

Date of Hearing: June 14, 2016

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Marc Levine, Chair

SB 1062 (Lara) – As Amended May 26, 2016

**SENATE VOTE:** 29-9

**SUBJECT:** Elephants: prohibited treatment

**SUMMARY:** Prohibits, beginning January 1, 2018, the use of a bullhook and other devices designed to inflict pain to train or control an elephant. Specifically, **this bill:**

- 1) Prohibits any person who houses, possesses, manages, or is in direct contact with an elephant, from using, or authorizing or allowing an employee, agent or contractor to use, a bullhook, ankus, baseball bat, axe handle, pitchfork, or other device designed to inflict pain for the purpose of training or controlling an elephant. Use includes brandishing, exhibiting, or displaying the devices in the presence of an elephant.
- 2) Makes any person who violates this prohibition subject to a civil penalty of not less than \$500 and not more than \$10,000 per violation, and immediate suspension or revocation of a restricted species permit.
- 3) Authorizes a person to appeal a restricted species permit suspension or revocation to the Fish and Game Commission (FGC).
- 4) Clarifies that a person who violates the prohibition is not subject to criminal penalties under the Fish and Game Code.
- 5) Provides that the prohibition in this bill is in addition to and not in lieu of other existing animal welfare laws, including any state or local laws.

**EXISTING LAW:**

- 1) Prohibits the importation, transportation, possession, or release of specified wild animals, including elephants, in California except under a restricted species permit issued by the Department of Fish and Wildlife (DFW), in cooperation with the Department of Food and Agriculture. Authorizes the FGC to adopt regulations governing the importation, possession, transportation, keeping, and confinement of wild animals, including elephants. Makes a violation of these requirements subject to a civil penalty of not less than \$500 and not more than \$10,000 per violation. Also makes a violation a misdemeanor, punishable by up to six months imprisonment in a county jail, or a fine of up to \$1,000.
- 2) Makes it a misdemeanor for any owner or manager of an elephant to engage in abusive behavior towards the elephant, including disciplining an elephant by any of the following methods:
  - a) Deprivation of food, water or rest.
  - b) Use of electricity.
  - c) Physical punishment resulting in damage, scarring, or breaking of skin.

- d) Insertion of any instrument into any bodily orifice.
  - e) Use of martingales (head immobilizing straps).
  - f) Use of block and tackle.
- 3) Makes it unlawful to purchase, sell, offer for sale, possess with intent to sell, or import with intent to sell, elephant ivory or rhinoceros horn, or to possess, sell, offer for sale, trade, or distribute a shark fin in this state. Makes it unlawful to import into this state for commercial purposes, or possess with intent to sell, the dead body, or any part or product thereof, of a polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf, zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin, porpoise, Spanish lynx, or elephant.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Rule 28.8, negligible if any state costs.

**COMMENTS:** This bill would prohibit the use of bullhooks and other devices designed to inflict pain for the purpose of training or controlling the behavior of an elephant. According to the author and supporters of this bill, bullhooks are used by a dwindling number of elephant handlers to train, punish and control elephants. The author and sponsors describe a bullhook as a device that resembles a fireplace poker, with a sharp metal hook and spiked tip, and a handle that is typically plastic or wood.

- 1) **Author's Statement:** This bill simply codifies industry standards for elephant management by prohibiting the use of bullhooks, bats, and pitchforks to discipline an elephant. A bullhook is typically embedded into the most sensitive areas of an elephant, which involves areas around the ears, mouth, and back of the legs. The use of this instrument also puts handlers at severe risk, should an elephant decide to rebel against the trainer. Los Angeles and Oakland have prohibited use of the bullhook, and San Francisco has banned performances using elephants and other performing wild animals. It is time for the state to follow suit and prohibit this inhumane practice.
- 2) **Background:** This bill follows up on last year's SB 716 (Lara), which would have addressed the issue by criminalizing the use of bullhooks. SB 716 was vetoed by the Governor, along with several other bills, because the bills created new crimes. This bill responds to the veto by proposing to make the use of bullhooks subject to civil penalties, and grounds for revocation of a restricted species permit instead of creating a new crime. Restricted species permits are issued and enforced by the DFW, and are required for possession and handling of elephants and other wild animals in California.

The author and supporters of this bill emphasize that the bullhook is an outdated tool. They point out that zoos accredited by the Association of Zoos and Aquariums (AZA) and the Performing Animal Welfare Society sanctuary now use a method called protected contact, which relies on positive reinforcement, making use of the bullhook obsolete. The author and sponsors believe this is now the industry standard. According to these groups, bullhooks are based on negative reinforcement, and are used by elephant handlers to prod, hook, strike and hit elephants on their sensitive skin areas in order to inflict pain during training, performing, and handling. Elephants who have been trained with bullhooks later may comply out of fear just upon seeing the tool.

However, opponents of this bill, which include members of the circus and entertainment community, as well a number of veterinarians and researchers, assert that the bullhook is an important tool that facilitates the ability of elephant handlers to provide veterinary care and conduct elephant research. They prefer the term "guide" to describe the tool rather than bullhook, and assert that it is not harmful or abusive when used correctly.

The committee received a letter opposing the use of bullhooks signed by more than 75 professionals, including veterinarians, scientific researchers, former elephant keepers and others. The letter emphasized the following arguments: 1) That the bullhook is an outdated and inhumane tool that unnecessarily subjects elephants to fear and pain, and puts keepers and veterinarians at serious risk of injury and death; and 2) That the protected contact method of elephant training and management is a superior method of managing elephants, eliminates the need for bullhooks, and is now the industry preferred standard. This method relies on positive reinforcement training and a protected barrier, enables keepers to provide high quality elephant husbandry and veterinary care, and is based on cooperation and respect rather than domination and control. The protected contact method is now required for all facilities certified by the AZA.

The committee received a separate letter supporting the use of bullhooks (guides) signed by more than 75 professionals, including veterinarians, scientific researchers, elephant keepers and others. The letter emphasized the following arguments: 1) That the "guide" is the only husbandry tool effective for managing elephants in a free contact environment where elephants are not confined exclusively to their enclosures; 2) That this bill is unnecessary as the few remaining venues using the bullhook are regulated by the USDA and the Animal Welfare Act; and 3) That the bullhook is not used on sensitive areas, and when used correctly is not abusive. They also emphasize that important scientific research on elephants is performed with the aid of the bullhook for management and care.

- 3) **Double-referral:** This bill is double-referred to the Assembly Arts, Entertainment, Sports, Tourism, and Internet Media Committee, which is scheduled to hear this bill next after this committee.
- 4) **Prior and Related Legislation:** SB 716 (Lara) of 2015 prohibited use of bullhooks for managing elephants but placed the prohibition in the Penal Code, making a violation of the law a crime. SB 716 along with 8 other bills was vetoed by the Governor. The veto message stated:

*"Each of these bills creates a new crime – usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.*

*Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human behavior. During the same period, our jail and prison populations have exploded.*

*Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective."*

AB 777 (L. Levine) of 2007, among other things, would have prohibited use of any implement or device on an elephant that may reasonably result in harm to the elephant, including the elephant's skin. AB 3027 failed passage in the Assembly.

AB 3027 (L. Levine) of 2006, among other things, would have prohibited use of a bullhook or similar device. AB 3027 was held in the Assembly Appropriations Committee.

AB 96 (Atkins), Chapter 475. Statutes of 2015, made it unlawful to purchase, sell or import elephant ivory or rhinoceros horn.

- 5) **Suggested Technical Amendment:** A technical committee amendment is proposed that would amend lines 15-19 on page 2 to read as follows:

(b) Any person who violates this section is subject to the civil penalty set forth in Section 2125 for each violation, and *the restricted species permit* is subject to immediate suspension or revocation ~~of his or her restricted species permit~~ by the department.

- 6) **Support Arguments:** Supporters emphasize that bullhooks have historically been used by elephant handlers to train, punish and control elephants. They have been used to inflict pain and evoke fear in order to forcefully achieve desired behaviors. The presence of the hook even when not in active use is a threat of painful punishment for elephants that have been trained by this method. There have been numerous documented incidents of elephants being wounded or scarred by abusive use of bullhooks. In addition to the inhumane treatment of elephants, performances that use elephants threaten public safety by bringing people into dangerously close proximity to elephants. Use of bullhooks promotes aggression and will not prevent an elephant from rampaging, or protect the public when such an incident occurs. Supporters note that since 1990 there have been 16 human deaths and 135 injuries in the United States attributed to elephants, primarily in circus-related accidents.

The Humane Society of the United States is only aware of two California-based businesses that still use bullhooks, neither of which is accredited by the AZA or the Global Federation of Animal Sanctuaries. In 2014 the AZA adopted a policy prohibiting keepers from sharing unrestricted space with elephants. Protected Contact, a progressive elephant management method based on positive reinforcement instead of punishment is a viable and more humane alternative. The California Association of Zoos and Aquariums, in support, notes that all zoos accredited by the AZA in California are using Protective Contact and operant conditioning training. Today no county fair in California offers elephant rides run by operators who use bullhooks, and the Ringling Brothers circus has also ended all use of elephants for circus performances in California, effective May 2016.

- 7) **Opposition Arguments:** Opponents assert that the use of bullhooks is not abusive and helps those who use them to provide more superior care than can be provided to those managed without them. They are concerned that taking away their ability to use bullhooks will adversely affect their ability to provide elephants with required care. The American Association of Zoo Veterinarians asserts that the bullhook should be referred to as an elephant "guide" and claims it is commonly used to aid in communication by gentle touch or visual cues to direct the elephant, and that when used properly it should not inflict pain or punishment. Some opponents assert the bullhook is comparable to the use of a harness and reins for horses, or collars and leads for dogs. Because it is useful in providing veterinary care, the state of California by removing its use would be removing an essential safety and welfare tool for handling a large and potentially dangerous animal.

Some opponents are also concerned that this bill will negatively impact the ability of the

entertainment industry to use elephants in performances, fairs and festivals, and for people in the animal industries to maintain their livelihoods. Others believe it will hamper research and conservation efforts that are beneficial to elephants.

*Opposition Amendments:* The Western Fair Associations opposes this bill unless amended to add a grandfather clause that would allow the two organizations that still use bullhooks in California to continue using the bullhook for management of the nine elephants under their care. They assert that, unless amended, this bill would prevent the nine elephants at the two facilities from continuing to interact safely with people other than their keepers. The nine elephants are all over the age of 30 and have been managed with free contact their entire lives. As such, they are accustomed to interacting with the public and their handlers. The amendment would also require an additional annual inspection of the facilities.

The author has declined the amendment, and maintains that the delayed effective date in this bill will give operators time to transition to new means of managing elephants. The Performing Animal Welfare Society (PAWS) asserts that all elephants can make the transition from bullhook-based training to a protected contact management system. This positive reinforcement-based method uses a long handled pole with a soft tip to cue behaviors. The elephants are trained to move toward the target and the behavior is reinforced with rewards and praise. PAWS indicates that they have successfully retrained elephants who were trained from birth with bullhooks to respond favorably to the protected contact system of care. They also reference a study published in *Zoo Biology* (Wilson, et al., 2015) that was conducted at Zoo Atlanta as the zoo transitioned from bullhook-based management to protected contact. The authors' found that the transition was associated with improved elephant welfare.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

The Humane Society of the United States (sponsor)  
 American Society for the Prevention of Cruelty to Animals (ASPCA)  
 Animal Legal Defense Fund  
 Best Friends Animal Society  
 Born Free USA  
 California Association of Zoos and Aquariums  
 California Travel Association  
 Center for Animal Protection and Education  
 City of Oakland  
 Compassion Works International  
 Connection Africa  
 Detroit Zoological Society  
 Earth Island Institute  
 East Bay Zoological Society (Oakland Zoo)  
 Elephant Aid International  
 Elephant Sanctuary of Tennessee  
 Global Sanctuary for Elephants  
 Humane Society Veterinary Medical Association  
 Humane Society Wildlife Land Trust

In Defense of Animals  
Lieutenant Governor Gavin Newsom  
Lions, Tigers & Bears  
Liuna Locals 777 & 792  
March for Elephants  
Marin Humane Society  
Performing Animal Welfare Society  
San Diego Humane Society  
San Francisco SPCA  
Santa Clara County Activists for Animals  
Sierra Club California  
Sierra Wildlife Coalition  
State Humane Association of California  
Numerous individuals, including veterinarians.

**Opposition**

American Association of Zoo Veterinarians  
Animals All Around  
Asian Elephant Support  
California Fairs Alliance  
California Responsible Pet Owners Coalition  
Circus Fans Association of America  
Feld Entertainment, Inc.  
Have Trunk Will Travel  
International Elephant Foundation  
Livingston Exotics LLC  
Los Angeles Foundation for the Circus Arts  
Pacific Animal Productions  
QE Productions  
The Shrine Circus, Pittsburgh  
Traveling Paws LLC  
Western Fair Association's Ag Council  
Wild Wonders, Inc.  
Wildlife Safari  
Zoological Association of America  
Numerous individuals, including veterinarians.

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