



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

From the Desk of  
**Representative  
Andy Olson**

April 17, 2015

Representative Andy Olson  
900 Court Street NE H478  
Salem OR 97301

Re: The Impact of HB 2888 on Agriculture and Farming

Dear Representative Olson:

You asked whether House Bill 2888 impacts reasonable agricultural and farming activities.

Short Answer

Generally, we think the answer is "no." HB 2888 provides that certain actions are nuisances and must be stopped. HB 2888 goes on to provide that an agricultural or farming activity that is carried out "with regard to activities and animals described under ORS 167.335" is not a nuisance. Therefore, an activity that fits the descriptions of "good animal husbandry practices," "good veterinary practices" or "reasonable handling and training techniques" should not be a nuisance, and may continue, unless the activity is performed with gross negligence.

Discussion

House Bill 2888 provides that certain actions "are declared to be nuisances and shall be enjoined and abated." The actions declared to be nuisances include causing "physical injury or serious physical injury," "cruelly causing death," "[k]illing maliciously," "committing torture," "failing to provide minimum care" and possession of an animal by a person convicted of certain crimes against animals. The bill also provides an exemption to the declaration of nuisance for actions carried out "with regard to activities and animals described under ORS 167.335."

ORS 167.335 provides that certain activities are permitted unless they are performed with "gross negligence." "Gross negligence" is understood to mean "negligence that is materially greater than the mere absence of reasonable care under the circumstances, and that is characterized by indifference to or reckless disregard of the rights of others."<sup>1</sup> The inclusion of "gross negligence" in ORS 167.335 indicates that except for in extreme circumstances, the listed activities are permitted. Three activities listed in ORS 167.335 are particularly relevant here, including "good animal husbandry practices," "good veterinary practices" and "reasonable handling and training techniques."<sup>2</sup>

<sup>1</sup> ORS 527.780; *see also* ORS 30.115.

<sup>2</sup> ORS 167.335 (4), (6) and (11).

"Good animal husbandry" is defined in ORS 167.310 (6) to include, but not be limited to, "the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, according to accepted practices of veterinary medicine or animal husbandry." If an activity could be considered as a good animal husbandry practice and is not performed with gross negligence, the activity meets the exception of HB 2888 section 2 (1) and is not a nuisance.

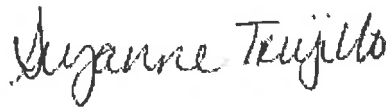
"Veterinary practice" as described in ORS 686.030 includes a list of activities and procedures that constitute the practice of veterinary medicine. In general, a license is required to practice veterinary medicine<sup>3</sup> except that a "person or the agent or employee of the person" may practice veterinary medicine in a humane manner on an animal belonging to the person, including "dehorning and vaccinating cattle".<sup>4</sup> This permission in ORS 686.040 to practice humane veterinary medicine on a person's own animal must qualify for protection under ORS 167.335 to avoid the absurd result of violating ORS 167.335 by engaging in an activity that is protected by ORS 686.040.<sup>5</sup> Therefore, the reference in ORS 167.335 to "good veterinary practices as described in ORS 686.030" must include veterinary care by the owner of an animal. This activity would not be a nuisance under HB 2888.

Finally, "reasonable handling and training techniques" are protected activities. Because the phrase is not defined in statute, it has its ordinary meaning.<sup>6</sup> Any type of reasonable directing or controlling of an animal, or the practicing of drills or routines with an animal, likely would fit the exemption provided by ORS 167.335 and would not be a nuisance under HB 2888.

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Very truly yours,

DEXTER A. JOHNSON  
Legislative Counsel



By  
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Staff Attorney

<sup>3</sup> ORS 686.020.

<sup>4</sup> ORS 686.040 (2).

<sup>5</sup> See *Lake v. Neal*, 585 F.3d 1059, 1061 (2009).

<sup>6</sup> *Portland General Electric Co. v. Bureau of Labor and Industries*, 317 Or. 606, 611 (1993).