

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #19

May 18, 2020

S. 5408

By: Senator Martinez

A. 3673

By: M. of A. Englebright

Senate Committee: Environmental Conservation

Assembly Committee: Environmental Conservation

Effective Date: December 31, 2020

AN ACT to amend the environmental conservation law, in relation to prohibiting the issuance of permits authorizing the use of wild animals in circuses.

LAW & SECTION 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. 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)]. 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 also are not included in the bill's provisions, presumably because they already are protected under the Elephant Protection Act, AML § 380 (enacted in 2017). Although this bill does not define the term "circus," and there is no other definition of circus elsewhere in the ECL, the Elephant Protection Act provides some guidance; in AML § 380(2)(b), circuses are included as an example of venues falling within the restrictions of the act: "*Entertainment Act means any exhibition¹, act, circus, trade show, carnival, ride, parade, race, performance or similar undertaking.*"

Subsection 1 provides examples of some of the types of permits and licenses that will not be granted to entities wishing to exhibit wild animals in circuses, such as education or exhibition

¹ Exhibition is defined as, "the regular display of wildlife "where the display itself is the chief object." 6 NYCRR § 175.2(b). An "education or exhibition permit" refers to the licenses that the DEC issues to possess certain non-endangered and non-threatened wildlife issued under N.Y. Environmental Conservation Law section 11-0515(1) & (2) and 6 NYCRR Part 175.

permits, endangered and threatened species licenses,² and permits for exhibitors “*holding a valid United States department of agriculture license.*” Subsection 2 exempts “*an accredited zoo accredited by the Association of Zoos and Aquariums*” and a “*Wildlife Sanctuary,*” defined in NY Environmental Conservation Law § 11-0103. The effective date of the legislation is December 31, 2020.

In 2017, New York first moved toward recognizing that certain wild animals simply do not belong in acts designed primarily to entertain the public when it enacted the Elephant Protection Act³ (EPA) prohibiting the use of elephants in entertainment, with specific exceptions for AZA accredited zoos and aquariums (AZA)⁴, NY sanctuaries and statutorily defined “*Environmental education programs*”⁵ focused on elephant welfare and conservation. Recognizing that circus animals other than elephants suffer physical and psychological harms similar to those summarized in the EPA’s legislative findings regarding elephants in entertainment,⁶ this bill creates prohibitions against the use of wild animals in circuses analogous to those instituted for elephants under the EPA. Although not all wild animals exploited in circuses are covered under the bill, those that are will be spared from further abuse and suffering associated with circus performances.

This bill is needed because widespread circulation of misleading information about benefits of circuses to wildlife education and conservation remain largely unchecked. Additionally, public safety is put in jeopardy in arenas in which wild animal performances take place. There is limited legal oversight necessary to protect circus animals or the public under the Animal Welfare Act (AWA), 7 U.S.C. §§ 2131 *et seq.*, and AML § 350, governing animal cruelty, and is difficult to apply in circus settings.

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

³ Elephant Protection Act, § 380.

⁴ AZA, <https://assets.speakcdn.com/assets/2332/aza-accreditation-standards.pdf>

⁵ Elephant Protection Act § 380(2)(c), (“*Environmental Education Program means animal use or exhibition that is devoted to imparting knowledge or information about the exhibited animal... At no time during an educational exhibition*

shall any animal be made to perform any behavior that is not intrinsically natural to such animal.”).

⁶ Elephant Protection Act § 380(2), (“*The legislature hereby finds that...it is widely recognized that elephants used for entertainment purposes (‘entertainment elephant’)* suffer physical and psychological harm due to the living conditions and treatment to which they are subjected... *entertainment elephants are trained with cruel techniques that involve the use of objects to control and punish... live in conditions that are in no way similar to their natural habitat, including an*

unnatural diet, restricted movement, inappropriate housing and a hostile climate; entertainment elephants are subjected to confinement and social isolation, leading to physiological, behavioral and psychological impairments; entertainment elephants transported into the state spend a significant portion of their lives inside trucks, trains or trailers, enduring additional physical restrictions and social isolation...”)

In 2016, a seminal study of wild animal welfare in traveling circuses⁷ asked more than 650 captive wildlife experts to assess whether circuses can satisfy the “five freedoms” recognized as minimally necessary for the wellbeing of captive animals.⁸ Those five freedoms were freedom from: (1) Hunger, thirst and malnutrition; (2) Discomfort and exposure; (3) Pain, injury and disease; (4) Fear and distress; and (5) the Freedom to express normal behavior.⁹ The participants concluded that “*all five of the ‘freedoms’ are compromised in travelling circuses and mobile zoos.*” Furthermore, with the exception of circus trainers who were included in the study, the consensus among the participants was 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.’*”

Many factors contribute to the inhumane life of a circus animal. Like elephants, wild animal species (such as tigers, lions and some bears) are sentient beings which experience extreme physical and psychological suffering when living a circus life.¹⁰ Injuries result from unnatural postures involved with tricks, and from the atrocities committed by trainers to coerce compliance, and they can lead to life-long impairments.¹¹ Central to the problem are circus animal trainers, who typically lack credentials in wild animal husbandry and experience with positive reinforcement methods of training which give animals positive experiences and offer them choices to perform an action or not.¹² Most unfortunately, animals respond fastest when extreme fear and pain are used to achieve a desired result, and the detrimental effects to the animal’s long-term behavioral health and well-being are not considered. Circuses need to maximize profits by providing multiple shows in multiple venues, which makes rewards-based behavior training uneconomical and infeasible, forcing upon the animals the negative performance experience.

Not surprisingly, positive reinforcement is not effective to coerce wild animals to perform feats which are unnatural and which induce acute and repetitive physical pain for the animal,¹³ But audiences awed by bears riding bicycles, tigers moonwalking on their hind legs, and other

⁷ 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. The study focused upon circuses and mobile zoos, finding, “*There is a lack of clarity as to what constitutes a circus and a mobile zoo, and there are comparable welfare concerns.*”

⁸ *Id.* The study included animal trainers and circuses, lawyers and veterinarians with expertise in wild animal welfare, relevant NGOs, biologists, researchers, species behavioral experts, and zoo and wild animal sanctuary staff.

⁹ 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, (explaining that the “five freedoms” approach is an ethical and scientific-based approach to assessing animal welfare in captivity).

¹⁰ Harris, *supra*. (“...there is widespread evidence that both vertebrates and some invertebrates can experience emotions of varying complexity from pain to empathy); see also Iftime, O., Circus animals - how much is “unfair”? *Eubios Journal of Asian and International Bioethics* 27 (May 2017), (“*Ecological and behavioral research has established that there is a deep unavoidable contradiction between wild animals’ nature and circus life*”).

¹¹ JAY PRATTE, SHRINE CIRCUS ANIMAL WELFARE REPORT: JAMES CRISTY COLE CIRCUS (Feb. 2018), <https://www.mediapeta.com/peta/PDF/ShrineCircusReport2018PratteSigned.pdf>

¹² 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.

¹³ Harris, *supra*, note ____.

unnatural animal acrobatics, are generally unaware of the training regimen behind those acts. A myriad of 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.¹⁴ Negative impacts upon wild circus animals are not limited to when they are performing. E when not performing, they remain tense, engaging in stereotypes--abnormal behaviors--associated with an animal's fear, pain and stress, such as pacing, panting, over-grooming, lethargy, swaying, head bobbing, hiding and aggression, which are all common signs of animal suffering.¹⁵ Sadly, although such animal behavior is communicating extreme stress, trainers and the public often misinterpret it as "cute," or "natural" for the species.

The frequent travel often associated with circus performances also is antithetical to the "Five Freedoms" approach to captive wild animal welfare. Inadequate space, unfamiliar settings, prolonged confinement without access to adequate food, water, exercise or natural posturing, thermal dysregulation, and the inability to engage in instinctive behaviors induce extreme distress and injuries. Tigers and elephants, for example, engage in increased stereotypic behavior during transport.¹⁶ Long-term, frequent travel strains an animal's joints and can lead to arthritis; exposure to exhaust fumes inside the transport trucks and outside, when cages are located too near stationary circus vehicles, is known to lead to respiratory distress syndrome.¹⁷ While some opine that that wild animals will eventually acclimate to constant travel, authors of the aforementioned traveling circus study assert, "*There is no scientific evidence that wild animals fully adapt to frequent transport.*"¹⁸

Because circuses typically lack the space to establish safe distances between animals, and away from the public, or the ability to quarantine animals who may become sick,¹⁹ circus animals often suffer from the spread of parasites and diseases within a single species and to other species, and the spread of parasites and zoonotic diseases from animals to humans.²⁰ Poor nutritional

¹⁴ 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 even Cyle - '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>; Bear Cubs, Lions Hit, Chained, and Deprived in the Chinese Circus Industry, PETA, <https://investigations.peta.org/chinese-circus-industry-bears-lions/> (accessed March 6, 2020); *see also* NYC Bar, Prohibiting the Use of Wild Animals in Circuses, May 2019, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/prohibiting-the-use-of-wild-animals-in-circuses>

¹⁵ Harris, *supra*. ("...situations that cause/increase stereotypies also decrease welfare.")

¹⁶ *Id.*

¹⁷ Harris, *supra*, note ____; *see also*, Born Free USA, *Ten Fast Facts about Animals in circuses*, <http://www.bornfreeusa.org/facts.php?p=433&more=1>

¹⁸ *Id.*

¹⁹ Harris, *supra*, note ____.

²⁰ Center for Disease Control and Prevention (CDC), Zoonotic Disease, <https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html> (accessed March 9, 2020), ("...over 60% of human

health is another reality. Often lacking awareness of species-appropriate food, or access to proper food sources, many circuses resort to purchasing leftover meat from local slaughterhouses or relying on “roadkill,” despite the increased potential for disease transmission from both those food sources.²¹ Other common practices include supplementing animal diets with dog food.²² Furthermore, without proper exercise or the ability to eat as they would in the wild, many captive wild animals in circuses often become obese.

Putting aside the harms experienced by wild animal circus performers, the reality is that public safety and the psychological well-being of human circusgoers are placed in jeopardy through direct interactions with circus animals, or from encounters with escaped wild animals during a performance or exhibition. Wild animals are never “tamed” so they are “safe” for direct public interaction at an entertainment performance. More than 300 people have suffered injuries, forty-five of them fatal, from encounters with wild animals in exhibitions in the United States during the past thirty years; additional injuries have been documented overseas.²³ “Encounters” leading to injuries include those which are unplanned, such as animals escaping confinement, or from direct contact within the circus or zoo setting.

Injuries can occur when there is a relationship between the victim and the animal. 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.²⁴ Additionally, wild animal exhibitions that go badly also cause collateral damage to adults and children who witness attacks, so more than the people “handling” the wild animals are endangered. As an example, the video showing a lion attacking its trainer during a circus performance in the Ukraine, while children scream in terror, went viral on the internet in April 2019.²⁵ In 2016, elementary school children watched in a state of horror as a tiger attacked its trainer during a performance at a county fair in Pensacola, Florida.²⁶

diseases are acquired from animals.”).

²¹ Harris, *Supra*, note (pg 139).

²² JAY PRATTE, SHRINE CIRCUS ANIMAL WELFARE REPORT: JAMES CRISTY COLE CIRCUS (Feb. 2018), <https://www.mediapeta.com/peta/PDF/ShrineCircusReport2018PratteSigned.pdf>

²³ Born Free, USA, Inc., Exotic Incidents Database, https://www.bornfreeusa.org/?post_type=exotic_incidents&ecategory=HI&facilitytype=AZA&datefrom=1990&date=2020&s= (updated February 2020); The statistics include the total deaths and injuries occurring in circuses, accredited AZA facilities and non-accredited zoos combined, which would include carnivals and fairs, all within the United States. Extracted from the total, the number of deaths and injuries occurring in circuses in the U.S. is twenty-nine, and the number of injuries occurring in circuses is 152. 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; *see also* Animal Defense International, <https://www.stopcircussuffering.com/page/7/?s=escape> (last accessed March 10, 2020).

²⁴ <https://abcnews.go.com/US/conservationist-attacked-tigers-animal-sanctuary/story?id=67575571>

²⁵ <https://www.youtube.com/watch?v=IMtJL9EaFBE>

²⁶ 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>;

Although in many instances escaped wild animals do not injure the public, they often result in the animal being fatally shot.²⁷ Since 1990 alone, more than 316 wild animals have been killed following an escape.²⁸

Another problematic aspect of circuses' misleading promotion of wild animal shows as being educational is that the public and wildlife conservation efforts are negatively affected. Using wild animals such as elephants and camels for rides, forcing them to engage in performances that include unnatural anthropomorphic tricks, and encouraging encounters with other wild animals may create or perpetuate a perception that wild animals are pets, rather than promoting sound conservation stewardship of them in the wild.²⁹ Thus, misleading and often false information promoted by self-proclaimed experts operating in a circus not only distorts the public's awareness of animal conservation concerns, but subsequently fails to advance animal conservation.

As the EPA's "legislative findings" noted regarding elephants, "...the use of elephants in entertainment provides a false and inaccurate educational experience for children and adults, often including performance tricks that are never executed by elephants in the wild..."³⁰ This is equally true for other wild animals.

While circus ticket sales are decreasing, attendance at AZA zoos and aquariums is increasing, suggesting a stronger desire to learn more about wild animal conservation, than to watch extravagant productions featuring animals performing bizarre tricks.

As discussed throughout, wild animals in circuses suffer from abuses similar to those suffered by elephants in entertainment, but they are left with the same limited and inadequate federal and state protections that motivated the EPA. The Animal Welfare Act (AWA) 7 U.S.C. §§ 2131, *et seq.*, establishes basic standards of humane care for the transportation, housing, handling, purchase and sale of certain animals, such as those used in circuses and entertainment.³¹ The USDA Animal and Plant Health Inspection Service (APHIS), which is responsible for enforcing the provisions of the AWA in businesses with animals on display, that perform for the public, or are used in educational presentations, has been accused of being unable to complete required inspections. Verification that inspections have been completed as required by regulation has been difficult to ascertain because public access to inspection reports, subsequent violations and sanction enforcement has been erratic.

²⁷ 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), *see also* NYC Bar, *Prohibiting the Use of Wild Animals in Circuses*, May 2019, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/prohibiting-the-use-of-wild-animals-in-circuses> (providing examples wild animals not covered under the proposed legislation escaping from exhibitions and posing threats to the public's safety).

²⁸ Born Free, USA, Inc., *Supra*.

²⁹ Harris, *Supra*.

³⁰ Elephant Protection Act, § 380.

³¹ U.S.C. §§ 2131, *et seq.*

Section 353 of the New York Agriculture and Markets Law penalizes the overt acts of animal cruelty, abuse and mistreatment often prevalent in circuses, but the law provides limited protection to animals in circuses that are trained outside of New York, traveling into the state only for performances. Local law enforcement may lack the knowledge and expertise in circus animal behavior and humane standards to properly identify the animals' suffering. Circusgoers are unknowingly participating in the animals' mistreatment by attending performances that are possible only as a result of the use of abusive training practices.

The Committee on Animals and the Law applauds the sponsors' recognition of the need to protect wild animals in circuses and it extends our full support to the proposed bill. By enacting this legislation, New York will ensure that the same abuses suffered by elephants in entertainment which prompted the enactment of the EPA, are no longer tolerated for other wild animals used in circuses. In so doing, New York would join more than 150 other jurisdictions and 45 foreign countries in eliminating the atrocities experienced by wild animals in circuses.³²

The Committee would ask the sponsors to also consider that the animals protected from suffering and exploitation in circuses under this bill may suffer similar abuses in other entertainment venues such as traveling zoos, carnivals and fairs, similar entertainment businesses not called a "circus." While we would like all animals exploited in circus-like entertainments included in the protections provided by this legislation, we are encouraged that this bill will stop the suffering of wild animals in circuses is a step in 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.

³² List source for jurisdictions and countries