

House Bill 4145

Sponsored by Representative GOMBERG; Senator PROZANSKI (Presession filed.)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act creates new crimes concerning visual displays of animal crushing. The Act creates exceptions to the new crimes. The Act amends related animal cruelty laws. (Flesch Readability Score: 64.6).

Creates the crime of using an animal in a display of animal crushing. Punishes by a maximum of five years' imprisonment, \$125,000 fine, or both.

Creates the crime of encouraging animal crushing in the first degree. Punishes by a maximum of 364 days' imprisonment, \$6,250 fine, or both.

Creates the crime of encouraging animal crushing in the second degree. Punishes by a maximum of six months' imprisonment, \$2,500 fine, or both.

Creates the crime of encouraging animal crushing in the third degree. Punishes by a maximum of 30 days' imprisonment, \$1,250 fine, or both.

Creates the crime of failure to report a display of animal crushing. Punishes by a maximum of 30 days' imprisonment, \$1,250 fine, or both.

Establishes certain exceptions to the new crimes.

Establishes certain changes related to a prohibition against possession of the same genus or domestic animal against which a crime was committed or involved.

Establishes certain changes related to the authority of a peace officer to enter premises or a motor vehicle.

Establishes certain changes related to the forfeiture of an animal to an animal care agency.

Establishes certain changes related to the forfeiture of rights in a mistreated animal.

A BILL FOR AN ACT

1
2 Relating to animal crush videos; creating new provisions; and amending ORS 167.332, 167.335,
3 167.345, 167.347 and 167.350.

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

VISUAL RECORDING OF ANIMAL CRUSHING

6
7
8 **SECTION 1. Sections 2 to 8 of this 2024 Act are added to and made a part of ORS chapter**
9 **167.**

10 **SECTION 2. As used in sections 2 to 8 of this 2024 Act:**

11 (1) **“Animal” has the meaning given that term in ORS 167.310.**

12 (2) **“Animal abuse” means conduct that constitutes, or would constitute if committed in**
13 **this state:**

14 (a) **Animal abuse in the first degree, as described in ORS 167.320; or**

15 (b) **Aggravated animal abuse in the first degree, as described in ORS 167.322.**

16 (3) **“Animal crushing” means conduct in which an animal is intentionally or knowingly**
17 **crushed, burned, drowned, suffocated, impaled or otherwise subjected to serious physical in-**
18 **jury, as defined in ORS 167.310.**

19 (4) **“Visual recording” includes, but is not limited to, photographs, films, videotapes and**
20 **computer and other digital pictures, regardless of the manner in which the recording is**

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 stored.

2 **SECTION 3.** (1) A person commits the crime of using an animal in a display of animal
3 crushing if the person:

4 (a) Subjects an animal to animal crushing for any person to observe or to record in a
5 visual recording; or

6 (b) Knowingly records animal crushing in a visual recording.

7 (2) Using an animal in a display of animal crushing is a Class C felony and the Oregon
8 Criminal Justice Commission shall classify the offense as crime category 6 of the sentencing
9 guidelines grid.

10 **SECTION 4.** (1) A person commits the crime of encouraging animal crushing in the first
11 degree if the person:

12 (a)(A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, dis-
13 plays, finances, attempts to finance or sells a visual recording of animal crushing or know-
14 ingly possesses, accesses or views such a visual recording with the intent to develop,
15 duplicate, publish, print, disseminate, exchange, display or sell it; or

16 (B) Knowingly brings into this state, or causes to be brought or sent into this state, for
17 sale or distribution, a visual recording of animal crushing; and

18 (b) Knows or is aware of and consciously disregards the fact that creation of the visual
19 recording of animal crushing involved animal abuse.

20 (2) Encouraging animal crushing in the first degree is a Class A misdemeanor.

21 **SECTION 5.** (1) A person commits the crime of encouraging animal crushing in the sec-
22 ond degree if the person:

23 (a)(A)(i) Knowingly possesses or controls, or knowingly accesses with the intent to view,
24 a visual recording of animal crushing for the purpose of arousing or satisfying the sexual
25 desires of the person or another person; or

26 (ii) Knowingly pays, exchanges or gives anything of value to obtain or view a visual re-
27 cording of animal crushing for the purpose of arousing or satisfying the sexual desires of the
28 person or another person; and

29 (B) Knows or is aware of and consciously disregards the fact that creation of the visual
30 recording of animal crushing involved animal abuse; or

31 (b)(A) Knowingly pays, exchanges or gives anything of value to observe animal crushing
32 or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the
33 person, animal crushing; and

34 (B) Knows or is aware of and consciously disregards the fact that animal crushing con-
35 stitutes animal abuse.

36 (2) Encouraging animal crushing in the second degree is a Class B misdemeanor.

37 **SECTION 6.** (1) A person commits the crime of encouraging animal crushing in the third
38 degree if the person:

39 (a)(A)(i) Knowingly possesses or controls, or knowingly accesses with the intent to view,
40 a visual recording of animal crushing for the purpose of arousing or satisfying the sexual
41 desires of the person or another person; or

42 (ii) Knowingly pays, exchanges or gives anything of value to obtain or view a visual re-
43 cording of animal crushing for the purpose of arousing or satisfying the sexual desires of the
44 person or another person; and

45 (B) Knows or fails to be aware of a substantial and unjustifiable risk that the creation

1 of the visual recording of animal crushing involved animal abuse; or

2 (b)(A) Knowingly pays, exchanges or gives anything of value to observe animal crushing
3 or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the
4 person, animal crushing; and

5 (B) Knows or fails to be aware of a substantial and unjustifiable risk that the animal
6 crushing constitutes animal abuse.

7 (2) Encouraging animal crushing in the third degree is a Class C misdemeanor.

8 **SECTION 7.** (1) As used in this section:

9 (a) "Computer technician" means a person who repairs, installs or otherwise services a
10 computer, computer network or computer system for compensation.

11 (b) "Processor of photographic images" means a person who develops, processes, re-
12 produces, transfers, edits or enhances photographic film into negatives, slides, prints, mov-
13 ies, digital images or video.

14 (2) A processor of photographic images or a computer technician who reasonably believes
15 the processor or technician has observed a visual recording of animal crushing shall report
16 the name and address, if known, of the person requesting the processing or of the owner or
17 person in possession of the computer, computer network or computer system to a law
18 enforcement agency within the county where the processor or technician making the report
19 is located at the time the visual recording is observed.

20 (3) Nothing in this section requires a processor of photographic images or a computer
21 technician to monitor any user, subscriber or customer or to search for prohibited materials
22 or media.

23 (4) Any person, their employer or a third party complying with this section in good faith
24 shall be immune from civil or criminal liability in connection with making the report, except
25 for willful or wanton misconduct.

26 (5) A person commits the crime of failure to report a display of animal crushing if the
27 person violates the provisions of this section.

28 (6) Failure to report a display of animal crushing is a Class C misdemeanor.

29 **SECTION 8.** Sections 2 to 8 of this 2024 Act do not apply to:

30 (1) The activities described in ORS 167.335 (1), except as provided in ORS 167.335 (2).

31 (2) Any activity undertaken in the course of bona fide law enforcement activity or nec-
32 essary to the proper functioning of the criminal justice system, except that this exception
33 shall not apply to any activity prohibited by section 3 of this 2024 Act.

34 (3) Obtaining, viewing or possessing a visual recording as part of a bona fide treatment
35 program for sexual offenders.

36 (4) A public library, as defined in ORS 357.400, or a library exempt from taxation under
37 ORS 307.090 or 307.130, except that these exceptions do not apply to any activity prohibited
38 by section 3 of this 2024 Act.

39 **SECTION 9.** ORS 167.335 is amended to read:

40 167.335. (1) Except as provided in subsection (2) of this section, unless gross negligence can be
41 shown, the provisions of ORS 167.315 to 167.333 and sections 2 to 8 of this 2024 Act do not apply
42 to:

43 (a) The treatment of livestock being transported by owner or common carrier;

44 (b) Animals involved in rodeos or similar exhibitions;

45 (c) Commercially grown poultry;

- 1 (d) Animals subject to good animal husbandry practices;
 - 2 (e) The killing of livestock according to the provisions of ORS 603.065;
 - 3 (f) Animals subject to good veterinary practices as described in ORS 686.030;
 - 4 (g) Lawful fishing, hunting and trapping activities;
 - 5 (h) Wildlife management practices under color of law;
 - 6 (i) Lawful scientific or agricultural research or teaching that involves the use of animals;
 - 7 (j) Reasonable activities undertaken in connection with the control of vermin or pests; and
 - 8 (k) Reasonable handling and training techniques.
- 9 (2) Subsection (1) of this section does not create an exemption from ORS 167.332.

10
11 **RELATED AMENDMENTS TO OFFENSES AGAINST ANIMALS**

12
13 **SECTION 10.** ORS 167.332 is amended to read:

14 167.332. (1) Except as provided in subsections (3) and (4) of this section:

15 (a) In addition to any other penalty imposed by law, a person convicted of violating ORS 167.315,
16 167.340 or 167.355 **or section 4, 5 or 6 of this 2024 Act** or of a misdemeanor under ORS 167.320,
17 167.325 or 167.330 may not possess any animal of the same genus against which the crime was
18 committed, **or which the crime involved**, or any domestic animal for a period of five years fol-
19 lowing entry of the conviction.

20 (b) In addition to any other penalty imposed by law, a person convicted of violating ORS 167.322,
21 167.333, 167.365 or 167.428 **or section 3 of this 2024 Act** or of a felony under ORS 167.320, 167.325
22 or 167.330 may not possess any animal of the same genus against which the crime was committed,
23 **or which the crime involved**, or any domestic animal for a period of 15 years following entry of
24 the conviction. However, the sentencing court may reduce the prohibition period if the person suc-
25 cessfully completes mental health treatment approved by the court.

26 (2) A person who possesses an animal in violation of this section commits a Class C
27 misdemeanor. When a person is convicted of possessing an animal in violation of this section, as part
28 of the sentence the court may order the removal of that animal from the person's residence and as
29 a condition of the person's probation may prohibit the person from possessing any animal of the
30 same genus:

31 (a) That the person unlawfully possessed under this section [or];

32 (b) Against which the underlying violation of ORS 167.315, 167.320, 167.322, 167.325, 167.330,
33 167.333, 167.340, 167.355, 167.365 or 167.428 **or section 3 of this 2024 Act** was committed; **or**

34 (c) **Which the underlying violation of section 4, 5 or 6 of this 2024 Act involved.**

35 (3) The animal possession prohibition described in subsection (1) of this section does not apply
36 to a person's first conviction if the person is the owner of a commercial livestock operation and the
37 underlying violation of ORS 167.315, 167.320, 167.322, 167.325, 167.330, 167.333, 167.340, 167.355,
38 167.365 or 167.428 **or section 3, 4, 5 or 6 of this 2024 Act** was committed against livestock.

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

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

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

45 (C) The person has not been convicted, in the previous five years, of a crime involving animals

1 or domestic violence or a crime where the victim was under 18 years of age; and

2 (D) The person’s conviction was the result of:

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

4 (ii) Criminal liability of a corporation as described in ORS 161.170, and the person is a corpo-
5 ration; or

6 (iii) Animal neglect as described in ORS 167.325 or 167.330 and the person’s criminal conduct
7 was not knowing or intentional.

8 (b) When a person files a motion and affidavit described in paragraph (a) of this subsection, the
9 sentencing court shall hold a hearing. At the hearing, the sentencing court shall grant the motion
10 if the person proves by clear and convincing evidence that:

11 (A) Continued enforcement of the prohibition against possessing livestock would result in sub-
12 stantial economic hardship that cannot otherwise be mitigated;

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

14 (C) The person is capable of providing and willing to provide necessary, adequate and appro-
15 priate levels of care for all livestock that would come within the person’s custody or control if the
16 petition is granted.

17 (c) When deciding a motion filed under this subsection, the sentencing court may consider the
18 person’s financial circumstances and mental health in determining whether the person is capable of
19 adequately caring for livestock.

20 (d) If the sentencing court grants the motion described in this subsection, the waiver of the
21 prohibition against possessing animals shall apply only to livestock. The sentencing court shall fur-
22 ther order that for five years the person must consent to reasonable inspections by law enforcement
23 and the United States Department of Agriculture to ensure the welfare of the livestock under the
24 person’s custody or control. A refusal to consent to a reasonable inspection described in this para-
25 graph is contempt of court and, if the person is found in contempt, shall result in the sentencing
26 court revoking the waiver of the possession prohibition.

27 (e) As used in this subsection, “commercial livestock operation” means a business engaged in
28 the raising, breeding or selling of livestock for profit.

29 **SECTION 11.** ORS 167.345 is amended to read:

30 167.345. (1) As used in this section, “peace officer” has the meaning given that term in ORS
31 161.015.

32 (2) If there is probable cause to believe that any animal is being subjected to treatment in vio-
33 lation of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428 **or section 3 of this 2024**
34 **Act**, a peace officer, after obtaining a search warrant or in any other manner authorized by law,
35 may enter the premises or motor vehicle where the animal is located to provide the animal with
36 food, water and emergency medical treatment and may impound the animal. If after reasonable effort
37 the owner or person having custody of the animal cannot be found and notified of the impoundment,
38 the notice shall be conspicuously posted on the premises or motor vehicle and within 72 hours after
39 the impoundment the notice shall be sent by certified mail to the address, if any, where the animal
40 was impounded.

41 (3) A peace officer is not liable for any damages for an entry under subsection (2) of this section,
42 unless the damages were caused by the unnecessary actions of the peace officer that were inten-
43 tional or reckless.

44 (4)(a) A court may order an animal impounded under subsection (2) of this section to be held
45 at any animal care facility in the state. A facility receiving the animal shall provide adequate food

1 and water and may provide veterinary care.

2 (b) A court may order a fighting bird impounded under subsection (2) of this section to be held
 3 on the property of the owner, possessor or keeper of the fighting bird in accordance with ORS
 4 167.433.

5 **SECTION 12.** ORS 167.347 is amended to read:

6 167.347. (1)(a) If an animal is impounded pursuant to ORS 167.345 and is being held by a county
 7 animal shelter or other animal care agency pending outcome of a criminal action charging a vio-
 8 lation of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428 **or section 3 of this 2024**
 9 **Act**, prior to the final disposition of the criminal action, the county or other animal care agency
 10 or, on behalf of the county or other animal care agency, the district attorney, may file a petition in
 11 the criminal action requesting that the court issue an order forfeiting the animal to the county or
 12 other animal care agency prior to the final disposition of the criminal action. The petitioner shall
 13 serve a true copy of the petition upon the defendant and, unless the district attorney has filed the
 14 petition on behalf of the county or other animal care agency, the district attorney.

15 (b) A petition may be filed in the criminal action under paragraph (a) of this subsection con-
 16 cerning any animal impounded under ORS 167.345 and held pending the outcome of the criminal
 17 action, regardless of whether the specific animal is the subject of a criminal charge, or named in the
 18 charging instrument, in the criminal action.

19 (2)(a) Upon receipt of a petition pursuant to subsection (1) of this section, the court shall set a
 20 hearing on the petition. The hearing shall be conducted within 14 days after the filing of the peti-
 21 tion, or as soon as practicable.

22 (b) To provide notice on any potential claimant who may have an interest in any animals
 23 impounded pursuant to ORS 167.345 and as an alternate form of service upon a defendant who can-
 24 not be personally served as required in subsection (1) of this section, a petitioner may publish notice
 25 of the filing of the petition, printed twice weekly for up to 14 consecutive days in a daily or weekly
 26 newspaper, as defined in ORS 193.010, published in the county in which the hearing is to be held
 27 or, if there is none, in a daily or weekly newspaper, as defined in ORS 193.010, generally circulated
 28 in the county in which the hearing is to be held. The notice of the filing of the petition required
 29 under this subsection shall contain a description of the impounded animal or animals, the name of
 30 the owner or reputed owner thereof, the location from which the animal or animals were impounded
 31 and the time and place of the hearing if the hearing has been set at the time of publication, or
 32 otherwise the name, address and phone number for the attorney for the petitioner, who shall upon
 33 request provide further details on the hearing date, place and time.

34 (3) At a hearing conducted pursuant to subsection (2) of this section, the petitioner shall have
 35 the burden of establishing probable cause to believe that the animal was subjected to a violation
 36 of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428. The defendant or any other claimant
 37 shall have an opportunity to be heard before the court makes its final finding. If the court finds that
 38 probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner,
 39 unless the defendant or any other claimant, within 72 hours of the hearing, posts a security deposit
 40 or bond with the court clerk in an amount determined by the court to be sufficient to repay all
 41 reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the animal
 42 from the date of initial impoundment to the date of trial.

43 (4) If a security deposit or bond has been posted in accordance with subsection (3) of this sec-
 44 tion, and the trial in the action is continued at a later date, any order of continuance shall require
 45 the defendant or any other claimant to post an additional security deposit or bond in an amount

1 determined by the court that shall be sufficient to repay all additional reasonable costs anticipated
 2 to be incurred by the petitioner in caring for the animal until the new date of trial.

3 (5) If a security deposit or bond has been posted in accordance with subsection (4) of this sec-
 4 tion, the petitioner may draw from that security deposit or bond the actual reasonable costs in-
 5 curred by the petitioner in caring for any impounded animal from the date of initial impoundment
 6 to the date of final disposition of the animal in the related criminal action.

7 (6) The provisions of this section are in addition to, and not in lieu of, the provisions of ORS
 8 167.350 and 167.435 and ORS chapters 87 and 88.

9 **SECTION 13.** ORS 167.350 is amended to read:

10 167.350. (1)(a) In addition to and not in lieu of any other sentence it may impose, a court may
 11 require a defendant convicted under ORS 167.315 to 167.333, 167.340, 167.355 or 167.365 **or section**
 12 **3 of this 2024 Act** to forfeit any rights of the defendant in the animal subjected to the violation,
 13 and to repay the reasonable costs incurred by a government agency, a humane investigation agency
 14 or its agent or a person prior to judgment in caring for each animal associated with the criminal
 15 proceeding.

16 (b) If a government agency or a humane investigation agency or its agent provides care and
 17 treatment for impounded or seized animals, a court that orders a defendant to repay reasonable
 18 costs of care under paragraph (a) of this subsection may not reduce the incurred cost amount based
 19 on the agency having received donations or other funding for the care.

20 (2)(a) When the court orders the defendant's rights in the animal to be forfeited, the court may
 21 further order that those rights be given over to an appropriate person or agency demonstrating a
 22 willingness to accept and care for the animal or to the county or an appropriate animal care agency
 23 for further disposition in accordance with accepted practices for humane treatment of animals. The
 24 court may not transfer the defendant's rights in the animal to any person who resides with the de-
 25 fendant.

26 (b) This subsection does not limit the right of the person or agency to whom rights are granted
 27 to resell or otherwise make disposition of the animal. A transfer of rights under this subsection
 28 constitutes a transfer of ownership. The court shall require a person to whom rights are granted to
 29 execute an agreement to provide minimum care to the animal. The agreement must indicate that
 30 allowing the defendant to possess the animal constitutes a crime.

31 (3) In addition to and not in lieu of any other sentence it may impose, a court may order the
 32 owner or person having custody of an animal to repay any reasonable costs incurred by a govern-
 33 ment agency, a humane investigation agency or its agent or a person in providing minimum care to
 34 the animal that are not included in a repayment order under subsection (1) of this section.

35 (4) A court may order a person convicted under ORS 167.315 to 167.333, 167.340, 167.355, 167.365
 36 or 167.428 **or section 3, 4, 5 or 6 of this 2024 Act** to participate in available animal cruelty pre-
 37 vention programs or education programs, or both, or to obtain psychological counseling for treat-
 38 ment of mental health disorders that, in the court's judgment, contributed to the commission of the
 39 crime. The person shall bear any costs incurred by the person for participation in counseling or
 40 treatment programs under this subsection.

41 (5) ORS 131.550 to 131.600 do not apply to the forfeiture of an animal subjected to a violation
 42 of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428 **or section 3 of this 2024 Act**. Any
 43 such animal is subject to forfeiture as provided in subsections (1) to (3) of this section or, if the
 44 animal is a fighting bird, as provided in ORS 167.435.

APPLICABILITY

SECTION 14. Sections 2 to 8 of this 2024 Act and the amendments to ORS 167.332, 167.335, 167.345, 167.347 and 167.350 by sections 9 to 13 of this 2024 Act apply to conduct occurring on or after the effective date of this 2024 Act.

CAPTIONS

SECTION 15. The unit captions used in this 2024 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2024 Act.
