

Enrolled
House Bill 2888

Sponsored by Representative WITT

CHAPTER

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. ORS 105.560 is amended to read:

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

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

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

(4) The court may consolidate all actions that relate to the same property and that are brought to restrain or enjoin a nuisance described in ORS 105.555 **or section 2 of this 2015 Act**. Consolidation in the small claims department of a circuit court shall be for purposes of trial only. A separate judgment shall be entered for each action in the small claims department of a circuit court.

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

SECTION 4. ORS 105.565 is amended to read:

105.565. (1) Any action shall be commenced by the filing of a complaint alleging facts constituting the nuisance, and containing a legal description of the property involved and an allegation that the owners of record of the property have been notified of the facts giving rise to the alleged

nuisance at least 10 days prior to the filing of the action with the court. The complaint must specify whether the plaintiff will seek the remedy provided in ORS 105.580 (2).

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

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

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

SECTION 5. ORS 105.600 is amended to read:

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

Passed by House April 22, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 12, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2015

Approved:

.....M.,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State