AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 650

113TH CONGRESS
2d Session

SENATE

REPORT
113–308

CAPTIVE PRIMATE SAFETY ACT

DECEMBER 11, 2014.—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. 1463]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1463) to amend the Lacey Act Amendments of 1981 to prohibit the importation, exportation, transportation, sale, receipt, acquisition, and purchase in interstate or foreign commerce, or in a manner substantially affecting interstate or foreign commerce, of any live animal of any prohibited wildlife species, 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. They can inflict serious harm.

According to the Humane Society of the United States more than 275 people in 43 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. The attack 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.

Further, 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 having these animals as pets. Still, there is a vigorous trade in these animals. Estimates are that 15,000 nonhuman primates are in private hands. As the trade is largely unregulated, the number may actually be much higher. Because many of these animals move in interstate commerce, federal legislation is needed.

S. 1463 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. 1463 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. 1463 includes technical corrections to ensure that the original intent of the legislation is achieved.

OBJECTIVES OF THE LEGISLATION

S.1463 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. S. 1509 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. S. 1498 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, in the 111th Congress, 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 Committee met on June 21, 2012 ordered S. 1324 to be reported favorably.

On July 30, 2014, the Committee met to consider S. 1463 in the current Congress. The bill was ordered favorably reported.

ROLLCALL VOTES

There were no roll call votes. The measure was approved by the Committee on Environment and Public Works by voice vote on July 30, 2014, with Senators Boozman, Crapo, Fischer, and Inhofe 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. 1463 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. 1463 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. 1463 would impose a private-sector mandate, as defined in UMRA, by expanding the definition of a prohibited wildlife species in the Lacey Act to include nonhuman primates . . . the aggregate cost of the mandates in the bill would fall below the annual threshold established in UMRA for private-sector mandates ($152 million in 2014, adjusted annually for inflation)."

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

SEPTEMBER 3, 2014.

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. 1463, 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. 1463—Captive Primate Safety Act

S. 1463 would amend the Lacey Act to prohibit interstate and foreign trade of nonhuman primates. The Lacey Act prohibits trade in wildlife, fish, and plants that have been illegally taken, transported, or sold. Because the Lacey Act is enforced under current law and the bill makes only slight modifications to that act, CBO estimates that implementing the bill would have no significant effect on the federal budget. 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.

Because violators of the proposed prohibition on interstate and foreign trade of nonhuman primates would be subject to criminal

and civil penalties, enacting S. 1463 could increase revenues from civil and criminal fines. Based on information obtained from the U.S. Fish and Wildlife Service (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).

S. 1463 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. 1463 would impose a private-sector mandate, as defined in UMRA, by expanding the definition of a prohibited wildlife species in the Lacey Act to include nonhuman primates. Several groups are exempted from the prohibition, including entities that are licensed or registered by a federal agency. The bill would amend that exemption so that only federally licensed entities that do not allow direct contact between a member of the public and a prohibited wildlife species would be eligible. The bill also would remove state-licensed wildlife rehabilitators from the list of entities exempted from the prohibition in the Lacey Act. Finally, the bill would authorize people to transport nonhuman primates in some circumstances if they comply with the requirements for transport specified in the bill.

The bill would primarily affect dealers of nonhuman primates that sell to the public by prohibiting those entities from selling or transporting nonhuman primates across state lines. Based on information from private organizations, CBO estimates that the cost of the mandate on dealers—the net loss of income—would be small. The costs to others who would be affected by the prohibition also would be small. Consequently, the aggregate cost of the mandates in the bill would fall below the annual threshold established in UMRA for private-sector mandates ($152 million in 2014, adjusted annually for inflation).

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs) and Amy Petz (for the private-sector impact). The estimate was approved by Theresa Gullo, 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:

* * * * * * *

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) * * *

* * * * * * *

(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 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**]** *;*

[(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)*.

* * * * * * *

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

(1) IN GENERAL.—Subsection (a)(2)(C) does not apply to importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of a prohibited wildlife species, by a person that, under regulations prescribed under paragraph (3), is described in paragraph (2) with respect to that species.**]**

(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, or in a manner substantially affecting interstate or foreign commerce, any live animal of any prohibited wildlife species.*

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

(2) LIMITATION ON APPLICATION.—*Paragraph (1) does not apply to any person who—*.

(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 *and does not allow direct contact between the public and prohibited wildlife 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[.];*or*

(3) 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).

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

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (a)(2)(C)

(E) is 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 that before July 18, 2008 was exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of such Code 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;

(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.

* * * * * * *

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.

(2) Any person who violates subsection (b) or (f) of section 3, except as provided in paragraph (1), may be assessed a civil penalty by the Secretary of not more than $250.

* * * * * * *

(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—

(A) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, if the offense involves—

(i) the importation or exportation of fish or wildlife or plants; or

(ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than $350; and

* * * * * * *

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).

* * * * * * *

[PUBLIC LAW 108–191—DEC. 19, 2003, 117 STAT. 2781]

SEC 1. SHORT TITLE.

This Act may be cited as the "Captive Wildlife Safety Act".

SEC. 2. DEFINITION OF PROHIBITED WILDLIFE SPECIES.

SEC. 3. PROHIBITED ACTS.

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

○