

D R A F T

SUMMARY

Amends findings by Legislative Assembly regarding provision of care and treatment for impounded or seized animals.

Prohibits person convicted of animal neglect in the first degree or animal neglect in the second degree from possessing certain animals for period of 15 years after conviction if crime of conviction was felony.

Clarifies that person convicted of possessing animal in violation of prohibition may be further prohibited from possessing certain animals as condition of probation.

A BILL FOR AN ACT

Relating to animals; amending ORS 167.305, 167.332 and 167.350.

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

SECTION 1. ORS 167.305 is amended to read:

167.305. The Legislative Assembly finds and declares that:

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

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

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

(4) The suffering of animals at the hands of unlicensed animal rescue organizations that are unable to provide sufficient food and care for the animals can be reduced by requiring such organizations to comply with regulations;

(5) The State of Oregon has an interest in facilitating the mitigation of

1 costs of care incurred by persons and government agencies that provide
2 treatment for impounded animals;

3 **(6) Government agencies, nonprofit organizations and persons pro-**
4 **viding care and treatment for impounded or seized animals:**

5 **(a) Have an interest in mitigating the costs of the care and treat-**
6 **ment in order to ensure the swift and thorough rehabilitation of the**
7 **animals; and**

8 **(b) May mitigate the costs of the care and treatment through**
9 **funding that is separate from, and in addition to, any recovery of**
10 **reasonable costs that a court orders a defendant to pay while a**
11 **forfeiture proceeding is pending or subsequent to a conviction;**

12 [(6)] **(7) Use of preconviction civil remedies is not an affront to the**
13 **presumption of innocence; and**

14 [(7)] **(8) Amendments to current law are needed to ensure that interested**
15 **parties are afforded adequate notice and an opportunity to be heard and thus**
16 **cannot unduly delay or impede animal lien foreclosure and preconviction**
17 **forfeiture processes through unfounded due process claims.**

18 **SECTION 2.** ORS 167.332 is amended to read:

19 167.332. (1) Except as provided in subsections (3) and (4) of this section:

20 (a) In addition to any other penalty imposed by law, a person convicted
21 of violating ORS 167.315, [167.325, 167.330,] 167.340 or 167.355 or of a
22 misdemeanor under ORS 167.320, **167.325 or 167.330** may not possess [*a do-*
23 *mestic animal or*] any animal of the same genus against which the crime was
24 committed **or any domestic animal** for a period of five years following
25 entry of the conviction.

26 (b) In addition to any other penalty imposed by law, a person convicted
27 of violating ORS 167.322, 167.333, 167.365 or 167.428 or of a felony under ORS
28 167.320, **167.325 or 167.330** may not possess [*a domestic animal or*] any animal
29 of the same genus against which the crime was committed **or any domestic**
30 **animal** for a period of 15 years following entry of the conviction.

31 (2) A person who possesses an animal in violation of this section commits

1 a Class C misdemeanor. When a person is convicted of possessing an animal
2 in violation of this section, as part of the sentence the court may order the
3 removal of that animal from the person's residence and **as a condition of**
4 **the person's probation** may prohibit the person from possessing any animal
5 of the same genus that the person unlawfully possessed under this section
6 or against which the underlying violation of ORS 167.315, 167.320, 167.322,
7 167.325, 167.330, 167.333, 167.340, 167.355, 167.365 or 167.428 was committed.

8 (3) The animal possession prohibition described in subsection (1) of this
9 section does not apply to a person's first conviction if the person is the
10 owner of a commercial livestock operation and the underlying violation of
11 ORS 167.315, 167.320, 167.322, 167.325, 167.330, 167.333, 167.340, 167.355, 167.365
12 or 167.428 was committed against livestock.

13 (4)(a) A person subject to an animal possession prohibition described in
14 subsection (1) of this section may file a motion with the sentencing court
15 requesting a waiver of the prohibition. The person must file a sworn affidavit
16 in support of the motion stating that:

17 (A) The person's conviction leading to the possession prohibition involved
18 only livestock;

19 (B) During the two years before the conviction triggering the prohibition,
20 the person was the owner of a commercial livestock operation;

21 (C) The person has not been convicted, in the previous five years, of a
22 crime involving animals or domestic violence or a crime where the victim
23 was under 18 years of age; and

24 (D) The person's conviction was the result of:

25 (i) Criminal liability for the conduct of another person under ORS 161.155
26 (2)(c);

27 (ii) Criminal liability of a corporation as described in ORS 161.170, and
28 the person is a corporation; or

29 (iii) Animal neglect as described in ORS 167.325 or 167.330 and the
30 person's criminal conduct was not knowing or intentional.

31 (b) When a person files a motion and affidavit described in paragraph (a)

1 of this subsection, the sentencing court shall hold a hearing. At the hearing,
2 the sentencing court shall grant the motion if the person proves by clear and
3 convincing evidence that:

4 (A) Continued enforcement of the prohibition against possessing livestock
5 would result in substantial economic hardship that cannot otherwise be
6 mitigated;

7 (B) The person no longer poses any risk to animals; and

8 (C) The person is capable of providing and willing to provide necessary,
9 adequate and appropriate levels of care for all livestock that would come
10 within the person's custody or control if the petition is granted.

11 (c) When deciding a motion filed under this subsection, the sentencing
12 court may consider the person's financial circumstances and mental health
13 in determining whether the person is capable of adequately caring for live-
14 stock.

15 (d) If the sentencing court grants the motion described in this subsection,
16 the waiver of the prohibition against possessing animals shall apply only to
17 livestock. The sentencing court shall further order that for five years the
18 person must consent to reasonable inspections by law enforcement and the
19 United States Department of Agriculture to ensure the welfare of the live-
20 stock under the person's custody or control. A refusal to consent to a rea-
21 sonable inspection described in this paragraph is contempt of court and, if
22 the person is found in contempt, shall result in the sentencing court revoking
23 the waiver of the possession prohibition.

24 (e) As used in this subsection, "commercial livestock operation" means a
25 business engaged in the raising, breeding or selling of livestock for profit.

26 **SECTION 3.** ORS 167.350 is amended to read:

27 167.350. (1)(a) In addition to and not in lieu of any other sentence it may
28 impose, a court may require a defendant convicted under ORS 167.315 to
29 167.333, 167.340, 167.355 or 167.365 to forfeit any rights of the defendant in
30 the animal subjected to the violation, and to repay the reasonable costs in-
31 curred by any **government agency, nonprofit organization or person** [or

1 *agency*] prior to judgment in caring for each animal [*subjected to the*
2 *violation*] **associated with the criminal proceeding.**

3 **(b) If the principal activity of a government agency, nonprofit or-**
4 **ganization or person is the provision of care and treatment for**
5 **impounded or seized animals, a court that orders a defendant to repay**
6 **reasonable costs of care under paragraph (a) of this subsection may**
7 **not reduce the incurred cost amount based on the agency, organiza-**
8 **tion or person having received donations or other funding for the care.**

9 (2)(a) When the court orders the defendant's rights in the animal to be
10 forfeited, the court may further order that those rights be given over to an
11 appropriate person or agency demonstrating a willingness to accept and care
12 for the animal or to the county or an appropriate animal care agency for
13 further disposition in accordance with accepted practices for humane treat-
14 ment of animals. The court may not transfer the defendant's rights in the
15 animal to any person who resides with the defendant.

16 (b) This subsection does not limit the right of the person or agency to
17 whom rights are granted to resell or otherwise make disposition of the ani-
18 mal. A transfer of rights under this subsection constitutes a transfer of
19 ownership. The court shall require a person to whom rights are granted to
20 execute an agreement to provide minimum care to the animal. The agreement
21 must indicate that allowing the defendant to possess the animal constitutes
22 a crime.

23 (3) In addition to and not in lieu of any other sentence it may impose, a
24 court may order the owner or person having custody of an animal to repay
25 [*the*] **any** reasonable costs incurred by any [*person or agency*] **government**
26 **agency, nonprofit organization or person** in providing minimum care to
27 the animal **that are not included in a repayment order under subsection**
28 **(1) of this section.**

29 (4) A court may order a person convicted under ORS 167.315 to 167.333,
30 167.340, 167.355, 167.365 or 167.428 to participate in available animal cruelty
31 prevention programs or education programs, or both, or to obtain psycho-

1 logical counseling for treatment of mental health disorders that, in the
2 court's judgment, contributed to the commission of the crime. The person
3 shall bear any costs incurred by the person for participation in counseling
4 or treatment programs under this subsection.

5 (5) ORS 131.550 to 131.600 do not apply to the forfeiture of an animal
6 subjected to a violation of ORS 167.315 to 167.333, 167.340, 167.355, 167.365
7 or 167.428. Any such animal is subject to forfeiture as provided in sub-
8 sections (1) to (3) of this section or, if the animal is a fighting bird, as pro-
9 vided in ORS 167.435.

10 **SECTION 4. The amendments to ORS 167.332 by section 2 of this**
11 **2017 Act apply to crimes committed on or after the effective date of**
12 **this 2017 Act.**

13 **SECTION 5. The amendments to ORS 167.350 by section 3 of this**
14 **2017 Act apply to repayment orders issued by a court on or after the**
15 **effective date of this 2017 Act.**

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