

HOUSE BILL 3165

By Niceley

AN ACT to amend Tennessee Code Annotated, Title 4; Title 11; Title 43; Title 44; Title 67; Title 69 and Title 70, relative to restructuring responsibilities for certain governmental entities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 70-4-401, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) It is unlawful for any person, for personal non-commercial use, to possess, transport, import, export, buy, sell, barter, propagate or transfer any wildlife, whether indigenous to this state or not, except as provided by this part and rules and regulations promulgated by the Tennessee wildlife resources board pursuant to this part. When such purposes are for commercial purposes, title 44, chapter 8, part 5 shall apply.

(b) No person, for personal, non-commercial use, shall possess Class I or Class II wildlife without having documentary evidence showing the name and address of the supplier of such wildlife and date of acquisition.

(c) If more than one (1) sale is made by a person in any one (1) year, it shall be deemed that the person is possessing, transporting, importing, exporting, buying, selling, bartering, propagating or transferring the wildlife for commercial purposes and title 44, chapter 8, part 5 shall apply.

SECTION 2. Tennessee Code Annotated, Section 70-4-403(3)(P), is amended by deleting the language "Cervidae except white-tailed deer" and by substituting instead the language "Cervidae except white-tailed deer, unless otherwise authorized pursuant to title 44, chapter 8, part 5, to be possessed for breeding purposes pursuant to rules and regulations promulgated by the commissioner of agriculture,".

SECTION 3. Tennessee Code Annotated, Section 70-4-403(4), is amended by deleting the language "; provided, that rehabilitation facilities may possess Class IV wildlife as provided by rules established by the commission if authorized by a letter from the director of the agency".

SECTION 4. Tennessee Code Annotated, Section 70-4-404(d), is amended by deleting the language "in captivity without first" and by substituting instead the language "in captivity for personal, non-commercial purposes without first".

SECTION 5. Tennessee Code Annotated, Section 70-4-404(d), is further amended by deleting subdivisions (3), (4), (6), (7), (8), and (11).

SECTION 6. Tennessee Code Annotated, Section 70-4-405(d), is amended by deleting the language "No person shall maintain any wildlife in captivity" and by substituting instead the language "No person shall maintain any wildlife in captivity for personal, non-commercial purposes".

SECTION 7. Tennessee Code Annotated, Section 70-4-405(e), is amended by deleting the language "held in captivity" and by substituting instead the language "held in captivity for personal, non-commercial purposes".

SECTION 8. Tennessee Code Annotated, Section 70-4-405(g)(1), is amended by deleting the language "Stationary facilities" and by substituting instead the language "Stationary facilities for wildlife held in captivity for personal, non-commercial purposes".

SECTION 9. Tennessee Code Annotated, Section 70-4-405(g), is amended by deleting subdivision (9) in its entirety.

SECTION 10. Tennessee Code Annotated, Section 70-4-405(h), is amended by deleting the language "Mobile Facilities." and by substituting instead the language "Mobile facilities for wildlife held in captivity for personal, non-commercial purposes".

SECTION 11. Tennessee Code Annotated, Section 70-4-405(h), is further amended in subdivision (6) by deleting the language "or temporarily exhibiting" and by deleting subdivision (8) and (9) in their entirety.

SECTION 12. Tennessee Code Annotated, Section 70-4-407(a), is amended by deleting the language "wildlife" and by substituting instead the language "wildlife held in captivity for personal, non-commercial purposes".

SECTION 13. Tennessee Code Annotated, Section 70-4-409(a), is amended by deleting the language "wildlife" and by substituting instead the language "wildlife held in captivity for personal, non-commercial purposes".

SECTION 14. Tennessee Code Annotated, Section 70-4-410, is amended by deleting the section in its entirety and by substituting instead the following language:

Before any person may engage in the business of propagating or otherwise obtaining Class I or Class II wildlife for sale, barter or trade, whether indigenous to this state or not, such person must obtain and possess a permit from the Tennessee exotic wildlife board for each propagating location in accordance with title 44, chapter 8, part 5.

SECTION 15. Tennessee Code Annotated, Section 70-4-411(a), is amended by deleting the language "wildlife" and by substituting instead the language "wildlife held in captivity for personal, non-commercial purposes".

SECTION 16. Tennessee Code Annotated, Section 70-4-411(c), is amended by deleting the language ", except no permit is required for zoos and temporary exhibitors".

SECTION 17. Tennessee Code Annotated, Section 70-4-413(a), is amended by deleting the language "the commission" and by substituting instead the language "the commissioner of agriculture, pursuant to title 44, chapter 8, part 5".

SECTION 18. Tennessee Code Annotated, Section 70-4-413, is amended by adding the following language as a new subsection (d):

(d) Notwithstanding any other law, rule or regulation to the contrary, any moratorium in place prior to the effective date of this act for permitting private wildlife preserves is hereby declared void.

SECTION 19. Tennessee Code Annotated, Section 70-4-414(a), is amended by deleting the word "falconry" and by substituting instead the language "falconry for personal, non-commercial purposes".

SECTION 20. Tennessee Code Annotated, Section 70-4-416, is amended by deleting the section in its entirety and by substituting instead the following language:

Permittees shall immediately notify the TWRA, the Tennessee exotic animals board created pursuant to title 44, chapter 8, part 5 or local law enforcement officials of any escape of Class I wildlife. Any personal injury inflicted by any species of captive wildlife requiring medical treatment shall be reported to TWRA or the board within forty-eight (48) hours of the injury, and a complete report provided regarding the nature and circumstances of the injury. If the agency or board so notified is not the governmental unit having jurisdiction over the escaped captive wildlife, that governmental unit shall immediately notify the governmental unit having jurisdiction over the escaped captive wildlife.

SECTION 21. Tennessee Code Annotated, Title 44, Chapter 8, is amended by adding the following language as a new part 5:

44-8-501.

(a) It is unlawful for any person, for commercial purposes, to possess, transport, import, export, buy, sell, barter, propagate or transfer any wildlife, whether indigenous to this state or not, except as provided by this part and rules and regulations promulgated by the department of agriculture pursuant to this part. When such purposes are for personal, non-commercial purposes, title 70, chapter 4, part 4 shall apply.

(b) No person, for commercial purposes, shall possess Class I or Class II wildlife without having documentary evidence showing the name and address of the supplier of such wildlife and date of acquisition.

44-8-502. As used in this part, unless the context otherwise requires:

(1) "Board" means the Tennessee exotic wildlife board;

(2) "Cage" means the primary enclosure in which an animal is held;

(3) "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 a Class I animal, except as otherwise provided for in this part;

(4) "Commercial propagator" means any person or entity that may sell, barter, trade, propagate or transfer Class I wildlife, excluding transfers to other commercial propagators located within the boundaries of Tennessee, and that meets all other applicable license, permit, zoning and other requirements necessary to conduct business in the city, county and state where located;

(5) "Commissioner" means the commissioner of agriculture;

(6) "Department" means the department of agriculture;

(7) "Mobile facility" means a facility designed for the transporting of animals or for the holding of animals on a temporary basis;

(8) "Native wildlife" means those species presently occurring in the wild in Tennessee and those extirpated species that could reasonably be expected to survive in the wild if reintroduced;

(9) "Perimeter fence" means a secondary fence that prevents the public from touching the cage in which the animal is held;

(10) "Permanent exhibitors" means those exhibits that are housed the entire year in facilities located within the state of Tennessee;

(11) "Personal possession permit" means a noncommercial type permit issued to private citizens for ownership or possession of nonbreeding animals in small numbers;

(12) "Stationary facility" means the primary holding facility, including cage and barriers that remain in a fixed location; and

(13) "Temporary exhibitors" means those transient animal acts not permanently located within the boundaries of the state of Tennessee.

44-8-503.

(a) A five (5) member exotic wildlife board is created and established. The board shall consist of the commissioner of agriculture or the commissioner's designated representative, the director of the regulatory services division, department of agriculture, the director of the agricultural enhancement program, department of agriculture, the director of market development within the department of agriculture, and the Tennessee state veterinarian.

(b) All members of the board shall serve ex-officio. In the event of a vacancy for the state veterinarian or in a position within the department of agriculture which position is filled by a person who is an ex-officio board member, the governor shall appoint an interim member to fill the vacancy until the respective position is filled.

(c) With the exception of the commissioner, no proxies nor power to designate a representative to serve in the place of a board member shall be allowed.

(d) The commissioner shall establish by written policy, rule or regulation, provisions relative to conflicts of interest of board members.

(e) The board shall have all powers necessary to carry out its duties as prescribed in this part and in rules and regulations promulgated by the commissioner.

The board is further authorized to hire an executive director and any other staff essential in carrying out its duties.

(f) The commissioner is authorized to promulgate necessary rules and regulations to accomplish the purposes of this part in accordance with the uniform administrative procedures act, compiled in title 4, chapter 5.

44-8-504. Live wildlife, kept and maintained for any purpose, shall be classified in the following five (5) classes:

(1) Class I — This class includes all species inherently dangerous to humans. These species may only be possessed by zoos, circuses and commercial propagators, except as otherwise provided in this part. The board, in conjunction with the commissioner of agriculture, may add or delete species from the list of Class I wildlife by promulgating rules and regulations. The following is a listing of animals considered inherently dangerous:

(A) Mammals:

(i) Primates — Gorillas, orangutans, chimpanzees, gibbons, siamangs, mandrills, drills, baboons, Gelada baboons;

(ii) Carnivores:

(a) Wolves — All species;

(b) Bears — All species; and

(c) Lions, tigers, leopards, jaguars, cheetahs, cougars —

All species;

(iii) Order Proboscidea: Elephants — All species;

(iv) Order Perissodactyla: Rhinoceroses — All species; and

(v) Order Artiodactyla: Hippopotamus, African buffalo;

(B) Reptiles:

(i) Order Crocodylia: Crocodiles and alligators — All species; and

(ii) Order Serpentes: Snakes — All poisonous species; and

(C) Amphibians: All poisonous species;

(2) Class II — This class includes native species, except those listed in other classes;

(3) Class III — This class requires no permits except those required by the department of agriculture or when sold commercially, and includes all species not listed in other classes and includes, but is not limited to, those listed in subdivisions (3)(A)-(Q). The board, in conjunction with the commissioner of agriculture, may add or delete species from the list of Class III wildlife by promulgating rules and regulations:

(A) Nonpoisonous reptiles and amphibians except caimans and gavials;

(B) Rodents — Gerbils, hamsters, guinea pigs, rats, mice, squirrels and chipmunks;

(C) Rabbits, hares, moles and shrews;

(D) Ferrets and chinchillas;

(E) Llamas, alpacas, guanacos, vicunas, camels, giraffes and bison;

(F) Avian species not otherwise listed, excluding North American game birds, ostriches and cassowary;

(G) Semi-domestic hogs, sheep and goats;

(H) All fish held in aquaria;

(I) Bovidae not otherwise listed;

(J) Marsupials;

(K) Common domestic farm animals;

(L) Equidae;

(M) Primates not otherwise listed;

(N) Bobcat/domestic cat hybrids;

(O) Hybrids resulting from a cross between a Class II species and a domestic animal or Class III species;

(P) Cervidae except white-tailed deer, unless otherwise authorized to be possessed for breeding purposes pursuant to rules and regulations promulgated by the commissioner, and wild elk. Elk originating from a legal source while held in captivity for the purpose of farming shall be regarded as Class III wildlife. All other elk shall be wild elk and shall be regarded as Class II wildlife. No person shall possess elk in captivity within the eastern grand division of the state as defined in § 4-1-202 without having documentary evidence indicating the origin of the elk being held. This documentary evidence will be presented to the agents of the department of agriculture or the wildlife resource board upon request. Sale documentation of offspring of purchased elk is not required; and

(Q) Furbearing mammals, including those native to Tennessee, raised solely for the sale of fur;

(4) Class IV — This class includes those native species that may be possessed only by zoos and temporary exhibitors; provided, that rehabilitation facilities may possess Class IV wildlife as provided by rules established by the board if authorized by a letter from the director of the board:

(A) Black bear (*Ursus americanus*);

(B) White-tailed deer (*Odocoileus virginianus*);

(C) Wild turkey (*Meleagris gallapavo*), including the eggs of wild turkey;

(D) Hybrids of a Class IV species other than bobcat shall be Class IV;

and

(E) Animals that are morphologically indistinguishable from native Class IV wildlife shall be Class IV; and

(5) Class V — This class includes such species that the board, in conjunction with the commissioner of agriculture, may designate by rules and regulations as injurious to the environment. Species so designated may only be held in zoos under such conditions as to prevent the release or escape of such wildlife into the environment.

44-8-505.

(a)

(1) The commissioner shall adopt reasonable rules and regulations for issuing permits to possess live wildlife for commercial purposes and establishing the conditions of possessing wildlife for such purposes. 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.

(2) The executive director of the board may authorize by letter permission to possess any class of wildlife for approved research studies or for the temporary holding of animals in the interest of public safety. The executive director may exempt specific events from the caging and handling requirements established for Class I wildlife. Approval of an exemption will be based on a written request that outlines safety precautions that must be implemented during the specified activity.

(b) Class I wildlife.

(1)

(A) Persons legally possessing Class I wildlife prior to July 1, 2012 for personal, non-commercial purposes, shall obtain annually a

personal possession permit to keep such Class I wildlife pursuant to § 70-4-404.

(B) To obtain a personal possession permit for commercial purposes, such persons shall comply with all of the provisions of this part and rules and regulations promulgated by the commissioner.

(2) A permittee shall control and maintain Class I wildlife at all times in such a manner as to prevent direct exposure or contact between the animal or animals and the public; provided, that a trained elephant may be brought into contact with the public under the close supervision of a qualified trainer or handler.

(c) No person shall hold live wildlife in captivity for commercial purposes without first obtaining the appropriate permit as provided in this part. The annual permits and fees for holding live wildlife in captivity for commercial purposes shall be as established in rules promulgated by the commissioner.

44-8-506.

(a) Wildlife housed in dangerously unsafe conditions constituting a threat to human safety shall, at the direction of the board, be placed in board approved facilities at the owner's expense.

(b) Any condition that results in wildlife escaping from its enclosure, cage, leash or other constraint shall be considered maintaining wildlife in an unsafe manner and shall be a violation of this part.

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

(d) No person shall maintain any wildlife in captivity for commercial purposes in any unsanitary or unsafe condition or in a manner that results in the maltreatment or

neglect of such wildlife, nor shall any species of wildlife be confined in any cage or enclosure that does not meet the cage specifications.

(e) Enclosure in which wildlife is held in captivity for commercial purposes shall be maintained in accordance with rules and regulations promulgated by the commissioner.

(f) A mobile facility for wildlife held in captivity for commercial purposes shall not be used in transporting any wildlife except as follows:

(1) Facilities shall be equipped to provide fresh air without injurious drafts and adequate protection from the elements to all animals;

(2) The animal traveling area shall be free of engine exhaust fumes;

(3) Animal cages shall have openings for the emergency removal of wildlife;

(4) Cages shall be large enough to ensure that each specimen has sufficient room to stand erect and lie naturally;

(5) Wildlife transported in the same cage area shall be in compatible groups;

(6) Facilities used in transporting or temporarily exhibiting Class I wildlife shall be constructed of steel or case hardened aluminum of sufficient strength to prevent the escape of wildlife being transported. Such facilities shall be constructed in such a manner to prevent contact between the animal or animals and the general public. All doors shall be locked when the facility is in use;

(7) Poisonous reptiles shall only be transported in a strong, closely woven cloth sack, tied or otherwise secured. This sack shall then be placed in a box. The box shall be of strong material in solid sheets, except for small air holes, which shall be screened. Boxes containing poisonous reptiles shall be

locked and prominently labeled “Danger — Poisonous Snakes” or “Danger — Poisonous Reptiles,” and shall include the owner's name, address, telephone number and list of number and species being transported;

(8) Temporary exhibits shall be housed in cages that meet the minimum cage specifications as provided in the section on stationary facilities when such wildlife is present in any geographical location for more than ten (10) days; and

(9) Prior to entering the state of Tennessee, temporary exhibitors shall submit a schedule that details the exact locations and dates of shows and places where such wildlife will be exhibited while in the state. Failure to provide such a schedule upon application for a permit shall be grounds to deny issuance of such permit.

44-8-507.

(a) Any person who keeps Class I wildlife is liable for any costs incurred by any person, city, county or state board resulting from the escape from captivity of the animal or animals.

(b) Neither the state of Tennessee nor any board, employee or agent of the state of Tennessee is liable for any animal that expires, is injured or is destroyed. Neither the state of Tennessee nor any board, employee or agent of the state of Tennessee is liable for any damage or injury caused by live wildlife under a permit issued pursuant to this part.

44-8-508.

(a) Prior to the transfer of any Class I wildlife held in captivity for commercial purposes to a new owner, the prospective owner must provide the seller with proper documentation of an approved holding facility for that species. Proper documentation consists of a copy of a current permit for that species or a letter from the Tennessee

exotic wildlife board stating that the facilities have been inspected and are approved. Any transfer without approved holding facilities is a violation of this part 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 board for providing such housing.

(b) Permittees must notify the board of any transfer of Class I wildlife within five (5) days of the transfer on forms provided by the board.

44-8-509. Owners of unpermitted wildlife who do not qualify for a permit to possess such wildlife shall dispose of such wildlife to an approved recipient within thirty (30) days of notification by the board. Each day of possession of unpermitted wildlife after such thirty (30) day period constitutes a separate violation.

44-8-510.

(a) Any person possessing live wildlife for commercial purposes in Class I or Class II shall, during normal business hours and at all reasonable times, and without the necessity of a search warrant, allow the director or any member or employee of the board to inspect all animals, facilities and records relating to such animals for the purpose of ensuring compliance with the provisions of this part.

(b) Notwithstanding subsection (a) to the contrary, in Roane County the director or any member or employee of the board may be accompanied on such inspections of animals, facilities and records relating to such animals by the county executive or the county executive's designee from the office of the county sheriff or the county office of emergency management.

44-8-511.

(a) Before any person may engage in the business of propagating or otherwise obtaining Class I or Class II wildlife 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 the state for the purpose of selling Class I or Class II wildlife species in this state shall also be required to purchase and possess a 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 wildlife, their care, propagation, importation and sale.

(d) Artificially propagated wildlife may be propagated, sold, possessed, released or exported in accordance with the rules and regulations prescribed by the board and, in the case of migratory birds, the regulations prescribed by the federal government.

(e) Only commercial propagators may qualify for a permit to propagate Class I wildlife and may transfer Class I wildlife only to persons or entities approved to possess Class I wildlife. First time commercial propagators shall have one (1) permit year to meet the criteria as defined in § 70-4-402(4). Renewal of a commercial propagator permit is conditional on the permittee having met the definition of a commercial propagator during the prior permit year.

44-8-512.

(a) All persons wishing to possess Classes I and II live wildlife for commercial purposes obtained outside the state of Tennessee shall have in their possession the importation permit required by this part. The permit and all bills of lading and shipping papers relating to any wildlife that such person may have in such person's possession shall be open and available for inspection at all reasonable times by authorized the

director of members and employees of the board for the purpose of ensuring compliance with the provisions of this part.

(b) Animals brought into this state under the authority of an annual importation permit must be reported to the board within five (5) days of the date of importation.

(c) An importation permit is required for all interstate movement of live wildlife except Class III, except no permit is required for zoos and temporary exhibitors.

44-8-513.

(a) It is unlawful for any person to operate a private wildlife preserve for the purpose of propagating or hunting, or both, any class of wildlife reared in captivity unless that person first obtains the appropriate permit from the Tennessee exotic wildlife board and operates such private wildlife preserve in accordance with the rules and regulations promulgated by the department of agriculture.

(b) It is lawful to hunt approved species of pen-reared and farm-reared animals on such preserve.

(c) Persons hunting pen-reared animals on such preserve are not required to possess a hunting license.

44-8-514.

(a) Before any person may take, transport or possess raptors for the purpose of falconry for commercial purposes, such person shall first obtain a falconry permit in accordance with the rules and regulations promulgated by the board. This permit is supplemental to all other permits and licenses required for hunting as provided in this title, except that a holder of a falconry license may import and possess raptors legally obtained without the necessity of an importation permit.

(b) Rules and regulations promulgated by the board shall govern the taking, importation, possession and use of raptors, and shall require applicants for such permit

to satisfactorily pass a written examination attesting to their qualification to possess and use falcons. The rules and regulations may provide for a waiver of the examination if the applicant has satisfactorily passed an examination in any other state that the board deems comparable to the Tennessee examination. The rules and regulations shall not be less restrictive than federal regulations governing taking, transporting, possessing and using raptors for the purpose of falconry.

44-8-515.

(a) The board, upon finding a violation of the provisions of this part, of the terms of the permit or rules and regulations promulgated pursuant to this part, may, as appropriate:

(1) 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 constitutes a separate violation;

(2) Give three (3) days' 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 part, the permit or rules or regulations promulgated pursuant to this part; provided, that if the board determines that the public health, safety or welfare imperatively requires emergency action, the notice requirement shall be suspended and the board may make immediate application to the court for seizure; and 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 the board or any law enforcement officer who may be present and assisting the board or an employee of the board may destroy such wildlife; and

(3) Take any other reasonable and appropriate actions otherwise provided by law, including, but not limited to, the action provided for under § 70-4-405(a).

(b) Any person violating any provision of this part, including a failure to remedy under subdivision (a)(1), or who violated the terms of any permit or rules and regulations promulgated pursuant to this part, commits a Class A misdemeanor; provided, that in the discretion of the court, and in lieu of or in addition to a fine or a jail sentence, or both, the person's permit may be revoked, and such person shall be precluded from applying for or obtaining a permit under this part 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 subdivision (a)(2) 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 commissioner of general services or as otherwise provided by rules and regulations, or donated to a worthy recipient. However, upon request of the board 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 commissioner of agriculture for use as educational or training purposes.

(e) No item or wildlife seized by the board 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.

44-8-516. Permittees shall immediately notify the TWRA, the board or local law enforcement officials of any escape of Class I wildlife. Any personal injury inflicted by any species of captive wildlife requiring medical treatment shall be reported to TWRA or the board within forty-eight (48) hours of the injury, and a complete report provided regarding the nature and circumstances of the injury. If the agency or board so notified is not the governmental unit having jurisdiction over the escaped captive wildlife, that governmental unit shall immediately notify the governmental unit having jurisdiction over the escaped captive wildlife.

44-8-517. The cost of administration of this part as it relates to wildlife not indigenous to this state shall be borne by the general fund and revenues collected pursuant to this part.

SECTION 22. Tennessee Code Annotated, Section 4-29-235(a), is amended by adding the following language as a new, appropriately designated subdivision:

() Tennessee exotic wildlife board, created by § 44-8-503;

SECTION 23. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect July 1, 2012, the public welfare requiring it.