

CONTACT

LEGISLATIVE AFFAIRS DEPARTMENT

MARIA CILENTI

212.382.6655 | mcilenti@nycbar.org

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

**REPORT ON LEGISLATION BY THE
ANIMAL LAW COMMITTEE**

**A.1555
S.56**

**M. of A. Paulin
Sen. Hoylman**

AN ACT to amend the agriculture and markets law, in relation to prohibiting cruel treatment of elephants

THIS LEGISLATION IS APPROVED

SUMMARY OF THE PROPOSED LEGISLATION

Assembly Bill No. 1555 and Senate Bill No. 56 would add a new section 380 to the New York State Agriculture and Markets Law to prohibit the following acts on or to an elephant: (1) using a bullhook, ankus, or similar devices;¹ (2) using electricity or shocking devices; (3) using martingales,² a whip, or block and tackle restraints;³ (3) hitting, beating, punching, kicking or engaging in any other act which could cause pain or injury; (4) inserting any instrument into any bodily orifice; (5) using chains for the purpose of restraining or tying down except for the limited purpose of protecting public safety; (6) depriving of adequate food, water, or rest; or (7) committing any other practices that are likely to cause injury or death to an elephant. The legislation further prohibits the possession in the presence of an elephant of a device that emits a shock or electric current or similar device.

A violation of proposed law would be a Class E felony. The proposed legislation provides an exception for veterinarians performing necessary treatment on an elephant. The proposed legislation would not bar municipalities from banning the display of elephants altogether or enacting more stringent legislation.

¹ A bullhook is a heavy baton with a sharp, metal hook at one end, resembling a fireplace poker; it is also called an ankus and an elephant hook. *See Tools of the Circus Trade*, Wildlife Advocacy Project, http://www.wildlifeadvocacy.org/current/circus/tools_of_the_trade.php.

² Martingales are metal rings which are attached to the elephant's tusks from which chains are fastened and attached to chains around the front feet. This is done to restrict head movement. *See* Randi Gerzofsky, *Elephants in the Wild and in Captivity*, Humane Education Committee, <http://www.uft.org/committees/humane-education-committee/humane-science-curricula/elephants-wild-and-captivity>.

³ A block and tackle restraint is a pulley system using ropes or chains attached to an elephant's appendages to restrain the animal or force the animal into a certain position such as standing on his or her hind legs. *See* Murray E. Fowler, *Restraint and Handling of Wild and Domestic Animals*, 3rd Edition, October 2008.

THE COMMITTEE SUPPORTS THE PROPOSED LEGISLATION

As stated in previous reports, the Animal Law Committee supports legislation to ban or severely restrict the use of animals in circuses and by other exhibitors due to the animal welfare and public safety concerns associated with such activities.⁴ Short of a full ban, we support the proposed legislation as a means of prohibiting some of the most egregious abuses of elephants who are subject to inhumane handling, discipline, and training techniques by circuses and other traveling shows, according to many reports described below.

1. Bullhooks and similar implements are harmful to elephants and should be banned.

Elephants are highly sensitive animals with the capacity to feel fear, stress, and pain.⁵ Circuses and some other exhibitors exploit these characteristics to make elephants perform unnatural tricks such as headstands, standing and sitting on each other, and spinning hula hoops.⁶ Circuses commonly use the “dominance-based free contact” approach to training, which relies on negative-reinforcement techniques in order to control animals.⁷

Several animal-advocacy groups allege that elephants are routinely beaten and punished for poor performances, displays of resistance, and unauthorized socialization with other elephants.⁸ Former circus employees report that circus elephants have been beaten in the face with bullhooks, whipped, and yelled at in order to force them to perform stunts,⁹ and the U.S. Department of Agriculture (“USDA”) has charged circuses for using bullhooks abusively.¹⁰ Photographs taken by a former circus employee that were published in the *Washington Post*

⁴ See Animal Law Committee reports on the Web site of the New York City Bar Association as follows: report on NYS bill to restrict the use of exotic and wild animals in circuses and shows, <http://www2.nycbar.org/pdf/report/uploads/20072638-RestrictionsofWildAnimalsinCircuses.pdf>; report on a NYC bill prohibiting the display of wild or exotic animals for public entertainment or amusement, <http://www2.nycbar.org/pdf/report/uploads/20072396-Prohibitingdisplayofexoticanimalsforentertainment.pdf>; report on the proposed federal Traveling Exotic Animal Protection Act, <http://www2.nycbar.org/pdf/report/uploads/20072237-HRBillTravelingExoticAnimalProtectionAct.pdf>. (All Internet citations were last visited February 16, 2015).

⁵ G.A. Bradshaw, Animals and Society Institute, *Elephants in Circuses: Analysis of Practice, Policy, and Future* 11-12 (2007), <http://www.helpelephants.com/pdf/BRADSHAW%20CIRCUSES%20ASI.pdf>.

⁶ Promotional photographs and video on the Ringling Bros. and Barnum & Bailey Web site show elephants sitting on stools while human performers straddle their necks, standing in rows balancing on their hind legs with their front legs resting on other elephants, and spinning in circles, among other tricks. <http://www.ringling.com/ContentPage.aspx?id=45707§ion=45696>.

⁷ Bradshaw *supra* note 2 at 14.

⁸ E.g., Bradshaw *supra* note 2 at 14-15; PETA, *Elephants: Broken Spirits*, at <http://www.peta.org/issues/animals-in-entertainment/circuses/elephants-broken-spirits>.

⁹ Deborah Nelson, *The Cruellest Show on Earth*, MOTHER JONES 48-57 (Nov./Dec. 2011), <http://motherjones.com/environment/2011/10/ringling-bros-elephant-abuse>.

¹⁰ See APHIS USDA, Official Warning, Case No. FL 120241 (Oct. 2, 2012), [http://www.aphis.usda.gov/foia/enforcement_actions/2012/November/Animal%20Welfare%20Act%20\(AWA\)/7060s/FL120241%20%20Franzen%20Brothers%20Circus%20Inc_100212_Redacted.pdf](http://www.aphis.usda.gov/foia/enforcement_actions/2012/November/Animal%20Welfare%20Act%20(AWA)/7060s/FL120241%20%20Franzen%20Brothers%20Circus%20Inc_100212_Redacted.pdf).

show baby elephants being tied up with rope and forcibly stretched and beaten by several men to make them perform tricks.¹¹ Undercover footage of training for a circus shows elephants being hit by circus employees on sensitive parts of their bodies and faces with baseball bats, electric prods, pitchforks, and other objects.¹² These acts of brutality result in emotional trauma, physical injury and, in extreme circumstances, death.¹³ In addition, there have been numerous reports that circuses use chains to restrain elephants in a manner that can cause physical and psychological harm. For example, the USDA charged one circus for chaining an elephant so tightly that she could move only a few feet from side to side and not at all forward or backward.¹⁴

2. New York State's existing laws do not effectively protect elephants in captivity.

Asian elephants and African elephants, two species commonly used in circuses and other animal performances, are respectively designated as Endangered and Threatened under the Endangered Species Act¹⁵ and are afforded the highest level of protection from trade under the Convention on International Trade in Endangered Species of Flora and Fauna.¹⁶ Elephants are also protected by New York State's animal cruelty laws, codified in Article 26 of the Agriculture and Markets Law. New York State and the United States government have recently taken additional measures to protect elephants from the threat of extinction caused by poaching for elephant ivory.¹⁷

However, these laws have not effectively protected elephants that are used in circuses and traveling zoos from inhumane treatment and as a result elephants in captivity are commonly treated by circuses in a manner that is injurious to their health and has resulted in death in a number of instances.¹⁸ The proposed legislation would be one step closer to aligning the

¹¹ Marc Kaufman, *USDA Investigates Death of Circus Lion*, WASHINGTON POST, Aug. 8, 2004, at A3, <http://www.washingtonpost.com/wp-dyn/articles/A48042-2004Aug7.html>.

¹² Footage available on the Last Chance for Animals Web site at <http://www.lcanimal.org/index.php/campaigns/elephants/circuses>; photographs of elephants being trained are available on Youtube.com at <http://www.youtube.com/watch?v=eDMYEHY6ELs>.

¹³ See generally, Bradshaw *supra* note 2.

¹⁴ *In re Liebel*, Complaint, AWA Docket 12-103, ¶ 12 (Dec. 7, 2011), http://www.aphis.usda.gov/foia/enforcement_actions/2011/December/Animal%20Welfare%20Act/Complaints/AWA%2012-0103%20Hugo%20Tommy%20Liebel.pdf. The defendant circus entered into a consent order to settle this and other charges. *In re Liebel*, Consent Decision and Order, AWA Docket 12-103, ¶ 12 (Mar. 18, 2013),

¹⁵ 16 U.S.C. §§ 1531-1544; 50 CFR Part 17.

¹⁶ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Mar. 3, 1973, app. I, 993 U.N.T.S. 243. (The United States is a signatory to the CITES Treaty, which has 180 member states.)

¹⁷ For example, in 2014, New York enacted Environmental Conservation Law § 11-0535-a to restrict the sale of elephant ivory. The United States Fish and Wildlife Services has taken administrative actions that will result in a nearly complete ban of commercial trade in elephant ivory. U.S. Fish and Wildlife Service Web site, Ivory Ban Q & As, <http://www.fws.gov/international/travel-and-trade/ivory-ban-questions-and-answers.html>.

¹⁸ See, e.g., Ted Hornhill, *The Moment a Terrified Rampaging Elephant was Shot Almost 100 Times in the Street: PETA Releases Harrowing Video 20 Years on from Shocking Incident as They Call for an End to Keeping Animals in Captivity*, Dailymail.com (Aug. 20, 2014), <http://www.dailymail.co.uk/news/article-2729817/Peta-releases-harrowing-video-circus-elephant-shot-dead-rampage-20-years-incident-call-end-keeping-large-animals-captivity.html>; Donna Horowitz, *Elephant Death has Marin Wary of Fall Circus*, THE EXAMINER, Aug. 8, 1997, http://articles.sfgate.com/1997-08-08/news/28576686_1.

practices affecting elephants in captivity with the government's and the public's stated concern for all elephants.

3. Numerous other jurisdictions have banned the use of bullhooks.

Numerous other jurisdictions have passed laws banning the use of bullhooks. For example, in California, the cities of Los Angeles¹⁹ and Oakland²⁰ have banned the use of bullhooks and similar implements as a means of controlling elephants. In Florida, Hallandale Beach,²¹ Margate,²² Miami Beach,²³ and Pompano Beach²⁴ have banned the use of bullhooks, electric prods, chains used as tie downs and other cruel training devices used on elephants and other animals. Fulton County, Georgia banned the use of bull hooks, whips, electric prods, and similar devices likely to cause pain to animals.²⁵ Similarly, in December 2014 the Austin City Council approved a resolution “directing the City Manager to draft an ordinance prohibiting devices likely to cause physical injury, torment, or pain to animals in circuses.”²⁶

Several other jurisdictions have banned the use of all or some wild animals in circuses, including elephants, legislation that makes a ban on bullhooks unnecessary. These jurisdictions include, for example: Boulder, Colorado,²⁷ Hollywood, Florida,²⁸ Revere²⁹ and Somerville, Massachusetts,³⁰ and Richmond, Missouri.³¹ And notably several countries have banned the use

¹⁹ Los Angeles Municipal Code § 53.74 (“It shall be unlawful for any person to use a bullhook, ankus, baseball bat, axe, handle, pitchfork or other implement or tool designed to inflict pain for the purpose of training or controlling the behavior of an elephant in the City of Los Angeles.” The Code’s definition of “use” includes displaying such an implement to an elephant.)

²⁰ Oakland, California Municipal Code § 6.04.365 (banning the use of a bullhook, ankus, baseball hat, axe handle, or similar implement as a means of controlling or training an elephant).

²¹ Hallandale Beach, Florida Code § 6-66(b).

²² Margate, Florida Code § 4-25(b).

²³ Miami Beach, Florida, Code of Ordinances § 10-17(a).

²⁴ Pompano Beach, Florida Code § 90.25(C)(2) (prohibiting “[t]he use of painful techniques and devices, to the extent permitted by law, that may cause or are likely to cause, physical injury, torment or pain and suffering to animals, including but not limited to: electric prods or shocking devices; sharpened spurs or rowels; flank or bucking straps or similar devices; wire tie-downs; chains used as tie-downs; whips or bullwhips (excluding riding crops); ankuses or bullhooks or similar devices.”).

²⁵ Fulton County, Georgia Code § 34-212.

²⁶ Action taken by the City Council during the meeting of: Thursday, December 11, 2014, Action Item # 113, Official Website of the City of Austin, http://austintexas.gov/council_meetings/action_notes.cfm?mid=380.

²⁷ Boulder, Colorado Code § 6-1-4.

²⁸ City of Hollywood, Florida Code § 92.60(D)(2)(c).

²⁹ Revere, Massachusetts Code § 6.04.031.

³⁰ City of Somerville, Massachusetts Code § 3-39(a).

³¹ Richmond, Missouri Code § 210.390.

of wild animals in circuses, among them: Austria,³² Greece,³³ Israel,³⁴ the Netherlands,³⁵ and Peru.³⁶ A comprehensive list of countries that have banned the use of all or some wild animals in circuses is set forth in Appendix A.

4. Arguments proffered by proponents of the use of bullhooks are without merit.

Proponents of the use of bullhooks claim that bullhooks are not painful. For example, one circus claims that the bullhook is “not an instrument of torture. It is a lawful, humane animal husbandry tool that allows a handler to control, guide and communicate with the animal.”³⁷ Claims that bullhooks are a “humane” method of training and controlling elephants are without merit as findings by the USDA and numerous animal welfare groups demonstrate that the use of bullhooks causes physical pain and injury to elephants. For example, USDA investigations have documented performing elephants with puncture wounds inflicted by bullhooks, and testimony of trainers and zookeepers indicates that bullhooks and similar implements commonly inflict painful wounds and scars on elephants.³⁸

Proponents of the use of bullhooks also claim that elephants are a necessary element of circuses and that the prohibition of the bullhook will prevent circuses from performing, resulting in the loss of local jobs.³⁹ At least one circus has stated that it will not tour in localities where bullhooks may not be used on elephants because bullhooks are necessary.⁴⁰ This claim assumes

³² In December 2011, the Austrian Constitutional Court determined that Austria’s ban on the use of wild animals in circuses was not unconstitutional. Decision G74/11; V63/11 (Dec. 1, 2011), at http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09888799_11G00074_00.

³³ Victoria Mindova, *Greece Bans Circuses with Animals*, GR REPORTER (Greece) (Feb. 9, 2012), http://www.grreporter.info/en/greece_bans_circuses_animals/6044.

³⁴ Animal Defenders International, *Worldwide Circus Bans* (updated Jan. 15, 2015), at http://www.ad-international.org/animals_in_entertainment/go.php?id=281.

³⁵ Government of the Netherlands Web page, *Agriculture and Livestock, Animal Welfare*, at <http://www.government.nl/issues/agriculture-and-livestock/animals/animal-welfare>. (“The cabinet Rutte-Asscher has decided that circuses will be banned from using wild animals in their performances.”).

³⁶ Stacey Samuel, *Bob Barker Touts Bill to Protect Traveling Circus Animals*, CNN.com (Nov. 2, 2011), at <http://www.cnn.com/2011/11/02/politics/barker-circus-animals-bill/index.html>.

³⁷ Steven Tavares, *Proposed Bullhook Ban in Oakland Stirs Debate Over Jobs Versus Animal Cruelty*, EAST BAY EXPRESS, Dec. 4, 2014, <http://www.eastbayexpress.com/SevenDays/archives/2014/12/04/proposed-bullhook-law-in-oakland-stirs-debate-over-jobs-versus-animal-cruelty>.

³⁸ *E.g.*, Memorandum from Kristin Cox, DVM to USDA-APHIS-Animal Care (Jan. 1, 1999), <https://www.documentcloud.org/documents/262510-ewell-cox-memo.html>; Nelson, *supra*. note 6; Coleen Kinzley, *Director of Animal Care at Oakland Zoo “I was Trained to Use Bullhooks on Elephants” and Why I’m Advocating For A Bullhook Ban Now*, Oakland Zoo Blog (Nov. 26, 2014), <http://www.oaklandzoo.org/blog/tag/ban-the-bullhook>.

³⁹ Dakota Smith, *Elephant Bullhook Ban in L.A. may Keep Ringling Bros. Circus out of City*, L.A. DAILY NEWS, Oct. 23, 2013, <http://www.dailynews.com/general-news/20131023/elephant-bullhook-ban-in-la-may-keep-ringling-bros-circus-out-of-city>.

⁴⁰ Associated Press, *California: Oakland Bans Bullhooks*, N.Y. TIMES, Dec. 18, 2014, http://www.nytimes.com/2014/12/19/us/california-oakland-bans-bullhooks.html?_r=0; Times Editorial Board, *Elephant Bullhooks? Not in L.A.*, THE L.A. TIMES, Oct. 22, 2013, <http://www.latimes.com/opinion/editorials/la-ed-bullhook-elephant-proposed-ban-los-angeles-20131022-story.html#axzz2iTZl2tMW>.

that circuses cannot perform without elephants. This contention is refuted by the success of elephant-free circuses such as Cirque du Soleil and the Bindlestiff Family Circus. In addition, circuses book only a very small number of dates at available New York venues,⁴¹ and therefore have at best a minor impact on the local and State economy.

SUMMARY

For the reasons explained above, the Animal Law Committee supports the proposed legislation.

March 2015

⁴¹ In 2015, circuses that use elephants are scheduled to perform in New York for a total of 71 days. According to the official Web sites of these circuses, the Ringling Bros. and Barnum & Bailey Circus is scheduled to perform in Brooklyn from February 19 to March 1 and in Uniondale from March 4 to March 8. The UniverSoul Circus is scheduled to perform in the Bronx from March 18 to April 6, in Brooklyn from April 8 to 26, and in Queens from April 28 to May 10. The Shrine Circus is scheduled to perform in Hamburg from March 12 to 15 and in Syracuse from April 1 to 3. The Royal Hanneford Circus is scheduled to perform in White Plains, NY from February 14 to 16.

Appendix A Worldwide Circus Bans⁴²

NORTH AMERICA

USA: 49 partial or full bans on circus animals in municipalities in the US, in 22 states;
Canada: Local bans on the use of animals in circuses in 28 municipal jurisdictions.

EUROPE

Austria: Nationwide ban on the use of wild animals in circuses;
Belgium: Nationwide ban on the use of most wild animals in circuses (Parrots and camel are classified as domestic);
Bosnia and Herzegovina: Nationwide ban on all animals in circuses;
Croatia: Nationwide ban on the use of wild animals in circuses;
Czech Republic: Nationwide ban on the use of certain species in circuses;
Cyprus: Nationwide ban on all animals in circuses;
Denmark: Nationwide ban on the use of certain species in circuses;
Estonia: Nationwide ban on the use of wild-born animals in circuses;
Finland: Nationwide ban on the use of certain species in circuses;
Greece: Nationwide ban on all animals in circuses;
Hungary: Nationwide ban on the use of wild caught animals in circuses, the purchase and training of elephants and primates for circus performances and the purchase, training and use of CITES (Appendix 1) listed species in circuses;
Ireland: Local bans on the use of animals in circuses in Clonakilty, Cork, Drogheda, Fingal, Galway City, Kildare, Monaghan, Moyle, South Dublin and Waterford;
Malta: Nationwide ban on all animals for performances, exhibitions, shows or training for the circus;
The Netherlands Nationwide ban on the use and transport of animals in circuses, with exemptions for certain, mostly domestic, species;
Norway Local ban on wild or exotic animal shows in Tromsø municipality;
Poland: Nationwide ban on the use of wild-born animals in circuses;
Portugal: Nationwide ban restricting the use of great apes in circuses and the acquisition and breeding of CITES-listed species;
Slovenia: Nationwide ban on the use of wild animals in circuses;
Spain: Local bans on the use of wild animals in circuses in several towns including Barcelona;
Sweden: Nationwide ban on the use of certain species in circuses;
UK: Over 200 local authorities have bans on animal circuses (more than two thirds of these ban all performing animals, the remainder ban just wild animals). A Government commitment to ban the use of wild animals in circuses – this is yet to be enacted.

⁴² See *Worldwide circus bans*, Animal Defenders International, http://www.ad-international.org/animals_in_entertainment/go.php?id=281.

CENTRAL AND SOUTH AMERICA

Argentina: Local bans on the use of wild animals in circuses in over 20 cities including a ban in the city of Buenos Aires;

Bolivia: Nationwide ban on the use of wild and domestic animals in circuses;

Brazil: Local bans on the use of wild and domestic animals in circuses in the districts of Rio de Janeiro, São Paulo, Pernambuco, Paraíba, Rio Grande do Sul, Espiritu Santo, Mato Grosso do Sul, Alagoas and a number of bans in cities within another four Brazilian states;

Chile: Local bans on the use of wild and domestic animals in circuses in the city of Santiago;

Colombia: Nationwide ban on the use of wild animals in circuses; Local ban on the use of animals in circuses in the capital, Bogota;

Costa Rica: Nationwide ban on the use of wild animals in circuses;

Ecuador: Nationwide ban on the use of native wild animals; restrictions on the use of exotic animals; ban on the import of both native and exotic wild animals with circuses;

El Salvador: Nationwide ban on the “Income, use or abuse of wildlife species in all kinds of entertainment”;

Mexico: Nationwide ban on the use of wild animals in circuses;

Panama: Nationwide ban prohibiting “entry of wild animals for use in static and travelling circuses and similar shows”;

Paraguay: Nationwide ban on the use of wild animals in circuses;

Peru: Nationwide ban on the use of wild animals in circuses as well as a local ban on all animals in Magdalena del Mar.

OCEANIA

Australia: Local bans on the use of animals in circuses in several towns including Hobsons Bay, Surf Coast Shire, Parramata and Lismore.

ASIA

India: Nationwide ban on the use of certain species in circuses;

Israel: Nationwide ban on the use of wild animals in circuses;

Singapore: Nationwide ban on the use of wild animals in circuses;

Taiwan: Nationwide prohibition on the import or export of protected wildlife for circuses.