

Honolulu, Hawaii

MAR - 2 2006

RE: S.B. No. 2924
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which
was referred S.B. No. 2924 entitled:

"A BILL FOR AN ACT RELATING TO CRUELTY TO ANIMALS,"

begs leave to report as follows:

The purpose of this measure is to give law enforcement officers authority to enter premises and impound an animal when there is probable cause to believe the animal is being subjected to cruel treatment. This measure also allows a court to order the forfeiture of the impounded animal prior to the disposition of a criminal action against its owner.

Testimony in support of this measure was submitted by the Hawaiian Humane Society, the Kauai Humane Society, the Maui Humane Society, the Humane Society of the United States, and twenty-three individuals. Testimony in opposition to this measure was submitted by the Office of the Public Defender.

Your Committee finds that during a recent animal cruelty case, the Hawaiian Humane Society incurred costs of approximately \$269,000 to board, care for, and feed seventy-eight dogs while the case was pending. The Hawaiian Humane Society was never compensated for the care provided to these animals even after the owner was allowed to sell the animals.

Your Committee finds that this measure is modeled after section 167.347 of the Oregon Revised Statutes (ORS). The Oregon courts have upheld the constitutionality of the Oregon version of



this measure. Specifically, in *State of Oregon v. Branstetter*, 45 P.3d 137 (Or. App. 2002), the Court of Appeals, on remand from the Oregon Supreme Court, upheld the trial court's forfeiture of the animals involved in the case. In *Branstetter*, the defendant appealed the forfeiture of his animals after he refused to post a bond under section 167.347 ORS. *Id.* at 138-39. On appeal, the defendant argued that the statute denied him constitutional due process and the right to a remedy. *Id.* at 138. The court "reject[ed] defendant's due process and remedies clause arguments." *Id.* at 139.

Justice Armstrong's concurring opinion in *Branstetter* stated that the obvious practical problem in impounding animals under animal cruelty laws is that someone needs to pay for the food, water, and care that the animals receive while impounded. *Id.* at 140. The defendant's arguments on appeal "misunderstand the nature of this procedure. He treats forfeiture as a punitive measure rather than as a method of ensuring payment for the care of his animals during the pendency of the criminal case." *Id.* at 140. The concurring opinion went on to note that "[i]t is irrelevant to forfeiture under ORS 167.347 whether the owner is innocent or guilty of the criminal charge [of animal cruelty], because the purpose of the forfeiture is to pay for the care of the animals, not to punish the owner." *Id.* The concurrence further pointed out that "although a forfeiture proceeding under ORS 167.347 takes place in the criminal action, it does not arise from that action, is entirely separate from it, and necessarily, is not governed by the rules that apply to criminal prosecutions." *Id.* The concurrence also stated that "[w]hat ORS 167.347 does is to provide a way to implement the legal principle that, despite the impoundment, the obligation to provide adequate care for the animals remains the owner's." *Id.*

Based upon the Oregon court's discussion of Oregon's forfeiture statute, your Committee believes that this measure will withstand constitutional challenge.

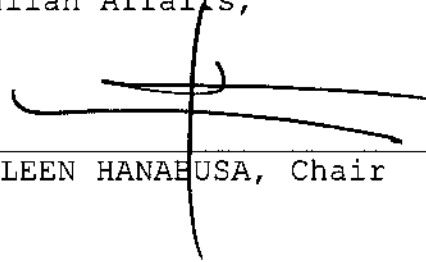
Your Committee has amended this measure to insert a savings clause and to add a provision that allows the defendant to demonstrate to the court that proper alternative care has been arranged in order to avoid forfeiture of the animal to a humane society.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to



this report, your Committee is in accord with the intent and purpose of S.B. No. 2924, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2924, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Hawaiian Affairs,

A handwritten signature in black ink, consisting of a vertical line intersected by several horizontal strokes, positioned above a horizontal line.

COLLEEN HANABUSA, Chair



