

Date of Hearing: July 14, 2015

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

Ian Charles Calderon, Chair
SB 716 (Lara) – As Amended May 5, 2015

SENATE VOTE: 29-7

SUBJECT: Animal cruelty: elephants.

SUMMARY: Would make it a misdemeanor for any person who houses, possesses, or is in direct contact with an elephant to use specified devices designed to inflict pain for the purpose of training or controlling the behavior of an elephant. Specifically, **this bill:**

- 1) Declares that on or after January 1, 2018, it shall be a misdemeanor for any person who houses, possesses, or is in direct contact with an elephant to use a bullhook, ankus, baseball bat, axe handle, pitchfork, or similar device designed to inflict pain for the purpose of training or controlling the behavior of an elephant.
- 2) Provides that prohibited behavior includes brandishing, exhibiting, or displaying any of the devices, listed above, in the presence of an elephant.

EXISTING LAW:

- 1) 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).)
- 2) 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.)
- 3) 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).)

- 4) 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).)
- 5) 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: Unknown

COMMENTS:

- 1) *Author's statement of need for legislation:* According to the author, "SB 716 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. Since 1990, there have been at least 16 human deaths, and 135 injuries in the U.S. have been attributed to elephants. Simply put, it is time for the State to 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.* 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 where the public interacts 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 10 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.

The committee also heard from The American Humane Association, the film industry expert veterinary officers who grant films with the "No Animal Was Harmed" certification for films, who also use the guide tool in their work with elephants.

Conversely, PAWS wildlife sanctuary offers tours of their facility with up-close-but-no-touch encounters with elephants, known as "Seeing the elephant" tours. Visitors are able to observe the elephant's habitat, special handling techniques for bull elephants, and observe positive reinforcement training to deal with medical problems and foot care. Education and conservation are combined with overnight options and vegetarian lunches. These tours would not be impacted by passage of SB 716.

3) *Arguments in support:*

- a) *Use of the "guide" or "bull hook" is de facto abuse.* According to the sponsor, 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. . . ."

The president and co-founder of PAWS, which is a co-sponsor of this bill, states in part, "Based on firsthand observations, I have concluded that there is no way to humanely use a bullhook – a weapon resembling a fireplace poker, with a sharp metal point and hook at the end – to train and manage elephants. By its very design, the bullhook is meant to inflict pain and instill fear. I have spent time around many circuses and personally seen handlers forcefully hook, jab and strike elephants with bullhooks on sensitive parts of their bodies before and during performances, and as a matter of routine handling. It was very obvious by the elephants' responses that they both anticipated and experienced pain."

- 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." (Emphasis in original).

4) Arguments in opposition:

- a) *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)."
- b) *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." In particular, The EMA states, "All animal species are able to be trained using "operant conditioning." This is a type of learning in which the probability of a behavior recurring is increased or decreased by the consequences that follow. This teaching process includes both positive and negative reinforcement. Operant conditioning is used in all forms of elephant care, and the process of training animals responsibly utilizes a variety of science-based techniques which are critical to providing proper welfare and husbandry. Utilizing an elephant guide and employing positive reinforcement are often part of the same overall operant conditioning system." 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.

- c) *Economic hardship: lost tourism and entertainment dollars.* The Western Fairs Association, states in opposition, "Our organization has been monitoring proposed legislation regarding guides for several years. Groups including the Elephant Manager's Association, the Zoological Association of America, the Association of Zoos and Aquariums, the International Elephant Foundation Elephant Husbandry Resource Guide, and the American Veterinary Medical Association all recognize the guide as a husbandry tool to aid in caring of elephants and have policies in place for its use. ... We see the efforts to ban the guide -- effectively shutting down elephant exhibits and rides at fairs -- as the beginning of a slippery slope that has serious implications for all fairs."

The Salinas Valley Chamber of Commerce adds in opposition, "The Monterey Zoo is an important tourist attraction in our area and elephants are the flagship of their new facility. Should the proposed legislation in SB 716 be enacted, it would create severe barriers to the success of this responsible 501(c)(3) non-profit organization that provides so much to our community."

- d) *Request for amendments: assignment of responsible oversight agency to existing California Fish and Wildlife Committee on "restricted species held by exhibitors," and one year extension of delayed implementation.* Concern has been raised that if SB 716 were to become law and use of the bullhook/ankus is outlawed; there is not sufficient guidance in the measure to direct development of an alternative tool and approve adoption for use. For instance, if a tool is created that is similar in design, but without barbs or points at the tips (imagine something more like a cane than a fire poker), that implement would seem to comply with the intention of the bill to be a tool for "training or controlling the behavior of an elephant" which is not "designed to inflict pain." Who will be the agency authorized to make that determination? As mentioned above, the enforcement of animal abuse laws falls upon the local Animal Control and law enforcement; that disbursement of authority would make uniform compliance and adoption of accepted tools of husbandry difficult to achieve.

In order to address this situation, the Monterey Zoo and Have Trunk Will Travel urge the adoption of amendments to refer the implementation and adoption of any new husbandry tool to the Department of Fish and Wildlife. In support of this concept, they share the following:

"Specifics on animal husbandry and care as well as tools used in animal care for species requiring permits in California are regulated by section 671 of title 14 of the California Code of Regulations. Section 671 of Title 14 of the California Code of Regulations contains all of the specifics on the care and housing of restricted species held by licensed exhibitors, including husbandry tools. Per Section 671, the California Fish and Wildlife Commission has an appointed committee that is required to meet on a scheduled basis to address such issues as addressed in SB 716, and submit recommendations to the Director of Fish and Wildlife. After the Committee votes on such issues and presents their report to the Director, he then may present his recommendation to the Fish and Wildlife Commission, where the law may be modified."

"The Director of Fish and Wildlife's Advisory Committee is composed of representatives of Human Society of the United States, PAWS, Monterey Zoo, Have Trunk Will Travel, UC Davis, laboratories, education facilities, several other animal rights representatives, and animal experts as well as representatives from Fish and Game legal, enforcement and licensing departments. This Committee needs to have the opportunity to debate this issue and possibly come to middle ground on an acceptable means of developing and using the guide tool. The use of the guide tool (bullhook) should go through this proper channel where individuals with actual and specific professional experience with these matters can apply both science and experience to their task."

In addition to the amendment to refer the enforcement and oversight of the issue to Fish and Wildlife, Monterey Zoo and Have Trunk Will Travel also request an extension of the date of implementation, to January 1, 2020, in order to allow sufficient time for the administrative process to determine an acceptable husbandry tool, and the affected entities proper time to retrain their staff and elephants to its proper use.

5) Committee comments:

- a) *Definitions: Is a "Guide" by any other name still covered by SB 716?* The opposing sides of this legislation use differing terminology to refer to the same tool of elephant husbandry, supporters often referring to "bull hooks" or sometimes "ankus", while opponents refer to a "guide." As defined in, *Literature Review on the Welfare Implications of Elephant Training*, (April 2008), the guide is a shaft with a tapered metal hook attached, and it sometimes has a blunt metal point at the end. It is also sometime referred to as the ankus, (bull)hook, or goad. The guide extends a handler's reach so s/he may touch, push, or pull various parts of the elephant's body. A guide is used in all free contact programs in the United States, and may also be used in conjunction with protected contact.
www.avma.org/KB/Resources/LiteratureReviews/Documents/elephant_training_bgnd.pdf

This legislation prohibits the use of a bullhook, ankus, baseball bat, axe handle, pitchfork, or similar device *designed to inflict pain...* The bill does not include "guide" in its list of prohibited husbandry devices. Many opponents of this legislation believe that the use of a

guide, when done properly, is not painful to the animal. They further argue that it is not intended to be painful, but rather mimic the physical interplay of tugging and prodding common in elephants. Additionally, earlier versions of this measure contained reference to the word "guide", but it was amended out. Therefore, there is some ambiguity as to whether use of the "guide" would be prohibited by this bill. The author may wish to clarify this by expressly including reference to guides and adding a definition.

- b) *Conflict within scope of covered persons within PC 596.5 (a) and (b).* This bill amends an existing section of the Penal Code, 596.5 which contains prohibited devices and abusive acts directed at elephants done by "*any owner or manager of an elephant*" and as of January 1, 2018 the new subsection (b) will prohibit use, including brandishing, exhibiting, or displaying or enumerated additional prohibited devices (bullhook, ankus, pitch fork, etc...), by "*any person who houses, possesses, or is in direct contact with an elephant.*" The committee wishes to point out that a conflict in the scope exists between these two sections, with the latter being substantially more broad than the existing law (which will remain in force). The author may wish to amend subsection (a) to also address abusive acts by any person who houses, possesses, or is in direct contact with an elephant, in order to provide consistency within the section.

6) *Prior Legislation:*

- a) AB 777 (Levine), of 2007-2008, would have prohibited specified conduct in relation to housing, possessing, contacting, or traveling with an elephant. AB 777 was held in the Assembly Public Safety Committee
- b) AB 3027 (Levine), of 2005-2006, would have prevented the use an Ankus, bullhook, or similar device on an elephant. Would have prevented the use of any chain that is used to restrain an elephant, except if utilized for the shortest amount of time necessary to provide actual medical treatment. AB 3027 was held in the Assembly Appropriations Committee.
- c) AB 1000 (Horcher), of 1995-96, would have prohibited the chaining of elephants in their permanent facility unless the chaining was for training purposes limited to two hours per a day or veterinary care. AB 1000 failed passage in the Assembly Committee on Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

Organizations (CA)

Active Environment

American Society for the Prevention of the Cruelty to Animals

Animal Film Festival

Animal Legal Defense Fund

City and County of San Francisco, Board of Supervisors

City of Los Angeles

City of Oakland

Elephant Voices

Global Sanctuary for Elephants
 Humane Society Veterinary Medical Association
 In Defense of Animals
 International Marine Mammal Project
 Laborer's International Union of North America, Local 777 & 792
 Last Chance for Animals
 Lions, Tigers and Bears
 March for Elephants
 Oakland Zoo
 Performing Animal Welfare Society
 Sacramento SPCA
 San Diego Humane Society
 San Francisco SPCA
 Santa Clara County Activists for Animals
 Sierra Wildlife Coalition
 Society for the Prevention of Cruelty to Animals Los Angeles
 State Humane Association of California
 The Elephant Sanctuary
 The Fund for Animals
 The Global March for Elephants and Rhinos
 The League of Humane Voters, California Chapter
 The Marin Humane Society

Organizations (Out of State)

Action for Animals
 Best Friends Animal Society
 Detroit Zoological Society
 Elephant Trust
 Global Sanctuary for Elephants
 Humane Society Veterinary Medical Association
 The Elephant Sanctuary in Tennessee
 The Humane Society of the United States
 Uganda Carnivore Program

8 California residents
 12 Out of state individuals

Opposition

Organizations (CA)

American Humane Association Hollywood
 Animal Actors of Hollywood
 California Fairs Alliance
 Circus Fans Association of America
 Face in the Crowd Casting
 Farm Bureau Monterey
 Gentle Jungle, Inc.
 Have Trunk Will Travel
 Los Angeles Foundation for the Circus Arts

Monterey Zoo
No Animals Were Harmed program
Pacific Animal Productions
Salinas Valley Chamber of Commerce
Silver Screen Animal, Inc.
Western Fairs Association
Wild Wonders, Inc.
Worldwide Movie Animals

Organizations (Out of State)

Asian Elephant Support
Columbus Zoo and Aquarium (Jack Hanna)
Feld Entertainment Inc.
International Elephant Foundation.Org
National Animal Interest Alliance
Outdoor Amusement Business Association
United States Zoological Association
Zoological Association of America

75 California residents
43 Out of state individuals

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