the first degree is a Class B 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) **When animal neglect in the first degree is a Class B felony, the Oregon Criminal Justice Commission shall classify the offense as crime category 6 if 10 to 20 animals were the subject of the neglect, crime category 7 if 21 to 30 animals were the subject of the neglect and crime category 8 if 31 or more animals were the subject of the neglect.**

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

167.332. (1) 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, **an equine 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) 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, **an equine 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) A person who possesses a domestic animal in violation of this section commits a Class C misdemeanor. When a person is convicted of possessing a domestic animal in violation of this section, the court may order the removal of domestic animals from the person's residence.

**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**

1 days in a daily or weekly newspaper, as defined in ORS 193.010, published in the county in  
 2 which the hearing is to be held or, if there is none, in a daily or weekly newspaper, as defined  
 3 in ORS 193.010, generally circulated in the county in which the hearing is to be held. The  
 4 notice of the filing of the petition required under this subsection shall contain a description  
 5 of the impounded animal or animals, the name of the owner or reputed owner thereof, the  
 6 location from which the animal or animals were impounded and the time and place of the  
 7 hearing if the hearing has been set at the time of publication, or otherwise the name, address  
 8 and phone number for the attorney for the petitioner, who shall upon request provide further  
 9 details on the hearing date, place and time.

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

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

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

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

30 (6) The provisions of this section are in addition to, and not in lieu of, the provisions of ORS  
 31 167.350 and 167.435 **and ORS chapters 87 and 88.**

32 **SECTION 8.** ORS 87.159 is amended to read:

33 87.159. (1) A person who, or governmental agency that, transports, pastures, feeds, cares for or  
 34 provides treatment to an animal that has been impounded under ORS 167.345 has a lien on the an-  
 35 imal in the possession of the person or governmental agency for the reasonable charges for trans-  
 36 portation, pasturage, feed, care or treatment provided by the person or governmental agency, and  
 37 the person or governmental agency may retain possession of the animal until those charges are paid.

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

1 animals and the district attorney, who shall be captioned as the respondents.

2 (b) Upon receipt of a petition in compliance with this subsection, the circuit court shall  
3 hold the hearing within 14 days, wherein the respondents shall demonstrate by a preponder-  
4 ance of the evidence that impoundment of the animal was based on probable cause and that  
5 the lien amount claimed accurately reflects the reasonable charges authorized and accruing  
6 under subsection (1) of this section.

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

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

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

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

25 (d) A person's failure to file a written petition within 30 days of impoundment of an ani-  
26 mal or animals shall constitute a waiver of the right to file a petition under this subsection  
27 and the foreclosure shall proceed without judicial review in the manner provided in ORS  
28 87.172 to 87.212. The court may extend the 30-day period to file a written petition by an ad-  
29 ditional 15 days only if the petitioner did not have actual notice of the impoundment and the  
30 court makes findings, on the record and in writing, that there are exceptional and compelling  
31 circumstances justifying the extension.

32 **SECTION 9. (1) As used in this section and section 10 of this 2013 Act:**

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

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

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

43 (2) Any animal rescue entity shall comply with all of the following record-keeping re-  
44 quirements:

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

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

3 (B) The date the animal rescue entity acquired possession, control or charge of the ani-  
4 mal and the source of the animal;

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

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

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

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

15 (b) Permit an authorized representative of the enforcing agency to inspect records of the  
16 animal rescue entity required by this subsection and furnish reports and information re-  
17 quired by the enforcing agency, as provided under section 10 of this 2013 Act.

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

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

21 (b) The entity shall pay a \$100 license application fee for a license or an annual renewal  
22 of the license.

23 (4) The enforcing agency may not issue or renew a license under this section unless the  
24 animal rescue entity is in compliance with this section and section 10 of this 2013 Act.

25 (5) An animal rescue entity may transfer a license issued under this section to another  
26 person with the written consent of the enforcing agency, provided that the transferee oth-  
27 erwise qualifies to be licensed as an animal rescue entity under this section and rules appli-  
28 cable to the transferee and does not have a certified unpaid debt to the state. The transferee  
29 shall submit a signed release to the enforcing agency permitting the performance of a  
30 background investigation of the transferee, and the enforcing agency shall conduct the  
31 background investigation.

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

35 (7) Any animal rescue entity is subject to inspection by the enforcing agency as provided  
36 in section 10 of this 2013 Act.

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

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

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

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

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

2 (9) Moneys raised by the enforcing agency under this section are dedicated to and shall  
3 be used for enforcing agency operations undertaken pursuant to this section and section 10  
4 of this 2013 Act.

5 **SECTION 10.** (1) Whenever an authorized representative of an enforcing agency is ad-  
6 vised or has reason to believe that an animal rescue entity is operating without a license,  
7 the authorized representative may visit and conduct an on-site investigation of the premises  
8 of the animal rescue entity. The purpose of an investigation under this section is to deter-  
9 mine whether the animal rescue entity is subject to the requirements of section 9 of this 2013  
10 Act.

11 (2) At any reasonable time, an authorized representative of an enforcing agency may  
12 conduct an on-site investigation of the premises of any licensed animal rescue entity to de-  
13 termine whether the entity is in compliance with section 9 of this 2013 Act.

14 (3) An authorized representative of the enforcing agency shall conduct an on-site inves-  
15 tigation of the premises of any licensed animal rescue entity if the enforcing agency receives  
16 a complaint about the animal rescue entity that the agency determines is credible and seri-  
17 ous.

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

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

24 (6) If, during the course of an inspection made under this section, the enforcing agency  
25 finds evidence of animal cruelty in violation of ORS 167.310 to 167.351, 167.352, 167.355 or  
26 167.360 to 167.372, the enforcing agency shall seize the evidence and report the violation to  
27 law enforcement. Evidence of animal cruelty found through a valid inspection under this  
28 section shall be presumed admissible in any subsequent criminal proceeding.