

House Bill 3177

Sponsored by COMMITTEE ON JUDICIARY

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 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

1
2 Relating to cockfighting; creating new provisions; and amending ORS 167.426, 167.433, 167.435,
3 167.437 and 167.439.

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

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

6 167.426. As used in ORS 167.426 to 167.439:

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

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

11 (3) "Fighting bird" means a bird that is intentionally reared or trained for use in, or that actu-
12 ally is used in, a cockfight.

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

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

17 **(6) "Source bird" means:**

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

19 **or**

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

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

23 167.433. (1) Pursuant to ORS 133.525 to 133.703, a judge may order the seizure of an alleged
24 fighting bird **or source bird** owned, possessed or kept by any person.

25 (2) A judge ordering the seizure of an alleged fighting bird **or source bird** under subsection (1)
26 of this section may order that the bird be impounded on the property of the owner, possessor or
27 keeper of the bird. If a judge orders an alleged fighting bird **or source bird** impounded on the
28 property of the owner, possessor or keeper of the bird, the court shall order the owner, possessor
29 or keeper to provide all necessary care for the bird and to allow regular and continuing inspection
30 of the bird by a person designated by the court, or the agent of a person designated by the court.

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 The owner, possessor or keeper shall pay the costs of conducting the inspections. The court shall
 2 further order the owner, possessor or keeper not to sell or otherwise dispose of the bird unless the
 3 court authorizes the sale or disposition, or until the seized bird is forfeited pursuant to an order
 4 under ORS 167.435 or restored to the person pursuant to an order under ORS 133.643.

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

6 167.435. (1) In addition to and not in lieu of any other penalty the court may impose upon a
 7 person convicted of cockfighting under ORS 167.428 or participation in cockfighting under ORS
 8 167.431, the court shall include in the judgment an order for forfeiture to the city or county where
 9 the crime occurred of the person's rights in any property proved to have been used by the person
 10 as an instrumentality in the commission of the crime, including any fighting bird **or source bird**.
 11 This subsection does not limit the ability of the court to dispose of a fighting bird **or source bird**
 12 as provided under subsection (2) of this section.

13 (2) A fighting bird is a public nuisance, regardless of whether a person has been convicted of
 14 cockfighting or participation in cockfighting. If a **fighting** bird is ordered forfeited under subsection
 15 (1) of this section or is proved by a preponderance of the evidence in a forfeiture proceeding to be
 16 a fighting bird, the court shall order that the bird be destroyed or be otherwise disposed of. Upon
 17 the conviction of the person charged, the court shall adjudge all of the seized property of the person
 18 to be forfeited and shall order that the property be destroyed or otherwise disposed of. **The court**
 19 **shall provide for a humane disposition of any source birds included in the forfeited property.**

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

21 167.437. (1) A peace officer having jurisdiction may, upon probable cause to believe that a bird
 22 is a fighting bird **or source bird**, take constructive possession of the bird on behalf of the law
 23 enforcement agency employing the officer.

24 (2) A peace officer who takes constructive possession of an alleged fighting bird **or source bird**
 25 pursuant to this section must do the following:

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

30 (b) Notify the owner, possessor or keeper of the bird that the bird has been seized by the law
 31 enforcement agency and may not be concealed, removed or released until authorized by a court or
 32 as provided in this section.

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

34 (3) If a law enforcement agency takes constructive possession of [a] **an alleged** fighting bird **or**
 35 **source bird** under this section, the owner, possessor or keeper of the bird shall provide all neces-
 36 sary care for the bird.

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

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

41 167.439. (1) A person commits the crime of forcible recovery of a fighting bird if the person
 42 knowingly dispossesses, or knowingly attempts to dispossess, a law enforcement agency of con-
 43 structive possession of a fighting bird, **a source bird or an alleged fighting bird or source bird**.

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

45 **SECTION 6.** The amendments to ORS 167.439 by section 5 of this 2017 Act apply to con-

1 **duct occurring on or after the effective date of this 2017 Act.**

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