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CAPTIVE WILDLIFE SAFETY ACT OF 2003

OCTOBER 23, 2003.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 269]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 269) to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species, having considered the same, reports favorably thereon and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

In the early 1900's, Congress recognized the need to support States in protecting their game animals and birds by prohibiting the interstate shipment of wildlife killed in violation of State or territorial laws. Today this legislation is known as the Lacey Act, named for its principal sponsor, U.S. Representative John Fletcher Lacey, R-Iowa. Most significantly amended in 1981, the Lacey Act makes it unlawful to import, export, transport, sell, buy, or possess fish, wildlife, or plants taken, possessed, transported, or sold in violation of any Federal, State, foreign or Native American tribal law, treaty, or regulation. The Act covers all fish and wildlife and their parts or products and plants under the Conventions on International Trade in Endangered Species of Wild Fauna and Flora, which makes trafficking in illegally acquired wildlife a Federal crime.

However the Lacey Act does not explicitly address the problem of the increasing trade in large cat species.

The large cat species—lion, tiger, leopard, cheetah, jaguar, and cougar—are extremely effective predators, capable in the wild of taking down prey twice their own size. Severe damage to the prey's nervous system through the vertebral column, massive blood loss, and nearly instant suffocation all contribute to the prey's certain, and nearly immediate, death. They are hunters by nature and, regardless of whether they were raised in captivity; it is impossible to predict when they will revert to extinct.

Contemporary experts on large cat behavior and physiology note that humans are not part of the large cats' natural diet, largely because they have learned to treat humans as another predator and to be wary of the dangers of human activity, i.e., hunting and habitat encroachment. When large cats and humans do share territory or interact, usually because of human activity, any number of reasons, including hunger, can cause large cats to attack and inflict serious injuries. They are wild creatures that are never completely tamed, nor are they totally predictable; even if they have lived their entire lives with humans.

The ownership of large cat species has dramatically increased in popularity. It is estimated that thousands of large cat species are kept as pets in the United States. This increase is due, in part, to Internet sales and auctions. This increase in popularity has raised concerns regarding the public safety as well as the welfare of the big cats.

As the cats are often purchased when young, many owners are ill equipped for the high maintenance of the mature cats. Too often, the owners lack the resources and veterinary knowledge these grown cats entail. In the hands of untrained exotic-pet fanciers or roadside zoo owners, large cats are not only a danger to people but are victims themselves. Additionally, often the burden of care goes to already strained sanctuary and humane societies after the cats are abandoned because they are too dangerous or too expensive. Over the past 10 years, there have been thousands of incidents of injury and death documented involving many different wild animals. According to the Captive Wild Animal Protection Coalition, in the past 5 years there have been 123 incidents involving large cats—87 injuries or death to adults and children and 38 animal escapes.

Nineteen States (Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire, New Mexico, Tennessee, Utah, Vermont, and Wyoming) prohibit the private possession of large cats. Sixteen States (Arizona, Delaware, Indiana, Maine, Mississippi, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia and Montana) have a partial ban on possession of large cats or require permits. Fifteen States (Arkansas, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Nevada, North Carolina, Ohio, South Carolina, Washington, West Virginia and Wisconsin) do not address the issue of private ownership of large cats, or allow it.

OBJECTIVES OF THE LEGISLATION

The Captive Wildlife Safety Act prohibits the interstate and foreign commerce of large cats. The Act amends the Lacey Act to in-

clude under its “prohibited wildlife species” designation any live species of lion, tiger, leopard, cheetah, jaguar, or cougar, or any hybrid thereof. The Lacey Act prohibits any person to import, export, transport, sell, receive acquire, or purchase in interstate or foreign commerce any prohibited wildlife species. This legislation does not apply to any licensed, registered, and federally inspected exhibitor (zoos, circuses, etc.) or research facility. It also exempts sanctuaries, humane societies, animal shelters, or societies for the prevention of cruelty to animals that meet specified criteria.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This Section cites the Act as the “Captive Wildlife Safety Act”.

Sec. 2. Definition of Prohibited Wildlife Species

SUMMARY

This Section defines prohibited wildlife species as any live species of lion, tiger, leopard, cheetah, jaguar, or cougar, or hybrid thereof.

DISCUSSION

For purposes of this section, “prohibited wildlife species” is meant to be inclusive. The large cats prohibited include eight species in five genera: lion (*Panthera leo*), tiger (*Panthera tigris*), leopard (*Panthera pardus*, and including the snow leopard (*Uncia uncia*) and the clouded leopard (*Neofelis nebulosa*)), cheetah (*Acinonyx jubatus*), jaguar (*Panthera onca*), and cougar (*Felis concolor*). Hybrids resulting from the breeding of any combination of any of the prohibited wildlife species, as defined in this Section, are also included.

Sec. 3. Prohibited Acts

SUMMARY

This Section amends Section 3 of the Lacey Act Amendments of 1981 to include a list of individuals or organizations to be exempt from the Captive Wildlife Safety Act. The “Nonapplicability of Prohibited Wildlife Species Offense” includes any exhibitor or research facility licensed or registered and inspected by a Federal agency; sanctuaries, humane societies, animal shelters, or societies for the prevention of cruelty to animals that are a 501 (c)(3) organization, which does not commercially trade in the large cat species cited in this bill (including, but not limited to, the sale of animals, animal parts, by-products, offspring, photographic opportunities, or public events with live animals for financial profit, or any other entertainment purpose), does not propagate the animals, does not allow unescorted public visitation or direct contact between the public and wild animals, and where animals are not taken from the sanctuary or enclosures for exhibition, and which maintain exceptional standards of animal care; any State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian; any federally licensed and inspected broker or dealer when the broker or dealer is conducting any brokering or dealing activity

with a person referred to in this paragraph; and any person having custody of a wild animal solely for the purpose of expeditiously transporting the animal to a person referred to in this paragraph.

This Section also requires that, not later than 180 days after enactment, the Secretary of the Interior, in cooperation with the Director of the Animal and Plant Health Inspection Service, shall promulgate regulations describing the persons or entities that have been exempted from the Act.

Nothing in this Section of the Act preempts or supersedes the authority of a State to regulate wildlife species within that State.

The Captive Safety Wildlife Act shall apply beginning on the effective date of regulations promulgated under section 3 (e)(2) of the Lacey Act Amendments of 1981.

DISCUSSION

While this Act prohibits the interstate commerce of large cat species, it recognizes those individuals and organizations with the expertise to care for large cat species. They would not be prohibited from importing, exporting, transporting, selling, receiving, acquiring, or purchasing in interstate or foreign commerce the large cat species included in this Act.

First, those exhibitors or research facilities that are licensed or registered and inspected by Federal agencies (for those purposes contained in the licenses or registration) would be allowed to continue to possess large cat species.

Second, any sanctuary, humane society, animal shelter, or society for the prevention of cruelty to animals that is protecting, not propagating, large cat species, would be allowed to continue to do so under this Act. While not all sanctuaries, humane societies, animal shelters, or societies for the prevention of cruelty to animals are equipped to handle large cat species, many are able to care for the cats, in some instances on an interim basis while a suitable, permanent home is being sought for the cat.

Third, any State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian would be allowed to continue owning large cat species in compliance with State law.

Fourth, any federally licensed and inspected broker or dealer who is conducting business with an individual or organization that is exempt from this Act, as provided in Section 3, could continue those activities without being in violation of the Lacey Act.

Finally, any person having custody of a wild animal solely for the purpose of expeditiously transporting the animal to a person who is not prohibited from possessing an animal under this Section is allowed to transport that animal. Often, when an animal is seized and in need of a home, the organization or individual receiving the animal is not the same entity as the transporter. In that case, the transporter would not be in violation of the prohibition imposed under Section 2 of this Act, when transporting the animal.

LEGISLATIVE HISTORY

S. 269, the "Captive Safety Wildlife Act" was introduced on January 30, 2003, by Senator James M. Jeffords, I-Vt.

The Committee on Environment and Public Works met to consider S. 269 on July 30, 2003. The committee voted the bill out of committee, with an amendment, by voice vote.

REGULATORY IMPACT STATEMENT

In compliance of section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 269 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 104B4), the committee finds that S. 269 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 2, 2003.

Hon. JAMES M. INHOFE,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 269, the Captive Wildlife Safety Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

S. 269, Captive Wildlife Safety Act, as ordered reported by the Senate Committee on Environment and Public Works on July 30, 2003

Summary

S. 269 would amend current law to prohibit interstate and foreign trade of certain species of animals. CBO estimates that implementing the bill would cost about \$4 million annually, assuming appropriation of the necessary amounts. The bill could increase direct spending and revenues, but we estimate that any such changes would be minimal and largely offsetting.

S. 269 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

The bill would impose a private-sector mandate, but CBO estimates that the direct costs of the mandate would fall well below the annual threshold established in UMRA (\$117 million in 2003, adjusted annually for inflation) in any of the next 5 years.

estimated Cost to the Federal Government

The estimated budgetary impact of S. 269 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]

	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	4	4	4	4	4
Estimated Outlays	4	4	4	4	4

Basis of Estimate

S. 269 would amend current law to make it illegal to import, export, transport, sell, receive, acquire, or purchase species of lion, tiger, leopard, cheetah, jaguar, cougar, and certain hybrids. Violators of the proposed prohibition on interstate and foreign trade of such animals would be subject to criminal and civil penalties. The bill specifies certain types of individuals and institutions that would be exempted from the proposed prohibition.

Based on information from the U.S. Fish and Wildlife Service (USFWS), CBO estimates that implementing S. 269 would cost about \$4 million annually, assuming appropriation of the necessary amounts. That amount includes \$3.5 million for additional staff to conduct the kinds of inspections and investigations that the bill would require and up to \$500,000 for administrative costs to issue permits to individuals and institutions that would be exempted from the proposed prohibition.

S. 269 could increase revenues from civil and criminal fines. Based on information from the USFWS and the Animal and Plant Health Inspection Service (APHIS) about the relatively small number of cases likely to occur, however, 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

S. 269 contains no intergovernmental mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

Estimated Impact on the Private Sector

The bill would prohibit persons, with some exceptions, from importing, exporting, transporting, selling, receiving, acquiring, or purchasing in interstate or foreign commerce any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of any of those species. At the same time, S. 269 would exempt several groups from the prohibition including: exhibitors or facilities that

are licensed or registered and inspected by a Federal agency, certain brokers or dealers licensed and inspected by the Federal Government, certain persons licensed by the State, and other groups such as animal shelters, humane societies, and sanctuaries that qualify under the bill's criteria.

Under current law, the Endangered Species Act already prohibits the interstate sale and international trade of tigers, leopards, cheetahs, and jaguars. In addition, the international trade of lions and cougars is prohibited under the Convention of International Trade in Endangered Species of Wild Fauna and Flora. According to APHIS and representatives of wildlife sanctuary associations, the bill would not cause significant new activity in the demand for licenses or accreditations. Further, CBO expects that the incremental costs to the entities that would have to comply with the requirements of the bill in order to deal with wild cats would not be substantial. Thus, CBO estimates that the costs of the mandate to the private sector would fall well below the annual threshold established in UMRA (\$117 million in 2003, adjusted annually for inflation).

Previous CBO Estimate

On August 28, 2003, CBO transmitted a cost estimate for H.R. 1006, the Captive Wildlife Safety Act, as ordered reported by the House Committee on Resources on July 15, 2003. S. 269 and H.R. 1006 are substantively similar, and our cost estimates are the same.

The private-sector mandates in the two bills are similar, and CBO estimated that the total direct costs of those mandates would fall well below the annual threshold for private-sector mandates established in UMRA.

Estimate Prepared By: Federal Costs: Megan Carroll; Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the Private Sector: Cecil McPherson.

Estimate Approved By: Peter H. Fontaine, Deputy 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

[Public Law 97-79, Approved Nov. 16, 1981, 95 Stat. 1073]

AN ACT To provide for the control of illegally taken fish and wildlife.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [16 U.S.C. 3371 note] That this Act may be cited as the "Lacey Act Amendments of 1981".

* * * * *

SEC. 2. DEFINITIONS.

For purposes of this Act:

(a) * * *

* * * * *

(g) *PROHIBITED WILDLIFE SPECIES.*—The term “prohibited wildlife species” means—

(A) any live species of lion, tiger, leopard, cheetah, jaguar, or cougar; and

(B) any live hybrid of any of those species.

[(g)] (h) The term “Secretary” means, except as otherwise provided in the Act, the Secretary of the Interior or the Secretary of Commerce, as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090); except that with respect to the provisions of this Act which pertain to the importation or exportation of plants the term means the Secretary of Agriculture.

[(h)] (i) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and any other territory, commonwealth, or possession of the United States.

[(i)] (j) The term “taken” means captured, killed, or collected.

[(j)] (k) The term “transport” means to move, convey, carry, or ship by any means, or to deliver or receive for the purpose of movement, conveyance, carriage, or shipment.

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SEC. 3. 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 taken, possessed, transported, or sold in violation of any law or regulation of any State;

(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

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

(4) to attempt to commit any act described in [paragraphs (1) through (4)] paragraphs (1) through (3).

* * * * *

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

(1) *IN GENERAL.*—Subsection (a)(2)(C) does not apply to—

(A) any exhibitor or research facility licensed or registered and inspected by a Federal agency;

(B) any sanctuary, humane society, animal shelter, or society for the prevention of cruelty to animals that—

(i) (I) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of that Code; and

(ii) is an organization described in section 170(b)(1)(A)(vi) of that Code;

(ii) does not engage in commercial trade of animals listed in section 2(k) (including any sale of animals, animal parts, byproducts, or offspring, exhibition of animals for photograph opportunities, or conduct of public events with live animals for financial profit or any other entertainment purpose);

(iii) does not propagate animals in a facility of the sanctuary, humane society, animal shelter, or society for the prevention of cruelty to animals;

(iv) does not—

(I) allow unescorted public visitation or direct contact between the public and wild animals; or

(II) take animals from a sanctuary or enclosure for exhibition; and

(v) maintains exceptional standards of animal care;

(C) any State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian;

(D) any federally-licensed and inspected broker or dealer in a case in which the broker or dealer is conducting any brokering or dealing activity with a person referred to in this paragraph; or

(E) any person having custody of a wild animal solely for the purpose of expeditiously transporting the animal to a person referred to in this paragraph.

(2) *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 and in consultation with the heads of other relevant Federal agencies, shall promulgate regulations describing the persons or entities to which paragraph (1) applies.

(3) *STATE AUTHORITY.*—Nothing in this subsection preempts or supersedes the authority of a State to regulate wildlife species within that State.”

(b) *APPLICATION.*—Section 3(a)(2)(C) of the Lacey Act Amendments of 1981 (as added by subsection (a)(1)(A)(iii)) shall apply be-

ginning on the effective date of regulations promulgated under section 3(e)(2) of that Act (as added by subsection (a)(2)).

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