

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1391

5 By: Representative Sabin
6

For An Act To Be Entitled

8 AN ACT TO PROHIBIT THE IMPORT, POSSESSION, SALE,
9 TRANSFER, AND BREEDING OF NONHUMAN PRIMATES, EXCEPT
10 BY QUALIFIED FACILITIES,; TO PROTECT PUBLIC SAFETY
11 AND PROHIBIT MISTREATMENT OF NONHUMAN PRIMATES; AND
12 FOR OTHER PURPOSES.
13
14

Subtitle

15 TO PROHIBIT THE IMPORT, POSSESSION, SALE,
16 TRANSFER, AND BREEDING OF NONHUMAN
17 PRIMATES, EXCEPT BY QUALIFIED FACILITIES;
18 AND TO PROTECT PUBLIC SAFETY AND PROHIBIT
19 MISTREATMENT OF NONHUMAN PRIMATES.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code Title 20, Chapter 19, is amended to add an
26 additional subchapter to read as follows:

Subchapter 6 – Nonhuman Primates

20-19-601. Definitions.

As used in this subchapter:

31 (1) "Interested person" means an individual, partnership, firm,
32 joint stock company, corporation, association, trust, estate, or other legal
33 entity that a court determines may have a pecuniary interest in a primate
34 that is the subject of the petition under § 20-19-606;

35 (2) "Law enforcement officer" means a public servant vested by
36 law with a duty to maintain public order or to make an arrest for an offense,



1 including without limitation:

2 (A) An animal control officer; and

3 (B) An Arkansas State Game and Fish Commission Wildlife
 4 Officer;

5 (3) "Person" means an individual, a partnership, a corporation,
 6 an organization, or another legal entity or an officer, a member, a
 7 shareholder, a director, an employee, an agent, or a representative of a
 8 partnership, a corporation, an organization, or another legal entity;

9 (4) "Primate" means a live individual animal of the taxonomic
 10 order Primates, excluding humans; and

11 (5) "Wildlife sanctuary" means a nonprofit entity that:

12 (A) Operates a place of refuge where abused, neglected,
 13 unwanted, impounded, abandoned, orphaned, or displaced animals are provided
 14 care;

15 (B) Does not conduct a commercial activity with respect to
 16 primates, including without limitation:

17 (i) Sale, trade, auction, lease, or loan of primates
 18 or parts of primates; or

19 (ii) Use of primates in a for-profit business or
 20 operation;

21 (C) Does not use primates for entertainment purposes or in
 22 a traveling exhibit;

23 (D) Does not breed primates; and

24 (E) Does not allow members of the public to be in
 25 proximity to primates without sufficient distance and protective barriers,
 26 including without limitation offering photographic opportunities next to a
 27 primate of any age.

28
 29 20-19-602. Prohibited activities.

30 (a) Except as provided under this subchapter, a person shall not
 31 import, possess, sell, transfer, or breed a primate.

32 (b)(1) It is unlawful for a person to allow a member of the public to
 33 come into direct contact with a primate.

34 (2) If a primate potentially exposes a human to rabies or
 35 another zoonotic disease by penetration or abrasion of the skin, the owner of
 36 the primate shall report the potential exposure to the local public health

1 office within twenty-four (24) hours.

2 (c)(1) It is unlawful for a person to tether a primate outdoors, such
3 as on a leash or chain, or to allow a primate to run at-large.

4 (2) If a primate escapes or is released, the owner of the
5 primate immediately shall contact a law enforcement officer in the county in
6 which the primate is kept and the Arkansas State Game and Fish Commission to
7 report the loss, escape, or release.

8 (3) The owner of a primate that escapes or is released is liable
9 for all expenses associated with efforts to recapture the primate.

10 (d) It is unlawful to violate the caging and care standards in this
11 subchapter or to keep a primate in a manner that threatens animal welfare or
12 public safety.

13
14 20-19-603. Exemptions.

15 Subdivisions 20-19-302(a),(c), and (d) and § 20-19-605 do not apply to:

16 (1) An institution accredited by the Association of Zoos and
17 Aquariums or a certified related facility that coordinates with an
18 Association of Zoos and Aquariums Species Survival Plan for breeding of
19 species listed as threatened or endangered under 16 U.S.C. § 1533, as it
20 existed on January 1, 2013;

21 (2) A research facility as defined in the Animal Welfare Act, 7
22 U.S.C. § 2132(e), as it existed on January 1, 2013;

23 (3) A wildlife sanctuary;

24 (4) A temporary holding facility that is an incorporated
25 nonprofit animal protection organization, such as a registered humane society
26 and shelter, that temporarily houses a primate at the written request of a
27 law enforcement officer;

28 (5) A licensed veterinarian for the purpose of providing
29 treatment to a primate;

30 (6) A law enforcement officer for purposes of enforcement or
31 investigation;

32 (7) A circus defined as an exhibitor holding a Class C license
33 under the Animal Welfare Act, 7 U.S.C. §§ 2131 et seq., as it existed on
34 January 1, 2013, that:

35 (A) Is in the state for less than ninety (90) days per
36 year;

1 (B) Regularly conducts performances featuring live,
 2 dangerous, wild animals and multiple trained human entertainers, including
 3 clowns and acrobats; and

4 (C) Does not allow a member of the public to be in
 5 proximity to a dangerous, wild animal without sufficient distance and
 6 protective barriers, including without limitation offering photographic
 7 opportunities next to a dangerous, wild animal; or

8 (8)(A) A person temporarily transporting a legally owned primate
 9 through this state if:

10 (i) The transit time is not more than forty-eight
 11 (48) hours;

12 (ii) The primate is not exhibited; and

13 (iii) The primate is maintained at all times in a
 14 species-appropriate cage or other travel container.

15 (B)(i) A transporter exempted under subdivision (8)(A) of
 16 this section shall provide notice of the transport to the Arkansas State Game
 17 and Fish Commission at least seventy-two (72) hours before entering the
 18 state, identifying the number and type of primate that will be transported.

19 (ii) The notification required under subdivision
 20 (8)(B)(i) of this section is in addition to a veterinary certificate or other
 21 permit required by state, local, or federal law.

22
 23 20-19-604. Prior possession.

24 Subdivision 20-19-602(a) does not apply to a person twenty-one (21)
 25 years of age or older who lawfully possessed a primate before the effective
 26 date of this subchapter if:

27 (1) The person maintains veterinary records, acquisition papers,
 28 or other documents or records that establish that the person possessed the
 29 primate before the effective date of this subchapter;

30 (2) The person does not acquire an additional primate after the
 31 effective date of this subchapter by purchase, donation, or breeding;

32 (3) The person has not plead guilty or nolo contendere to or
 33 been found guilty of an offense involving the abuse or neglect of an animal
 34 under a state, local, or federal law and has not within the past ten (10)
 35 years plead guilty or nolo contendere to or are found guilty of a felony;

36 (4) The person is not subject to a court order requiring the

1 forfeiture of a primate;

2 (5) The person has not had a license or permit regarding the
3 care, possession, exhibition, breeding, or sale of an animal revoked or
4 suspended by a state, local, or federal authority;

5 (6) The facility and the conditions in which each primate is
6 kept comply with this subchapter;

7 (7) The person does not bring a primate to a commercial or
8 retail establishment, except a licensed veterinarian's office;

9 (8) The person has an identification number placed in the
10 primate via subcutaneous microchip, at the expense of the owner, unless a
11 veterinarian determines the implantation would be harmful to the primate's
12 well-being;

13 (9)(A) Within sixty (60) days after the effective date of this
14 subchapter and annually thereafter, the person submits to the county sheriff
15 of the county in which the primate is kept an application for registration on
16 a form provided by the sheriff's department, and the county sheriff approves
17 the application.

18 (B) The application shall include:

19 (i) The name, address, and telephone number of the
20 applicant;

21 (ii) A description of each primate, including the
22 scientific classification, name, gender, age, color, weight, and
23 distinguishing marks;

24 (iii) A photograph of the primate;

25 (iv) The location at which the primate is kept;

26 (v) The name, address, and telephone number of the
27 person from whom the applicant obtained the primate, if known;

28 (vi) A written statement giving the name and address
29 of the veterinarian who provides veterinary care to the primate, signed by
30 the veterinarian;

31 (vii) Proof of liability insurance in an amount of
32 not less than two hundred fifty thousand dollars (\$250,000), with a
33 deductible of not more than two hundred fifty dollars (\$250), for each
34 occurrence of property damage, bodily injury, or death caused by a primate
35 possessed by the person; and

36 (viii) A registration fee of two hundred fifty

1 dollars (\$250) to be deposited into the county treasury, which the county
2 sheriff's department shall use to offset the cost of issuing registration for
3 possession of a primate and for costs involved in controlling primates
4 located within the county.

5 (C) The county sheriff's office shall notify the Arkansas
6 State Game and Fish Commission of each application approved by the county
7 sheriff's office;

8 (10) The person notifies the county sheriff's department of any
9 changes in the information provided on the application, including the death
10 of the primate;

11 (11)(A) At least seventy-two (72) hours before the sale or
12 transfer of a primate, the person notifies the county sheriff's department in
13 writing, identifying the recipient of the primate.

14 (B) Possession, sale, transfer, and transport of the
15 primate shall comply with applicable state, local, and federal laws;

16 (12) The person allows an official of the county sheriff's
17 department, an animal control officer, an Arkansas State Game and Fish
18 Commission Wildlife Officer, or a law enforcement officer of the municipality
19 or county in which the primate is kept to enter the premises to ensure
20 compliance with this subchapter; and

21 (13) The Arkansas State Game and Fish Commission is notified by
22 a county sheriff's office of each application approved by the county
23 sheriff's office.

24
25 20-19-605. Facility and care requirements.

26 (a) A person possessing a primate shall maintain the primate in an
27 enclosure that meets or exceeds the minimum standards set forth by the United
28 States Department of Agriculture under the Animal Welfare Act, 7 U.S.C. §
29 2132(e), as it existed on January 1, 2013, for each species of primate.

30 (b) A person possessing a primate shall comply with the minimum
31 standards of care set forth by the United States Department of Agriculture
32 under the Animal Welfare Act, 7 U.S.C. § 2132(e), as it existed on January 1,
33 2013.

34 (c) A person possessing a primate shall post a clearly legible sign at
35 each entrance onto the premises where a primate is kept, warning of the
36 presence of a primate.

1
2 20-19-606. Enforcement.

3 (a) Upon probable cause, a law enforcement officer may, seize a
4 primate possessed or kept in violation of this subchapter.

5 (b) A primate seized under this section is forfeited upon a judicial
6 determination that:

7 (1) The seized animal is a primate; and

8 (2) The owner of the seized primate has violated this subchapter
9 with regard to the seized primate.

10 (c)(1) A primate seized and forfeited under this section shall be
11 placed in the custody and control of a zoo accredited by the Association of
12 Zoos and Aquariums or a wildlife sanctuary.

13 (2) If law enforcement officers, after a reasonable effort, is
14 unable to find a zoo accredited by the Association of Zoos and Aquariums or a
15 wildlife sanctuary that is willing and able to take custody and control of a
16 seized and forfeited primate, the primate shall be humanely euthanized in
17 compliance with state and federal law.

18 (d) A primate seized but not forfeited under this section shall be
19 kept in the custody of an institution accredited by the Association of Zoos
20 and Aquariums, a wildlife sanctuary, or a temporary holding facility under §
21 20-19-603 until disposition of the seized primate.

22 (e)(1) A zoo, wildlife sanctuary, or temporary holding facility having
23 custody of a primate under this section may file a petition with the court
24 requesting that the person from whom the primate was seized or the owner of
25 the primate be ordered to post security.

26 (2)(A) Security ordered under subdivision (e)(1) of this section
27 shall be in an amount sufficient to secure payment of all reasonable expenses
28 expected to be incurred by the zoo, the wildlife sanctuary, or the temporary
29 holding facility in caring for and providing for the primate pending the
30 disposition of the primate.

31 (B) Reasonable expenses under subdivision (e)(2)(A) of
32 this section include without limitation, estimated medical care and boarding
33 of the primate before disposition.

34 (C) The amount of the security under subdivision (e)(2)(A)
35 of this section shall be determined by the court after taking into
36 consideration the facts and circumstances of the case, including without

1 limitation the recommendation of the organization having custody and care of
2 the seized primate and the cost of caring for the primate.

3 (D) If security under subdivision (e)(2)(A) of this
4 section has been posted, the zoo, the wildlife sanctuary, or the temporary
5 holding facility may draw from the security the actual costs incurred in
6 caring for the seized primate.

7 (3)(A) Upon receipt of a petition the court shall set a hearing
8 on the petition to be conducted within five (5) business days after the
9 petition is filed.

10 (B) The petitioner shall serve a copy of the petition on
11 the owner of the primate and the law enforcement entity that seized the
12 primate.

13 (C) The petitioner also shall serve a copy of the petition
14 on any interested person.

15 (D) The court shall set a hearing date to determine the
16 interested persons.

17 (f)(1) If the court orders the posting of security under this section,
18 the person ordered to do so shall post the security with the clerk of the
19 court within five (5) business days after the hearing.

20 (2) If the person ordered to post security does not do so, the
21 primate is forfeited by operation of law and the zoo, the wildlife sanctuary,
22 or the temporary holding facility having custody of the primate shall have
23 legal custody and control over the primate.

24 (g) Upon judicial determination on the disposition of the seized
25 primate, a person who posted the security under this section is entitled to a
26 refund of the security for any expenses not incurred by the impounding
27 organization.

28 (h)(1) A person ordered to post security under this section may
29 permanently relinquish the primate to the zoo, wildlife sanctuary, or
30 temporary holding facility having custody of the primate in lieu of posting
31 security.

32 (2) Voluntary relinquishment does not affect criminal charges
33 that may be pursued by the appropriate authorities.

34
35 20-19-607. Civil remedies.

36 (a) A person who is harmed or threatened with harm by a violation of

1 this subchapter may sue an owner of a primate to enjoin a violation of this
 2 subchapter.

3 (b) The owner of a primate is liable in a civil action for the death
 4 or injury of a human and for property damage, including without limitation
 5 the death or injury of another animal, caused by the primate.

6 (c) This subchapter does not limit the common law liability of the
 7 owner of a primate for the death or injury of a human or for property damage
 8 caused by the primate.

9
 10 20-19-608. Penalty.

11 A violation of this subchapter is a Class A misdemeanor.

12
 13 20-19-609. Additional local restrictions authorized.

14 (a) This subchapter does not prohibit a city or county from adopting
 15 or enforcing a rule or law that places further restrictions or additional
 16 requirements on the possession, sale, transfer, breeding, or exhibition of
 17 primates.

18 (b) A city, town, or county may adopt an ordinance governing primates
 19 that is more restrictive than this subchapter.

20 (c) This subchapter is supplementary to other requirements governing a
 21 primate under state and federal law.

22
 23 20-19-610. Rules.

24 (a) The Arkansas State Game and Fish Commission may adopt rules to
 25 implement this subchapter.

26 (b) A rule adopted under this subchapter shall not add to the list of
 27 exempt entities.

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