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COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

AN ACT to amend the Animal Welfare Act to restrict the use of exotic and non-domesticated animals in traveling circuses and exhibitions.

U.S. House of Representatives Bill No. 3359, the Traveling Exotic Animal Protection Act

THIS LEGISLATION IS APPROVED

1. Summary of the Proposed Law

The Animal Welfare Act (“AWA”), 7 U.S.C. section 2131 *et seq.*, requires that minimum standards be provided for the care, treatment, transportation, housing, handling, purchase and sale of certain warm-blooded animals used for research, exhibition, and commerce in order to ensure their humane treatment. U.S. House of Representatives Bill No. 3359, the Traveling Exotic Animal Protection Act (“TEAPA”), amends section 13 of AWA, 7 U.S.C. section 2143, by adding subsection i that prohibits an exhibitor¹ from allowing the use of exotic² or wild animals³ in an animal act⁴ if the animal was traveling in a mobile housing facility⁵ at any time within 15 days prior to the animal act. TEAPA

¹ “Exhibitor” is defined in the AWA regulations as “any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.” 9 C.F.R. § 1.1.

² “Exotic animal” is defined in the AWA regulations as “any animal not identified in the definition of ‘animal’ provided in this part that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad. This term specifically includes animals such as, but not limited to, lions, tigers, leopards, elephants, camels, antelope, anteaters, kangaroos, and water buffalo, and species of foreign domestic cattle, such as Ankole, Gayal, and Yak.” 9 C.F.R. § 1.1.

³ “Wild animal” is defined in the AWA regulations as “any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions. This term includes, but is not limited to, animals such as: Deer, skunk, opossum, raccoon, mink, armadillo, coyote, squirrel, fox, wolf.” 9 C.F.R. § 1.1.

⁴ “Animal act” is defined in the AWA regulations as “any performance of animals where such animals are trained to perform some behavior or action or are part of a show, performance, or exhibition.”

⁵ “Mobile housing facility” is defined in the AWA regulations as “a transporting vehicle such as a truck, trailer, or railway car, used to house animals while traveling for exhibition or public education purposes.” 9 C.F.R. § 1.1.

provides five exceptions that allow the use of wild or exotic animals (i) in animal exhibitions on-site at zoos or aquariums, (ii) by an accredited zoo or aquarium as part of an educational program for educational or outreach as long as the animal is not kept in a mobile housing facility for more than 12 hours a day, (iii) by a university, college, laboratory, or other research facility registered with the USDA pursuant to AWA, (iv) in film, television or advertising, and (v) in a rodeo. The Animal and Plant Health Inspection Service (“APHIS”) of USDA enforces AWA. Under AWA, an exhibitor found guilty of violating TEAPA is subject to license suspension or revocation and a maximum \$10,000 civil penalty for each violation and each day the violation occurs.⁶

2. TEAPA’s Factual Findings are Supported by Numerous Reports

TEAPA sets forth ten legislative findings concerning the use of wild and exotic animals by exhibitors in traveling animal acts, including findings that (a) the tricks that circus animals are forced to perform require extreme physical coercion and abuse, (b) traveling circuses are detrimental to animal physical and psychological health and welfare, (c) the public safety and the safety of workers are put at risk by the exhibition of wild and exotic animals in traveling circuses, and (d) law enforcement cannot properly monitor violations of animal-related laws due in part to the transitory nature of traveling circuses. As explained below, evidence strongly supports these findings and the necessity to protect such animals.

(a) The tricks that traveling circus animals are forced to perform require extreme physical coercion and abusive tactics.

Today, there are roughly two dozen USDA-licensed traveling circuses in the United States that exhibit animals in animal acts.⁷ The tricks that circus animals are forced to perform such as headstands and jumping through rings of fire are not behaviors animals would perform in nature. In order to make the animals perform these tricks, exhibitors use extreme physical coercion that results in trauma and physical injury and, in extreme circumstances, in death. Former circus employees report that travelling circus elephants were beaten in the face with sharp metal hooked rods known as bullhooks, whipped, and cursed at by employees in order to force them to perform stunts.⁸ Photographs taken by a former by Ringling Bros. and Barnum & Bailey (“Ringling”) employee show a baby elephant being tied up with rope and forcibly stretched and beaten by several men to make him perform tricks like headstands.⁹ An eight-month old circus

⁶ 7 U.S.C. § 2149.

⁷ Born Free USA Web site at <http://www.bornfreeusa.org/facts.php?more=1&p=425> (Last visited January 1, 2012.)

⁸ Deborah Nelson, *The Cruellest Show on Earth*, Mother Jones, 48-57 (Nov./Dec. 2011), available at <http://motherjones.com/environment/2011/10/ringling-bros-elephant-abuse>. (Last visited January 19, 2012.)

⁹ Photographs by Samuel J. Haddock, former Ringling employee, available on Youtube.com at <http://youtu.be/eDMYEHY6EIs>. (Last visited January 1, 2012.)

elephant was euthanized after fracturing its back legs after falling off of a platform.¹⁰ Similarly, video shows tigers being whipped in training.¹¹

In addition to being victims of coercive training tactics, animals used in traveling circuses suffer during long hours of transport in confined conditions that bear no resemblance to their natural habitats. Dangers inherent in transporting wild and exotic animals have existed almost as long as trains started transporting them at the end of the 19th Century. Jumbo, P.T. Barnum's most famous elephant, was killed by a train in 1885 when he was being loaded into his car.¹² Estimates suggest that many circus animals spend 11 months a year traveling,¹³ which can cause stress. In recent years, inspections and internal circus memoranda document circus animals, including large elephants, being confined to train boxcars for periods of over 24 hours, including a trip of 36 hours through the California and Arizona desert region.¹⁴ The stress and conditions of traveling can result in mental and physical harm and, occasionally, circus animals' traveling conditions are so extreme that they result in death. For example, in 2004, a lion died while traveling in a boxcar through the Mojave, allegedly due to the heat and lack of water.¹⁵ In 1997, an elephant owned by King Royal Circus died from heat prostration in a trailer in New Mexico.¹⁶

(b) Circuses are detrimental to animal physical and psychological health

Wild and exotic animals that are subjected to coercive training techniques, stressful travel conditions, and long periods of confinement are prone to serious health problems as is documented in reports by governmental agencies and animal advocacy organizations. For example, an investigation memo issued by the Division of Animal Care Services of the City of Sacramento California ("SACS") dated September 9, 2010, regarding the care and treatment of four Asian elephants by Ringling, revealed that the elephants suffered from: "(1) Short stepping; (2) Lameness; (3) Walking on the outside of their feet; (4) Shuffling; and (5) Instability in their stifles." Additionally, SACS concluded that "[t]hese four elephants show evidence of osteo-arthritis as exemplified by

¹⁰ Marc Kaufman, *USDA Investigates Death of Circus Lion*, Washington Post (Aug. 8, 2004) A3, available at <http://www.washingtonpost.com/wp-dyn/articles/A48042-2004Aug7.html>. (Last visited January 1, 2012.)

¹¹ *Id.*

¹² Bob Brooke, *Step Right Up!*, HISTORY MAGAZINE (Oct./Nov. 2011), available at <http://www.history-magazine.com/circuses.html>. (Last visited January 6, 2012.)

¹³ Born Free USA, *Ten Fast Facts About Animals in the Circus*, at <http://www.bornfreeusa.org/facts.php?more=1&p=431>. (Last visited January 6, 2012.)

¹⁴ E.g., Michael Smith to Dr. Garland regarding a 7/12/04 Ringling Brothers train arrival (7/21/04) (documenting a 36-hour train ride), available at <http://c206728.r28.cf1.rackcdn.com/Plaintiffs-Will-Call-Exhibit-48.pdf>; J. William Misiura, Ringling Director of Transportation, Blue Unit Transportation Order Memos (2000-2008), available at <http://c206728.r28.cf1.rackcdn.com/Plaintiffs-Will-Call-Exhibit-49A.pdf>. (Last visited January 1, 2012.)

¹⁵ Marc Kaufman, *USDA Investigates Death of Circus Lion*, Washington Post (Aug. 8, 2004) A3, available at <http://www.washingtonpost.com/wp-dyn/articles/A48042-2004Aug7.html>. (Last visited January 1, 2012.)

¹⁶ Donna Horowitz, *Elephant Death has Marin Wary of Fall Circus*, THE EXAMINER, (Aug. 8, 1997), available at http://articles.sfgate.com/1997-08-08/news/28576686_1. (Last visited January 6, 2012.)

gait deficits and lameness.”¹⁷ A USDA inspection report of Ringling in Chicago, dated November 18, 2010, revealed that one of the elephants “had chronic lameness since early 2009, and that the licensee has not conducted adequate diagnostics, developed an adequate treatment plan, or ensured that the elephant received prescribed treatments.”¹⁸ A complaint by In Defense of Animals dated December 13, 2010, made to the USDA alleged that an elephant exhibited by Liebling Brothers Circus had been suffering from a serious skin condition—that was untreated for over thirteen years.¹⁹

(c) The public safety and the safety of workers are put at risk by the exhibition of wild and exotic animals in traveling circuses.

Reports too numerous to list here document escapes and attacks by circus animals and zoonotic illnesses that put the public, circus employees’, and the animal’s safety at risk. For example, on April 9, 2010, an elephant in the Irem Shelter Circus killed her handler.²⁰ In February 2010, a zebra escaped from Ringling and ran down a section of Interstate 75 in Atlanta, Georgia.²¹ In 2009, an elephant escaped a circus in Oklahoma and hit an SUV.²² In 1997, a handler was killed by his tiger in a circus performance in Carrollton, Pennsylvania.²³ In 1994, an elephant crushed her trainer at a circus in Honolulu; after the attack, the elephant charged the audience and was gunned down by police.²⁴ In 1991, a leopard jumped out of a ring in Wilkesboro, North Carolina and bit a three-year old girl on the neck.²⁵ And more than a third of Ringling’s elephants have been

¹⁷ Letter from Penny E. Cistaro, City of Sacramento Animal Care Services Manager, to Feld Entertainment regarding the findings of an inspection of Ringling (Sept. 9, 2010), *available at* [http://www.mediapeta.com/peta/PDF/20100909LetterFromCityofSacramentotoFeldEntmt\(00057028\).pdf](http://www.mediapeta.com/peta/PDF/20100909LetterFromCityofSacramentotoFeldEntmt(00057028).pdf). (Last visited Jan. 14, 2012.)

¹⁸ USDA Inspection Report of Feld Entertainment, Inc. on Nov. 18, 2010, *available at* <http://tiny.cc/Ringling111810> (at Adobe page 9). (Last visited January 14, 2012.)

¹⁹ Letter from Deborah Robinson, In Defense of Animals Captive Elephant Specialist, to Elizabeth Goldentyer, USDA (Dec. 13, 2010), *available at* http://www.idausa.org/pdfs/Nosey_USDA_final_12_13_10.pdf. (Last visited January 14, 2012.)

²⁰ Sherry Long, *Circus Fatal Blamed on Wire Sparks The Worker Killed by a Shrine Circus Elephant on Friday is Identified as Andrew Anderton, of Florida*, THE TIMES-LEADER (WILKES-BARRE) (April 11, 2010), *at* http://www.timesleader.com/news/Circus_fatal_blamed_on_wire_sparks_04-11-2010.html. (Last visited January 5, 2012.)

²¹ *A real-life zebra crossing! Escaped circus animal sparks mayhem on U.S. highway*, MAIL ONLINE *at* <http://www.dailymail.co.uk/news/article-1252155/Alert-zebra-crossing-Escaped-circus-animal-sparks-mayhem-U-S-highway.html#ixzz1ijWsTXe1>

²² Murray Evans, *Elephant That Escaped and Was Hit by SUV OK*, THE SEATTLE TIMES (Nov. 6, 2009), *available at* http://seattletimes.nwsourc.com/html/nationworld/2010218625_apuscircuselephantescapes.html. (Last visited January 5, 2012.)

²³ Zoocheck, *The Bull in the China Shop: An Assessment of the Human Safety Risks Associated With Wild Performing Animals in Circuses*, *at* <http://www.zoocheck.com/Reportpdfs/BullinCinashop.pdf>.

²⁴ Rosemarie Bernardo, *Shots Killing Elephant Echo Across Decade*, HONOLULU STAR-BULLETIN (Aug. 16, 2004), *available at* <http://archives.starbulletin.com/2004/08/16/news/story2.html>. (Last visited January 6, 2012.)

²⁵ Exotic Animal Incident Report, Born Free USA, *at* http://www.bornfreeusa.org/database/exo_incident.php?id=14. (Last visited January 6, 2012.)

diagnosed with tuberculosis, a potentially deadly disease that can be transmitted to humans.²⁶

(d) Law enforcement cannot properly monitor violations of animal-related laws due in part to the transitory nature of traveling circuses.

The activities described above—striking elephants’ faces with bullhooks, depriving a lion of water, whipping tigers to force them to jump through fire—are violations of state anti-cruelty laws. New York Agriculture and Markets Law section 353 provides:

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance . . . is guilty of a Class A misdemeanor

However, because traveling circuses move from state to state, the investigative efforts of local law enforcement officers is necessarily limited by their jurisdiction. APHIS, the agency charged with enforcing AWA, is also limited in its enforcement efforts, apparently due to a lack of resources and flawed investigative protocols. According to a USDA Inspector General report:

[F]or 6 of 40 traveling exhibitors we reviewed, Animal Care inspectors could not perform timely reinspections to ensure that serious noncompliant items that were identified in previous inspections had been resolved. For example, one exhibitor continued to show its elephants on the road even though an animal care inspector had previously cited the exhibitor for the animals being too thin for travelling exhibition. This occurred because APHIS had no requirement for exhibitors to submit travel itineraries, and the Animal Care inspectors were therefore unable to determine the exhibitors’ current locations. Without reinspection, APHIS Animal Care inspectors cannot determine if the serious safety violations cited have been corrected.²⁷

3. Addressing Opposing Arguments

We approve the bill due to the overwhelming evidence that the wild and exotic animals used in circuses suffer from their training and transport. Because existing animal

²⁶ Nelson at 56, *supra* n. 8.

²⁷ Audit Report by the USDA Office of the Inspector General, *Controls Over APHIS Licensing of Animal Exhibitors*, 33601-10-Ch at 2 (June 2010), available at <http://www.usda.gov/oig/webdocs/33601-10-CH.pdf>. (Last visited January 1, 2012.)

welfare laws are so difficult to enforce and offer traveling circus animals little meaningful protection, TEAPA is necessary to ensure the welfare of such animals.

The opposition accuses the bill drafters of trying “to censor entertainment and remove the right to let the American public choose for itself whether Ringling Bros. Circus, a 141-year old American institution, can continue to operate.”²⁸ The opposition further states that TEAPA will destroy the jobs of more than 750 employees working for the circus nationwide.²⁹ It argues that existing laws sufficiently protect circus animals.

The opposition fails to address the overwhelming evidence, and common sense judgment, that wild and exotic circus animals experience profound suffering when they are forced to endure long hours of travel and coercive training techniques. The animals belong in their natural habitat, not packed into trains and 18-wheelers and, shortly thereafter, performing headstands under packed circus tents.

The opposition also exaggerates the intent and effect of TEAPA. TEAPA will not mean the end to all circus entertainment in America and a concomitant loss of hundreds of jobs. Circuses will simply have to focus on acts that do not cause harm to animals and/or give animals a longer break between traveling and performing. Cirque du Soleil is wildly popular despite the fact that it does not use animals in its circus shows. The roughly dozen animal-free circuses in the United States are a testament to the public’s desire to see circuses that do not exploit wild and exotic animals.³⁰

4. Summary

For the reasons explained above, H.R. Bill No. 3359 is approved.

²⁸ Feld Entertainment (owner of Ringling) Press Release (Nov. 1, 2011), *at* <http://www.feldentertainment.com/Press/PressRelease.aspx?id=55873>. (Last visited January 6, 2012.)

²⁹ *Id.*

³⁰ PETA, *at* <http://www.mediapeta.com/peta/pdf/animal-free-circuses-pdf>. (Last visited January 6, 2012.)