

Calendar No. 456

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 112-188

CAPTIVE PRIMATE SAFETY ACT

JULY 17, 2012.—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 S. 1324]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1324) to amend the Lacey Act Amendments of 1981 to prohibit the importation, exportation, transportation, and sale, receipt, acquisition, or purchase in interstate or foreign commerce, of any live animal of any prohibited wildlife species, and for other purposes, having considered the same, reports favorably thereon 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. They can inflict serious harm.

According to the Humane Society of the United States more than 230 people in 40 states have been injured by captive primates since 1990, with more incidents likely but unreported. On February 16, 2009, a much publicized chimpanzee attack of a Connecticut woman left her blind for life without her hands, nose, lips and eyelids and required a face transplant.

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 ulti-

mately 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.

S. 1324 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.

S. 1324 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. 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, there is concern 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, S. 1324 includes technical corrections to ensure that the original intent of the legislation is achieved.

OBJECTIVES OF THE LEGISLATION

S. 1324 amends 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.

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. This section limits the application of the prohibitions in the Act when persons are carrying out certain activities outlined in the Act, including—persons transporting a nonhuman primate to a veterinarian; persons transporting a nonhuman primate to a legally designated caregiver following death of the preceding owner; and persons transporting a nonhuman primate solely for the purpose of assisting an individual who is permanently disabled with a severe mobility impairment, if certain conditions are met.

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.

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.

In the 112th Congress, Senator Barbara Boxer along with Senators Vitter and Blumenthal introduced S. 1324 on July 5, 2011. The bill was received, read twice and referred to the Committee on Environment and Public Works.

On June 21, 2012, the Full Committee met to consider a number of bills including S. 1324. The bill was ordered to be reported favorably by voice vote with Senators Crapo, Inhofe and Johanns recorded as “No”.

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 June 21, 2012 with Senators Crapo, Inhofe and Johanns recorded as “No”.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that S. 1324 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 notes that the Congressional Budget Office has found, “S. 1324 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. S. 1324 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 (\$146 million in 2012, adjusted annually for inflation).”

JULY 6, 2012.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1324, the Captive Primate Safety Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1324—Captive Primate Safety Act

Summary: S. 1324 would amend the Lacey Act to prohibit interstate and foreign trade of nonhuman primates. The legislation also would authorize the appropriation of \$3 million a year over the 2013–2015 period for the U.S. Fish and Wildlife Service (USFWS) to carry out that act. Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 1324 would cost \$9 million over the 2013–2015 period. The legislation could increase revenues and associated direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such changes would be insignificant.

S. 1324 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.

S. 1324 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 (\$146 million in 2012, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1324 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—					
	2013	2014	2015	2016	2017	2013–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	3	3	3	0	0	9
Estimated Outlays	3	3	3	0	0	9

Basis of estimate: S. 1324 would make it illegal to import, export, transport, sell, receive, acquire, or purchase nonhuman primates (such as monkeys and apes). The legislation would authorize the appropriation of \$3 million annually through 2015 for certain enforcement costs under the Lacey Act. Assuming appropriation of the authorized amounts, CBO estimates that enforcing the legislation's prohibitions on transactions involving nonhuman primates would cost \$9 million over the 2013–2015 period.

Because violators of the proposed prohibition on interstate and foreign trade of such animals would be subject to criminal and civil penalties, enacting S. 1324 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: S. 1324 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: S. 1324 would impose a private-sector mandate as defined in UMRA. The bill would prohibit 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 currently 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 bill.

S. 1324 also would authorize persons to transport nonhuman primates in some circumstances if they comply with the requirements for transport specified in the bill. 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 (\$146 million in 2012, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Melissa Merrill; Impact on the Private Sector: Danielle Parnass and Amy Petz.

Estimate approved by: Peter H. Fontaine, 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) * * *

* * * * *

(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*

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stump-

age fees required for the plant by any law or regulation of any State or any foreign law; or

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants【; 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—

(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

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants; or

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

(b) MARKING OFFENSES.—It is unlawful for any person to import, export, or transport in interstate commerce any container or package containing any fish or wildlife unless the container or package has previously been plainly marked, labeled, or tagged in accordance with the regulations issued pursuant to paragraph (2) of subsection 7(a) of this Act.

(c) SALE AND PURCHASE OF GUIDING AND OUTFITTING SERVICES AND INVALID LICENSES AND PERMITS.—

(1) SALE.—It is deemed to be a sale of fish or wildlife in violation of this Act for a person for money or other consideration to offer or provide—

(A) guiding, outfitting, or other services; or

(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

(2) PURCHASE.—It is deemed to be a purchase of fish or wildlife in violation of this Act for a person to obtain for money or other consideration—

(A) guiding, outfitting, or other services; or

(B) a hunting or fishing license or permit;
for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

(d) FALSE LABELING OFFENSES.—It is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be—

(1) imported, exported, transported, sold, purchased, or received from any foreign country; or
(2) transported in interstate or foreign commerce.

[(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] *2011 through 2015*.

* * * * *

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, promulgate regulations to implement section 3(e).*

* * * * *

CAPTIVE WILDLIFE SAFETY ACT

[(a) IN GENERAL.—Section 3] *Section 3* of the Lacey Act Amendments of 1981

[(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-

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

* * * * *

○