



## Memorandum in Support

### COMMITTEE ON ANIMALS AND THE LAW

Animals # 14-A  
S. 4363-A  
A. 4005-A

February 29, 2024

By: Senator Fernandez

By: M. of A. Glick

Senate Committee: Environmental Conservation

Assembly Committee: Codes

Effective Date: December 31, 2024

**AN ACT** to amend the environmental conservation law, in relation to prohibiting the participation of certain animals in 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, providing that no person shall allow for the participation of a covered animal in a traveling animal act, and prohibiting the issuance of permits or licenses authorizing the use of animals included in the bill in performances or displays typically undertaken in circuses, traveling animal exhibitions or in similar venues. Notwithstanding other laws, no exceptions are made for education or exhibition permits or for those holding an endangered or threatened species license for a covered animal.<sup>1</sup> Animals explicitly defined under subsection 4(a) as covered animals, are non-domestic cats, bears, kangaroos, wallabies, and all non-human primates, and any hybrids of these animals.

Like New York's seminal Elephant Protection Act (AML § 380) enacted in 2017, the bill's restrictions extend beyond circuses, defining two new terms, "performance"<sup>2</sup> and "traveling animal act,"<sup>3</sup> to clearly articulate the prohibited practices and settings in which covered animals are typically harmed and exploited. For example, under subsection 4(c) of the new § 11-0541, a performance includes activities that require the covered animal to perform tricks, give rides or otherwise serve as entertainment for a live audience, in settings such as petting zoos, carnivals, exhibitions and others similar amusement locations. Read together, subsection 4(b) and 4(d) essentially define a traveling animal act as any performance that requires the transportation of the covered animal between locations, regardless of the type of vehicle used or the origination or destination point. An exception to the location restriction is provided under subsection 3, allowing covered animals to be transported to and from non-mobile or permanent facilities for performances, provided the animals remain at the location for at least two weeks, and are not performing solely for entertainment. Violations of the bill's provisions under subsection 5 will incur a civil

<sup>1</sup> Cite, 4(a): "... "Covered animal" shall mean any of the following animals, including hybrids thereof: (i) Felidae, but excluding domestic cats; (ii) Kangaroo; (iii) Non-human primate; (iv) Ursidae; and (v) Wallaby."

<sup>2</sup> cite "... any exhibition or public showing, presentation, display, exposition, fair, animal act, circus, ride, trade show, petting zoo, carnival, parade, race, or similar undertaking in which covered animals are required to perform tricks, give rides, or participate as accompaniments for the entertainment, amusement, or benefit of a live audience."

<sup>3</sup> Cite, "... "Traveling animal act" shall mean any performance of covered animals where such animals are transported to, from, or between locations for the purpose of such performance, in a mobile or traveling housing facility."

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penalty of not more than one thousand dollars.

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 Elephant Protection Act. 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 performances 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.’*”<sup>4</sup> 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.<sup>5</sup>

As sentient beings, wild animal species such as the non-domestic cats, bears, kangaroos, wallabies, bears and non-human primates covered under this bill experience extreme physical and psychological suffering from the unnatural demands of performance life.<sup>6</sup> Injuries, many life-long, result from unnatural postures involved with tricks and atrocities committed by trainers to force compliance.<sup>7</sup> 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.<sup>8</sup> Circuses and similar 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 “training” atrocities.<sup>9</sup> Even when not performing, wild circus animals suffer extreme duress and communicate their

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<sup>4</sup> Harris, Stephen & Doring, 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](https://www.ispca.ie/uploads/The_welfare_of_wild_animals_in_travelling_circuses.pdf).

<sup>5</sup> 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.

<sup>6</sup> Harris, supra. (“...there is widespread evidence that both vertebrates and some invertebrates can experience emotions of varying complexity from pain to empathy”)

<sup>7</sup> Jay Pratte, Shrine Circus Animal Welfare Report: James Cristy Cole Circus (Feb. 2018), <https://www.mediapeta.com/peta/PDF/ShrineCircusReport2018PratteSigned.pdf>.

<sup>8</sup> 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.

<sup>9</sup> 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](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 Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

discomfort by engaging in stereotypes--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.<sup>10</sup>

The frequent venue changes often associated with traveling animal acts 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.<sup>11</sup> Poor nutritional health is another negative effect, with obesity from an inappropriate diet and lack of exercise being common.<sup>12</sup>

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.<sup>13</sup> Consequently, the tight quarters increase the spread of parasites and zoonotic diseases<sup>14</sup> 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*.<sup>15</sup> Over the past thirty-four 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 accredited and non-accredited AZA<sup>16</sup> and non-AZA zoos, which include fairs and carnivals. Circus injuries and deaths contributed 152 incidents to the total, with non-accredited zoos accounting for thirty.<sup>17</sup> 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.<sup>18</sup> While escaped wild animals do not always injure the public, they are often euthanized as a precaution rather than captured.<sup>19</sup> Since 1990 alone, more than 316 wild animals have been killed following an escape.<sup>20</sup>

The misleading promotion of wild animal shows as an educational experience further harms the public and is

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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>.

<sup>10</sup> Born Free USA, Ten Fast Facts about Animals in Circuses, <http://www.bornfreeusa.org/facts.php?p=433&more=1>.

<sup>11</sup> Id.

<sup>12</sup> Harris, supra, note (pg. 139).

<sup>13</sup> Harris, supra, note.

<sup>14</sup> Center for Disease Control and Prevention (CDC), Zoonotic Disease, <https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html> (accessed March 9, 2020).

<sup>15</sup> <https://abcnews.go.com/US/conservationist-attacked-tigers-animal-sanctuary/story?id=67575571>.

<sup>16</sup> Association of Zoos and Aquariums (AZA) official website: <https://www.aza.org/?locale=en>

<sup>17</sup> Born Free, USA, Inc., Exotic Incidents Database, [https://www.bornfreeusa.org/?post\\_type=exotic\\_incidents&category=HI&facilitytype=AZA&datefrom=1990&dateto=2020&s=](https://www.bornfreeusa.org/?post_type=exotic_incidents&category=HI&facilitytype=AZA&datefrom=1990&dateto=2020&s=) (updated May 2023; 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.

<sup>18</sup> 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>.

<sup>19</sup> 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).

<sup>20</sup> Born Free, USA, Inc., supra.

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detrimental to legitimate conservation efforts. Forcing wild animals to perform unnatural anthropomorphic tricks, using them for rides 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.<sup>21</sup> 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.<sup>22</sup> 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 such shows 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 performance animal behavior and humane standards to identify the animals' suffering.

The Committee on Animals and the Law applauds the sponsors in recognizing the need to provide protections to animals commonly harmed and abused in traveling animal acts and extends our full support to the proposed bill. We are further encouraged that the bill implicitly establishes a precedent for protecting other similarly exploited wild and exotic animals as covered species under its provisions in the future. More than 150 other jurisdictions, including 34 U.S. states with full or partial bans,<sup>23</sup> and 51 foreign countries<sup>24</sup> have eliminated the atrocities commonly experienced by certain wild animals species in traveling animal acts. By enacting this important legislation, New York would further its commitment to ensuring that the senseless abuse of animals "for entertainment" purposes will no longer be tolerated.<sup>25</sup>

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

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<sup>21</sup> Harris, supra.

<sup>22</sup> 7 U.S.C. §§ 2131, et seq.

<sup>23</sup> Animal Defenders International, [https://www.federalcircusbill.org/briefings/worldwide-summary/\(updated April, 2023\).\[states with full or partial bans include, AR,CA, CO, FL,HI, ID,IL,IN,KS,ME,OR,MD,MA, MI, MN,MT,NJ, NM, NY,NC, OH,OK, OR, PA, RI, SC, VT, VA, WA, WI\].](https://www.federalcircusbill.org/briefings/worldwide-summary/(updated+April,+2023).[states)

<sup>24</sup> ADI, supra.,[countries include: "...Armenia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, England, Estonia, Finland, France, Greece, Guatemala, Hungary, India, Iran, Ireland, Israel, Italy, Latvia, Lebanon, Lithuania, Luxembourg, Macedonia, Malta, Mexico, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Scotland, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Taiwan, The Netherlands, Ukraine, and Wales; similar laws are being discussed in a number of other countries."]

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