

111TH CONGRESS
2D SESSION

S. 3841

To amend title 18, United States Code, to prohibit the creation, sale, distribution, advertising, marketing, and exchange of animal crush videos that depict obscene acts of animal cruelty, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2010

Mr. KYL (for himself, Mr. MERKLEY, and Mr. BURR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit the creation, sale, distribution, advertising, marketing, and exchange of animal crush videos that depict obscene acts of animal cruelty, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Animal Crush Video
5 Prohibition Act of 2010”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The United States has a long history of
2 prohibiting the interstate sale, marketing, adver-
3 tising, exchange, and distribution of obscene mate-
4 rial and speech that is integral to criminal conduct.

5 (2) The Federal Government and the States
6 have a compelling interest in preventing intentional
7 acts of extreme animal cruelty.

8 (3) Each of the several States and the District
9 of Columbia criminalize intentional acts of extreme
10 animal cruelty, such as the intentional crushing,
11 burning, drowning, suffocating, or impaling of ani-
12 mals for no socially redeeming purpose.

13 (4) There are certain extreme acts of animal
14 cruelty that appeal to a specific sexual fetish. These
15 acts of extreme animal cruelty are videotaped, and
16 the resulting video tapes are commonly referred to
17 as “animal crush videos”.

18 (5) The Supreme Court of the United States
19 has long held that obscenity is an exception to
20 speech protected under the First Amendment to the
21 Constitution of the United States.

22 (6) In the judgment of Congress, many animal
23 crush videos are obscene in the sense that the depic-
24 tions, taken as a whole—

25 (A) appeal to the prurient interest in sex;

1 (B) are patently offensive; and

2 (C) lack serious literary, artistic, political,
3 or scientific value.

4 (7) Serious criminal acts of extreme animal cru-
5 elty are integral to the creation, sale, distribution,
6 advertising, marketing, and exchange of animal
7 crush videos.

8 (8) The creation, sale, distribution, advertising,
9 marketing, and exchange of animal crush videos is
10 intrinsically related and integral to creating an in-
11 centive for, directly causing, and perpetuating de-
12 mand for the serious acts of extreme animal cruelty
13 the videos depict. The primary reason for those
14 criminal acts is the creation, sale, distribution, ad-
15 vertising, marketing, and exchange of the animal
16 crush video image.

17 (9) The serious acts of extreme animal cruelty
18 necessary to make animal crush videos are com-
19 mitted in a clandestine manner that—

20 (A) allows the perpetrators of such crimes
21 to remain anonymous;

22 (B) makes it extraordinarily difficult to es-
23 tablish the jurisdiction within which the under-
24 lying criminal acts of extreme animal cruelty
25 occurred; and

1 (C) often precludes proof that the criminal
2 acts occurred within the statute of limitations.

3 (10) Each of the difficulties described in para-
4 graph (9) seriously frustrates and impedes the abil-
5 ity of State authorities to enforce the criminal stat-
6 utes prohibiting such behavior.

7 **SEC. 3. ANIMAL CRUSH VIDEOS.**

8 (a) IN GENERAL.—Section 48 of title 18, United
9 States Code, is amended to read as follows:

10 **“§ 48. Animal crush videos**

11 “(a) DEFINITION.—In this section the term ‘animal
12 crush video’ means any photograph, motion-picture film,
13 video or digital recording, or electronic image that—

14 “(1) depicts actual conduct in which 1 or more
15 living non-human mammals, birds, reptiles, or am-
16 phibians is intentionally crushed, burned, drowned,
17 suffocated, impaled, or otherwise subjected to seri-
18 ous bodily injury (as defined in section 1365 and in-
19 cluding conduct that, if committed against a person
20 and in the special maritime and territorial jurisdic-
21 tion of the United States, would violate section 2241
22 or 2242); and

23 “(2) is obscene.

24 “(b) PROHIBITIONS.—

1 “(1) CREATION OF ANIMAL CRUSH VIDEOS.—It
2 shall be unlawful for any person to knowingly create
3 an animal crush video, or to attempt or conspire to
4 do so, if—

5 “(A) the person intends or has reason to
6 know that the animal crush video will be dis-
7 tributed in, or using a means or facility of,
8 interstate or foreign commerce; or

9 “(B) the animal crush video is distributed
10 in, or using a means or facility of, interstate or
11 foreign commerce.

12 “(2) DISTRIBUTION OF ANIMAL CRUSH VID-
13 EOS.—It shall be unlawful for any person to know-
14 ingly sell, market, advertise, exchange, or distribute
15 an animal crush video in, or using a means or facil-
16 ity of, interstate or foreign commerce, or to attempt
17 or conspire to do so.

18 “(c) EXTRATERRITORIAL APPLICATION.—Subsection
19 (b) shall apply to the knowing sale, marketing, adver-
20 tising, exchange, distribution, or creation of an animal
21 crush video outside of the United States, or any attempt
22 or conspiracy to do so, if—

23 “(1) the person engaging in such conduct in-
24 tends or has reason to know that the animal crush

1 video will be transported into the United States or
2 its territories or possessions; or

3 “(2) the animal crush video is transported into
4 the United States or its territories or possessions.”

5 “(d) PENALTY.—Any person who violates subsection
6 (b) shall be fined under this title, imprisoned for not more
7 than 7 years, or both.

8 “(e) EXCEPTIONS.—

9 “(1) IN GENERAL.—This section shall not apply
10 with regard to any visual depiction of—

11 “(A) customary and normal veterinary or
12 agricultural husbandry practices;

13 “(B) the slaughter of animals for food; or

14 “(C) hunting, trapping, or fishing.

15 “(2) GOOD-FAITH DISTRIBUTION.—This section
16 shall not apply to the good-faith distribution of an
17 animal crush video to—

18 “(A) a law enforcement agency; or

19 “(B) a third party for the sole purpose of
20 analysis to determine if referral to a law en-
21 forcement agency is appropriate.

22 “(f) NO PREEMPTION.—Nothing in this section shall
23 be construed to preempt the law of any State or local sub-
24 division thereof to protect animals.”

1 (b) CLERICAL AMENDMENT.—The item relating to
2 section 48 in the table of sections for chapter 3 of title
3 18, United States Code, is amended to read as follows:

“48. Animal crush videos.”.

4 (c) SEVERABILITY.—If any provision of section 48 of
5 title 18, United States Code (as amended by this section),
6 or the application of the provision to any person or cir-
7 cumstance, is held to be unconstitutional, the provision
8 and the application of the provision to other persons or
9 circumstances shall not be affected thereby.

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