

SHORT TITLE: Game and fish; requiring the Department of Agriculture to regulate the exhibition of big cats and bears. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1230

By: Easley

AS INTRODUCED

An Act relating to wildlife and agriculture; creating the Oklahoma Agriculture Exhibition Act; providing short title; defining terms; prohibiting possession of certain wildlife for specified purposes; requiring the State Department of Agriculture to issue certain permits, adopt rules and establish conditions for issuance of such permits; allowing the authorization of certain permission by letter; stating conditions for approval of exemption; stating conditions upon which permits shall be issued; requiring specified control and maintenance of certain wildlife; prohibiting holding certain wildlife in captivity prior to obtaining permit; specifying types of permits and corresponding fees; requiring permit holder to obtain additional or amended permits prior to obtaining additional animals; allowing regulation of wildlife by local governmental authorities; stating expiration date of licenses; requiring notification prior to disposing of wildlife; requiring specified wildlife housed in unsafe conditions be placed in certain approved facilities; stating conditions constituting violation of section of law; stating criteria for cages holding wildlife; prohibiting maltreatment or neglect of specified wildlife; requiring wildlife housing meet certain

specifications; requiring specified wildlife be contained and stating exceptions; requiring notification prior to transporting specified wildlife; stating liability and nonliability; requiring proper documentation be provided to seller; stating criteria for proper documentation; stating when transfer of specified wildlife constitutes violation of act; requiring certain actions and stating liability on seller's part; requiring permittee to provide certain notification; requiring disposal of specified wildlife within certain time period under specific conditions and providing penalty for violation; requiring permit for propagation; requiring propagation permits comply with federal law; requiring import permits subsequent to certain actions and stating procedure thereto; stating certain prohibition; allowing officer of the Department of Agriculture to take specified actions upon finding a violation of this act; providing penalties, including a fine, revocation of permit, or forfeiture; requiring conviction and exhaustion of appeals prior to forfeiture or disposal of seized items or wildlife; requiring appeals bond; requiring notification of escaped wildlife and personal injury and requiring certain report; requiring specified entities exempt from the provisions of the act to complete application; prohibiting certain acts; construing section of law; making specified persons immune from liability; providing penalties for violations of section of law; requiring promulgation of rules for

regulations of certain wildlife; amending 29 O.S. 1991, Sections 4-107, as last amended by Section 5, Chapter 7, O.S.L. 1996, 4-122, as amended by Section 9, Chapter 318, O.S.L. 1994 and 5-411, as amended by Section 3, Chapter 135, O.S.L. 1996 (29 O.S. Supp. 1997, Sections 4-107, 4-122 and 5-411), which relate to commercial and noncommercial wildlife breeders licenses, and hunting, buying and selling certain wildlife; deleting language relating to specified wildlife; clarifying language; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-5 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Agriculture Exhibition Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-7 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this act:

1. "Breeding" includes the possession of a wild animal for purpose of propagation;

2. "Circus" means a public entertainment consisting typically of a variety of performances by acrobats, clowns, and trained animals, but does not include wrestling bears or any type of show in

which there is direct contact between the public and animals which may be dangerous;

3. "Educational center" means a professionally operated facility, with a full-time staff, whose major responsibility is to conduct approved research or to educate and/or train its clientele in bona fide conservation principles, which include the protection and enhancement of animal populations through professionally accepted wildlife management techniques and principles;

4. "Exhibition" includes any display of a wild animal to members of the general public for whatever reason;

5. "Permanent exhibitors" means those exhibits that are housed the entire year in facilities located within the State of Oklahoma;

6. "Personal use" includes the possession of a wild animal for any purpose other than for commercial purposes, breeding or exhibiting;

7. "Temporary exhibitors" means those transient animal acts not permanently located within the boundaries of the State of Oklahoma; and

8. "Cat or bear" shall mean any cat or bear that will grow to a weight of fifty (50) pounds or more.

B. "Zoo" shall be defined as a facility where any class of wildlife is exhibited to the public while meeting the following provisions:

1. Zoos must be accredited by the American Association of Zoological Parks and Aquariums (AAZPA) and/or be designated as the official zoo of a municipality;

2. Zoos provided for in this provision must maintain an annual visitation rate of 100,000 visitors annually; and

3. Animals may not be sold or transferred to the general public.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-150 of Title 29, unless there is created a duplication in numbering, reads as follows:

"Restricted wildlife" means any cat or bear species or subspecies that can grow to reach a weight of fifty (50) pounds or more and is not indigenous to or found in the wild in the United States.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-151 of Title 29, unless there is created a duplication in numbering, reads as follows:

"Wild bear" means any native bear that is living or has been living in a natural and free roaming state not including captive bred or reared bears.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-152 of Title 29, unless there is created a duplication in numbering, reads as follows:

"Wild mountain lion" means any native mountain lion living or has been living in a natural and free roaming state not including captive bred or reared mountain lions.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-8 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to hold any bear or cat that will grow to a weight of fifty (50) pounds or more in this state for the purpose of breeding, exhibition, or for personal use unless the person has first obtained a permit from the State Department of Agriculture as specified in this section.

B. The Department shall issue permits for possession of a cat or bear as defined in this act:

1. The State Board of Agriculture shall adopt reasonable rules for issuing permits to possess cats or bears and establish the living conditions thereof. The conditions shall be directed toward

assuring the health, welfare, and safety of animals, the public and, where necessary, the security of facilities in which the animals are kept; and

2. The State Department of Agriculture may authorize by letter permission to possess for approved research studies or for the temporary holding of animals in the interest of public safety. Approval of an exemption will be based on a written request that outlines safety precautions that must be implemented during the specified activity.

C. 1. The Director shall issue a permit upon a satisfactory showing of qualifications to possess a cat or bear under the following conditions:

- a. the applicant must be at least twenty-one (21) years of age,
- b. the applicant must have at least two (2) years experience in the handling or care of the species for which the applicant is applying, or, in the alternative, must take a written examination, developed and administered by the Department, evidencing basic knowledge of the habits and requirements, in regard to proper diet, health care, exercise needs and housing of the species to be covered by the permit. Experience gained while in violation of this part shall not be considered qualifying experience,
- c. the facilities for holding such cat or bear must be located on the premises on which the permit holder resides or shall have a full-time resident caretaker to supervise the care and security of the facilities. Facilities may not be on premises of less than one (1) acre for a personal possession permit and three (3) acres for a commercial propagator facility permit, and

may not be located in a multi-unit dwelling or trailer park, and

- d. the applicant must have a plan for the quick and safe recapture of the cat or bear, or if recapture is impossible, for the destruction of any animal held under the permit. The applicant must have the legal authority to possess weapons or other equipment necessary to carry out the plan and in fact, possess such weapons or other equipment.

2. The permittee shall control and maintain such cat or bear at all times in such a manner as to prevent direct contact between the animal(s) and the public.

D. No person shall hold a cat or bear in captivity without first obtaining the appropriate permit pursuant to this act. The annual permits and fees for holding a cat or bear are as follows:

1. Personal possession. Ten Dollars (\$10.00) per animal and One Hundred Dollars (\$100.00) per facility. This permit allows for the possession of such animal for any purpose other than for commercial purposes or breeding or exhibit;

2. Transfer of ownership. Ten Dollars (\$10.00) per animal. A permit for transferring any animal held under the personal possession permit. If the transfer of the animal is ordered by the Department, no transfer permit shall be required; and

3. Class I commercial propagator. One Thousand Dollars (\$1,000.00) per facility. A permit required of any person or entity which may breed, sell, barter, or trade, or possess any cat or bear, and which meets all other applicable license, permit, zoning and other requirements necessary to conduct business in the city, county and state where located;

E. Before a permit holder acquires additional wildlife, another permit must be obtained or the current permit amended to authorize the possession of the additional animal(s).

F. Any permit issued by the Department under this section will not prevent a local governmental authority from regulating the possession of species of wild animals within their jurisdiction.

G. All permits expire December 31. Anyone who is going to dispose of their wildlife must notify the State Department of Agriculture in writing of their intention to dispose of their wildlife by December 31 of the year their permit expires.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-9 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A cat or bear housed in dangerously unsafe conditions constituting a threat to human safety shall, at the direction of Department of Agriculture personnel, be placed in the Department approved facilities at the owner's expense.

B. Any condition which results in a cat or bear escaping from its enclosure, cage, leash or other constraint shall be considered maintaining a cat or bear in an unsafe manner and shall be a violation of this section.

C. Cages shall be sufficiently strong to prevent escape and to protect the caged animal from injury.

D. No person shall maintain any cat or bear in captivity in any unsanitary and unsafe condition or in a manner which results in the maltreatment or neglect of such cat or bear. A violation of Section 1685 of Title 21 of the Oklahoma Statutes shall be prima facie evidence that this section has been violated.

E. No cat or bear shall be confined in any cage or enclosure which does not meet the cage and housing specifications pursuant to rules promulgated by the State Board of Agriculture.

F. Any person holding a permit to possess a cat or bear must keep such animals contained in their approved facilities as prescribed by the Department at all times. Exceptions are:

1. While being transported to or from or confined at a licensed veterinarian; or

2. While being transported to or from an advertised auction, or to a licensed facility for the purpose of breeding.

The State Department of Agriculture must be notified a minimum of twenty-four (24) hours in advance to transport pursuant to paragraph 1 of this subsection. Persons transporting bears or cats must use the most direct route to and from the destinations listed in paragraphs 1 and 2 of this subsection.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-10 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any person who keeps a cat or bear shall be liable for any costs incurred by any person, city, county or state resulting from the escape from captivity of the animal(s).

B. Neither the State of Oklahoma, nor any agency, employee or agent thereof shall be liable for any animal that expires, is injured or is destroyed. Neither the State of Oklahoma, nor any agency, employee or agent thereof shall be liable for any damage or injury caused by a cat or bear under a permit issued pursuant to this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-11 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Prior to the transfer of any cat or bear to a new owner, the prospective owner must provide the seller with proper documentation of an approved holding facility for that species. Proper documentation shall consist of a copy of a current permit for that species or a letter from the State Department of Agriculture stating that the facilities have been inspected and are approved. Any transfer without approved holding facilities shall be a violation of this act by the seller, who shall provide housing for the animal at

such seller's cost until the transferee can provide approved facilities or until final court actions are concluded. If the seller does not provide housing, such seller shall be liable for costs incurred by the State Department of Agriculture for providing such housing.

B. Permittees must notify the Department of any transfer of a cat or bear within five (5) days of the transfer on forms provided by the Department.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-12 of Title 2, unless there is created a duplication in numbering, reads as follows:

Owners of a cat or bear who do not qualify for a permit to possess such cat or bear shall dispose of such animal to an approved recipient within thirty (30) days of notification by the State Department of Agriculture. Each day of possession of such cat or bear after a thirty-day period constitutes a separate violation.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-13 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Before any person may engage in the business of breeding, or propagating, or otherwise obtaining a cat or bear for sale, barter or trade, whether indigenous to this state or not, such person must obtain and possess a permit for each propagating location.

B. Any nonresident who enters this state for the purpose of selling a cat or bear shall be required to purchase and possess an applicable Commercial Propagator's permit.

C. All permits under this section shall comply with all provisions of the United States Code and the Code of Federal Regulations relating to exotic animals, their care, propagation, importation and sale.

D. Artificially propagated cats or bears may be propagated, sold, possessed, released or exported in accordance with the rules prescribed by the State Department of Agriculture.

E. Only Class I Commercial Propagators may qualify for a permit to propagate a cat or bear and may transfer such cat or bear only to persons or entities approved to possess a cat or bear.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-14 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All persons wishing to possess a cat or bear obtained outside the State of Oklahoma must acquire an importation permit issued by the State Department of Agriculture before the cat or bear can be brought into the state. The applicable permit and all bills of lading and shipping papers relating to any cat or bear which such person may have in such person's possession shall be open and available for inspection at all reasonable times by authorized Department officers and employees for the purpose of ensuring compliance with the provisions of this section.

B. Animals to be brought into this state under the authority of an importation permit must be reported to the Department at least five (5) days before the date of importation.

C. An importation permit is required for all interstate movement of a cat or bear.

D. It is unlawful to release any cat or bear into the wilds of Oklahoma except in accordance with the rules promulgated by the State Board of Agriculture.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-15 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any officer of the State Department of Agriculture, upon finding a violation of the provisions of this act, or the terms of a

permit or rules promulgated pursuant to this act, may take the following action or actions, as appropriate:

1. Such officer may exercise arrest authority or issue a finding of a violation, along with a warning to remedy the violation by a specified date. Each day's continuation after such date shall constitute a separate violation;

2. Such officer may give a three-day written notice of seizure to the alleged offender, and make application to a court of proper jurisdiction for an order to seize any items or wildlife held, used or transported in violation of the provisions of this act, the permit or rules promulgated pursuant to this section; provided, that if such officer determines that the public health, safety or welfare imperatively requires emergency action, the notice requirement shall be suspended and such officer may make immediate application to the court for seizure; provided further, that if the emergency is such that the wildlife presents a present or imminent life-threatening situation or is likely to do so under the circumstances, then such officer or any employee of the Department who may be present and assisting the officer may destroy such wildlife; and

B. Any person convicted of violating any provision of this section, including a failure to remedy, or who violated the terms of any permit or rules promulgated pursuant to this section shall be punished by a fine of not less than One Hundred Dollars (\$100.00); and if applicable, the person's permit may be revoked, and such person shall be precluded from applying for or obtaining a permit under this section for a period not to exceed three (3) years.

C. In the event of revocation of a person's permit, the court shall determine whether or not the items seized pursuant to this section shall be ordered forfeited to the state.

D. When any item or wildlife is forfeited, the court shall enter an order accordingly and the contraband property shall be sold at public sale by the State Department of Agriculture or as

otherwise provided by rules, or donated to a worthy recipient. However, upon request of the Department at the trial of the matter, the court, as a part of its order, may direct that specific items or wildlife, which the court has ordered forfeited, be awarded to the Department for educational or training purposes.

E. No item or wildlife seized by the agency may be forfeited or disposed of in the discretion of the court, unless the offender has been convicted of the offense charged and all appeals from such conviction have been exhausted. An appeals bond shall be required to cover the cost of holding and maintaining such animals held, pending final disposition of the appeal.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-16 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Permittees shall immediately notify the State Department of Agriculture and local law enforcement officials of any escaped cat or bear.

B. Any personal injury inflicted by any species of captive wildlife requiring medical treatment shall be reported to the agency within forty-eight (48) hours of the injury, and a complete report provided regarding the nature and circumstances of the injury.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-18 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. All zoos, nature centers, rehabilitation centers, and educational exhibits meeting provisions which exempt them from the charge for necessary permits must complete an annual application and provide requested information.

B. A "nature center" shall be defined as a facility which operates in order to educate the general public about natural ecosystem interrelationships, in which a person's actions are an

integral part, and which has as its chief goal the protection and enhancement of all populations of Oklahoma animal life.

Authorized Classes of wildlife may be utilized at these facilities for educational purposes. Authorization must be obtained annually from the Director if animals are maintained.

C. An "educational center" means a professionally operated facility, with a full-time staff, who's major responsibility is to conduct approved research or to educate and/or train its clientele in bona fide conservation principles, which include the protection and enhancement of animal populations through professionally accepted wildlife management techniques and principles.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 64.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No person may:

1. Kill or attempt to kill, injure or attempt to injure any cat or bear that will grow to a weight of fifty (50) pounds or more is:

- a. in captivity in this state, or
- b. released from captivity in this state for the purpose of being killed; or

2. Conduct, promote, assist, or advertise an activity prohibited by this section.

B. No person may:

1. Sell or offer for sale, or transport or consign for transportation in this state, including interstate commerce in this state, any cat or bear that will grow to a weight of fifty (50) pounds or more that is to be used for controlled killing prohibited under this section; or

2. Sell or offer for sale a part of a product made from any cat or bear that will grow to a weight of fifty (50) pounds or more that is used in a controlled kill prohibited under this section.

C. This section does not restrict the authority of a local government to regulate the possession of any cat or bear that will grow to a weight of fifty (50) pounds or more or any other wildlife if the regulation does not conflict with this act.

D. This section does not apply to a peace officer or other employee of a municipality, a county, or this state, or a person acting at the direction of such an officer or employee, who, while acting in an official capacity or at the direction of such officer or employee acting in an official capacity, injures or kills any cat or bear that will grow to a weight of fifty (50) pounds or more that the officer or employee reasonably believes to present, under the circumstances, the possibility of danger to the public. A person described by this subsection is immune from criminal or civil liability and from prosecution or civil suit for causing injury or death to the animal.

E. This section does not apply to a licensed veterinarian or an employee of a facility accredited by the Association of Zoos and Aquariums, who while in the course of such employment, humanely euthanizes any cat or bear that will grow to a weight of fifty (50) pounds or more to eliminate the suffering of that animal due to illness or injury. A person described by this subsection is immune from criminal or civil liability and from prosecution or civil suit for causing injury or death to the animal.

F. Any person convicted of violating any provision of this section shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not less than ten (10) days nor more than thirty (30) days, or by both such fine and imprisonment.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-6 of Title 2, unless there is created a duplication in numbering, reads as follows:

The State Board of Agriculture shall promulgate rules to regulate the possession and exhibition of any cat or bear species or subspecies that will grow to reach a weight of fifty (50) pounds or more.

SECTION 18. AMENDATORY 29 O.S. 1991, Section 4-107, as last amended by Section 5, Chapter 7, O.S.L. 1996 (29 O.S. Supp. 1997, Section 4-107), is amended to read as follows:

Section 4-107. A. Except as otherwise provided for in this title and Sections 1 through 18 of this act, no person may breed, possess or raise native wildlife, except fish, amphibians, aquatic reptiles, aquatic invertebrates or exotic livestock, for commercial purposes without having first procured a license for such from the Director of Wildlife Conservation.

~~B. No person licensed under this section may sell cats specified in subsection D of this section or bears to any person who does not possess a commercial wildlife breeder's license or noncommercial wildlife breeder's license.~~

~~C.~~ Such license may be issued to any person whom the Director believes to be acting in good faith, and whom he believes does not intend to use such license for the purpose of violating any of the laws of the State of Oklahoma, and who proves that the brood stock he uses will be obtained in a lawful manner.

~~D. Without exception, any person shall be licensed under this section who keeps or maintains on premises any bear or cat that will grow to reach the weight of fifty (50) pounds or more and shall at all times keep such wildlife confined, controlled and restrained in such manner so the life, limb or property of any person lawfully entering such premises shall not be endangered.~~

~~E.~~ C. The fees for a license under this section, and all renewals of such license, shall be Forty-eight Dollars (\$48.00).

~~F.~~ D. Any person convicted of violating the provisions of this section shall be punished by a fine of not less than One Hundred

Dollars (\$100.00); and, if applicable, shall have his or her wildlife license revoked. No such person whose license has been revoked shall be eligible to obtain a new license until after the date on which the revoked license would have expired.

SECTION 19. AMENDATORY 29 O.S. 1991, Section 4-122, as amended by Section 9, Chapter 318, O.S.L. 1994 (29 O.S. Supp. 1997, Section 4-122), is amended to read as follows:

Section 4-122. A. Individuals possessing the noncommercial wildlife breeders license are authorized to breed ~~and/or~~ raise such noncommercial wildlife for personal uses only. Such personal uses shall include, but not be limited to:

1. Breeding for a hobby;
2. Educational or scientific purposes;
3. Personal consumption;
4. Release on private property, ~~except any bear or cat that will grow to reach the weight of fifty (50) pounds or more;~~ and
5. Care and rehabilitation of sick or injured wildlife.

B. The fees for a license under this section and all renewals of such license shall be Five Dollars (\$5.00).

C. Noncommercial wildlife breeders are required to abide by all provisions of Sections 5-601 and 5-602 of this title, except for those parts referring to the sale of wildlife, which is not authorized under this license.

SECTION 20. AMENDATORY 29 O.S. 1991, Section 5-411, as amended by Section 3, Chapter 135, O.S.L. 1996 (29 O.S. Supp. 1997, Section 5-411), is amended to read as follows:

Section 5-411. A. 1. No person, including but not limited to persons licensed for commercial hunting or wildlife breeders, may hunt, chase, capture, shoot, shoot at, wound, attempt to take or take, attempt to kill or kill, or slaughter an antelope, moose, whitetail or mule deer, bear, elk, mountain lion, rocky mountain

bighorn sheep, wild turkey, or any subspecies except in open season under Section 5-401 of this Code.

2. No person shall sell, offer for sale or buy or offer to buy an antelope, moose, whitetail or mule deer, wild bear, elk, wild mountain lion, rocky mountain bighorn sheep, wild turkey, or any subspecies or any parts thereof, except as otherwise provided by rules prescribed by the Oklahoma Wildlife Conservation Commission or ~~by law~~ as otherwise provided by law.

3. The provisions of this subsection shall not be construed to prevent a hide, antlers or horns from a legally taken whitetail or mule deer, elk, moose, antelope or bighorn sheep from being sold or traded by a person who legally harvested or who legally possesses the hide, antlers or horns. Any antlers or horns sold or traded shall have been removed from the skull of the deer in such a way as to leave no portion of the skull attached.

B. 1. It shall be unlawful for any person to have in his or her possession any meat, head, hide or any part of the carcass of any wildlife not legally taken.

2. Any meat, head, hide or any part of the carcass of any wildlife not legally taken shall be subject to immediate seizure by a game warden.

3. The provisions of this subsection shall not apply to privately owned, domesticated animals so designated by the Oklahoma Wildlife Conservation Commission.

C. Persons excepted from the above are:

1. Department employees when in the performance of their duties.

2. Authorized agents when appointed under Section 3-202 of this title.

SECTION 21. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-2021

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