

**REVENUE: No revenue impact**

**FISCAL: Minimal fiscal impact, no statement issued**

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<b>Action:</b>	Do Pass as Amended and Be Printed Engrossed
<b>Vote:</b>	3 - 0 - 2
<b>Yeas:</b>	Prozanski, Walker, Burdick
<b>Nays:</b>	0
<b>Exc.:</b>	Beyer, Kruse
<b>Prepared By:</b>	Darian Stanford, Counsel
<b>Meeting Dates:</b>	2/12, 4/26

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**WHAT THE MEASURE DOES:** Creates Class A misdemeanor of hindering assistance animal in second degree. Creates Class C felony of hindering assistance animal in first degree. Allows forfeiture of instrumentalities relating to both offenses. Expands first degree animal abuse to include provision relating to death of “assistance animal.” Removes references to “assistance animal” in existing ORS 167.352. Modifies provisions relating to civil action arising from injuries to assistance animals. Expands definition of “public nuisance.”

**ISSUES DISCUSSED:**

- Extension of criminal liability to persons based on actions of person’s animal

**EFFECT OF COMMITTEE AMENDMENT:** Changes mental state of crime from “with criminal negligence” to “recklessly.” Removes noneconomic damages (subjective, nonmonetary losses such as pain and suffering, emotional distress, humiliation, loss of consortium, comfort, injury to reputation) from statute regarding what person with physical impairment can recover in any civil lawsuit against owner or keeper of dog that injures or disables an assistance animal. An impaired person would thus *only* be able to recover economic damages (objectively verifiable monetary losses such as lost wages, medical bills, etc).

**BACKGROUND:** Under current ORS 167.352, it is a Class A misdemeanor to intentionally or knowingly interfere with, injure, or attempt to injure an assistance animal, a search and rescue animal or a therapy animal. SB 438 A removes assistance animals from ORS 167.352 and creates a special statute dealing specifically with the new crimes of first and second degree “hindering an assistance animal.”

Second degree hindering, a Class A misdemeanor, provides two primary changes to present law. First, it lowers the mental requirement from “intentional” or “knowing” to reach persons that act “reckless.”

Second, and perhaps most significantly, SB 438 A allows for the prosecution of dog “keepers” when the person’s dog injures or interferes with an assistance animal. Present law appears to be limited to criminalizing only human actions. In sum, the elements of the new offense of second-degree hindering are: (1) with recklessness, (2) without provocation, (3) a defendant injures/disables/interferes with/jeopardizes the safety of an assistance animal OR fails to prevent his dog from doing the same and (4) the defendant knew/should have known that the other animal was an assistance animal. An offense rises to hindering in the first degree (Class C felony) if either of the following is true: (1) the defendant acted intentionally or (2) the defendant had at least two prior related convictions.

In addition, SB 438 A amends 167.320 (first degree animal abuse) to include causing the death of an assistance animal or failing to prevent your dog from causing the death of an assistance animal. It also modifies ORS 346.687, which deals with civil remedies available to owners of injured or disabled assistance animals. For each of the new/amended crimes, SB 438 A also allows a court to impose reasonable restrictions on the offending dog consistent with ORS 609.990(6). Such restrictions can include sterilization or putting the dog to sleep. Finally, SB 438 A expands the definition of a dog that is a “public nuisance” by including dogs that injure or disable assistance animals.