

4693

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when
printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to
enacting Haley's act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 11 of the environmental conservation law is amended
2 by adding a new title 26 to read as follows:

3 TITLE 26
4 HALEY'S ACT

5 SECTION 11-2601. SHORT TITLE.

6 11-2603. DEFINITIONS.

7 11-2605. PROHIBITIONS.

8 11-2607. PENALTIES.

9 S 11-2601. SHORT TITLE.

10 THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS "HALEY'S ACT".

11 S 11-2603. DEFINITIONS.

12 FOR THE PURPOSES OF THIS TITLE:

13 1. "BIG CAT" SHALL MEAN ANY LIVE SPECIES OF LION (PANTHERA LEO PERSI-
14 CA), TIGER (PANTHERA TIGRES), LEOPARD (PANTHERA PARDUS), CHEETAH
15 (ACINOYX JUBATUS), JAGUAR (PANTHERA ONCA), MOUNTAIN LION, SOMETIMES
16 CALLED COUGAR (FELIS CONCOLAR) OR ANY HYBRID OF SUCH SPECIES.

17 2. "DIRECT CONTACT" SHALL MEAN ANY SITUATION IN WHICH AN INDIVIDUAL
18 MAY POTENTIALLY TOUCH OR OTHERWISE COME INTO PHYSICAL CONTACT WITH ANY
19 LIVE SPECIMEN OF A SPECIES.

20 3. "ZOO" MEANS ANY INDOOR AREA OPEN TO THE PUBLIC FOR THE PURPOSE OF
21 VIEWING ANIMALS.

22 4. "DEALER" SHALL MEAN ANY PERSON WHO, IN COMMERCE, FOR COMPENSATION
23 OR PROFIT, DELIVERS FOR TRANSPORTATION, OR TRANSPORTS, EXCEPT AS A
24 CARRIER, BUYS, SELLS, OR NEGOTIATES THE PURCHASE OR SALE OF ANY ANIMALS.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD01448-01-9

1 5. "EXHIBITOR" SHALL MEAN ANY PERSON (PUBLIC OR PRIVATE) EXHIBITING
2 ANY ANIMALS, WHICH WERE PURCHASED IN COMMERCE OR THE INTENDED DISTRIB-
3 UTION OF WHICH AFFECTS COMMERCE, OR WILL AFFECT COMMERCE, TO THE PUBLIC
4 FOR COMPENSATION, AS DETERMINED BY THE COMMISSIONER, AND SUCH TERM
5 INCLUDES CARNIVALS, CIRCUSES, AND ZOOS EXHIBITING SUCH ANIMALS WHETHER
6 OPERATED FOR PROFIT OR NOT.

7 S 11-2605. PROHIBITIONS.

8 1. IT SHALL BE UNLAWFUL FOR AN EXHIBITOR OR DEALER LICENSED PURSUANT
9 TO TITLE 7 U.S.C. SECTIONS 2133 AND 2134 TO ALLOW DIRECT CONTACT BETWEEN
10 A BIG CAT AND A MEMBER OF THE PUBLIC.

11 2. THIS SECTION SHALL NOT APPLY TO AN EXHIBITOR THAT IS A ZOO, AS
12 DETERMINED BY THE COMMISSIONER.

13 3. AN EXHIBITOR IS DETERMINED TO BE ZOO UNDER SUBDIVISION TWO OF THIS
14 SECTION UPON THE COMMISSIONER'S CONSIDERATION OF:

15 (A) WHETHER THE EXHIBITOR IS A FACILITY ACCREDITED BY, AND IN GOOD
16 STANDING WITH, THE ASSOCIATION OF ZOOS AND AQUARIUMS; AND

17 (B) WHETHER THE EXHIBITOR OPERATES WITH SUFFICIENT REGARD FOR PUBLIC
18 SAFETY.

19 S 11-2607. PENALTIES.

20 1. ANY DEALER OR EXHIBITOR LICENSED PURSUANT TO TITLE 17 U.S.C.
21 SECTIONS 2133 AND 2134, THAT VIOLATES ANY PROVISION OF THIS TITLE, OR
22 ANY RULE OR REGULATION PROMULGATED BY THE COMMISSIONER PURSUANT TO THIS
23 TITLE, MAY BE ASSESSED A CIVIL PENALTY BY THE COMMISSIONER OF NOT MORE
24 THAN TEN THOUSAND DOLLARS FOR EACH SUCH VIOLATION. EACH VIOLATION AND
25 EACH DAY DURING WHICH A VIOLATION CONTINUES SHALL BE A SEPARATE OFFENSE.
26 NO PENALTY SHALL BE ASSESSED UNLESS SUCH PERSON IS GIVEN NOTICE AND
27 OPPORTUNITY FOR A HEARING WITH RESPECT TO THE ALLEGED VIOLATION, AND THE
28 ORDER OF THE COMMISSIONER ASSESSING A PENALTY SHALL BE FINAL AND CONCLU-
29 SIVE UNLESS THE AFFECTED PERSON FILES AN APPEAL FROM THE COMMISSIONER'S
30 ORDER WITHIN THE PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT.
31 THE COMMISSIONER SHALL GIVE DUE CONSIDERATION TO THE APPROPRIATENESS OF
32 THE PENALTY WITH RESPECT TO THE SIZE OF THE BUSINESS OF THE PERSON
33 INVOLVED, THE GRAVITY OF THE VIOLATION, THE PERSON'S GOOD FAITH, AND THE
34 HISTORY OF PREVIOUS VIOLATIONS. ANY SUCH CIVIL PENALTY MAY BE COMPRO-
35 MISED BY THE COMMISSIONER. UPON ANY FAILURE TO PAY THE PENALTY ASSESSED
36 BY A FINAL ORDER UNDER THIS SUBDIVISION, THE COMMISSIONER SHALL REQUEST
37 THE ATTORNEY GENERAL TO INSTITUTE A CIVIL ACTION TO COLLECT THE PENALTY.

38 2. ANY DEALER OR EXHIBITOR, LICENSED PURSUANT TO TITLE 7 U.S.C.
39 SECTIONS 2133 AND 2134, WHO KNOWINGLY VIOLATES ANY PROVISIONS OF THIS
40 TITLE SHALL, ON CONVICTION THEREOF, BE SUBJECT TO IMPRISONMENT FOR NOT
41 MORE THAN ONE YEAR, OR A FINE OF NOT MORE THAN TEN THOUSAND DOLLARS, OR
42 BOTH.

43 S 2. This act shall take effect on the one hundred eightieth day after
44 it shall have become a law; provided, however, that effective immediate-
45 ly, the addition, amendment and/or repeal of any rule or regulation
46 necessary for the implementation of this act on its effective date are
47 authorized and directed to be made and completed by the commissioner of
48 the department of environmental conservation on or before such effective
49 date.