

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Kansen Chu, Chair

SB 1062 (Lara) – As Amended June 15, 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.
- 2) Authorizes the FGC to adopt regulations governing the importation, possession, transportation, keeping, and confinement of wild animals, including elephants.
- 3) 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.
- 4) Declares that it is a misdemeanor for any owner or manager of an elephant to engage in abusive behavior toward the elephant, including the discipline of the elephant by any of the

following methods:

- a) Deprivation of food, water, or rest. (Pen. Code, § 596.5, subd. (a).)
 - b) Use of electricity. (Pen. Code, § 596.5, subd. (b).)
 - c) Physical punishment resulting in damage, scarring, or breakage of skin. (Pen. Code, § 596.5, subd. (c).)
 - d) Insertion of any instrument into any bodily orifice. (Pen. Code, § 596.5, subd. (d).)
 - e) Use of martingales. (Pen. Code, § 596.5, subd. (e).)
 - f) Use of block and tackle. (Pen. Code, § 596.5, subd. (f).)
- 5) Provides that the actions of a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal as a criminal offense. (Pen. Code, § 597.)
 - 6) Specifies when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor as a criminal offense. (Pen. Code, § 597, subd. (b).)
 - 7) Requires punishment as a felony by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail for not more than one year, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment for violations of Penal Code section 597 (animal cruelty). (Pen. Code, § 597, subd. (d).)
 - 8) Requires that if a defendant is granted probation for a conviction of animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)

FISCAL EFFECT: This bill passed out of the Senate Appropriations Committee, pursuant to Rule 28.8.

COMMENTS:

1) *Author's statement in support of legislation:* According to the author, "SB 1062 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 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 the performance of elephants, among other performing animals. Supported by the California Association of Zoos and Aquariums, it is time for the State to follow suit and prohibit this inhumane practice."

2) *Background:*

a) *Existing state and federal law prohibits animal abuse, and provides specific protections for elephants.* As mentioned in the "Existing Law" section above, California law makes abuse of an animal a crime punishable under the Penal Code. Further specific protections exist for elephants, including (Pen. Code, § 596.5, subd. (a).) which provides, "It shall be a misdemeanor for any owner or manager of an elephant to engage in abusive behavior toward the elephant, . . ." Id. The statute goes on to list specific conduct which is included under "abusive behavior," but does not limit the definition of abusive behavior towards an elephant in any way. A "bull hook" or "guide" used by an owner or manager to engage in abusive behavior toward the elephant is already a crime under existing law. Enforcement of these laws is done at the local level by the local Animal Control Officer and local law enforcement.

In addition, federal law provides, under the Animal Welfare Act (AWA), that zoos, circuses, transporters, roadside menageries and exhibitors of elephants must be licensed and participate in record-keeping and marking requirements. Additional protections exist governing their care, handling, and transport. The AWA gives power to the Secretary of Agriculture and the United States Department of Agriculture, whose power is further delegated to the Animal Plant and Health Inspection Service (APHIS) to administer and enforce the AWA's requirements. APHIS enforces the Act through conducting inspections and instituting rules and regulations for facilities. APHIS is required to conduct yearly inspections and investigate facilities whenever a complaint is filed.

Unlike California law, the AWA does not prohibit any particular instruments in the handling of elephants or other warm blooded animals.

b) *Two models for handling elephants: protected contact and free contact. Without use of "guide" free contact will be ended.* There are two models for elephant trainers and caretakers to interact with elephants: "protective contact" and "free contact." In the protective contact model, the trainer or caretaker only interacts with elephants through a barrier or fence. In free contact the trainer/caretaker shares a physical space with the elephant. According to some experts, the bullhook/guide is necessary for free contact training or management. Without use of the "bull hook" or "guide," free contact is not a

viable model for interacting with elephants. In order to have a live performance involving an elephant, for instance, free contact is necessary. A live performance with elephants typically occurs in a circus, but can also include use of elephants in films, events like county fairs, or attractions such as theme parks and safari experience parks.

It should be noted that while California zoos accredited by the Association of Zoos and Aquariums (AZA), along with many other facilities housing elephants no longer use bullhooks, the American Veterinary Medicine Association (AVMA) policy does not prohibit the use of guides/bullhooks, and many facilities nationwide have contacted the committee to state that they incorporate guides into their protected contact protocol.

AVMA policy prohibits the use of guides in a manner which inflicts harm on an elephant, but allows use of the guide as a husbandry tool for elephant management. “The AVMA condemns the use of guides to puncture, lacerate, strike or inflict harm upon an elephant. Elephant guides are husbandry tools that consist of a shaft capped by one straight and one curved end. The ends are blunt and tapered, and are used to touch parts of the elephant's body as a cue to elicit specific actions or behaviors, with the handler exerting very little pressure. The ends should contact, but should not tear or penetrate the skin.” (*Elephant Guides and Tethers*, AVMA.) www.avma.org/KB/Policies/Pages/Elephant-Guides-and-Tethers.aspx

“Guides and tethers are used for training elephants in some elephant management systems, and appropriate training is important for facilitating veterinary care. However, guides and tethers should only be used in a manner consistent with the promotion of optimum welfare of the elephant. Personnel using these devices should be trained adequately, as well as introduced to alternative management systems.” (*Elephant Guides and Tethers*, AVMA.) www.avma.org/KB/Policies/Pages/Elephant-Guides-and-Tethers.aspx

- c) *Elephants in the California entertainment and tourism industries: Impacted entities are two businesses which work with the film and entertainment industry and provide public interaction directly with elephants.* As mentioned above, all zoos and major sanctuaries in California have moved to protected contact and have ceased use of the guide tool. There are two remaining commercial organizations - which have 9 elephants between them - that have direct contact with elephants as their business model. Both claim they need to use guide tools in order to provide their services. The first is Have Trunk Will Travel, who provides elephants for work in films, television, commercials, traditional Indian weddings, as well as offering elephant rides at fairs and theme parks. They are the exclusive providers of elephants to the film industry and have worked on projects such as *George of the Jungle* and *Water for Elephants*. Their research and development of elephant handling and medical care techniques are recognized nationwide.

The second affected business is the Monterey Zoo, which offers a safari style bed and breakfast experience, public meet and greets with exotic animals and educational experience and research facilities all inside an expansive property outside of Salinas California. There are over 100 exotic animals onsite, with five elephants among them. Education, public interaction with exotic animals and research are all supported through a related non-profit as well as the proceeds from their ranch. The facility's animals are also stars of stage and screen, with their lions and bears, parrots, squirrels, yaks and more

appearing in numerous television shows, commercials and films. The Monterey Zoo is currently undergoing a \$10 million dollar renovation and expansion of their facility.

3) *Arguments in support:*

- a) *Use of the "guide" or "bull hook" is de facto abuse.* According to information provided by the author, a "bullhook is a steel-pointed rod resembling a fireplace poker that is used to prod, hook, and strike elephants in order to dominate and control them during training, performing, and handling. The sharp tip and hook are applied with varying degrees of pressure to sensitive spots on an elephant's body, causing the elephant to recoil from the source of pain. The handle is used as a club, inflicting substantial pain by striking areas where little tissue separates skin and bone. . . . Elephant calves are forcibly separated from their mothers (females elephants naturally remain with their mothers for life) and taught to associate the bullhook with pain and fear. While the elephant is typically restrained, handlers repeatedly administer sharp jabs and hooks with the bullhook, and strike sensitive parts of their bodies with the handle or metal hook. Thereafter, the elephant responds to the bullhook out of fear of pain (moving away from the device) and will be expected to perform a behavior on cue or suffer the painful consequences. . . ."
- b) *The professional community of elephant handlers is moving away from direct human contact with elephants, and thus the instrument should be banned from use as outmoded.*

The East Bay Zoological Society, which owns the Oakland Zoo, supports this bill, explaining in part that it has used the management style called "Protected Contact" described in Comment 2 above since 1991. "The elephants and staff do not share the same physical space, and the elephants also have a choice of whether or not to participate in training sessions. This management style ensures not only the safety and care of our elephants, but also our staff." According to the Humane Society of the United States, "California zoos accredited by the Association of Zoos and Aquariums (AZA) no longer use bullhooks, nor does the Performing Animal Welfare Society's sanctuary which is home to numerous rescued elephants. The AZA now also urges *all* its member zoos to switch to a safer and more humane elephant training system that does not utilize the bullhook."

4) *Arguments in opposition:*

- a) *The "guide" is a humane and irreplaceable aspect of elephant handling in direct contact with humans, which many vets and zoo keepers still need to use, in addition to use with performing animals.* According to the Elephant Managers Association (EMA), who oppose this measure, "All animal species are vastly different in their husbandry needs and each species requires specialized equipment to ensure proper care. Tools such as the elephant guide (or bullhooks) are safe and productive components of elephant care and training. Elephant tools are not intended to injure or harm the animal and are proven and humane husbandry tools that are widely utilized by knowledgeable and experienced elephant care professionals in a variety of settings. They also add an increased degree of safety for the trainer, the animal, and the public."

Additionally, they add, "The American Veterinary Medical Association (AVMA) has gone on record supporting the use of professional tools, including the guide, to manage elephants." They relay a concern with reliance solely upon protected contact, which depends upon the animal's choice to cooperate, especially with baby elephants that are not yet conditioned to approach their medical treatment area, which is when elephants don't feel well; they won't come into medical pens for treatment. Sadly, this has resulted in more than one baby elephant's death from a treatable condition, an EMA representative asserts.

- b) *Existing law is sufficiently protective of elephants.* Numerous letters to the committee contain similar language and content to the effect of the following: In addition to state laws against animal abuse, and specific laws protecting elephants, there are existing federal regulations that strictly govern elephant care under the Animal Welfare Act, that are overseen and revised frequently by the U.S. Department of Agriculture, animal and Plant Health Inspection Service (USDA/APHIS). USDA/APHIS utilizes trained veterinary professionals who are instructed specifically in animal/elephant care and welfare to conduct regular inspections of all license exhibitors of elephants (and other animals)."
- 5) *Committee comment and suggested amendment.* According to the author, sponsors and supporters of this measure, the goal of SB 1062 is to ensure that elephants are not mistreated. Indeed, it is the uniform view of both supporters and opponents of SB 1062 that elephants should not be subject to any form of abuse, nor subjected to cruel or harmful treatment. Toward this shared goal, both the Penal Code and Fish and Game Code already provide express prohibition in the law against such conduct.

Where there is a conflict of opinion is the differing view of experts in animal husbandry, regulators and veterinarians as to the need for and proper use of the elephant guide, also known as a bullhook or auk. Given the existing protection in the law against abuse of this tool, and the sometimes mortal consequences asserted by veterinarians and experts in elephant care if the tool is abolished, including; mothers accidentally crushing their newborn baby elephants, inability to provide medication to baby elephants untrained in protected contact and adult elephants too sick to cooperate with their handlers in protected contact, and current unavailability of alternative means to allow safe direct contact with the public as required by federal regulations, the committee suggests an alternative to the absolute ban proposed in the current language of the bill.

Suggested amendment. The committee suggests that the bill be amended to add the additional language *in a manner that would violate Penal Code section 596.5*, so that the bill would prohibit 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 (including brandishing, exhibiting, or displaying the devices in the presence of an elephant) *in a manner that would violate Penal Code section 596.5*.

As mention under Existing Law above, PC 596.5 generally prohibits any and all abusive behavior toward elephants and expressly prohibits (a) Deprivation of food, water, or rest, (b)

Use of electricity, (c) **Physical punishment resulting in damage, scarring, or breakage of skin**, (d) Insertion of any instrument into any bodily orifice, (e) Use of martingales, (f) Use of block and tackle (emphasis added).

The impact of this amendment would be to allow the continued use of the guide or bullhook, but only in a safe way which could not be abusive or cause any harm to the elephant. The burden of proof threshold would be the civil standard of preponderance of the evidence, rather than the more stringent criminal standard of beyond a reasonable doubt. Any violator would be subject to loss of their permits and license to maintain their elephants.

SHOULD NOT THE BILL BE AMENDED TO PROHIBIT ELEPHANT ABUSE
CONSISTANT WITH PROVISIONS IN THE PENAL CODE?

6) *Prior related legislation.*

- a) SB 716 (Lara) of 2015, was a substantially similar measure to SB 1062 currently under consideration, which would have 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."

In response to the Governor's concerns, the author moved the language banning the use of bullhook and other implements contained in SB 716 from the Penal Code to the Fish and Game Code when drafting SB 1062, and expressly excludes the criminal penalties under the Fish and Game Code from its provisions.

- b) 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.
- c) 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.

REGISTERED SUPPORT / OPPOSITION:

Support

The Humane Society of the United States (sponsor)

Active Environments
Alaska Zoo
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 Regional Park District
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
American Humane Association
Animals All Around
Asian Elephant Support
California Fairs Alliance
California Responsible Pet Owners Coalition
Circus Fans Association of America
Circus World Museum Foundation, Inc.
Elephant Managers Association
Feld Entertainment, Inc.
Have Trunk Will Travel

International Elephant Foundation
Lake County Fair
Livingston Exotics LLC
Los Angeles Foundation for the Circus Arts
Monterey Zoo
Pacific Animal Productions
P.M. Productions Entertainment
QE Productions
Ringling Bros. Center for Elephant Conservation
The Shrine Circus, Pittsburgh
The Syria Shrine Circus
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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