

# D R A F T

## SUMMARY

Allows seizure, constructive possession and forfeiture of hens and chicks used in connection with cockfighting operation.

Amends existing offense of forcible recovery of fighting bird, punishable by maximum of five years' imprisonment, \$125,000 fine, or both, to include forcible recovery of seized hens and chicks. Revises offense elements to conform language to related statutes.

## A BILL FOR AN ACT

Relating to cockfighting; creating new provisions; and amending ORS 167.426, 167.433, 167.435, 167.437 and 167.439.

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

**SECTION 1.** ORS 167.426 is amended to read:

167.426. As used in ORS 167.426 to 167.439:

(1) "Cockfight" means a fight between two or more birds that is arranged by a person and that has the purpose or probable result of one bird inflicting injury to another bird.

(2) "Constructive possession" means an exercise of dominion and control over the location and treatment of property without taking physical possession of the property.

(3) "Fighting bird" means a bird that is intentionally reared or trained for use in, or that actually is used in, a cockfight.

(4) "Gaff" means an artificial steel spur designed for attachment to the leg of a fighting bird in replacement of the bird's natural spurs.

(5) "Slasher" means a steel weapon resembling a curved knife blade designed for attachment to the foot of a fighting bird.

1       **(6) “Source bird” means:**

2       **(a) A hen used to produce one or more chicks intended for eventual**  
3 **use as fighting birds; or**

4       **(b) A chick being reared with the intent that the chick eventually**  
5 **be used as a fighting bird or as a hen described in paragraph (a) of this**  
6 **subsection.**

7       **SECTION 2.** ORS 167.433 is amended to read:

8       167.433. (1) Pursuant to ORS 133.525 to 133.703, a judge may order the  
9 seizure of an alleged fighting bird **or source bird** owned, possessed or kept  
10 by any person.

11       (2) A judge ordering the seizure of an alleged fighting bird **or source bird**  
12 under subsection (1) of this section may order that the bird be impounded  
13 on the property of the owner, possessor or keeper of the bird. If a judge or-  
14 ders an alleged fighting bird **or source bird** impounded on the property of  
15 the owner, possessor or keeper of the bird, the court shall order the owner,  
16 possessor or keeper to provide all necessary care for the bird and to allow  
17 regular and continuing inspection of the bird by a person designated by the  
18 court, or the agent of a person designated by the court. The owner, possessor  
19 or keeper shall pay the costs of conducting the inspections. The court shall  
20 further order the owner, possessor or keeper not to sell or otherwise dispose  
21 of the bird unless the court authorizes the sale or disposition, or until the  
22 seized bird is forfeited pursuant to an order under ORS 167.435 or restored  
23 to the person pursuant to an order under ORS 133.643.

24       **SECTION 3.** ORS 167.435 is amended to read:

25       167.435. (1) In addition to and not in lieu of any other penalty the court  
26 may impose upon a person convicted of cockfighting under ORS 167.428 or  
27 participation in cockfighting under ORS 167.431, the court shall include in  
28 the judgment an order for forfeiture to the city or county where the crime  
29 occurred of the person’s rights in any property proved to have been used by  
30 the person as an instrumentality in the commission of the crime, including  
31 any fighting bird **or source bird**. This subsection does not limit the ability

1 of the court to dispose of a fighting bird **or source bird** as provided under  
2 subsection (2) of this section.

3 (2) A fighting bird is a public nuisance, regardless of whether a person  
4 has been convicted of cockfighting or participation in cockfighting. If a  
5 **fighting** bird is ordered forfeited under subsection (1) of this section or is  
6 proved by a preponderance of the evidence in a forfeiture proceeding to be  
7 a fighting bird, the court shall order that the bird be destroyed or be other-  
8 wise disposed of. Upon the conviction of the person charged, the court shall  
9 adjudge all of the seized property of the person to be forfeited and shall order  
10 that the property be destroyed or otherwise disposed of. **The court shall**  
11 **provide for a humane disposition of any source birds included in the**  
12 **forfeited property.**

13 **SECTION 4.** ORS 167.437 is amended to read:

14 167.437. (1) A peace officer having jurisdiction may, upon probable cause  
15 to believe that a bird is a fighting bird **or source bird**, take constructive  
16 possession of the bird on behalf of the law enforcement agency employing the  
17 officer.

18 (2) A peace officer who takes constructive possession of an alleged fight-  
19 ing bird **or source bird** pursuant to this section must do the following:

20 (a) Place a tag or other device approved by the law enforcement agency  
21 on the cage or other enclosure where the **alleged** fighting bird **or source**  
22 **bird** is located. The tag or other device must clearly state that it is unlawful  
23 to conceal, remove or release the bird for purposes of interfering with law  
24 enforcement agency control over the bird.

25 (b) Notify the owner, possessor or keeper of the bird that the bird has  
26 been seized by the law enforcement agency and may not be concealed, re-  
27 moved or released until authorized by a court or as provided in this section.

28 (c) Promptly apply to an appropriate court for an order described in ORS  
29 167.433.

30 (3) If a law enforcement agency takes constructive possession of [a] **an**  
31 **alleged** fighting bird **or source bird** under this section, the owner, possessor

1 or keeper of the bird shall provide all necessary care for the bird.

2 (4) Constructive possession of an alleged fighting bird **or source bird**  
3 pursuant to this section terminates when a court order described in ORS  
4 167.433 is served on the owner, possessor or keeper of the bird, or after 24  
5 hours, whichever occurs first.

6 **SECTION 5.** ORS 167.439 is amended to read:

7 167.439. (1) A person commits the crime of forcible recovery of a fighting  
8 bird if the person knowingly dispossesses, or knowingly attempts to dispo-  
9 sess, a law enforcement agency of constructive possession of a fighting  
10 bird, **a source bird or an alleged fighting bird or source bird.**

11 (2) Forcible recovery of a fighting bird is a Class C felony.

12 **SECTION 6.** **The amendments to ORS 167.439 by section 5 of this**  
13 **2017 Act apply to conduct occurring on or after the effective date of**  
14 **this 2017 Act.**

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