S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N A S S E M B L Y

February 25, 2013

Introduced by M. of A. PAULIN, AUBRY -- Multi-Sponsored by -- M. of A. COOK, HIKIND -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to restricting the use of exotic and wild animals in traveling circuses and shows

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

Section 1. This act shall be known and may be cited as the "traveling exotic and wild animal protection act".

S 2. Legislative findings. The legislature finds that:

1. traveling circuses and shows are detrimental to animal welfare due to the adverse effects of captivity and transport;

2. severe confinement, lack of free exercise, and the restriction of natural behaviors, cause animals used in traveling circuses and shows to suffer and be prone to health, behavioral, and psychological problems;

3. tricks that exotic and non-domesticated animals are forced to perform require extreme physical coercion techniques, including the restriction of food, the use of elephant hooks (objects used to control and punish elephants), electric shocks, metal bars, whips, and other forms of physical abuse;

4. welfare of animals subject to the conditions in traveling circuses and shows, such as constant travel, limited facilities, long periods of restricted movement, stress, and physical coercion, will inevitably be compromised, which can lead to increased risks to public safety;

5. animals in traveling circuses and shows pose an additional risk to public safety because such animals have wild instincts and needs and have demonstrated unpredictability;

6. use of collapsible, temporary facilities in traveling circuses and shows increases the risk of escaping exotic and non-domesticated animals seriously harming workers and the public;

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

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7. traveling circuses and shows bring people dangerously close to exotic and non-domesticated animals by displaying animals in inappropriate, uncontrolled areas that are not suited for the exhibition of such animals;

8. it is not possible to provide exotic and non-domesticated animals with facilities sufficient to maintain the optimum physical and mental health of the animals because of the suffering caused to the animals by the nature of traveling circuses and shows, in which restriction of movement, separation from natural groupings, restriction of food and water, and physical abuse are prevalent;

9. due to the mobile and transitory nature of traveling circuses and shows, law enforcement authorities cannot properly monitor the conditions of the animals or follow up on previous infractions by traveling circuses;

10. restricting the use of exotic and non-domesticated animals in traveling circuses and shows is the most cost-effective and efficient way to safeguard both animal welfare and public safety; and

11. animal-free circuses like Cirque du Soleil are growing in number, economic impact, and popularity, a testament to an educated public's desire to see humane entertainment.

S 3. The agriculture and markets law is amended by adding a new section 352 to read as follows:

S 352. USE OF EXOTIC OR WILD ANIMALS IN TRAVELING CIRCUSES AND EXHIBITIONS. 1. NO TRAVELING CIRCUS OR SHOW MAY ALLOW FOR THE PARTICIPATION OF AN EXOTIC OR WILD ANIMAL, INCLUDING A NON-HUMAN PRIMATE, IN AN ANIMAL ACT IF, DURING THE THIRTY DAY PERIOD PRECEDING SUCH PARTICIPATION, SUCH ANIMAL WAS TRAVELING IN A MOBILE HOUSING FACILITY.

2. THE RESTRICTION UNDER SUBDIVISION ONE OF THIS SECTION SHALL NOT APPLY TO THE USE OF AN EXOTIC OR WILD ANIMAL, INCLUDING A NON-HUMAN PRIMATE:

(A) IN AN EXHIBITION AT A NON-MOBILE, PERMANENT INSTITUTION OR FACILITY, INCLUDING AN ACCREDITED ZOO OR AQUARIUM;

(B) AS PART OF AN OUTREACH PROGRAM FOR EDUCATION OR CONSERVATION PURPOSES BY AN ACCREDITED ZOO, AQUARIUM, OR NOT-FOR-PROFIT CONSERVATION ORGANIZATION IF THE ANIMAL USED FOR SUCH PURPOSES IS NOT KEPT IN A MOBILE HOUSING FACILITY FOR MORE THAN TWELVE HOURS A DAY;

(C) BY A UNIVERSITY, COLLEGE, LABORATORY, OR OTHER RESEARCH FACILITY REGISTERED WITH THE SECRETARY OF THE DEPARTMENT OF AGRICULTURE PURSUANT TO THE ANIMAL WELFARE ACT (7 U.S.C. SECTION 2136);

(D) IN FILM, TELEVISION, OR ADVERTISING IF SUCH USE DOES NOT INVOLVE A LIVE PUBLIC EXHIBITION; OR

(E) IN A RODEO.

3. A TRAVELING CIRCUS OR SHOW THAT FAILS TO COMPLY WITH THIS SECTION OR ANY RULE, REGULATION, OR STANDARD PROMULGATED BY THE COMMISSIONER THEREUNDER, MAY BE ASSESSED A CIVIL PENALTY BY THE COMMISSIONER OF NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH SUCH VIOLATION, AND THE COMMISSIONER MAY ALSO MAKE AN ORDER THAT SUCH PERSON SHALL CEASE AND DESIST FROM CONTINUING SUCH VIOLATION. EACH VIOLATION AND EACH DAY DURING WHICH A VIOLATION CONTINUES SHALL BE A SEPARATE OFFENSE. ANY PERSON WHO KNOWINGLY FAILS TO OBEY A CEASE AND DESIST ORDER MADE BY THE COMMISSIONER UNDER THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF ONE THOUSAND FIVE HUNDRED DOLLARS FOR EACH OFFENSE, AND EACH DAY DURING WHICH SUCH FAILURE CONTINUES SHALL BE DEEMED A SEPARATE OFFENSE.

4. THE FOLLOWING ARE EXEMPT FROM THE PROVISIONS OF THIS SECTION:

(A) INSTITUTIONS ACCREDITED BY THE AMERICAN ZOO AND AQUARIUM ASSOCIATION,

(B) ANY WILDLIFE SANCTUARY AS DEFINED IN THIS SECTION.
(C) NOT-FOR-PROFIT ENVIRONMENTAL EDUCATION PROGRAMS AS DEFINED UNDER THIS SECTION.
5. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
(A) "TRAVELING CIRCUS" MEANS A CLASS C LICENSEE THAT IS LICENSED UNDER THE ANIMAL WELFARE ACT (7 U.S.C. SECTION 2131 ET SEQ.) AND ITS SUBSEQUENT AMENDMENTS, REGULATIONS, AND STANDARDS ADOPTED PURSUANT TO THE ANIMAL WELFARE ACT, THAT OFFERS PERFORMANCES BY LIVE ANIMALS, CLOWNS, AND/OR ACROBATS THAT TRAVEL IN MOBILE HOUSING FACILITIES.
(B) "SHOW" MEANS ANY MOBILE OR STATIONARY ACT, CIRCUS, PUBLIC SHOW, TRADE SHOW, PHOTOGRAPHIC OPPORTUNITY, CARNIVAL, CITY OR COUNTY FAIR, AGRICULTURAL FAIR, RIDE, PARADE, RACE, PERFORMANCE, OR SIMILAR UNDERTAKING INCORPORATING WILD OR EXOTIC ANIMALS WHEREIN THE ANIMALS ARE TAKEN FROM THEIR PERMANENT RESIDENCE AND REQUIRED TO TRAVEL FOR ANY DISTANCE.
(C) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION, JOINT VENTURE, ASSOCIATION, TRUST, ESTATE, OR ANY OTHER LEGAL ENTITY, AND ANY OFFICER, MEMBER, SHAREHOLDER, DIRECTOR, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THESE.
(D) "EXOTIC OR WILD ANIMALS" MEANS ANY OR ALL OF THE FOLLOWING OR THE FOLLOWING ORDERS AND FAMILIES, WHETHER BORN IN THE WILD OR IN CAPTIVITY, AND ALSO ANY OR ALL OF THEIR HYBRIDS WITH DOMESTIC SPECIES. THE ANIMALS LISTED ARE INTENDED TO ACT AS EXAMPLES AND ARE NOT TO BE CONSTRUED AS AN EXHAUSTIVE LIST OR LIMIT THE GENERALITY OF EACH GROUP OF ANIMALS, UNLESS OTHERWISE SPECIFIED:
(I) NON-HUMAN PRIMATES AND PROSIMIANS, SUCH AS CHIMPANZEES, BABOONS AND MONKEYS;
(II) FELIDAE, SUCH AS LIONS, TIGERS, COUGARS, LEOPARDS, OCELOTS AND SERVALS, BUT SHALL NOT INCLUDE DOMESTICATED ANIMALS;
(III) CANIDAE, SUCH AS WOLVES AND COYOTES, BUT SHALL NOT INCLUDE DOMESTIC DOGS;
(IV) URSIDAE, SUCH AS BEARS;
(V) MARSUPIALIA, SUCH AS KANGAROOS;
(VI) PROBOSCIDAE, SUCH AS ELEPHANTS;
(VII) ARTIODACTYLA, SUCH AS GIRAFFES AND CAMELS, BUT SHALL NOT INCLUDE DOMESTIC CATTLE, SWINE, SHEEP, OR GOATS;
(VIII) PERISSODACTYLA, SUCH AS ZEBRAS, BUT SHALL NOT INCLUDE DOMESTIC HORSES, DONKEYS, OR MULES.
(E) "WILDLIFE SANCTUARY" MEANS A 501(C)(3) ORGANIZATION DESCRIBED IN SECTION 170(B)(1)(A)(VI) OF THE INTERNAL REVENUE CODE 1986, AND ITS SUBSEQUENT AMENDMENTS WHERE:
(I) NO COMMERCIAL TRADE IN ANIMALS OCCURS, INCLUDING, BUT NOT LIMITED TO, SALE OF ANIMALS, ANIMAL PARTS, BY-PRODUCTS, OFFSPRING, PHOTOGRAPHIC OPPORTUNITIES OR PUBLIC EVENTS FOR FINANCIAL PROFIT, OR ANY OTHER ENTERTAINMENT PURPOSES;
(II) NO PROPAGATION OF ANIMALS OCCURS IN THE FACILITY; AND
(III) NO ESCORTED PUBLIC VISITATION IS ALLOWED; NO DIRECT CONTACT BETWEEN THE PUBLIC AND WILD ANIMALS IS ALLOWED; ANIMALS ARE NOT TAKEN FROM THE SANCTUARY OR ENCLOSURES FOR EXHIBITION.
(F) "DOMESTICATED ANIMAL" MEANS ANY DOMESTICATED SHEEP, HORSE, CATTLE, FALLOW DEER, RED DEER, SIKA DEER, WHITETAIL DEER WHICH IS RAISED UNDER LICENSE FROM THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, LLAMA, GOAT, SWINE, FOWL, DUCK, GOOSE, SWAN, TURKEY, CONFINED DOMESTIC HARE OR RABBIT, PHEASANT OR OTHER BIRD WHICH IS RAISED IN CONFINEMENT UNDER LICENSE FROM THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION BEFORE RELEASE FROM CAPTIVITY, EXCEPT THAT THE VARIETIES OF FOWL COMMONLY USED FOR COCK

FIGHTS SHALL NOT BE CONSIDERED DOMESTIC ANIMALS FOR THE PURPOSES OF THIS SECTION.

(G) "ENVIRONMENTAL EDUCATION PROGRAM" MEANS ANIMAL USE OR EXHIBITION THAT IS DEVOTED TO IMPARTING KNOWLEDGE OR INFORMATION ABOUT THE EXHIBITED ANIMAL'S BEHAVIOR, HABITAT, LIFE CYCLE, MIGRATORY PATTERNS, FEEDING HABITS OR SIMILAR PEDAGOGICAL INFORMATION AND IS CONDUCTED BY AN INDIVIDUAL OR INDIVIDUALS WHO IS/ARE ACCREDITED OR SIMILARLY QUALIFIED TO IMPART SUCH INFORMATION. AT NO TIME DURING AN EDUCATIONAL EXHIBITION WILL ANY ANIMAL BE MADE TO PERFORM ANY BEHAVIOR THAT IS NOT INTRINSICALLY NATURAL TO THE ANIMAL.

S 4. This act shall take effect one year after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such date.