



**CONTACT**

POLICY DEPARTMENT

MARIA CILENTI

212.382.6655 | [mcilenti@nycbar.org](mailto:mcilenti@nycbar.org)

ELIZABETH KOCIENDA

212.382.4788 | [ekocienda@nycbar.org](mailto:ekocienda@nycbar.org)

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

**Int. No. 1233-2016**

**Council Members Mendez, Johnson, Palma, Cabrera, Dromm, Koslowitz, Williams, Rodriguez, Rosenthal, Gibson, Torres**

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting the display of wild or exotic animals for public entertainment or amusement.

**THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS**

**1. SUMMARY OF THE PROPOSED LAW**

Int. No. 1233 would add a new section 17-199.1 to the New York City Administrative Code to prohibit performances by wild or exotic animals in New York City, with certain exceptions. “Performance” means any exhibition, public showing, presentation, display, exposition, fair, act, circus, ride, trade show, petting zoo, carnival, parade, race, performance, or similar undertaking in which animals are required to perform tricks, give rides, or participate as accompaniments for the entertainment, amusement, or benefit of a live audience. “Cause a performance” means to be responsible for the management of a performance, to financially benefit as an owner or operator from a performance, or to sponsor a performance. The definition of “wild or exotic animal” includes any animals from any of the statute’s list of groupings, and excludes companion animals and farm animals, or any hybrid of any such companion animal or farm animal.

The legislation expressly would not prohibit performances that (1) occur at a non-mobile facility accredited by the association of zoos and aquariums (AZA) or the global federation of animal sanctuaries (GFAS), (2) are conducted as part of an educational or conservation program or presentation by or on behalf of an institution or facility accredited by the AZA or GFAS if the wild or exotic animal is not kept in a mobile or traveling housing facility for more than 12 hours in any 24 hour period that includes such performance, (3) occur as part of a religious ceremony or celebration which consists solely of the display of the animal, or (4) occur at a research facility registered by the USDA and approved to operate under the NYS Public Health Law section 504.

The fine for illegally exhibiting wild or exotic animals is up to \$2,500 per violation, but up to \$1,000 for a first violation and others occurring on the same day.

## 2. REASONS FOR THE LEGISLATION

As explained below, the proposed legislation is necessary to protect circus animals—many of which are endangered or threatened species<sup>1</sup>—because (a) the tricks that circus animals are forced to perform often involve physical coercion and abuse, (b) extensive travel and prolonged confinement of animals in circuses can be detrimental to their physical and psychological health and welfare, (c) the public safety and the safety of workers may be put at risk by exhibiting wild and exotic animals in circuses, and (d) current law—including the federal Animal Welfare Act (AWA),<sup>2</sup> Article 26 of the New York State’s Agriculture & Markets Law, and the City’s existing circus-permit requirement<sup>3</sup>—does not adequately protect circus animals from abuse and mistreatment.

### **(a) The tricks that circus animals are forced to perform often involve physical coercion and abusive tactics.**

The tricks that circus animals are forced to perform, such as headstands and jumping through rings of fire, often involve physical coercion and abusive tactics. In particular, these are not behaviors animals would perform in nature and, in order to make animals perform them, some exhibitors use training methods that result in trauma, physical injury and, in extreme circumstances, death.

In 2004, for instance, an eight-month-old circus elephant was euthanized after a training session in which he fractured his back legs as a result of falling off of a platform used for a circus trick.<sup>4</sup> Similarly, undercover footage of circus training has shown elephants being hit by circus employees on sensitive parts of their bodies and faces with baseball bats, electric prods,

---

<sup>1</sup> See Anastasia Niedrich, *Animals in Circuses and the Laws Governing Them*, Animal Legal & Historical Center (2010) (noting, for example, that the number of Bengal tigers in the United States in captivity exceed the number in the wild and citing two examples of deaths of such tigers due to neglect by circuses), at <http://www.animallaw.info/articles/dduscircus.htm>.

<sup>2</sup> 7 U.S.C. §§ 2131, *et seq.* The AWA 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. A federal bill to amend the AWA, known as the Traveling Exotic Animals Protection Act (“TEAPA”; H.R. 3359) would bar the exhibition of animals traveling 15 days prior to a circus exhibition. The Committee has submitted a report in support of TEAPA, which is available at <http://www2.nycbar.org/pdf/report/uploads/20072237-HRBillTravelingExoticAnimalProtectionAct.pdf>. (Unless otherwise stated, all websites listed in this testimony were last visited on October 17, 2016.) Although TEAPA would be a step in the right direction if enacted, a ban on the use of animals in circuses in New York City is the best way to ensure that no animals are harmed in circuses locally.

<sup>3</sup> Rules of the City of New York (“RCNY”), Health Code § 161.01. New York City requires a permit only for circuses not licensed under the AWA. The City’s regulation is focused on protecting humans from exposure to dangerous animals and not on the well-being of animals used to perform for entertainment and amusement. *See, e.g.*, RCNY, Health Code § 161.01(e) (permitting the Commissioner of Health to “promulgate such regulations as may be necessary to add to the list [of animals for which permits are required] any animal which the Commissioner determines is naturally inclined to do harm and capable of inflicting bodily harm upon human beings”).

<sup>4</sup> Marc Kaufman, *USDA Investigates Death of Circus Lion*, WASHINGTON POST A3, Aug. 8, 2004, at <https://web.archive.org/web/20081011105032/http://www.washingtonpost.com/wp-dyn/articles/A48042-2004Aug7.html>.

pitchforks, and other objects.<sup>5</sup> Former circus employees have also reported that circus elephants were beaten in the face with sharp metal hooked rods known as bullhooks or ankuses, whipped, and yelled at in order to force them to perform stunts.<sup>6</sup> Other photographs and videos taken by a former circus 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.<sup>7</sup>

Elephants are not the only animals to suffer. Undercover investigators have also uncovered photographed and videotaped abuse of camels, lions, dogs, monkeys, tigers, and other animals used in circuses in the United States and abroad. Occasionally, circuses even kill animals that they are unable to control. For example, in 1997, the brother of a circus animal trainer shot and killed a tiger while the tiger was in his cage after the tiger attacked the animal trainer.<sup>8</sup>

**(b) Extensive travel and prolonged confinement can be detrimental to circus animals' physical and psychological health.**

Like harmful training methods, extensive travel and prolonged confinement can also be detrimental to circus animals' physical and psychological health. A 2007 report by the Animals and Society Institute, *Elephants in Circuses: Analysis of Practice, Policy, and Future*, for instance, notes how the stress of performing in circuses and living in captivity has a profound impact on elephant health and behavior:

[E]lephants used in circuses are subjected to absolute control, social and physical deprivation, and in many cases, psychological and physical violence. ... The costs of such chronic stress and trauma are evident in elephant biology and behavior. Symptoms of elephants' inability to successfully adapt to captive conditions include decreased longevity, foot ailments, auto-immune disease, unanticipated aggression, depression, aggression toward each other, stereotypy [persistent repetition or sameness of act], and infanticide, all of which are commonly observed in elephants kept in close confinement.<sup>9</sup>

---

<sup>5</sup> Footage available on the Last Chance for Animals, Ban Circus Animals, <http://www.lcanimal.org/index.php/campaigns/elephants/circuses>.

<sup>6</sup> Deborah Nelson, *The Cruellest Show on Earth*, MOTHER JONES 56 (Nov./Dec. 2011), available at <http://motherjones.com/environment/2011/10/ringling-bros-elephant-abuse>

<sup>7</sup> Ringling Bros. -Elephant Child Abusers-Breaking A Baby Elephant, YouTube, Jan. 31, 2010, <http://www.youtube.com/watch?v=eDMYEHY6ELs>.

<sup>8</sup> Jen Girgen, *The Historical and Contemporary Prosecution and Punishment of Animals*, 9 ANIMAL LAW 97, 129 (2003), available at [https://www.animallaw.info/sites/default/files/lralvol9\\_p97.pdf](https://www.animallaw.info/sites/default/files/lralvol9_p97.pdf).

<sup>9</sup> G.A. Bradshaw, Animals and Society Institute, *Elephants in Circuses: Analysis of Practice, Policy, and Future* 14 (2007), available at [https://web.archive.org/web/20121114141006/http://kerulos.org/projects/elephant\\_ptsd\\_assets/Bradshaw\\_ASI-Elephant\\_Policy-2007.pdf](https://web.archive.org/web/20121114141006/http://kerulos.org/projects/elephant_ptsd_assets/Bradshaw_ASI-Elephant_Policy-2007.pdf); see also Letter from Joyce Poole, Director of ElephantVoices, to City of Hartford, Connecticut Joint Committee on the Environment (Feb. 27, 2009) (discussing the psychological and emotional harm to elephants caused by common circus practices), available at [https://www.elephantvoices.org/component/docman/?task=doc\\_download&gid=46&Itemid=155](https://www.elephantvoices.org/component/docman/?task=doc_download&gid=46&Itemid=155); G. Iossa, *Are Wild Animals Suited to a Travelling Circus Life*, 18 ANIMAL WELFARE 129-140 (2009), available at [http://www.dzivniekubriviba.lv/sites/default/files/are\\_wild\\_animals\\_suited\\_to\\_a\\_travelling\\_circus\\_life.pdf](http://www.dzivniekubriviba.lv/sites/default/files/are_wild_animals_suited_to_a_travelling_circus_life.pdf).

This harm has been reflected in the early deaths of many circus elephants: from 1994 to 2016, at least 65 circus elephants have died premature deaths from a variety of reasons, including from euthanization due to broken hind legs, being shot or burned to death, drowning, osteoarthritis, tuberculosis, and other reasons.<sup>10</sup>

Circus animals are particularly harmed by being forced to travel for long periods of time, living in inadequate housing, and experiencing harsh conditions on the road as they are transported to different venues. A 2010 United States Department of Agriculture (“USDA”) inspection, for instance, noted that a Ringling Brothers rail car had protruding wires that could have harmed elephants during transport.<sup>11</sup> In another case, a 54-year old circus elephant collapsed while boarding a train car shortly after a circus performance; video shot by eyewitnesses shows the elephant lying on the ground for several minutes.<sup>12</sup> Occasionally, circus animals’ traveling conditions may be so extreme that they result in death. For example, in 2004, a lion died while traveling in a boxcar<sup>13</sup> and in 1997 an elephant died from heat prostration in a trailer.<sup>14</sup> Yet despite this, one animal welfare group estimates that many circus animals spend eleven months a year traveling,<sup>15</sup> while other reports note that traveling circus elephants may be kept inside train boxcars for several days.<sup>16</sup>

In addition to requiring long periods of travel, circuses have been cited numerous times by the USDA and in some cases have been found guilty of failing to provide adequate veterinary care, causing animals discomfort, failing to provide appropriate enclosures, and failing to remove excrement from enclosures to prevent animals from contamination.<sup>17</sup> For instance, several USDA inspections documented one circus housing big cats in rusty cages with splintered floors, and for using the same containers for both food for tigers and their waste.<sup>18</sup> A 2010 USDA inspection report of a circus in Chicago revealed that one of the elephants “had chronic lameness

---

<sup>10</sup> Born Free USA, Circus Elephant Death List, <http://www.bornfreeusa.org/facts.php?more=1&p=422>.

<sup>11</sup> Philip K. Ensley, Report to Determine Physical Condition and Suitability to Perform Following Inspection of Ringling Brother and Barnum & Bailey Circus (RBBBC) Elephants at the Los Angeles Staples Center the Week of July 11-17 2012 (July 29, 2012), available at <http://www.mediapeta.com/peta/PDF/philip-ensley-report.pdf>.

<sup>12</sup> Lucy Blodgett, *Elephant Abuse: Ringling Circus Cited After Elephant Collapses*, HUFFINGTON POST, Aug. 10, 2011, [http://www.huffingtonpost.com/2011/08/10/elephant-abuse-adi-protest\\_n\\_923882.html](http://www.huffingtonpost.com/2011/08/10/elephant-abuse-adi-protest_n_923882.html).

<sup>13</sup> Kaufman, *USDA Investigates Death of Circus Lion*, WASHINGTON POST A3.

<sup>14</sup> 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](http://articles.sfgate.com/1997-08-08/news/28576686_1).

<sup>15</sup> Born Free USA, *Ten Fast Facts About Animals in the Circus*, <https://web.archive.org/web/20130131100418/http://www.bornfreeusa.org/facts.php?p=431&more=1>.

<sup>16</sup> See, e.g., Melissa Cronin, *Ringling Bros. Allegedly Kept Elephants Locked In Boxcars For 4 Days Straight*, The Dodo, Jan. 2, 2015, <https://www.thedodo.com/elephants-ringling-circus-peta-910283393.html>.

<sup>17</sup> See, e.g., *In re Cuneo, Jr.*, AWA Docket 03-0023 (Consent Decision and Order as to Respondents John N. Caudill, III, John N. Caudill, Jr., and Walker Brother’s Circus Inc., Mar. 29, 2004), available at [https://web.archive.org/web/20151008220439/http://www.dm.usda.gov/oaljdecisions/AWA\\_03\\_0023\\_032904.pdf](https://web.archive.org/web/20151008220439/http://www.dm.usda.gov/oaljdecisions/AWA_03_0023_032904.pdf); *In re Julius Von Uhl d/b/a Circus Winterquarters*, AWA Docket 07-0177 (Order, Dec. 16, 2008), available at [http://www.oaljdecisions.dm.usda.gov/sites/default/files/100126AWA\\_07-0177\\_O.pdf](http://www.oaljdecisions.dm.usda.gov/sites/default/files/100126AWA_07-0177_O.pdf). PETA’s website lists hundreds of citations against circuses for violating the Animal Welfare Act. See PETA, *Citations and Other Problems*, <http://www.peta.org/issues/animals-in-entertainment/circuses-USDA-citations-problems.aspx>.

<sup>18</sup> Miguel Llanos, *Ringling Circus Paying Big Fine Over Animal Case*, NBC News, Nov. 28, 2011, available at <http://usnews.nbcnews.com/news/2011/11/28/9072340-ringling-circus-paying-big-fine-over-animal-case?lite>.

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.”<sup>19</sup> Similarly, an investigative memorandum issued by the Division of Animal Care Services of the City of Sacramento California (“SACS”), regarding the care and treatment of four Asian elephants by a circus, 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.”<sup>20</sup> This is significant because arthritis and foot problems are two of the leading reasons why elephants are euthanized.<sup>21</sup> SACS ultimately concluded that “[t]hese four elephants show evidence of osteo-arthritis as exemplified by gait deficits and lameness.”<sup>22</sup>

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

In addition to protecting animals, the proposed legislation would also protect people, because public safety and the safety of workers are put at risk by exhibiting wild and exotic animals in traveling circuses. In New York City, for instance, a 450-pound tiger escaped from the New Cole Bros. Circus while being transferred from one cage to another near the Forest Park bandshell in Queens, injuring drivers who had encountered the animal.<sup>23</sup> Other examples abound. In November 2012, for instance, a camel escaped from a circus in Glendale, California and ran down a busy four-lane boulevard.<sup>24</sup> In April 2010, an elephant in a circus killed her handler.<sup>25</sup> In February 2010, a zebra escaped from a circus and ran down a section of Interstate 75 in Atlanta, Georgia, and was euthanized due to injuries sustained during the escape.<sup>26</sup> In 2009, an elephant escaped a circus in Oklahoma and was hit by an SUV.<sup>27</sup> And reportedly more

---

<sup>19</sup> USDA, Inspection Report: Feld Entertainment, Inc., Nov. 18, 2010, [https://www.aphis.usda.gov/foia/ringling\\_brothers/RB\\_Nov\\_18\\_2011.pdf](https://www.aphis.usda.gov/foia/ringling_brothers/RB_Nov_18_2011.pdf).

<sup>20</sup> Letter from Penny E. Cistaro, City of Sacramento Animal Care Services Manager, to Feld Entertainment regarding the findings of an inspection of Ringling Bros. and Barnum & Bailey (Sept. 9, 2010), *available at* [http://www.mediapeta.com/peta/PDF/20100909LetterFromCityofSacramentotoFeldEntmt\(00057028\).pdf](http://www.mediapeta.com/peta/PDF/20100909LetterFromCityofSacramentotoFeldEntmt(00057028).pdf).

<sup>21</sup> Murray E. Fowler, *An Overview of Foot Conditions in Asian and African Elephants*, THE ELEPHANT’S FOOT: PREVENTION AND CARE OF FOOT CONDITIONS IN CAPTIVE ASIAN ELEPHANTS 5 (2001).

<sup>22</sup> *Id.*

<sup>23</sup> Janon Fisher, *Tiger, Briefly on the Loose, Causes Collision*, N.Y. TIMES, Aug. 1, 2004, *available at* <http://www.nytimes.com/2004/08/01/nyregion/tiger-briefly-on-the-loose-causes-collision.html>; Jen Chung, *Escaped Circus Tiger Lawsuit Settlement*, Gothamist, Jan. 7, 2009, [http://gothamist.com/2009/01/07/escaped\\_circus\\_tiger\\_lawsuit\\_settle.php](http://gothamist.com/2009/01/07/escaped_circus_tiger_lawsuit_settle.php).

<sup>24</sup> *Camel Escapes Circus, Runs Amok Through Streets of Glendale, Calif.*, HUFFINGTON POST, Nov. 24, 2012, [https://web.archive.org/web/20121128101642/http://www.huffingtonpost.com/2012/11/24/camel-escapes-circus-runs\\_n\\_2184860.html](https://web.archive.org/web/20121128101642/http://www.huffingtonpost.com/2012/11/24/camel-escapes-circus-runs_n_2184860.html).

<sup>25</sup> Sherry Long, *Circus Fatal Blamed on Wire Sparks*, THE TIMES LEADER (WILKES-BARRE), Apr. 11, 2010, *available at* [http://archives.timesleader.com/2010\\_16/2010\\_04\\_11\\_Circus\\_fatal\\_blamed\\_on\\_wire\\_sparks\\_news.html](http://archives.timesleader.com/2010_16/2010_04_11_Circus_fatal_blamed_on_wire_sparks_news.html).

<sup>26</sup> Lindsay Barnett, *Lima, Zebra that Escaped Ringling Bros. Circus in Atlanta, is Euthanized*, L.A. TIMES, Mar. 19, 2010, *available at* <http://latimesblogs.latimes.com/unleashed/2010/03/lima-zebra-ringling-bros-circus-escape-euthanized.html>.

<sup>27</sup> Murray Evans, *Elephant That Escaped and Was Hit by SUV OK*, THE SEATTLE TIMES, Nov. 6, 2009, *available at* <http://www.seattletimes.com/nation-world/circus-elephant-that-escaped-and-was-hit-by-suv-ok/>.



than a third of one circus's elephants have been diagnosed with tuberculosis,<sup>28</sup> a potentially deadly disease that can be transmitted to humans.<sup>29</sup>

**(d) Current law does not adequately protect circus animals from abuse and mistreatment.**

More generally, the proposed legislation is necessary because current law does not adequately protect circus animals from abuse and mistreatment. For instance, state law bars a person from beating an animal or denying an animal food or water or “in any way further[ing] any act of cruelty to any animal,” and offers other protections.<sup>30</sup> But because the actual training of circus animals usually occurs in jurisdictions outside of New York, it is not possible for New York City law enforcement to protect animals from abusive training techniques before they arrive in New York City. Further, local law enforcement often lacks the training and expertise necessary to determine whether an exotic or wild circus animal's welfare is compromised.<sup>31</sup> Effective enforcement may be further hampered by the fact that the NYC ASPCA—which for 147 years has served as the primary law enforcement agency for animal abuse and neglect in New York City and whose agents should have had significant expertise with wild and exotic animals—relinquished its law enforcement duties as of January 2014 to the NYPD, which has historically had less experience in this area.<sup>32</sup>

At the federal level, APHIS (Animal and Plant Health Inspection Service)—the section of the USDA charged with enforcing the AWA—is likewise limited in its enforcement efforts. 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. ... Without reinspection,

---

<sup>28</sup> Nelson, *The Cruellest Show on Earth*, MOTHER JONES 56.

<sup>29</sup> Rendi Murphee, *Elephant-to-Human Transmission of Tuberculosis*, 17 EMERGING INFECTIOUS DISEASES 366-71 (Mar. 2011), available at [http://wwwnc.cdc.gov/eid/article/17/3/10-1668\\_article](http://wwwnc.cdc.gov/eid/article/17/3/10-1668_article). As one microbiologist explained, the United States is currently in the midst of an elephant tuberculosis epidemic. Nathalia Holt, *The Infected Elephant in the Room*, SLATE, March 24, 2015, [http://www.slate.com/blogs/wild\\_things/2015/03/24/elephant\\_tuberculosis\\_epidemic\\_zoo\\_and\\_circus\\_animals\\_passing\\_tb\\_to\\_humans.html](http://www.slate.com/blogs/wild_things/2015/03/24/elephant_tuberculosis_epidemic_zoo_and_circus_animals_passing_tb_to_humans.html).

<sup>30</sup> N.Y. AGRIC. & MKTS. L. § 353.

<sup>31</sup> Cf. *City of Chicago Report Of The Inspector General's Office: A Review of the City's Animal Exhibition License and Permit Procedures* 2 (Oct. 2012) (stating that City of Chicago Animal Care and Control “inspectors may lack the necessary training to identify issues specific to large or exotic animals” that are displayed in circuses), at <http://chicagoinspectorgeneral.org/wp-content/uploads/2012/10/Animal-Exhibitors-Public-Report.pdf>.

<sup>32</sup> David B. Caruso, *NYPD Takes Over After ASPCA Closes Enforcement Unit*, *PoliceOne.com*, Jan. 7, 2014, <https://www.policeone.com/police-jobs-and-careers/articles/6719145-NYPD-takes-over-after-ASPCA-closes-enforcement-unit/>.

APHIS Animal Care inspectors cannot determine if the serious safety violations cited have been corrected.<sup>33</sup>

Notably, at least one federal court has characterized the USDA's review of applications for license renewals as "an automatic, 'rubberstamping' type transaction."<sup>34</sup>

Notably, while one circus, Ringling Bros., has announced that it would cease using elephants in its performances in 2016,<sup>35</sup> many other animal-based circuses have not followed suit. UniverSoul Circus, for instance, continues to use elephants in its New York City performances. It does not possess a USDA exhibitor license but leases its animal acts from outside exhibitors, some of which have been cited repeatedly by the USDA for failing to meet the minimum standards required by the AWA.<sup>36</sup> Another circus, Circo Hermanos Vazquez, has similarly been cited by the USDA for AWA violations.<sup>37</sup>

### 3. OTHER JURISDICTIONS

Several municipalities in the United States already ban the use of all or some animals in circuses or implements used to train and control circus animals. The following is a partial list of some municipal laws banning the use of certain animals in circuses:<sup>38</sup>

a. *Ban on circuses:*

i. Stamford, Connecticut prohibits circuses.<sup>39</sup>

---

<sup>33</sup> USDA, Office of the Inspector General, *Controls Over APHIS Licensing of Animal Exhibitors* (June 2010), available at <http://www.usda.gov/oig/webdocs/33601-10-CH.pdf>.

<sup>34</sup> *Ray v. Vilsack*, No. 5:12-CV-212-BO (E.D.N.C.) (Oct 7, 2013 Order Granting Plaintiffs' Motion to Compel Production of the Full Administrative Record and Plaintiffs' Motion for Leave to File Supplemental Complaint. The case was brought under the Administrative Procedure Act by plaintiffs challenging the defendants' decisions to renew the AWA license of roadside menagerie and animal dealer Jambbas Ranch. Plaintiffs argued that the renewal contravened the AWA's statutory mandate requiring facilities to comply with USDA standards under the AWA and reflected a pattern, practice, and policy of rubberstamping AWA license renewal applications without requiring a demonstration of compliance.)

<sup>35</sup> Christine Hauser, *Ringling Bros. Elephants Are Taking Early Retirement to Florida*, N.Y. TIMES, Jan 11, 2016, available at [http://www.nytimes.com/2016/01/12/us/ringling-circus-elephants-take-early-retirement-to-florida.html?\\_r=0](http://www.nytimes.com/2016/01/12/us/ringling-circus-elephants-take-early-retirement-to-florida.html?_r=0).

<sup>36</sup> PETA, "Fact Sheet," <http://www.mediapeta.com/peta/pdf/Universoul-pdf.pdf>. The USDA has cited UniverSoul exhibitors for failure to meet minimum federal standards under the AWA for the care of animals, having been cited for failure to maintain transport vehicles properly, failure to provide adequate veterinary care, adequate space, and other violations.

<sup>37</sup> PETA, "Fact Sheet," <http://www.mediapeta.com/peta/PDF/Circo-Hermanos-Vazquez-Factsheet.pdf>. The USDA has cited Circo Hermanos Vazquez numerous times for failing to provide adequate veterinary care, failing to produce complete documented programs of veterinary care, and failing to meet minimum space requirements, which, in one incident, resulted in the death of a tiger.

<sup>38</sup> More extensive lists of laws concerning restrictions on animals in circuses are available on the websites for Animal Defenders International and Born Free USA. See Animal Defenders International, *Worldwide Circus Bans* (March 11, 2016), [http://www.ad-international.org/animals\\_in\\_entertainment/go.php?id=281&ssi=10](http://www.ad-international.org/animals_in_entertainment/go.php?id=281&ssi=10); Born Free USA, *Local Restrictions Governing Traveling Shows and Circuses in the U.S. and Canada* [http://www.bornfreeusa.org/b4a3\\_circuses\\_and\\_shows.php](http://www.bornfreeusa.org/b4a3_circuses_and_shows.php).

<sup>39</sup> Stamford, Connecticut Code § 74-6 ("No carnivals, circuses or wild west shows shall be conducted, operated or performed within the city.").

- ii. San Francisco, California bans all performances by wild and exotic animals in the city, including motion pictures.<sup>40</sup>
- b. *Ban on the use of certain animals in circuses:*
  - i. Boulder, Colorado prohibits the display of certain animals in circuses, including elephants and tigers.<sup>41</sup>
  - ii. Hollywood, Florida prohibits the display of exotic, threatened or endangered species as defined by the United States Department of the Interior, which includes elephants and tigers.<sup>42</sup>
  - iii. Revere, Massachusetts bans the exhibition of nondomesticated animals for entertainment or amusement purposes.<sup>43</sup>
  - iv. Richmond, Missouri bans the display of wild or exotic animals in circuses.<sup>44</sup>
  - v. Somerville, Massachusetts bans the display of non-domestic animals in circuses.<sup>45</sup>
- c. *Ban on animals engaged in unnatural behavior:* St. John, Indiana bars circuses from displaying wild animals engaging in “unnatural behavior.”<sup>46</sup>
- d. *Ban on implements commonly used to train circus animals:* Margate, Florida and Fulton County, Georgia ban the use of bull hooks, whips, electric prods, and similar devices likely to cause pain to animals.<sup>47</sup> Similarly, Los Angeles banned the use of bull hooks and similar devices designed to inflict pain for the purpose of training and controlling the behavior of elephants.<sup>48</sup>
- e. *Ban on circuses on public property:* Greenburgh, New York prohibits the display of wild or exotic animals on any property in which the town has a property interest.<sup>49</sup>

---

<sup>40</sup> City of San Francisco, Ordinance No. 55-15, April 2, 2015, available at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances15/o0055-15.pdf>. Violators are guilty of a misdemeanor. See also John Wildermuth, *S.F. Board Votes to Ban Wild, Exotic Animal Performances in City*, SFGATE, Apr. 14, 2015, <http://www.sfgate.com/bayarea/article/SF-Supervisors-vote-to-ban-animal-performances-in-6200216.php>.

<sup>41</sup> Boulder, Colorado Code § 6-1-4.

<sup>42</sup> City of Hollywood, Florida Code § 92.60(C); U.S. Fish & Wildlife Service, Listed Animals, [http://ecos.fws.gov/tess\\_public/pub/listedAnimals.jsp](http://ecos.fws.gov/tess_public/pub/listedAnimals.jsp).

<sup>43</sup> Revere, Massachusetts Code § 6.04.031.

<sup>44</sup> Richmond, Missouri Code § 210.390.

<sup>45</sup> City of Somerville, Massachusetts Code § 3-39(a).

<sup>46</sup> St. John, Indiana Code § 3-11(a) provides in part:

No person may sponsor, promote or train a wild, domestic, or exotic animal to participate in, contribute to the involvement of an animal in or attend as a spectator any activity or event in which any wild animal engages in unnatural behavior or is wrestled, fought, mentally or physically harassed or displayed in such a way that the animal is abused or stressed mentally or physically or is induced or encouraged to perform through the use of chemical, mechanical, electrical or manual devices in a manner that will cause or is likely to cause physical injury or suffering.

<sup>47</sup> Margate, Florida Code § 6-25(b); Fulton County, Georgia Code § 34-212.

<sup>48</sup> City of Los Angeles, Ordinance No. 183060 (codified at City of Los Angeles Municipal Code § 53.74).

<sup>49</sup> Greenburgh, New York Code § 345-2(A).



Pasadena, California bans the display of wild or exotic animals on public property in the city.<sup>50</sup>

Several countries have also banned the use of animals in circuses, with Iran and Scotland having instituted their bans in 2016. The following is a partial list of some of the countries that have such bans:

- a. Austria bans the use of wild animals in circuses.<sup>51</sup>
- b. Bolivia prohibits the use of both wild and domestic animals in circuses.<sup>52</sup>
- c. China bans the use of circus acts in zoos.<sup>53</sup>
- d. Greece bans the use of all animals in circuses.<sup>54</sup>
- e. India bans lions, tigers, monkeys, panthers and bears from performing in circuses.<sup>55</sup>
- f. Israel bans the use of wild animals in circuses.<sup>56</sup>
- g. Iran bans issuance of permits allowing the use of wildlife in circuses.<sup>57</sup>
- h. Mexico bans on the use of wild animals in circuses.<sup>58</sup>
- i. The Netherlands bans the use of wild animals in circuses.<sup>59</sup>
- j. Paraguay bans the use of wild animals in circuses.<sup>60</sup>
- k. Peru bans the use of wild animals in circuses.<sup>61</sup>
- l. Scotland bans wild animals in traveling circuses.<sup>62</sup>

---

<sup>50</sup> Pasadena, California Code § 6.40.040.

<sup>51</sup> In December 2011, the Austrian Constitutional Court reportedly determined that Austria's ban on the use of wild animals in circuses was not unconstitutional. See Stop Circus Suffering, No Legal Obstacles to UK Ban on Wild Animals in Circuses, <http://www.stopcircussuffering.com/news/europe/legal-obstacles-uk-ban-wild-animals-circuses/>.

<sup>52</sup> Bolivia Law 4040; Jean Friedman-Rudovsky, *Bolivia's Freed Circus Animals Need Homes*, TIME, Oct. 27, 2009, <http://www.time.com/time/world/article/0,8599,1932343,00.html>.

<sup>53</sup> See Malcolm Moore, *China Bans Animal Circuses*, THE TELEGRAPH, Jan. 18, 2011, <http://www.telegraph.co.uk/news/worldnews/asia/china/8266563/China-bans-animal-circuses.html>.

<sup>54</sup> See Victoria Mindova, *Greece Bans Circuses with Animals*, GR REPORTER, Feb. 9, 2012, at [http://www.grreporter.info/en/greece\\_bans\\_circuses\\_animals/6044](http://www.grreporter.info/en/greece_bans_circuses_animals/6044).

<sup>55</sup> See Animal Defenders International, *Help for Indian Circus Rescue* (Jan. 5, 2006), [http://www.ad-international.org/animals\\_in\\_entertainment/go.php?id=212&ssi=10](http://www.ad-international.org/animals_in_entertainment/go.php?id=212&ssi=10).

<sup>56</sup> See Animal Defenders International, *Worldwide Circus Bans* (last updated Mar. 11, 2016), [http://www.ad-international.org/animals\\_in\\_entertainment/go.php?id=281](http://www.ad-international.org/animals_in_entertainment/go.php?id=281).

<sup>57</sup> See Animal Defenders International, *Iran Says No to Wild Animal Circuses!*, March 29, 2016, [http://www.ad-international.org/animals\\_in\\_entertainment/go.php?id=4155&ssi=10](http://www.ad-international.org/animals_in_entertainment/go.php?id=4155&ssi=10).

<sup>58</sup> See Animal Defenders International, *Worldwide Circus Bans*.

<sup>59</sup> See Government of the Netherlands, *Animal Welfare, Welfare of Circus Animals*, <http://www.government.nl/issues/agriculture-and-livestock/animals/animal-welfare> ("It is now illegal for circuses to include wild animals in their shows or to transport them for this purpose.").

<sup>60</sup> See Animal Equality, *Paraguay Bans Wild Animals in Circuses* (June 12, 2012), <http://www.iol.co.za/news/world/paraguay-bans-wild-animals-in-circuses-1314685> (discussing Resolución N°2002/12).

<sup>61</sup> See Stacey Samuel, *Bob Barker Touts Bill to Protect Traveling Circus Animals*, CNN.com, Nov. 2, 2011, <http://www.cnn.com/2011/11/02/politics/barker-circus-animals-bill/index.html>.

<sup>62</sup> See Scott MacNab, *Scotland Leads the Way with Wild Animal Ban at Circuses*, THE SCOTSMAN, June 10, 2016, <http://www.scotsman.com/news/politics/scotland-leads-the-way-with-wild-animal-ban-at-circuses-1-4151878>.

m. Singapore bans travelling circuses that display wild animals.<sup>63</sup>

#### 4. OPPOSITION

In response to similar legislation designed to protect wild and exotic animals, some animal exhibitors have argued, among other things, that circus workers will lose jobs if animals may no longer perform; that the public will lose an opportunity to view entertainment; and that other businesses will decline due to the lack of circuses.<sup>64</sup>

The opposition exaggerates the intent and effect of a ban on the use of wild and exotic animals in circuses. Such a ban does not mean the end to all circus entertainment in New York City or a loss of hundreds of jobs. Rather, circuses will simply have to focus on acts that do not use animals. Cirque du Soleil, for instance, is popular despite the fact that it does not use animals in its circus shows. Other circuses based in New York City, like the Bindlestiff Family Cirkus and the Russian American Kids Circus, likewise do not use animals. The roughly two 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.<sup>65</sup>

There is also evidence that there may be little, if any, actual financial harm from prohibiting circuses. In particular, the Los Angeles City Council's Committee on Personnel and Animal Welfare concluded that the City's circus permittees generated only \$15,000 to \$20,000 in direct and indirect tax revenue in 2011 and suggested that such revenues may not be impacted at all if the circuses choose to perform without animals in the show.<sup>66</sup> Indeed, the experience in Los Angeles—which has banned the use of bull hooks and similar devices<sup>67</sup>—potentially shows that animal exhibitors have adapted to the new animal-related prohibitions.<sup>68</sup>

---

<sup>63</sup> See Agri-Food & Veterinary Authority of Singapore (Dec. 29, 2000), <https://web.archive.org/web/20090926235239/http://www.ava.gov.sg/NewsEvents/PressReleases/2000/Ban+on+Performing+Wild+Animals+in+Travelling+Circuses.htm>.

<sup>64</sup> See, e.g., Feld Entertainment, "Moran Sponsors Discrimination Bill Against Circus to Censor American Institution," Nov. 2, 2011, <http://www.feldentertainment.com/Press/PressRelease.aspx?id=55873>.

<sup>65</sup> Born Free USA, Get the Facts: Animal-Free Circuses, <http://www.bornfreeusa.org/facts.php?more=1&p=419>

<sup>66</sup> Brenda F. Barnette, General Manager, City of Los Angeles, Report to the Board of Animal Services Commissioners, Oct. 18, 2012, available at [http://clkrep.lacity.org/online/docs/2012/12-0186\\_RPT\\_BAS\\_11-01-12.pdf](http://clkrep.lacity.org/online/docs/2012/12-0186_RPT_BAS_11-01-12.pdf).

<sup>67</sup> City of Los Angeles, Ordinance No. 183060 (codified at City of Los Angeles Municipal Code § 53.74).

<sup>68</sup> Testimony of Catherine Doyle, Director of Science, Research and Advocacy, Performing Animal Welfare Society, before NYC Council, Committee on Health, Hearing October 20, 2016. In examining the economic impact of similar bills, one economist has compared animal-based circuses to performing events in arenas and sports stadiums, noting that "[e]conomists roundly agree that these venues do not generate new economic spending in a region—they only redistribute the discretionary spending of families to different owners of capital." Jennifer Fearing, *The Show Will Still Go On: An Economic Analysis of Restricting Traveling Shows Utilizing Elephants*, Humane Society of the United States, Feb. 10, 2014 at 3 (citing, among other things, Roger Noll and Andrew Zimbalist, *Are New Stadiums Worth the Cost?*, 15 THE BROOKINGS REVIEW 35-39 (1997)).

## 5. RECOMMENDATIONS

The Animal Law Committee supports this legislation. However, we offer several recommendations in order to clarify drafting ambiguities and/or to improve the effectiveness of the bill:

1. The bill lists various superorders/orders/classes/families/clades of animals and then follows this with some, but not all, of the animals included in that category. Since all animals are susceptible to the stress inherent in performing unnatural tricks and the stress of continuous travel and confinement, the legislation should unambiguously include all wild and exotic animals. We recommend, therefore, that language be added to the effect that: “[t]he examples identified in parentheses are not intended to be an exhaustive list and do not limit the generality of each group of animals, unless otherwise specified.”
2. The legislation should clarify that an act or practice that is otherwise prohibited under New York City, New York State or federal law is not sanctioned by this legislation. Accordingly we believe that a subparagraph (f) should be added which states as follows: “(f) Nothing in this section shall be construed to affect any other protections afforded to animals under any other provision of law.”
3. We believe that the monetary penalties cited in paragraph (e) are not fully effective to accomplish the purpose of the legislation. The legislation should cause the cessation of the prohibitive behavior, and any New York City permit that was issued that enables the violator to continue operating should not remain in effect. The proposed monetary penalties of \$1,000 for a business enterprise, which can be easily passed on to consumers as a cost of business, would not achieve this result. Accordingly, we suggest that paragraph (e) be amended to include the following:

Any person who violates subdivision (b) of this section or any rule promulgated thereunder shall also be subject to the suspension or revocation of a permit to exhibit animals in the city of New York. Except as may otherwise be provided in any other law, the corporation counsel may institute an action on behalf of the city, in a court of competent jurisdiction, for injunctive and other appropriate equitable relief in order to restrain the violation or threatened violation of this section or any rule promulgated thereunder.

We further note that the monetary penalties are not fixed at \$1,000 or \$2,500 but are “up to” those amounts, effectively leaving open the possibility of negligible penalties and, therefore, monetary amounts which may not have the desired deterrent effect. Finally, the fine should expressly apply with respect to each animal involved with a prohibited performance, as this is currently unclear.

4. We recommend two modifications that are fully consistent with Int. 49-2010, the prior bill introduced on this subject in 2010, which this Committee supported. First,

the definition of “performance” should include “photographic opportunity” since that is another forum for possible animal entertainment/amusement. Second, the word “live” should be deleted in the phrase “live audience” within the definition of “performance” for several reasons. The gravamen of the prohibited behavior is the animal cruelty and abuse inherent in causing wild and exotic animals to be intensely confined, struck and coerced with implements—behind, or in the face of, public viewing, and subjected to psychological and physical stressors (even when sometimes afflicted with osteoarthritis, lameness, tuberculosis and other disabling conditions) whether in front of, or outside the view of, a live audience. Further, a prohibited performance done in private may subsequently be shown or displayed to a live audience, thereby providing a loophole to evade the law.

5. The definition of “cause a performance” contains a potential loophole since it suggests that the only persons to financially benefit from a performance would be “an owner or operator.” However, the owner or operator of a building, stadium or other forum in which wild and exotic animals might perform could easily be part of a larger business organization with affiliates where an affiliate (corporation, partnership, limited liability company, etc.) acts as the marketer, broker or other procurer of the performance with the financial benefit going, at least in part, to the affiliate rather than to the owner or operator of a forum in which the performance takes place. We recommend, therefore, that the definition of “cause a performance” be broadened to address the reality of complex corporate organizations.
6. Finally, we are aware that the Zoological Association of America (“ZAA”) has unsuccessfully sought in several other jurisdictions with animal protective legislation to seek an exempt status, comparable to that for AZA-accredited facilities. We do not support an exemption for the ZAA—which has endorsed roadside zoos and private menageries—under the proposed legislation.<sup>69</sup>

## 6. SUMMARY

For the reasons explained above, Int. No. 1233 is approved with the above recommendations.

November 2016

---

<sup>69</sup> See Humane Society of the United States (“HSUS”), “Fact Sheet,” Jan. 24, 2014, *available at* <https://bigcatrescue.org/wp-content/uploads/2014/07/ZAA-Factsheet.pdf>. The HSUS notes that:

The deceptively-named Zoological Association of America (ZAA) is a fringe group with weak standards that endorses poorly run roadside zoos, traveling zoos, and private menageries and promotes the private ownership of exotic pets as well as the commercialization of wildlife. Despite threats to public safety and animal welfare, ZAA standards allow public contact with dangerous wild animals. In 2011-2013, The HSUS helped defeat attempts to exempt ZAA facilities from state dangerous wild animal laws in Louisiana, Michigan, and Texas, and similarly played a role in defeating a proposed regulation to exempt ZAA from the California Restricted Species Law.<sup>3,4,5</sup> ZAA has no affiliation with the highly respected Association of Zoos and Aquariums (AZA), which has a long history of setting industry standards for zoological institutions.

\* *Committee Chair Lori Barrett recused herself from the preparation of this report.*