

In the Senate of the United States,

September 28, 2010.

Resolved, That the bill from the House of Representatives (H.R. 5566) entitled “An Act to amend title 18, United States Code, to prohibit interstate commerce in animal crush videos, and for other purposes.”, do pass with the following

AMENDMENT:

Strike all after the enacting clause and insert the following:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Animal Crush Video*
3 *Prohibition Act of 2010”.*

4 ***SEC. 2. FINDINGS.***

5 *The Congress finds the following:*

6 *(1) The United States has a long history of pro-*
7 *hibiting the interstate sale, marketing, advertising,*
8 *exchange, and distribution of obscene material and*
9 *speech that is integral to criminal conduct.*

1 (2) *The Federal Government and the States have*
2 *a compelling interest in preventing intentional acts of*
3 *extreme animal cruelty.*

4 (3) *Each of the several States and the District of*
5 *Columbia criminalize intentional acts of extreme ani-*
6 *mal cruelty, such as the intentional crushing, burn-*
7 *ing, drowning, suffocating, or impaling of animals*
8 *for no socially redeeming purpose.*

9 (4) *There are certain extreme acts of animal cru-*
10 *elty that appeal to a specific sexual fetish. These acts*
11 *of extreme animal cruelty are videotaped, and the re-*
12 *sulting video tapes are commonly referred to as “ani-*
13 *mal crush videos”.*

14 (5) *The Supreme Court of the United States has*
15 *long held that obscenity is an exception to speech pro-*
16 *TECTED under the First Amendment to the Constitution*
17 *of the United States.*

18 (6) *In the judgment of Congress, many animal*
19 *crush videos are obscene in the sense that the depic-*
20 *tions, taken as a whole—*

21 (A) *appeal to the prurient interest in sex;*

22 (B) *are patently offensive; and*

23 (C) *lack serious literary, artistic, political,*
24 *or scientific value.*

1 (7) *Serious criminal acts of extreme animal cru-*
2 *elty are integral to the creation, sale, distribution, ad-*
3 *vertising, marketing, and exchange of animal crush*
4 *videos.*

5 (8) *The creation, sale, distribution, advertising,*
6 *marketing, and exchange of animal crush videos is in-*
7 *trinsically related and integral to creating an incen-*
8 *tive for, directly causing, and perpetuating demand*
9 *for the serious acts of extreme animal cruelty the vid-*
10 *eos depict. The primary reason for those criminal acts*
11 *is the creation, sale, distribution, advertising, mar-*
12 *keting, and exchange of the animal crush video image.*

13 (9) *The serious acts of extreme animal cruelty*
14 *necessary to make animal crush videos are committed*
15 *in a clandestine manner that—*

16 (A) *allows the perpetrators of such crimes to*
17 *remain anonymous;*

18 (B) *makes it extraordinarily difficult to es-*
19 *tablish the jurisdiction within which the under-*
20 *lying criminal acts of extreme animal cruelty oc-*
21 *curred; and*

22 (C) *often precludes proof that the criminal*
23 *acts occurred within the statute of limitations.*

24 (10) *Each of the difficulties described in para-*
25 *graph (9) seriously frustrates and impedes the ability*

1 of State authorities to enforce the criminal statutes
2 prohibiting such behavior.

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

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

6 **“§ 48. Animal crush videos**

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

10 “(1) depicts actual conduct in which 1 or more
11 living non-human mammals, birds, reptiles, or am-
12 phibians is intentionally crushed, burned, drowned,
13 suffocated, impaled, or otherwise subjected to serious
14 bodily injury (as defined in section 1365 and includ-
15 ing conduct that, if committed against a person and
16 in the special maritime and territorial jurisdiction of
17 the United States, would violate section 2241 or
18 2242); and

19 “(2) is obscene.

20 “(b) *PROHIBITIONS.*—

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

1 “(A) *the person intends or has reason to*
2 *know that the animal crush video will be distrib-*
3 *uted in, or using a means or facility of, inter-*
4 *state or foreign commerce; or*

5 “(B) *the animal crush video is distributed*
6 *in, or using a means or facility of, interstate or*
7 *foreign commerce.*

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

14 “(c) *EXTRATERRITORIAL APPLICATION.—Subsection*
15 *(b) shall apply to the knowing sale, marketing, advertising,*
16 *exchange, distribution, or creation of an animal crush video*
17 *outside of the United States, or any attempt or conspiracy*
18 *to do so, if—*

19 “(1) *the person engaging in such conduct intends*
20 *or has reason to know that the animal crush video*
21 *will be transported into the United States or its terri-*
22 *tories or possessions; or*

23 “(2) *the animal crush video is transported into*
24 *the United States or its territories or possessions.”*

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

4 “(e) *EXCEPTIONS.*—

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

7 “(A) *customary and normal veterinary or*
 8 *agricultural husbandry practices;*

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

10 “(C) *hunting, trapping, or fishing.*

11 “(2) *GOOD-FAITH DISTRIBUTION.*—*This section*
 12 *shall not apply to the good-faith distribution of an*
 13 *animal crush video to—*

14 “(A) *a law enforcement agency; or*

15 “(B) *a third party for the sole purpose of*
 16 *analysis to determine if referral to a law enforce-*
 17 *ment agency is appropriate.*

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

21 “(b) *CLERICAL AMENDMENT.*—*The item relating to sec-*
 22 *tion 48 in the table of sections for chapter 3 of title 18,*
 23 *United States Code, is amended to read as follows:*

“48. *Animal crush videos.*”.

24 “(c) *SEVERABILITY.*—*If any provision of section 48 of*
 25 *title 18, United States Code (as amended by this section),*

1 *or the application of the provision to any person or cir-*
2 *cumstance, is held to be unconstitutional, the provision and*
3 *the application of the provision to other persons or cir-*
4 *cumstances shall not be affected thereby.*

Attest:

Secretary.

11TH CONGRESS
2^D SESSION

H.R. 5566

AMENDMENT