



Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #14

March 21, 2023

S. 4363

By: Senator Fernandez

A. 4005

By: M. of A. Glick

Senate Committee: Environmental Conservation

Assembly Committee: Environmental Conservation

Effective Date: December 31, 2024

AN ACT to amend the Environmental Conservation Law, in relation to prohibiting the issuance of permits authorizing the use of wild animals in circuses or traveling animal acts.

LAW AND SECTIONS REFERRED TO: New Section 11-0541 of the Environmental Conservation Law.

THE COMMITTEE ON ANIMALS AND THE LAW **SUPPORTS THIS LEGISLATION**

This bill adds a new Section 11-0541 to the Environmental Conservation Law, prohibiting the issuance of permits or licenses authorizing the use of certain wild animals in circuses or traveling animal acts. Wild animals subject to the bill include non-human primates, lions and tigers, bears, lemurs, wolves, alligators, as well as other animals falling within the same orders and families [ECL § 11-0103(6)(e)]. Specifically not included are farm animals including llamas, camels and zebras [Agriculture & Markets Law § 350(4)] and companion animals, such as dogs and cats [AML § 350(5)].

Elephants are not included in the bill's provisions, presumably because they already are protected under the Elephant Protection Act, AML § 380 (enacted in 2017). The term "circus" is not defined in this bill or elsewhere in the ELC, but under the Elephant Protection Act, circuses are included in the list of entertainment acts prohibited from using elephants.¹ The bill extends beyond circuses by defining two new terms, "traveling animal act" and "performance" and including them among the restricted activities. Read together with the implied meaning of circus, the bill prohibits venues and activities that require wild animals to perform tricks, give rides or otherwise participate for the "*amusement, benefit and entertainment of a live audience*," whether the location is fixed or transitory.

Subsection one of the new § 11-0103 specifically prohibits issuance of education or exhibition permits or endangered and threatened species licenses² that authorize the exhibition of a wild animal. Subsection two exempts facilities accredited by the Association of Zoos and Aquariums (AZA) and wildlife sanctuaries,

¹ AML § 380(2)(b).

² "Endangered or threatened species license" refers to DEC licenses to possess certain endangered or threatened wildlife issued under N.Y. Environmental Conservation Law § 11-0535(2) and 6 NYCRR Part 175.

defined in NY Environmental Conservation Law § 11-0103.

In 2017, New York enacted the Elephant Protection Act (EPA), prohibiting the use of elephants in entertainment, with specific exceptions for AZA accredited zoos and aquariums,³ NY sanctuaries and “environmental education programs” statutorily defined as focusing on “...imparting knowledge or information about the exhibited animal.”⁴ Animals exploited for entertainment in circuses, traveling animal acts and similar entertainment performances suffer similarly from the physical and psychological harms that motivated the protections for elephants found in the EPA. Subjected to harmful and unnatural environments, inappropriate nutrition, cruel training techniques, and confined in trucks and cages that impair their ability to thrive, wild animals used for live-audience entertainment experience extreme physical and psychological trauma. Logically then, this bill creates prohibitions against the use of certain wild animal species in circuses and traveling animal acts analogous to those instituted for elephants under the EPA.

In a seminal 2016 study of over 650 captive wildlife experts, including but not limited to veterinarians, biologists, sanctuary professionals, circus keepers and animal behaviorists, everyone excluding circus trainers concluded that “*Life for wild animals in travelling circuses and mobile zoos does not appear to constitute either a ‘good life’ or a ‘life worth living.’*”⁵ Paramount to the findings was the absence in traveling circuses and circus settings of the “five freedoms,” the fundamental essentials for captive animal wellbeing expressed as freedom from (1) hunger, thirst and malnutrition; (2) discomfort and exposure; (3) pain, injury and disease; (4) fear and distress; and (5) the inability to express normal behavior.⁶

As sentient beings, wild animal species covered under this bill (such as tigers, lions and some bears) experience extreme physical and psychological suffering from the unnatural demands of performance life.⁷ Injuries, many life-long, result from unnatural postures involved with tricks and atrocities committed by trainers to force compliance.⁸ Tragically, animals respond fastest when extreme fear and pain are used to achieve a desired result, but the detrimental effects to the animal’s long-term behavioral health and well-being are not considered. Circus animal trainers typically lack credentials in wild animal husbandry and experience with positive reinforcement training methods that capitalize on the animal’s desire for a pleasurable experience, instead of than eliciting pain or fear to get a result.⁹ Circuses and traveling animal acts need to maximize profits by providing multiple shows in multiple venues therefore making the more time-consuming rewards-based behavior training model uneconomical and infeasible.

Moreover, positive reinforcement is not effective to coerce wild animals to perform the “tricks” or feats which often thrill audiences who are unaware of how the trick was achieved but which are unnatural and therefore induce acute and repetitive physical pain for the animal. Myriad undercover investigations have revealed horrors of tigers being repeatedly whipped or pepper-sprayed in their eyes and nostrils, baby bears chained to stand upright for hours and days, monkeys bolted into the floor with heavy neck-chains, and numerous other

³ AZA, <https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf>.

⁴ Elephant Protection Act § 380(2)(c).

⁵ Harris, Stephen & Dorning, Jo & Pickett, Heather, (2016) The welfare of wild animals in travelling circuses, 10.13140/RG.2.1.2404.2483,

https://www.ispca.ie/uploads/The_welfare_of_wild_animals_in_travelling_circuses.pdf.

⁶ Mäekivi, N. Freedom in Captivity: Managing Zoo Animals According to the “Five Freedoms,” *Biosemiotics* 11, 7–25 (2018) doi.org/10.1007/s12304-018-9311-5.

⁷ Harris, supra. (“...there is widespread evidence that both vertebrates and some invertebrates can experience emotions of varying complexity from pain to empathy)

⁸ Jay Pratte, Shrine Circus Animal Welfare Report: James Cristy Cole Circus (Feb. 2018), <https://www.mediapeta.com/peta/PDF/ShrineCircusReport2018PratteSigned.pdf>.

⁹ Pratte, supra; see also, AZA Accreditation Standards & Related Policies (2020 edition), <https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf>, explaining the use and method of positive reinforcement and the importance of choice.

“training” atrocities.¹⁰ Even when not performing, wild circus animals suffer extreme duress and communicate their discomfort by engaging in stereotypical--abnormal behaviors--associated with an animal’s fear, pain and stress. Pacing, panting, over-grooming, lethargy, swaying, head bobbing, hiding and aggression are all signs of animal suffering, but trainers and the public often misinterpret the animal’s behavior as “cute,” or “natural” for the species.¹¹

The frequent travel often associated with circus performances is also antithetical to the aforementioned “Five Freedoms” and there is no scientific evidence that captive wild animals adapt to the transport. Inadequate space, unfamiliar settings, prolonged confinement without access to adequate food, water, exercise or natural posturing, and the exhaust fumes inside the transport trucks and outside, thermal dysregulation, and the inability to engage in instinctive behaviors induce extreme distress and injuries.¹² Poor nutritional health is another negative effect, with obesity from an inappropriate diet and lack of exercise being common.¹³

Public safety is also compromised by poor animal husbandry, as the settings typically lack the space needed to establish safe distances between animals and the public, or the ability to quarantine animals who may become sick.¹⁴ Consequently, the tight quarters increase the spread of parasites and zoonotic diseases¹⁵ between the animals, and from animals to humans. Public safety and the psychological well-being of human circus goers are further jeopardized through other direct and indirect interactions with circus animals. Wild animals are trained but never “tamed,” therefore, they are never “safe” for direct public interaction at an entertainment performance. For example, in December 2019, the owner of a 501(c)(3) conservation center in Los Angeles was mauled during a “play session” by one of two tigers *she raised from birth*.¹⁶ Over the past thirty years in the United States, more than 300 people have suffered injuries, forty-four of them fatal, from encounters with wild animals in exhibitions at circuses, and at AZA and non-AZA accredited zoos which include fairs and carnivals. Circus injuries and deaths contributed 152 incidents to the total, with non-accredited zoos accounting for twenty-nine.¹⁷ Wild animal exhibitions that go badly also cause collateral damage to adults and children who witness attacks. In 2016, elementary school children watched in horror as a tiger attacked its trainer during a performance at a county fair in Pensacola, Florida.¹⁸ While escaped wild animals do not always injure the public, they are often euthanized as a precaution rather than captured.¹⁹ Since 1990 alone, more than 316 wild

¹⁰ Press Release, Humane Society of the United States, Undercover Investigation by The Humane Society of the United States Reveals Abused Tigers Whipped and Hit at Circuses (May 18, 2017),

http://www.humanesociety.org/news/press_releases/2017/05/undercover-investigationby051817.html?credit=blog_post_051817_id8986; See also Parry, R. Forced to perform handstands, throw a basketball and ‘cruel’ lives of the circus bears who perform to raise money for the Shriners is revealed, Dailymail.com, published March 2017,

<https://www.dailymail.co.uk/news/article-4364504/Circus-bears-forced-tricks-Shriners-Hospitals.html>.

¹¹ Born Free USA, Ten Fast Facts about Animals in Circuses, <http://www.bornfreeusa.org/facts.php?p=433&more=1>.

¹² Id.

¹³ Harris, supra, note (pg. 139).

¹⁴ Harris, supra, note.

¹⁵ Center for Disease Control and Prevention (CDC), Zoonotic Disease, <https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html> (accessed March 9, 2020).

¹⁶ <https://abcnews.go.com/US/conservationist-attacked-tigers-animal-sanctuary/story?id=67575571>.

¹⁷ Born Free, USA, Inc., Exotic Incidents Database,

[¹⁸ Schelling, A. 10/28/2016, Crowd Watches Circus Tiger Get Whipped 'Mercilessly' After Turning On Trainer, <https://www.thedodo.com/florida-tiger-attack-whipping-2068011247.html>.](https://www.bornfreeusa.org/?post_type=exotic_incidents&category=HI&facilitytype=AZA&datefrom=1990&dateto=2020&s=(updated October 2020); Excluded from the calculation are escapes occurring at all facilities that did not result in death or injury, but the information can be found using the database.</p></div><div data-bbox=)

¹⁹ Alexia Fernandez, Tiger Killed in Atlanta Was Star of Ringling Bros. and Barnum & Bailey Before Circus Closed, PEOPLE (Sept. 6, 2017), <https://people.com/pets/tiger-shot-atlanta-ringling-circus-star>; Alanna Quillen, Incident at Tiger Show Causes Firestorm on Social Media; Trainers Deny Tigers Escaped, WPTV (Feb. 16, 2017).

animals have been killed following an escape.²⁰

The misleading promotion of wild animal shows as an educational experience further harms the public and is detrimental to legitimate conservation efforts. Forcing wild animals to perform unnatural anthropomorphic tricks, using them for rides, often seen with elephants or camels, and encouraging encounters with other wild animals may create or perpetuate a perception that wild animals can be pets. Clearly these activities compromise the promotion of sound conservation stewardship and appreciation of wild animals in the wild.²¹ Evidence suggests that the public is gaining interest in animal conservation, as circus ticket sales are decreasing, and attendance at AZA zoos and aquariums is increasing. Continuing to support extravagant productions featuring animals performing bizarre tricks runs counter to the trend and to New York's commitment to wildlife conservation.

Finally, and very troubling, wild animals in circuses and traveling animal acts suffer from the same limited federal and state protections which motivated the enactment of the previously discussed legislation aimed at protecting elephants. The federal Animal Welfare Act establishes only basic standards of humane care for the transportation, housing, handling, purchase and sale of certain animals, such as those used in circuses and entertainment.²² Furthermore, oversight and inspections required by the USDA Animal and Plant Health Inspection Service (APHIS) are often erratic. Section 353 of the New York Agriculture and Markets Law penalizes the overt acts of animal cruelty, abuse and mistreatment often prevalent in circuses and traveling animal acts. Unfortunately, the law provides limited protection to animals in circuses that are trained outside of New York and traveling into the state only for performances. It is unrealistic to expect members of local law enforcement to have the knowledge and expertise in circus animal behavior and humane standards to identify the animals' suffering.

The Committee on Animals and the Law applauds the sponsors' recognition of the need to protect wild animals in circuses and traveling animal acts, and extends our full support to the proposed bill. By enacting this legislation, New York would join more than 150 other jurisdictions and 45 foreign countries in eliminating the atrocities experienced by wild animals in circuses and other similar venues, taking yet another step towards ensuring that the senseless abuse of animals "for entertainment" will no longer be tolerated.

For all the reasons cited herein, the Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation.

²⁰ Born Free, USA, Inc., supra.

²¹ Harris, supra.

²² 7 U.S.C. §§ 2131, et seq.