

House Bill 2888

Sponsored by Representative WITT

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**.

Allows action to enjoin or restrain nuisance if place is used for certain activities involving animals.

A BILL FOR AN ACT

1
2 Relating to proceedings against nuisance properties; creating new provisions; and amending ORS
3 105.560, 105.565 and 105.600.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 105.550 to**
6 **105.600.**

7 **SECTION 2. In addition to any places described in ORS 105.555, the following are declared**
8 **to be nuisances and shall be enjoined and abated as provided in ORS 105.550 to 105.600:**

9 (1) Any place being used on a continuous, regular or sporadic basis for carrying out any
10 of the following activities, except with regard to activities and animals described under ORS
11 167.335, whether or not carried out with a particular mental state:

12 (a) Causing physical injury or serious physical injury, both as defined in ORS 167.310, or
13 cruelly causing death.

14 (b) Killing maliciously as defined in ORS 167.322 or committing torture as defined in ORS
15 167.322.

16 (c) Failing to provide minimum care as defined in ORS 167.310.

17 (d) Possession of a domestic animal as defined in ORS 167.310 by a person described under
18 ORS 167.332.

19 (2) Any place appearing to be vacant at which a domestic animal or equine, both as de-
20 fined in ORS 167.310, are present and have been left without provision for minimum care as
21 defined in ORS 167.310.

22 (3) Any place being used on a continuous, regular or sporadic basis for carrying out any
23 of the following activities, whether or not carried out with a particular mental state:

24 (a) Training or keeping an animal for use in an exhibition of fighting as defined in ORS
25 167.355.

26 (b) Preparing for, occupation for, promoting, conducting or participating in an exhibition
27 of fighting as defined in ORS 167.355.

28 (c) Possessing, keeping, breeding, training, buying, selling or offering for sale a fighting
29 dog as defined in ORS 167.360.

30 (d) Promoting, conducting, participating in or performing services in furtherance of a
31 dogfight as defined in ORS 167.360.

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 (e) Occupation, keeping or use of the place for a dogfight as defined in ORS 167.360.

2 (f) Exchanging for commerce raw fur of a domestic cat or dog as defined in ORS 167.390,
 3 or products that include the fur of a domestic cat or dog, if the fur is obtained through a
 4 process that kills or maims the domestic cat or dog.

5 (g) Possessing, keeping, rearing, training, buying, selling or offering for sale a fighting
 6 bird as defined in ORS 167.426.

7 (h) Promoting, conducting, participating in or performing services in furtherance of a
 8 cockfight as defined in ORS 167.426.

9 (i) Occupation, keeping or use of the place for a cockfight as defined in ORS 167.426.

10 (4) Any place being used on a continuous, regular or sporadic basis for carrying out any
 11 of the following activities:

12 (a) Sexual assault of an animal as described in ORS 167.333.

13 (b) Possession of dogfighting paraphernalia as described under ORS 167.372.

14 (c) Selling or offering for sale equipment other than paraphernalia described in paragraph
 15 (b) of this subsection with the intent that the equipment be used to train a fighting dog as
 16 defined in ORS 167.360.

17 (d) Possessing, controlling or otherwise having charge at the same time of more than 50
 18 sexually intact dogs that are two or more years of age for the primary purpose of reproduc-
 19 tion.

20 (e) Manufacturing, buying, selling, bartering, exchanging, possessing or offering for sale
 21 a gaff or slasher as those terms are defined in ORS 167.426, or other sharp implement de-
 22 signed for attachment to the leg of a fighting bird as defined in ORS 167.426, with the intent
 23 that the gaff, slasher or other sharp implement be used in a cockfight as defined in ORS
 24 167.426.

25 (f) Manufacturing, buying, selling, bartering, exchanging, possessing or offering for sale
 26 equipment other than equipment described in paragraph (e) of this subsection with the intent
 27 that the equipment be used to train or handle a fighting bird as defined in ORS 167.426 or
 28 to enhance the fighting ability of a fighting bird.

29 **SECTION 3.** ORS 105.560 is amended to read:

30 105.560. (1) An action to restrain or enjoin a nuisance described in ORS 105.555 **or section 2**
 31 **of this 2015 Act** may be brought by the Attorney General, district attorney, county attorney, city
 32 attorney or a person residing or doing business in the county where the property is located. The
 33 action shall be brought in the circuit court in the county where the property is located. Except as
 34 provided in subsection (5) of this section, the action may be commenced in the small claims depart-
 35 ment of the circuit court for the county where the property is located.

36 (2) In addition to any other remedy that may be available under ORS 105.550 to 105.600, a
 37 plaintiff in an action brought to restrain or enjoin a nuisance described in ORS 105.555 **or section**
 38 **2 of this 2015 Act** may seek damages for mental suffering, emotional distress, inconvenience and
 39 interference with the use of property suffered by the plaintiff by reason of the activities constituting
 40 a nuisance.

41 (3) The court may award reasonable attorney fees to the prevailing party in an action under
 42 ORS 105.550 to 105.600 unless the action is commenced and tried in the small claims department of
 43 a circuit court. Attorney fees may not be awarded to any party in an action under ORS 105.550 to
 44 105.600 that is commenced and tried in the small claims department of a circuit court.

45 (4) The court may consolidate all actions that relate to the same property and that are brought

1 to restrain or enjoin a nuisance described in ORS 105.555 **or section 2 of this 2015 Act**. Consol-
 2 idation in the small claims department of a circuit court shall be for purposes of trial only. A sep-
 3 arate judgment shall be entered for each action in the small claims department of a circuit court.

4 (5) An action may not be brought in the small claims department of a circuit court to restrain
 5 or enjoin a nuisance described in ORS 105.555 if the property alleged to be a nuisance is licensed
 6 under ORS chapter 471.

7 **SECTION 4.** ORS 105.565 is amended to read:

8 105.565. (1) Any action shall be commenced by the filing of a complaint alleging facts consti-
 9 tuting the nuisance, and containing a legal description of the property involved and an allegation
 10 that the owners of record of the property have been notified of the facts giving rise to the alleged
 11 nuisance at least 10 days prior to the filing of the action with the court. The complaint must specify
 12 whether the plaintiff will seek the remedy provided in ORS 105.580 (2).

13 (2) The complaint shall be served on owners of record as provided in ORCP 7. No service need
 14 be made prior to an application for a temporary restraining order, provided the procedures of ORCP
 15 79 B are followed with regard to all persons entitled to service under this section.

16 (3) Except in those cases tried in the small claims department of a circuit court, any party may
 17 demand a trial by jury in any action brought under ORS 105.550 to 105.600.

18 (4) On the issue of whether property is used in violation of ORS 105.555 **or section 2 of this**
 19 **2015 Act**, evidence of its general reputation and the reputation of persons residing in or frequenting
 20 it shall be admissible.

21 **SECTION 5.** ORS 105.600 is amended to read:

22 105.600. The provisions of ORS 105.550 to 105.600, 166.715 and 167.158 shall not be construed to
 23 limit the powers of cities and counties to adopt ordinances and regulations that further restrict the
 24 activities declared by ORS 105.555 **or section 2 of this 2015 Act** to be nuisances provided that no
 25 such ordinance or regulation shall affect real or personal property unless it is consistent with the
 26 provisions of ORS 105.550 to 105.600, 166.715 and 167.158.

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