

May 5, 2015

Senate Committee on Judiciary  
Oregon State Capitol  
900 Court Street NE, Room 343  
Salem, OR 97301



Re: Animal Legal Defense Fund's Support of HB 2888

Dear Senate Committee on Judiciary,

My name is Lora Dunn and I am a Staff Attorney for the Criminal Justice Program at the Animal Legal Defense Fund. First, we would like to sincerely thank Representative Witt for sponsoring HB 2888, which is supported by the Oregon Veterinary Medical Association (OVMA), the Oregon Humane Society (OHS), 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 provides free training support to prosecutors in partnership with both the National District Attorneys Association (NDAA) and the Association of Prosecuting Attorneys (APA).

In short, HB 2888 is an important bill that simply **adds existing animal crimes to the current list of illegal activity (prostitution, gambling, drugs) that can be civilly abated as a nuisance** under Oregon's already-established nuisance abatement mechanism, ORS 105.550 *et seq.* To be clear, **HB 2888 does not create any new substantive crime** regarding animal victims—rather, the bill provides an additional tool for combating animal cruelty **at no additional cost to Oregon law enforcement, the indigent defense bar, or Oregon's corrections system.**

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## **What HB 2888 does**

Oregon has a longstanding policy of allowing citizens to enjoin nuisances based on ongoing illegal conduct under 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 prostitution, gambling, or drugs (the current conduct within the definition of “nuisances”) can sue to stop it, regardless of whether a criminal case is filed. **HB 2888 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).

## **Why do we need HB 2888?**

Oregon has long recognized the seriousness of animal cruelty and its impact on humans. As this Legislature highlighted in its Legislative findings in 2013, “[a]nimals are sentient beings capable of experiencing pain, stress and fear ... [and] should be cared for in ways that minimize pain, stress, fear and suffering,” ORS 167.305. These values have long been 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 2888 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 2888 fills this gap in enforcement** by empowering citizens to address ongoing animal suffering in their own communities.

### **Safeguards already in place under current nuisance abatement structure**

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 2888 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.<sup>1</sup> 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

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<sup>1</sup> 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 2888—**this bill incorporates the existing and far-reaching exemptions for industrial agriculture practices and conduct constituting good animal husbandry that is already codified in ORS 167.335.**<sup>2</sup> HB 2888 leaves those protections in full force.<sup>3</sup> 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.”<sup>4</sup> Simply put, HB 2888 is exclusively focused on unlawful criminal conduct—period.

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<sup>2</sup> 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”*

<sup>3</sup> Any lawful activity, including those regarding agriculture and livestock practices, that is already legal would remain legal, and could not constitute a nuisance, under HB 2888, since this bill does not create any new substantive crime regarding animals. Some Representatives presented hypotheticals during this bill’s Third Reading in the House that we would like to address here: A barking dog does not constitute an animal crime under current law, and therefore would not be a nuisance under this bill; branding and castration if done lawfully in accordance with good animal husbandry practices could not be a nuisance under this bill, as per ORS 167.335(4); an animal that is abandoned without being provided with minimum care could be a nuisance, just as it is currently a crime under ORS 167.340; the definition of “minimum care” in this bill is directly incorporated from current criminal law, ORS 167.310—citizens filing nuisance complaints would not have the power to determine whether minimum care has been provided, but rather the court alone would determine the existence of a nuisance relating to minimum care by referencing the definition in ORS 167.310.

<sup>4</sup> 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.”*

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 prostitution, gambling, or drug 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), which is already law, 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 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.

Animals are voiceless, and their suffering often goes undetected and unabated due to shortfalls in our criminal justice system. HB 2888 is a small change to current law, but one that will mean life or death for animal victims. An Oregon citizen currently has the right to sue and stop prostitution, illegal gambling, or drug dealing—and we submit that this Legislature expand this list of crimes to include ongoing acts of criminal animal abuse.

Sincerely,



Lora Dunn  
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Animal Legal Defense Fund

Enclosure: HB 2888 Fact Sheet



## HB 2888: Fact Sheet

### What does HB 2888 do?

- Adds animal crimes to the list of illegal activity that can be abated as a nuisance under ORS 105.550 *et seq.*
- Allows private citizens to take action to enjoin animal crimes from continuing, just as they can other nuisances in Oregon (prostitution, gambling, drugs)

### What does HB 2888 *not* do?

- **Does not** create new, substantive crimes regarding animals
- **Does not** interfere with exemptions for customary agricultural practices / good animal husbandry already exempted under Oregon's cruelty code, ORS 167.335, and Oregon's "Right to Farm Act," ORS 30.930 *et seq.*
- **Does not** allow citizens to bring baseless claims without penalty (*see below*)

### Why do we need HB 2888?

- As this Legislature has emphasized, "[a]nimals are sentient beings capable of experiencing pain, stress and fear ... [and] should be cared for in ways that minimize pain, stress, fear and suffering," ORS 167.305.
- Law enforcement departments throughout Oregon face budget cuts and resource scarcity, which often results in animal crimes going unaddressed.
- HB 2888 allows private citizens to fill this enforcement gap, and take immediate action to stop animal cruelty by filing a complaint with the court.

### What safeguards are in place to prevent citizens from bringing frivolous nuisance claims?

- After decades on the books, there is no known abuse of the nuisance abatement system to date.
- Agricultural operators receive the same broad exemptions for operating their businesses as they do under Oregon's cruelty code (ORS 167.335), and Oregon's "Right to Farm Act" (ORS 30.930 *et seq.*).
- Private citizens can file a complaint alleging a nuisance, but only the court can actually order the abatement of a proven nuisance.
- The current nuisance abatement scheme contains a prevailing party attorney fees clause to deter unfounded claims (ORS 105.560(3)).
- Oregon lawyers who bring frivolous claims are subject to serious sanctions by the bar (Oregon Rule of Professional Conduct 3.1).