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SENATE BILL NO. 1315

Offered January 14, 2015

A BILL to amend the Code of Virginia by adding in Chapter 5 of Title 29.1 an article numbered 8, consisting of sections numbered 29.1-578 through 29.1-581, relating to nonhuman primates; penalties.

Patrons—Lewis and Ebbin; Delegate: Hester

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 5 of Title 29.1 an article numbered 8, consisting of sections numbered 29.1-578 through 29.1-581, as follows:

Article 8.

Primates.

§ 29.1-578. Definitions.

As used in this article, unless the context requires a different meaning:

"Circus" means an exhibitor that holds a valid Class "C" license issued under the Animal Welfare Act (7 U.S.C. § 2131 et seq.), has no permanent animal facilities in Virginia, and regularly conducts performances featuring live animals and multiple trained human entertainers, including clowns and acrobats.

"Law-enforcement officer" means any state police officer, officer of the Department, including a conservation police officer as defined in § 9.1-101, local law-enforcement officer, animal control officer as defined in § 3.2-6555, humane investigator as defined in § 3.2-6558, or public prosecutor.

"Person" means any individual, partnership, corporation, organization, or other legal entity and any officer, member, shareholder, director, employee, agent, or representative thereof.

"Primate" means any species of the taxonomic order Primates, except humans.

"Wildlife sanctuary" means a nonprofit entity that (i) operates a place of refuge where an abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced animal is provided care for its lifetime; (ii) does not conduct any commercial activity with respect to primates, including the (a) sale, trade, auction, lease, or loan of primates or parts of primates and (b) use of primates in any manner in a for-profit business or operation; (iii) does not use primates for entertainment purposes or in a traveling exhibit; and (iv) does not breed any primates.

§ 29.1-579. Prohibitions; exceptions; regulations.

A. No person shall possess, sell, transfer, or breed a primate.

B. The prohibitions of subsection A shall not apply to:

1. An institution accredited or certified by the Association of Zoos and Aquariums (AZA); a research facility as defined in the Animal Welfare Act, 7 U.S.C. § 2131 et seq.; a circus or wildlife sanctuary as defined in § 29.1-578; a duly-incorporated nonprofit animal protection organization housing a primate temporarily at the written request of a law-enforcement officer acting pursuant to the provisions of § 29.1-580; a licensed veterinary hospital providing treatment to a primate; or a law-enforcement officer enforcing the provisions of this chapter.

2. A person temporarily transporting a legally owned primate through the Commonwealth if the transit time is not more than 24 hours, the primate is not exhibited, and the primate is maintained at all times in a species-appropriate cage or travel container. Such a transporter shall provide notice of the transport to the Department at least 72 hours prior to entering the Commonwealth, identifying the number and type of primate that will be transported, in addition to obtaining any veterinary certificate or other permits required by local, state, or federal law.

3. A person who lawfully possessed a primate prior to July 1, 2015, if the person (i) maintains veterinary records, acquisition papers, or other documents or records establishing that the person possessed the animal prior to July 1, 2015; (ii) acquires no additional primate on or after July 1, 2015, whether by purchase, donation, or breeding; (iii) has not been convicted of any offense involving the abuse or neglect of an animal pursuant to any local, state, or federal law; (iv) has not had a license or permit regarding the care, possession, exhibition, breeding, or sale of animals revoked or suspended by any local, state, or federal agency; (v) registers with, and pays a registration fee to, the Department by September 1, 2015, and annually thereafter, indicating the number of animals of each primate species in his possession; and (vi) notifies the Department at least 72 hours prior to sale or transfer of an existing primate, identifying the purchaser or transferee of the animal.

C. The Board shall adopt regulations to implement the provisions of this article, including

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59 regulations establishing registration fees on a sliding scale depending on the number of primates a
60 person possesses.

61 **§ 29.1-580. Seizure of a primate.**

62 A. A law-enforcement officer shall, after obtaining a warrant from any judge or magistrate upon
63 probable cause, seize or impound any primate possessed, sold, transferred, bred, or exhibited in
64 violation of this article. If the primate poses a direct threat to public safety or is suffering from
65 apparent animal neglect or cruelty, such primate shall be immediately placed in the custody and control
66 of a wildlife sanctuary, a duly incorporated nonprofit animal protection organization housing a primate
67 temporarily at the written request of a law-enforcement officer acting pursuant to the provisions of this
68 article, or an institution accredited by the Association of Zoos and Aquariums (AZA). If there is no
69 immediate threat to public safety or animal welfare, a law-enforcement officer shall impound the
70 primate in place.

71 B. Upon seizing or impounding a primate, a law-enforcement officer shall petition the general
72 district court in the locality where the primate was seized or impounded for a hearing to determine
73 whether the primate was in fact possessed, sold, transferred, bred, or exhibited in violation of this
74 article. The hearing shall be held not more than 14 days from the date of the seizure or impoundment,
75 and the law-enforcement officer shall provide written notice of the hearing at least five days prior to the
76 hearing to the person from whom the primate was seized or impounded.

77 C. Upon judicial determination of a violation of any provision of this section, the seized or
78 impounded primate shall be deemed forfeited and the court shall order the violator to pay all
79 reasonable expenses incurred in caring and providing for the primate, from the time the primate is
80 seized until the time such primate is forfeited, to the AZA institution, wildlife sanctuary, or temporary
81 holding facility in possession of the primate. The court may also prohibit the possession or ownership of
82 primates or other nonnative wild animals by the person found to have violated this section.

83 D. A forfeited primate shall be transferred to a wildlife sanctuary or an AZA-accredited institution
84 that is willing and able to take custody of the forfeited primate. Nothing in this article shall be
85 construed to prevent law-enforcement officers from humanely euthanizing a primate in compliance with
86 state and federal law if, after reasonable efforts, no wildlife sanctuary or AZA-accredited institution is
87 willing and able to provide long-term care for the primate.

88 E. Nothing in this article shall be construed to prevent the voluntary, permanent relinquishment of
89 any primate by its owner to a person legally able to possess the primate and willing and able to take
90 possession. Voluntary relinquishment shall have no effect on any criminal charges for violations of this
91 article.

92 F. Any primate found to be not properly confined, whether on the property of the owner or running
93 at large, may be humanely destroyed by law-enforcement officers in order to protect public safety. The
94 owner of such primate shall be liable for costs accrued to law-enforcement officers in humanely
95 destroying or otherwise securing any such primate.

96 **§ 29.1-581. Penalties; private action; article not exclusive of local ordinance.**

97 A. Any person who violates any provision of this article or any regulation adopted thereunder is
98 guilty of a Class 1 misdemeanor, and any person convicted of such a violation shall be subject to a fine
99 of not more than \$2,500 and confinement in jail for not more than 12 months, either or both.

100 B. Any primate owner or custodian whose willful act or omission in the care, control, or containment
101 of the primate is so gross, wanton, and culpable as to show a reckless disregard for human life and is
102 the proximate cause of an attack by such animal that causes serious bodily injury to any person is
103 guilty of a Class 1 misdemeanor.

104 C. Any resident of a locality in which a primate is kept may sue the owner of the primate to enjoin a
105 violation of this article.

106 D. The governing body of any locality may adopt, and make more stringent, ordinances that parallel
107 the provisions of this article restricting the possession, sale, transfer, or breeding of primates.