

Calendar No. 118

111TH CONGRESS }
1st Session }

SENATE

{ REPORT
111-53

CAPTIVE PRIMATE SAFETY ACT

JULY 20, 2009.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany H.R. 80]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (H.R. 80) to amend the Lacey Act Amendments of 1981 to treat nonhuman primates as prohibited wildlife species under that Act, to make corrections in the provisions relating to captive wildlife offenses under that Act, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

Nonhuman primates kept as pets pose serious risks to public health and safety. These animals can be dangerous and can spread life-threatening diseases. Infant primates often seem endearing and cooperative, but they grow larger, stronger and more aggressive. They can inflict serious harm by biting and scratching. Removing their teeth, as some pet owners do, is cruel and there is no safeguard against injury.

On March 11, 2008, the Humane Society of the United States testified before the House Committee on Natural Resources that more than 100 people—including 29 children—were injured by captive primates over the last 10 years, with more incidents likely but unreported. On February 16, 2009, a much publicized chimpanzee attack of a Connecticut woman has purportedly left her blind for life and without her hands, nose, lips and eyelids. Reports document an additional 4 human injuries caused by captive primate attacks from February to May of 2009.

Many incidents occur when primates have contact with people other than their owners or trained caretakers. The probability of contact with strangers and untrained people increases during interstate transport. If a nonhuman primate becomes too difficult to handle for the pet owner, there are few options for caring for them. Nonhuman primates purchased in the interstate pet trade can ultimately face abandonment, euthanasia, or a lifetime of containment in unsatisfactory conditions.

Nonhuman primates are a possible source of infectious agents that pose a threat to humans, due to their genetic, physiologic and social similarities. The following zoonotic disease threats are known to originate in primates: Herpes B, monkeypox, Simian Immunodeficiency Virus (SIV), tuberculosis, yellow fever, and the Ebola virus. Not only do nonhuman primates pose significant risk of viral and bacterial disease transmission, but they also share fungal and parasitic diseases with humans, such as streptothricosis (a skin infection), ringworm, nematodes and arthropods (lice, mites and fleas).

Because of the serious health risk, importing nonhuman primates to the United States for the pet trade has been banned by federal regulation since 1975. In addition, many states already prohibit these animals as pets. Still, there is a vigorous trade in these animals. Estimates are that 15,000 are in private hands and, as the trade is largely unregulated, the number may be much higher. Because many of these animals move in interstate commerce, federal legislation is needed.

OBJECTIVES OF THE LEGISLATION

H.R. 80 amends the Lacey Act by adding monkeys, apes, and other nonhuman primates to the list of animals that cannot be transported across state lines for the pet trade. It has no impact on trade or transportation of animals for zoos, research facilities, or other federally licensed and regulated entities. The bill is similar to the Captive Wildlife Safety Act, which Congress passed in 2003 to ban interstate commerce in lions, tigers, and other big cats for the pet trade.

H.R. 80 also makes technical corrections to the Lacey Act Amendments of 1981 and the Captive Wildlife Safety Act (CWSA) in order to ensure that the CWSA provisions found in 16 U.S.C 3372 are fully enforceable. After the development of the regulations to implement the CWSA, the U.S. Fish and Wildlife Service (Service) became concerned that in certain cases enforcement of the CWSA might be questioned because of the provision's location within the Lacey Act Amendments of 1981. Specifically, the Lacey Act's civil and criminal wildlife trafficking prohibitions are built upon a two-part prohibition scheme. Each trafficking violation requires proof of two acts involving wildlife at issue. First, the wildlife must be taken, possessed, transported or sold by someone in violation of existing laws or treaties. Second, the wildlife must be imported, exported, transported, sold, received, acquired or purchased. Although it was not Congress' intent, the Service is concerned that the Act might be interpreted as providing that these two prohibited acts cannot be collapsed into one step or act committed by the defendant. Therefore, H.R. 80 includes technical corrections to ensure that the original intent of the legislation is achieved.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that this Act may be cited as the “Captive Primate Safety Act”.

Sec. 2. Addition of nonhuman primates to the definition of prohibited wildlife species

This section amends the Lacey Act by adding nonhuman primates to the list of animals that cannot be transported, sold, received, acquired or purchased in interstate or foreign commerce.

Sec. 3. Captive wildlife amendments

This section makes technical corrections to section 3 of the Lacey Act Amendments of 1981 (16 U.S.C. 3372, 3373(a) and 3373(d)) and clarifies application of these prohibitions to certain entities and activities.

Sec. 4. Applicability provision amendment

This section makes technical corrections to section 3 of the Captive Wildlife Safety Act (117 Stat. 2871; Public Law 108–191).

Sec. 5. Regulations

This section amends section 7(a) of the Lacey Act Amendment of 1981 (16 U.S.C. 3376(a)) to direct the Secretary of the Interior, in consultation with other relevant federal and state agencies, to issue regulations to implement the Captive Wildlife Safety Act.

Sec. 6. Authorizations of appropriations for additional law enforcement personnel

This section authorizes an appropriation to the Secretary of the Interior of \$5 million for fiscal year 2010 to hire additional law enforcement personnel for the U.S. Fish and Wildlife Service.

LEGISLATIVE HISTORY

In the 109th Congress, similar legislation, S. 1509, was introduced by Senator James Jeffords, which was reported by the Senate Environment and Public Works Committee on June 19, 2006, and passed the Senate without amendment by Unanimous Consent on July 11, 2006. In the 110th Congress, similar legislation was introduced by Senator Barbara Boxer, S. 1498, and was ordered to be reported by the Senate Environment and Public Works Committee with an amendment favorably on July 31, 2007.

On January 6, 2009, Rep. Earl Blumenauer [D–OR] introduced H.R. 80. Companion legislation was introduced by Senator Barbara Boxer on February 24, 2009. The bill passed the House of Representatives on February 24, 2009 and was received, read twice and referred to the Senate Committee on Environment and Public Works on March 13, 2009. The Committee met on May 14, 2009, and ordered H.R. 80 to be reported favorably by voice vote.

ROLLCALL VOTES

There were no roll call votes. The measure was approved by the Committee on Environment and Public Works at a business meeting, a quorum being present, by voice vote on May 14, 2009.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that H.R. 80 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the Committee finds that H.R. 80 would not impose Federal intergovernmental unfunded mandates on State, local, or tribal governments.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 80—Captive Primate Safety Act

Summary: H.R. 80 would amend the Lacey Act to prohibit interstate and foreign trade of nonhuman primates. The legislation also would authorize appropriations for the U.S. Fish and Wildlife Service (USFWS) to carry out that act. Assuming appropriation of the amounts authorized, CBO estimates that implementing H.R. 80 would cost \$20 million over the 2010–2014 period. The legislation could increase revenue collections and direct spending, but we estimate that any such changes would be insignificant.

H.R. 80 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 80 would impose a private-sector mandate, as defined in UMRA, on certain entities that handle nonhuman primates. CBO expects that the aggregate direct cost of the mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 80 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	8	3	3	3	3	20
Estimated Outlays	4	4	4	4	4	20

Basis of estimate: H.R. 80 would make it illegal to import, export, transport, sell, receive, acquire, or purchase nonhuman primates (such as monkeys and apes). Violators of the proposed prohibition on interstate and foreign trade of such animals would be subject to criminal and civil penalties.

The legislation would reauthorize appropriations of \$3 million annually through 2014 for enforcement of the Lacey Act. For 2010, an additional \$5 million would be authorized to hire new enforcement personnel. (The bill would not authorize appropriations after 2010 to fund the additional employees.)

Assuming appropriation of the authorized amounts, CBO estimates that enforcing the legislation's prohibitions on transactions involving nonhuman primates would cost \$20 million over the 2010–2014 period. For this estimate, we assume that the USFWS would spend the 2010 authorization of \$5 million evenly over the 2010–2014 period to hire and compensate new enforcement employees, resulting in a program level for captive primates of \$4 million annually. We assume that enforcing existing provisions of the Lacey Act would continue to be funded with a portion of the annual appropriations provided for USFWS law enforcement. (That funding—recently about \$60 million a year—is authorized and appropriated under other federal statutes governing USFWS enforcement activities.)

Enacting H.R. 80 could increase revenues from civil and criminal fines. Based on information obtained from the USFWS about the relatively small number of violations likely to occur, CBO estimates that any such increase would be less than \$500,000 annually. Moreover, such changes would be fully offset by increases in direct spending from the Crime Victims Fund (where criminal fines are deposited) or the resource management account of the USFWS (where civil fines are deposited and used for rewards to informers and for other program costs).

Estimated impact on state, local, and tribal governments: H.R. 80 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impacts on the private sector: H.R. 80 would impose a private-sector mandate, as defined in UMRA, by prohibiting any person from importing, exporting, transporting, selling, receiving, acquiring, or purchasing nonhuman primates in interstate or foreign commerce. Several groups would be exempted from the prohibition, including entities that are licensed or registered by a federal agency. Importers, dealers, exhibitors, transporters, and research facilities that handle nonhuman primates are already required to obtain a permit or license, or register with a federal agency. Therefore, those entities would not be affected by the provisions in the act.

H.R. 80 also would authorize persons to transport nonhuman primates in some circumstances if they comply with the requirements for transport specified in the act. CBO expects that the cost to comply with those requirements would be minimal. The costs to others who would be affected by the prohibition also would be small. Consequently, CBO expects that the total cost of complying with the mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$139 million for 2009, adjusted for inflation).

Estimate prepared by: Federal costs: Deborah Reis; Impact on state, local, and tribal governments: Melissa Merrill; Impact on the private sector: Amy Petz.

Estimated approved by: Theresa Gullo, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

* * * * *

LACEY ACT AMENDMENTS OF 1981

* * * * *

SEC. 2. [16 U.S.C. 3371] DEFINITIONS.

For purposes of this Act:

(a) The term "fish or wildlife" means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.

(b) The term "import" means to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(c) The term "Indian tribal law" means any regulation of, or other rule of conduct enforceable by, any Indian tribe, band, or group but only to the extent that the regulation or rule applies within Indian country as defined in section 1151 of title 18, United States Code.

(d) The terms "law," "treaty," "regulation," and "Indian tribal law" mean laws, treaties, regulations or Indian tribal laws which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants.

(e) The term "person" includes any individual, partnership, association, corporation, trust, or any officer, employee, agent, department, or instrumentality of the Federal Government or of any State or political subdivision thereof, or any other entity subject to the jurisdiction of the United States.

(f) The terms "plant" and "plants" mean any wild member of the plant kingdom, including roots, seeds, and other parts thereof (but excluding common food crops and cultivars) which is indigenous to any State and which is either (A) listed on an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or (B) listed pursuant to any State law that provides for the conservation of species threatened with extinction.

(g) PROHIBITED WILDLIFE SPECIES.—The term "prohibited wildlife species" means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species or any nonhuman primate.

* * * * *

SEC. 3. [16 U.S.C. 3372] PROHIBITED ACTS.

(a) OFFENSES OTHER THAN MARKING OFFENSES.—It is unlawful for any person—

(1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;

(2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—

(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law; *or*

(B) any plant—

(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—

(I) the theft of plants;

(II) the taking of plants from a park, forest reserve, or other officially protected area;

(III) the taking of plants from an officially designated area; **[or]**

* * * * *

[(C) any prohibited wildlife species (subject to subsection (e));]

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18, United States Code)—

(A) to possess any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law or Indian tribal law, *or*

(B) to possess any plant taken, possessed, transported, or sold in violation of any law or regulation of any State; *or*

(4) to attempt to commit any act described in paragraphs (1) through (3) *or subsection (e)*.

* * * * *

[(e) NONAPPLICABILITY OF PROHIBITED WILDLIFE SPECIES OFFENSE.—

[(1) IN GENERAL.—Subsection (a)(2)(C) does not apply]

(e) CAPTIVE WILDLIFE OFFENSE.—

(1) IN GENERAL.—It is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any live animal of any prohibited wildlife species.

(2) LIMITATION ON APPLICATION.—This subsection—

(A) does not apply to a person transporting a nonhuman primate to or from a veterinarian who is licensed to practice veterinary medicine within the United States, solely for the purpose of providing veterinary care to the nonhuman primate, if—

(i) the person transporting the nonhuman primate carries written documentation issued by the veterinarian, including the appointment date and location;

(ii) the nonhuman primate is transported in a secure enclosure appropriate for that species of primate;

(iii) the nonhuman primate has no contact with any other animals or members of the public, other than the veterinarian and other authorized medical personnel providing veterinary care; and

(iv) such transportation and provision of veterinary care is in accordance with all otherwise applicable State and local laws, regulations, permits, and health certificates;

(B) does not apply to a person transporting a nonhuman primate to a legally designated caregiver for the nonhuman primate as a result of the death of the preceding owner of the nonhuman primate, if—

(i) the person transporting the nonhuman primate is carrying legal documentation to support the need for transporting the nonhuman primate to the legally designated caregiver;

(ii) the nonhuman primate is transported in a secure enclosure appropriate for the species;

(iii) the nonhuman primate has no contact with any other animals or members of the public while being transported to the legally designated caregiver; and

(iv) all applicable State and local restrictions on such transport, and all applicable State and local requirements for permits or health certificates, are complied with;

(C) does not apply to a person transporting a nonhuman primate solely for the purpose of assisting an individual who is permanently disabled with a severe mobility impairment, if—

(i) the nonhuman primate is a single animal of the genus *Cebus*;

(ii) the nonhuman primate was obtained from, and trained at, a licensed nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 the nonprofit tax status of which was obtained—

(I) before July 18, 2008; and

(II) on the basis that the mission of the organization is to improve the quality of life of severely mobility-impaired individuals;

(iii) the person transporting the nonhuman primate is a specially trained employee or agent of a nonprofit organization described in clause (ii) that is transporting the nonhuman primate to or from a designated individual who is permanently disabled with a severe mobility impairment, or to or from a licensed foster care home providing specialty training of the nonhuman primate solely for purposes of assisting an individual who is permanently disabled with severe mobility impairment;

(iv) the person transporting the nonhuman primate carries documentation from the applicable nonprofit organization that includes the name of the designated individual referred to in clause (iii);

(v) the nonhuman primate is transported in a secure enclosure that is appropriate for that species;

(vi) the nonhuman primate has no contact with any animal or member of the public, other than the designated individual referred to in clause (iii); and

(vii) the transportation of the nonhuman primate is in compliance with—

(I) all applicable State and local restrictions regarding the transport; and

(II) all applicable State and local requirements regarding permits or health certificates; and

(D) does not apply; to importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of [a] any prohibited wildlife species, by a person that, under regulations prescribed under paragraph [(3)](4), is described in paragraph [(2)](3) with respect to that species.

[(2)](3) PERSONS DESCRIBED.—A person is described in this paragraph, if the person—

(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to that species;

(B) is a State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian;

(C) is an accredited wildlife sanctuary that cares for prohibited wildlife species and—

(i) is a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of such Code;

(ii) does not commercially trade in [animals listed in section 2(g)]*prohibited wildlife species*, including offspring, parts, and byproducts of such animals;

(iii) does not propagate [animals listed in section 2(g)]*prohibited wildlife species*; and

(iv) does not allow direct contact between the public and [animals]*prohibited wildlife species*; or

(D) has custody of the [animal]*prohibited wildlife species* solely for the purpose of expeditiously transporting the [animal]*prohibited wildlife species* to a person described in this paragraph with respect to the species.

[(3)](4) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in cooperation with the Director of the Animal and Plant Health Inspection Service, shall promulgate regulations describing the persons described in paragraph [(2)](3).

[(4)](5) STATE AUTHORITY.—Nothing in this subsection preempts or supersedes the authority of a State to regulate wildlife species within that State.

[(5)](6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out [subsection (a)(2)(C)]*this subsection* \$3,000,000 for each of fiscal years [2004 through 2008]*2010 through 2014*.

SEC. 4. [16 U.S.C. 3373] PENALTIES AND SANCTIONS.

(a) CIVIL PENALTIES.—

(1) Any person who engages in conduct prohibited by any provision of this Act (other than subsections (b), (d), (e), and (f) of section 3) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, and any person who knowingly violates subsection (d), (e), or (f) of section 3, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation: *Provided*, That when the violation involves fish or wildlife or plants with a market value of less than \$350, and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, or regulation, or \$10,000, whichever is less.

* * * * *

(d) CRIMINAL PENALTIES.—

(1) Any person who—

(A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this Act (other than subsections (b), (d), (e), and (f) of section 3), or

(B) violates any provision of this Act (other than subsections (b), (d), (e), and (f) of section 3) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of \$350,

knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than \$20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(2) Any person who knowingly engages in conduct prohibited by any provision of this Act (other than subsections (b), (d), (e), and (f) of section 3) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation shall be fined not more than \$10,000, or imprisoned for not more than one year, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(3) Any person who knowingly violates subsection (d), (e), or (f) of section 3—

* * * * *

SEC. 7. [16 U.S.C. 3376] ADMINISTRATION.

(a) REGULATIONS.—

(1) The Secretary, after consultation with the Secretary of the Treasury, is authorized to issue such regulations, except as provided in paragraph (2), as may be necessary to carry out the provisions of sections 3(f), 4, and 5 of this Act.

(2) The Secretaries of the Interior and Commerce shall jointly promulgate specific regulations to implement the provisions of subsection 3(b) and of this Act for the marking and labeling of containers or packages containing fish or wildlife. These regulations shall be in accordance with existing commercial practices.

(3) *The Secretary shall, in consultation with other relevant Federal and State agencies, issue regulations to implement section 3(e).*

* * * * *

Captive Wildlife Safety Act

* * * * *

[(a) IN GENERAL.—Section 3]Section 3

* * * * *

[(b) APPLICATION.—Section 3(a)(2)(C) of the Lacey Act Amendments of 1981 (as added by subsection (a)(1)(A)(iii)) shall apply beginning on the effective date of regulations promulgated under section 3(e)(3) of that Act (as added by subsection (a)(2)).]

* * * * *

