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CAPTIVE PRIMATE SAFETY ACT

OCTOBER 29, 2007.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 1498]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1498) to amend the Lacey Act Amendments of 1981 to prohibit the import, export, transportation, sale, receipt, acquisition, or purchase in interstate of Foreign commerce of any live animal of any prohibited wildlife species, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

Nonhuman primates kept as pets pose serious risks to public health and safety. These animals can be dangerous and can spread life-threatening diseases. Infant primates often seem endearing and cooperative, but they grow larger, stronger and more aggressive. They can inflict serious harm by biting and scratching. Removing their teeth, as some pet owners do, is cruel and no safeguard against injury. The Captive Wild Animal Protection Coalition reported that, from January 1, 1995 to January 1, 2005, there were 132 incidents reported of human injury caused by captive primates or escapes of captive primates in the United States. The breakdown of these incidents by type of owner is as follows:

Pet	80
Research facility	7
Quarantine facility	1
Circus	1
Sanctuary	1
Zoo	18

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Dealer	1
Exhibitor	13
Unknown	10

More incidents may have occurred but gone unreported. Most incidents occur when primates have contact with people other than their owners or trained caretakers. The probability of contact with strangers and untrained people increases during interstate transport.

Nonhuman primates can potentially transmit diseases including Herpes B, monkeypox, Simian Immunodeficiency Virus (SIV), tuberculosis, yellow fever, and the Ebola virus. There are more than 240 species of extant primates. Primates fall into four categories: apes, old world monkeys, new world monkeys, and prosimians. The species from each group most commonly seen in the U.S. as pets are described below along with brief selections of the dangers that accompany them.

APES

CHIMPANZEES AND GIBBONS

- Great apes become intractable during and post-puberty. They are extremely muscular and can cause great injury even without intention.
- Molloscum contagiosum is an example of a virus transported only from chimpanzees to humans as a small, domelike waxy papule on the face and eyelids.
- Because of our close genetic relationship, almost all diseases can be transmitted between apes and humans.

OLD WORLD MONKEYS

RHESUS MACAQUES, VERVETS, CYNOMOLGUS MONKEYS, AND BABOONS

- Old world monkeys can be aggressive and dangerous in close proximity to humans, especially after puberty.
- Old world monkeys should be considered carriers of Herpes B, a virus that can be passed to humans through bites but also through the airborne transmission of the disease in the form of vapor, fine particles, or larger droplets from body fluids and feces.
- Live rabies vaccines commonly given to dogs and cats can cause rabies in old world monkeys which can then be spread to humans.
- The vervet monkey is known to often carry the Marburg virus, a disease that has been fatal to humans in 7 out of 31 cases. No symptoms are shown until death and all vervets should be treated as if infected.

NEW WORLD MONKEYS

WOOLEY MONKEYS, CAPUCHINS, SQUIRREL MONKEYS, MARMOSETS, SPIDER MONKEYS, AND OWL MONKEYS

- New world monkeys tend to be less aggressive but are far more difficult to adapt to a pet environment.
- New world monkeys often carry diseases, such as measles, easily contracted by young children and the elderly.

• All four poxviruses are found in new world monkeys, with monkeypox being the most frequent.
• Viral hepatitis A is common in capuchins, owl monkeys, and tamarins. Often undetectable in the monkeys, the disease can still be passed to humans. Primate handlers often contract this virus from recently shipped animals.
• New world monkeys (mostly frugivores) are especially prime candidates for klebsiella and other water-borne, gram-negative bacteria. Infected primates pose a serious danger to human infants, and children with mild respirator infections.

PROSIMIANS

GALAGOS, TARSIERS, LEMURS, AND LORISES

• Prosimians may appear small and cuddly but have fierce and dangerous bites.
• Prosimians are likely to carry tuberculosis, bacterial pathogens such as salmonella, and both endo- and ecto-parasites.

All non-human primates may carry diseases that can be passed to their human caretakers.

• Poxviruses can be found in all primates. The most common of these is monkey pox, which can be passed to humans as small pox. All recent purported small pox outbreaks appear to have been transmitted from monkeys. Humans can also be infected with other poxviruses carried by primates.
• Like humans, all primates can be infected with bacterial infection. The bacteria that deserve the most concern are Mycobacteriaciae (tuberculosis), Shigella/Salmonella, Campylobacter, and Klebsiella. Tuberculosis is especially common among pet primates and their owners. In addition, many primates carry parasites that are easily transmitted to human beings.

In addition, nonhuman primates require a specialized diet, companionship from other nonhuman primates, and housing in very large enclosures. If a nonhuman primate becomes too difficult to handle for the pet owner, there are few options for caring for them.

Because of the serious health risk, importing nonhuman primates to the U.S. for the pet trade has been banned by federal regulation since 1975. In addition, many states already prohibit these animals as pets. Still, there is a vigorous trade in these animals. Estimates are that 15,000 are in private hands; however, as the trade is largely unregulated, the number may be much higher. Because many of these animals move in interstate commerce, federal legislation is needed.

OBJECTIVES OF THE LEGISLATION

S. 1498 amends the Lacey Act by adding monkeys, apes, and other nonhuman primates to the list of animals that cannot be transported across state lines for the pet trade. It has no impact on trade or transportation of animals for zoos, research facilities, or other federally licensed and regulated entities. Federal licenses or registration are required for all commercial activity, such as breeders, dealers, research institutions, exhibitors, and transporters, therefore, they are exempt. The bill is similar to the Captive Wildlife Safety Act, which Congress passed in 2003 to ban

interstate commerce in lions, tigers, and other big cats for the pet trade.

S. 1509 also makes technical corrections to the Lacey Act Amendments of 1981 and the Captive Wildlife Safety Act (CWSA) in order to ensure that the CWSA provisions found in 16 U.S.C 3372 are fully enforceable. After the development of the regulations to implement the CWSA, the U.S. Fish and Wildlife Service (Service) became concerned that in certain cases enforcement of the CWSA might be questioned because of the provision's location within the Lacey Act Amendments of 1981. Specifically, the Lacey Act's civil and criminal wildlife trafficking prohibitions are built upon a two-part prohibition scheme. Each trafficking violation requires proof of two acts involving wildlife at issue. First, the wildlife must be taken, possessed, transported or sold by someone in violation of existing laws or treaties. Second, the wildlife must be imported, exported, transported, sold, received, acquired or purchased. Although it was not Congress' intent, the Service is concerned that the Act might be interpreted as providing that these two prohibited acts cannot be collapsed into one step or act committed by the defendant. Therefore, based on the recommendations of the Service and the Department of Justice, this technical correction moves the CWSA provisions to another part of the Lacey Act to make it clear beyond peradventure that the CWSA is fully enforceable.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that this Act may be cited as the "Captive Primate Safety Act of 2005".

Sec. 2. Addition of nonhuman primates to the definition of prohibited wildlife species

This section amends the Lacey Act by adding nonhuman primates to the list of animals that cannot be transported, sold, received, acquired or purchased in interstate or foreign commerce.

Sec. 3. Captive wildlife amendments

This section makes technical corrections to section 3 of the Lacey Act Amendments of 1981 (16 U.S.C. 3372, 3373(a) and 3373(d)).

Sec. 4. Applicability provision amendment

This section makes technical corrections to section 3 of the Captive Wildlife Safety Act (117 Stat. 2871; Public Law 108–191).

LEGISLATIVE HISTORY

In the 109th Congress, similar legislation, S. 1509, was introduced by Senator Jeffords, and cosponsored by Senators Chaffee, Lieberman, Lautenberg, Ensign, Vitter, and Menendez. The bill was reported by the Senate Environment and Public Works Committee on June 19, 2006, accompanied by written report No. 109–263. On July 11, 2006, the bill passed the Senate without amendment by Unanimous Consent.

On May 24, 2007, Senator Boxer introduced S. 1498, which was cosponsored by Senators Vitter, Lautenberg, Lieberman and Menendez. The bill was received, read twice and referred to the

Senate Committee on Environment and Public Works. The committee met on July 31, 2007, to consider the bill. S. 1498 was ordered to be reported with an amendment favorably.

HEARINGS

No committee hearings were held on S. 1498.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1468 on July 31, 2007. The bill was ordered favorably reported by voice vote. No roll call votes were taken.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1498 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 1498 would not impose Federal intergovernmental unfunded mandates on State, local, or tribal governments.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Summary: S. 1498 would amend the Lacey Act to prohibit interstate and foreign trade of nonhuman primates. CBO estimates that implementing the bill would cost $17 million over the 2008–2012 period, assuming appropriation of the necessary amounts. The bill could increase revenue collections and direct spending, but we estimate that any such changes would be insignificant.

S. 1498 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

S. 1498 would impose a private-sector mandate, as defined in UMRA, on certain entities that handle nonhuman primates. CBO expects that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1498 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	2	3	4	4	4
Estimated Outlays	2	3	4	4	4

Basis of estimate: S. 1498 would make it illegal to import, export, transport, sell, receive, acquire, or purchase nonhuman primates (such as monkeys and apes). Violators of the proposed prohibition

on interstate and foreign trade of such animals would be subject to criminal and civil penalties.

Based on information provided by the U.S. Fish and Wildlife Service (USFWS), CBO estimates that implementing S. 1498 would cost about $4 million annually, primarily for additional staff to conduct inspections and investigations to enforce the legislation. CBO expects that the agency would take about three years to reach that level of effort. Thus, we estimate that the added duties for USFWS would cost about $17 million over the 2008–2012 period, assuming appropriation of the necessary amounts.

Enacting S. 1498 could increase revenues from civil and criminal fines. Based on information obtained from the USFWS about the relatively small number of violations likely to occur, CBO estimates that any such increase would be less than $500,000 annually. Moreover, such changes would be fully offset by increases in direct spending from the Crime Victims Fund (where criminal fines are deposited) or the resource management account of the USFWS (where civil fines are deposited and used for rewards to informers and for other program costs).

Estimated impact on state, local, and tribal governments: S. 1498 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: S. 1498 would impose a private-sector mandate, as defined in UMRA, by prohibiting anyone from importing, exporting, transporting, selling, receiving, acquiring, or purchasing nonhuman primates in interstate or foreign commerce. Several groups would be exempted from the prohibition, including: entities that are licensed or registered and inspected by a federal agency; a state college, university, or agency, or certain persons licensed by the state; other groups such as accredited wildlife sanctuaries that qualify under the bill's criteria; and individuals that have custody of nonhuman primates solely for the purpose of transporting them to an exempted entity.

The direct cost of the mandate would be the cost of becoming licensed, registered, or accredited for those who are not required to do so under current law. Importers, dealers, exhibitors, transporters, and research facilities that handle nonhuman primates are currently required to obtain a permit or license, or register with a federal agency. In addition, based on information from wildlife sanctuaries, CBO expects that few sanctuaries would seek accreditation, which has a minimal cost. Consequently, CBO expects that the direct cost of complying with the mandate would fall well below the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted for inflation).

Estimate prepared by: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Leo Lex; Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is en-

closed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

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LACEY ACT AMENDMENTS OF 1981

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SEC. 2. DEFINITIONS.

For purposes of this Act:

(a) * * *

* * * * * * *

(g) PROHIBITED WILDLIFE SPECIES.—The term "prohibited wildlife species" means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species*, or any nonhuman primate*.

* * * * * * *

SEC. 3. PROHIBITED ACTS.

(a) OFFENSES OTHER THAN MARKING OFFENSES.—It is unlawful for any person—

(1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;

(2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—

(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law; *or*

(B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State**[**; or**]** *;*

[(C) any prohibited wildlife species (subject to subsection (e));**]**

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18, United States Code)—

(A) to possess any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law or Indian tribal law, or

(B) to possess any plant taken, possessed, transported, or sold in violation of any law or regulation of any State; or

(4) to attempt to commit any act described in paragraphs (1) through (3) *or subsection (e)*.

* * * * * * *

[(e) NONAPPLICABILITY OF PROHIBITED WILDLIFE SPECIES OFFENSE.—

[(1) IN GENERAL.—Subsection (a)(2)(C) does not apply**]**

(e) CAPTIVE WILDLIFE OFFENSE.—

(1) IN GENERAL.—It is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate

or foreign commerce any live animal of any prohibited wildlife species.

(2) NONAPPLICABILITY.—*This subsection does not apply* to importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of [a prohibited]*any prohibited* wildlife species, by a person that, under regulations prescribed under [paragraph (3), is described in paragraph (2)]*paragraph (4), is described in paragraph (3)* with respect to that species.

[(2)]*(3)* PERSONS DESCRIBED.—A person is described in this paragraph, if the person—

(A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other Federal agency with respect to that species;

(B) is a State college, university, or agency, State-licensed wildlife rehabilitator, or State-licensed veterinarian;

(C) is an accredited wildlife sanctuary that cares for prohibited wildlife species and—

(i) is a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of such Code;

(ii) does not commercially trade in [animals listed in section 2(g)]*prohibited wildlife species*, including offspring, parts, and byproducts of such animals;

(iii) does not propagate [animals listed in section 2(g)]*prohibited wildlife species*; and

(iv) does not allow direct contact between the public and [animals]*prohibited wildlife species*; or

(D) has custody of the [animal]*prohibited wildlife species* solely for the purpose of expeditiously transporting the [animal]*prohibited wildlife species* to a person described in this paragraph with respect to the species.

[(3)]*(4)* REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in cooperation with the Director of the Animal and Plant Health Inspection Service, shall promulgate regulations describing the persons described in [paragraph (2)]*paragraph (3)*.

[(4)]*(5)* STATE AUTHORITY.—Nothing in this subsection preempts or supersedes the authority of a State to regulate wildlife species within that State.

[(5)]*(6)* AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out [subsection (a)(2)(C)]*this section* $3,000,000 for each of fiscal years 2004 through 2008.

(7) APPLICATION.—This subsection shall apply beginning on the effective date of the regulations promulgated pursuant to this subsection.

SEC. 4. PENALTIES AND SANCTIONS.

(a) CIVIL PENALTIES.—

(1) Any person who engages in conduct prohibited by any provision of this Act [(other than subsection 3(b))]*(other than subsections (b), (d), and (e) of section 3)* and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a

manner unlawful under, any underlying law, treaty, or regulation, may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation: *Provided,* That when the violation involves fish or wildlife or plants with a market value of less than $350, and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, or regulation, and any person who knowingly violates [section 3(d)]*subsection (d) or (e) of section 3*, or $10,000, whichever is less.

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(b) HEARINGS.—* * *

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(d) CRIMINAL PENALTIES.—

(1) Any person who—

(A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this Act [(other than subsection 3(b))]*(other than subsections (b), (d), and (e) of section 3)*, or

(B) violates any provision of this Act [(other than subsection 3(b))]*(other than subsections (b), (d), and (e) of section 3)* by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of $350,

knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than $20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(2) Any person who knowingly engages in conduct prohibited by any provision of this Act [(other than subsection 3(b))]*(other than subsections (b), (d), and (e) of section 3)* and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation shall be fined not more than $10,000, or imprisoned for not more than one year, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(3) Any person who knowingly violates [section 3(d)]*subsection (d) or (e) of section 3*—

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CAPTIVE WILDLIFE SAFETY ACT

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SECTION 1. SHORT TITLE.

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SEC. 3. PROHIBITED ACTS.

[(a) IN GENERAL.—Section 3]*Section 3* of the Lacey Act Amendments of 1981 (16 U.S.C. 3372) is amended—

(1) * * *

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[(b) APPLICATION.—Section 3(a)(2)(C) of the Lacey Act Amendments of 1981 (as added by subsection (a)(1)(A)(iii)) shall apply beginning on the effective date of regulations promulgated under section 3(e)(3) of that Act (as added by subsection (a)(2)).]

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