

Analysis of SB 344

Enacts provisions relating to the importation, possession, sale, transfer and breeding of dangerous wild animals. (BDR 50-871)

<https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7991/Overview>

GOALS: kill SB344, or amend it to exempting all classes of USDA licenses, and grandfather non USDA people with their current animals.

FACTS: nobody was killed in Nevada by exotic animals in the last 20 years. At least 13 of Nevada's 17 counties already have local ordinances regulating exotic animals.

Tiger King characters visiting Nevada illegally were charged because Nevada already has proper laws. Jeff Lowe had his federal USDA license revoked, and Joe Exotic is behind bars because we also have proper federal laws to deal with bad actors. Using the old Zanesville, Ohio incident is ridiculous: owner Terry Thompson didn't represent the typical responsible owner, it is already illegal to release exotic animals. He had a criminal record and animal abuse charges. What he did was selfish and insane; we cannot regulate insanity. Would the Ohio situation be any different if the animals were owned by a government or AZA zoo, and their caretaker released them? Is this really about private ownership, or is it about certain people's personal issues with exotics in captivity?

PROBLEMS with SB344

Sec.4. " **3. All species of primates, except humans.**

Many primates weigh only a few pounds and do less damage than pet rabbit, and do NOT spread diseases. Macaques in research settings do, but it is very rare; usually researches accidentally injecting themselves or splashing infected material they are researching in their eyes, aka occupational hazard. But research monkeys are exempt from SB344.

According to CDC: <https://www.cdc.gov/herpesvirus/cause.html>

<<Cause and Frequency

B virus infections in people are usually caused by macaque monkeys. These kinds of monkeys are commonly infected with B virus, but they usually do not have symptoms, or have just mild disease. Other primates, such as chimpanzees and capuchin monkeys, can become infected with B virus and will frequently die from these infections. There have not been documented cases of such primates spreading B virus except to macaques.

B virus infections in people are rare. Since B virus was identified in 1932, only 50 people have been documented to have infections; 21 of them died. Most of these people got infected after they were bitten or scratched by a monkey, or when tissue or fluids from a monkey got on their broken skin, such as by needle stick or cut. In 1997, a researcher died from B virus infection after bodily fluid from an infected monkey splashed into her eye. Hundreds of bites and scratches occur every year in monkey facilities in the United States, but people rarely get infected with B virus. A study of more than 300 animal care workers showed that none had B virus infection, including the 166 workers who had possible exposures to monkeys.>>

Sec.5. 1. “Direct contact” means physical contact with or a situation of physical proximity where physical contact is possible with a dangerous wild animal.

2. The term includes, without limitation, a situation in which a photograph is taken with a dangerous wild animal without the presence of a permanent physical barrier which is designed to prevent physical contact between the public and the dangerous wild animal.

It is too vague and NON-enforceable: What is “close proximity”? What is a permanent physical barrier? Is an animal loaded and displayed in a circus trailer on wheels (or delivered to a veterinarian) considered a permanent physical barrier? Are stage cables or temporary or magic props and cages used in big cat casinos or circus shows considered permanent barrier material, or is it a possible direct contact??? Is Plexiglas, wood or fiberglass wall or enclosure permanent or temporary, since it can be destroyed by fire or power tool? What kind of building material would be permanent according to SB344? **Would SB344 survive strict scrutiny from the legal point of view should the legality of this bill end up in front of a judge?**

Sec. 7. 2. A person shall not allow a dangerous wild animal to come in direct contact with a person who is not exempt from subsection 1 pursuant to the provisions of section 8 or 9 of this act.

Sec. 8. The provisions of subsection 1 of section 7 of this act do not apply to 1. A research facility, as defined in 7 U.S.C. § 2132.

The research facilities that actually do have purposely infected monkeys are exempt, but the non-infected pet and USDA licensed non-research monkeys can't be touched by employees or the public in non-research settings? It doesn't make sense!

6. An institution or facility which is accredited by the Association of Zoos and Aquariums, or its successor organization, or the Alliance of Marine Mammal Parks and Aquariums, or its successor organization.

WHY is SB344 improperly exempting AZA and AMMPA? Federal USDA agency does NOT exempt any private groups (AZA or AMMPA) from Animal Welfare Act laws. All facilities exhibiting mammals MUST HAVE USDA C license and follow the federal laws and rules. WHY is SB344 discriminatorily exempting them from the proposed state law? Nevada is a right-to-work state regardless of “animal quasi union” accreditation, and US Constitution guarantees people equal protection of the law: here certain private groups are given more freedoms than others, even though they have the same federal license.

American Animal Hospital Association (AAHA) accredited member hospitals are NOT exempt from state requirements to employ licensed veterinarians, and AAHA accreditation is NOT MANDATORY to operate a veterinary hospital. AAHA accreditation is totally voluntary, and animal hospitals can operate without AAHA accreditation, as vast majority do. This makes total sense as many small rural hospitals have to be fiscally responsible and can't afford expensive accreditation (same with AZA vs non AZA zoos) or be open 24/7, or have the newest diagnosis equipment as many big-city facilities have.

<https://www.aaha.org/accreditation--membership/what-is-accreditation/>

<<Today, only 12%–15% of veterinary practices in the US and Canada hold the “AAHA-accredited” designation>>

If AAHA accreditation was mandatory in Nevada, we would have an urgent shortage of animal clinics, and most likely no clinics in small towns or rural areas, which would jeopardize animal welfare.

WHY is there an attempt by outsiders (HSUS) from Washington D.C. at discriminatory treatment against non-AZA and non-Marine Alliance exotic animal ownership in Nevada???

7. A holder of a Class “C” license for exhibitors, as defined 1 in 9 C.F.R. § 1.1, including, without limitation, a resort hotel, circus, qualified production or zoological park, that: <snip>

(b) Does not employ any person who has:

(1) Direct contact with a dangerous wild animal;

In order to exhibit exotic mammals, AZA and AMMPA need USDA “C” federal license too, since USDA does NOT exempt anybody from the federal laws. This is very confusing, as it appears nobody is really (rightfully) exempt from SB344. In addition, AMMPA accredited “MIRAGE RESORTS, INC.” have their own corporation USDA C license, and “S & R PRODUCTIONS” have their own corporation USDA C license as well. Since “S&R” do NOT have marine mammals, they do NOT appear to be exempt.

Both have corporation USDA license, so it is unclear who exactly can touch the animals, board members aka "holder of a Class C" but not trainers, employees???

USDA Animal welfare law is written to specifically allow direct hands-on employees' contact with the regulated animals to properly assure humane animal welfare care. **SB344 is in direct contradiction to federal law by criminalizing animal contact other than that of an actual USDA C license holder. SB344 illegitimately prevents Nevada USDA licensees from following federal regulations and comply with Animal Welfare Act.** Domestic cats or horses get better medical treatment than feral cats or mustangs that can't be touched easily to give them proper veterinary care. SB344 would force owners to provide worse and inferior care to their animals if it passed due to the improper no-contact requirement. Handling of big cat cubs and non-human primates is already heavily regulated, and those that don't comply are being dealt with by USDA using current federal laws and court system.

https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/IES_Processes

Investigative and Enforcement Processes Last Modified: Jun 2, 2020

https://www.aphis.usda.gov/animal_welfare/downloads/big_cat/big_cat_q&a.pdf

<snip> **What about cubs? Can I exhibit them in situations allowing contact with the public?** *It depends. The handling regulations require that all animals be handled as carefully as possible. They also specifically prohibit young or immature animals from exposure to rough or excessive public handling, and prohibit animals from being subjected to any combination of temperature, humidity, and time that is detrimental to the animal's health and well-being. The latter requires exhibitors to take into consideration an animal's age, species, and overall health status, among other things. Although we do not encourage public contact with cubs, it is possible for an exhibitor to exhibit cubs over approximately 8 weeks of age (i.e., when their immune systems have developed sufficiently to protect them from most communicable diseases), to the public, and still comply with all of the regulatory requirements*

What is meant by the term public? *The terms "the public" and "the general viewing public" in the handling regulations generally mean customers or visitors, and not an exhibitor's paid employees or unpaid bona fide workers who comprise the exhibitor's regular work force (i.e., personnel with regular hours who work under formal arrangements). Exhibitors themselves are not "the public" or "the general viewing public."*<snip>

https://www.aphis.usda.gov/animal_welfare/downloads/AC_BlueBook_AWA_508_comp_version.pdf

<< § 2.131 - Handling of animals.(a) All licensees who maintain wild or exotic animals must demonstrate adequate experience and knowledge of the species they maintain. (b)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.>> snip <<Nonhuman primates used in trained animal acts or in uncaged public exhibits must be under the direct control and supervision of an experienced handler or trainer at all times when the public is present. Trained nonhuman primates may be permitted physical contact with the public, as allowed under § 2.131, but only if they are under the direct control and supervision of an experienced handler or trainer at all times during the contact.>>

(c) Except as otherwise provided in this paragraph, has not had a license or permit for the care, possession, sale, exhibition or breeding of animals revoked or suspended by any federal, state or local governmental entity or into any stipulation, consent decree or settlement with the United States Department of Agriculture within the immediately preceding 5 years. A Class "C" licensee shall disclose to a law enforcement officer or an animal control authority, upon request, any pending investigations that the United States Department of Agriculture is conducting. A Class "C" licensee to which the circumstances in this paragraph apply has 90 days after the license or permit is revoked or suspended or after entering the stipulation, consent decree or settlement, as applicable, to fix the issue or issues that resulted in such circumstance before the licensee is subject to the prohibitions set forth in section 7 of this act.

(d) Has not been cited within the immediately preceding 3 years by the United States Department of Agriculture for jeopardizing the health or well-being of a dangerous wild animal by:

(1) Providing inadequate veterinary care to the dangerous¹ wild animal;

(2) Inappropriately handling a dangerous wild animal that caused:

(I) Stress or trauma to the dangerous wild animal; or

(II) A threat to public safety; or

(3) Providing inadequate food, water, shelter or space to the dangerous wild animal.

(e) Has not been cited within the immediately preceding 3 years by the United States Department of Agriculture for:

(1) Refusing access to any site registered under the Class "C" license by an inspector of the United States Department of Agriculture; or

(2) Interfering with an inspection

Ex post facto laws are illegal. And why 3, 5 years, or 90 days? What is the reasoning behind these random numbers? **If the person or corporation still has their USDA license 3-5 years later that means the issues has been successfully resolved, and they are in compliance with the federal Animal Welfare Act, or the USDA is still investigating. SB344 improperly cherry-picks ‘mix and match’ federal law with state or local penalties & confiscations, but no corresponding state or local law.** Clark County can't force their penalties on a person who broke Washoe County laws, for example, meaning: a rational person can't put gas in a diesel truck and expect a happy end. SB344 is improperly interfering with federal RULES OF PRACTICE GOVERNING FORMAL ADJUDICATORY ADMINISTRATIVE PROCEEDINGS INSTITUTED BY THE SECRETARY <https://www.dm.usda.gov/RulesofPractice5.pdf>

Sec. 10. 1. A law enforcement officer or an animal control authority may seize a dangerous wild animal if the officer or authority has probable cause to believe that the person who owns or possesses the dangerous wild animal has violated any provision of section 7, 8 or 9 of this act.

2. A law enforcement officer or an animal control authority may impound a dangerous wild animal seized pursuant to subsection 1 on the property of the person who owns or possesses the dangerous wild animal until a transfer and placement of the dangerous wild animal becomes possible.

SB344 improperly interferes with federal investigations limiting the ‘fix it period’ to 90 days, forcing local government to illegally confiscate animals aka evidence in the ongoing federal investigation. If the confiscated animal is placed outside of the current jurisdiction, and owner is found innocent, the owner might never get their animals back. USDA has its own confiscation rules and procedures, and non-federal employees shouldn't be interfering unless specifically asked:

https://www.aphis.usda.gov/animal_welfare/downloads/AC_BlueBook_AWA_508_comp_version.pdf

<< § 2.129 - Confiscation and destruction of animals.

(a) If an animal being held by a dealer, exhibitor, intermediate handler, or by a carrier is found by an APHIS official to be suffering as a result of the failure of the dealer, exhibitor, intermediate handler, or carrier to comply with any provision of the regulations or the standards set forth in this subchapter, the APHIS official shall make a reasonable effort to notify the dealer, exhibitor, intermediate handler, or carrier of the condition of

the animal(s) and request that the condition be corrected and that adequate care be given to alleviate the animal's suffering or distress, or that the animal(s) be destroyed by euthanasia. In the event that the dealer, exhibitor, intermediate handler, or carrier refuses to comply with this request, the APHIS official may confiscate the animal(s) for care, treatment, or disposal as indicated in paragraph (b) of this section, if, in the opinion of the Administrator, the circumstances indicate the animal's health is in danger.

(b) In the event that the APHIS official is unable to locate or notify the dealer, exhibitor, intermediate handler, or carrier as required in this section, the APHIS official shall contact a local police or other law officer to accompany him to the premises and shall provide for adequate care when necessary to alleviate the animal's suffering. If in the opinion of the Administrator, the condition of the animal(s) cannot be corrected by this temporary care, the APHIS official shall confiscate the animals.

(c) Confiscated animals may be: (1) Placed, by sale or donation, with other licensees or registrants that comply with the standards and regulations and can provide proper care; or (2) Placed with persons or facilities that can offer a level of care equal to or exceeding the standards and regulations, as determined by APHIS, even if the persons or facilities are not licensed by or registered with APHIS; or (3) Euthanized.

(d) The dealer, exhibitor, intermediate handler, or carrier from whom the animals were confiscated must bear all costs incurred in performing the placement or euthanasia activities authorized by this section >>

Sec. 11.4. A dangerous wild animal that is forfeited pursuant to this section must not be returned to the owner if the investigating law enforcement officer or animal control authority determines that possession of the dangerous wild animal is prohibited pursuant to this chapter or title 45 of NRS. If possession of the dangerous wild animal is prohibited by law, the dangerous wild animal must be humanely euthanized by an animal control authority in compliance with all applicable federal, state and local laws.

Sec. 12. 1. A dangerous wild animal that is seized pursuant to section 10 of this act, voluntarily relinquished pursuant to section 11 of this act or forfeited pursuant to section 11 or 13 of this act must be placed in the custody of a person or entity that is exempted from the provisions of subsection 1 of section 7 of this act pursuant to section 8 of this act.

2. The dangerous wild animal may be humanely euthanized by an animal control authority in compliance with all applicable federal, state and local laws if the placement of the dangerous wild animal:

- (a) Is not possible after reasonable efforts by a law enforcement officer or an animal control authority to make such a placement;*
- (b) Is prohibited pursuant to title 45 of NRS; or*
- (c) Creates a risk to public health or safety.*

Many animals listed in SB344 are on ESA, Endangered Species Act, which prohibits killing these species for non-medical reasons. Isn't it why Tiger King is behind bars, for killing healthy ESA tigers? And SB344 in effect mandates the same disgusting thing!

Sec. 13. 1. A person or entity with whom a dangerous wild animal is placed pursuant to section 12 of this act may file a petition in any court of competent jurisdiction to request that the person from whom the dangerous wild animal was seized be ordered to post security adequate to ensure the full payment of all reasonable costs incurred in caring for the dangerous wild animal during the pendency of any proceedings regarding the disposition of the dangerous wild animal.

2. A petitioner who files a petition pursuant to subsection 1 must serve a copy of the petition upon the person from whom the dangerous wild animal was seized and the law enforcement officer or animal control agent who seized the dangerous wild animal, if other than the petitioner.

3. The court shall set a hearing on any petition filed pursuant to subsection 1 to be held within 5 business days after service of the petition pursuant to subsection 2. At the hearing, the court may determine whether any additional interested parties must be served with the petition. If the court determines that additional parties must be served with the petition, the hearing must be continued to provide time for the petitioner to serve the interested parties with the petition and for the interested parties to respond to the petition.

4. If a court orders the posting of security pursuant to a hearing on a petition, the court may require the entire amount of the security to be posted within business days after the issuance of the order or may allow the person from whom the dangerous wild animal was seized to make installment payments of the total amount ordered. If the security is not paid as ordered by the court, the dangerous wild animal must be forfeited and the law enforcement officer or animal control authority that seized the dangerous wild animal shall proceed pursuant to section 12 of this act.

5. Upon resolution of the proceedings regarding the disposition of the dangerous wild animal that was seized, the person having custody of the animal must refund to the person who posted the security any portion of the security remaining.

Unlucky Section 13 creates a perverse and possibly dangerous situation, where a facility holding the confiscated animals is forced to deal with the possibly very angry and emotional owner, as well as waste their time and money in court.