

AMERICAN BAR ASSOCIATION
TORT TRIAL AND INSURANCE PRACTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges all federal, state, local, and
2 territorial legislative bodies and/or governmental agencies to enact comprehensive laws
3 that prohibit the private possession, sale, breeding, import, or transfer of dangerous wild
4 animals, such as big cats, bears, wolves, primates, and dangerous reptiles, in order to
5 protect public safety and health, and to ensure the humane treatment and welfare of such
6 animals.

REPORT

This Tort, Trial and Insurance Practice Section Animal Law Committee resolution and policy recommendation addresses the private possession of dangerous wild animals. This report will discuss in depth the numerous public health and safety hazards, animal welfare concerns, legal liability, and insurance issues resulting from the current inconsistent patchwork of federal, state, and territorial laws on the subject.¹ The issue of dangerous wild animals in private hands has significant importance to the public and has been the subject of debate in many state legislatures over the past 15 years. A recommendation by the ABA will assist those seeking to encourage decision makers to address these concerns with comprehensive and uniform laws that prohibit private possession of dangerous wild animals. Without consistency, individuals who do not properly care for their animals are free to forum shop for states without regulations, placing both the public and the animals at risk.²

INTRODUCTION

Numerous scientific organizations and governmental entities all believe that certain wild animals are not safe or suitable to be kept as pets—these include the Association of Zoos and Aquariums,³ American Veterinary Medical Association,⁴ American Animal Hospital Association,⁵ Centers for Disease Control and Prevention,⁶ and United States Department of Agriculture.⁷ A consortium of 20 animal protection groups has organized to oppose such private possession, noting that dangerous wild animals behave unpredictably and cannot be domesticated simply through captive breeding or raising by hand.⁸ The process of “domestication,” such as that of dogs, is the result of thousands of years of selective breeding. Lions, tigers, leopards, bears, wolves, reptiles, and non-human primates belong in their natural habitats or at accredited facilities that have the appropriate knowledge and expertise to care for wild animals humanely and securely—not in the hands of unregulated individuals. According to one source there are an

¹ For a comprehensive, recent overview of the subject, see Lauren Slater, Wild Obsession—The perilous attraction of owning exotic pets, National Geographic, 96 (April 2014) at <http://ngm.nationalgeographic.com/2014/04/exotic-pets/slater-text>.

² Michael Scott, Ohio has had loose leash on selling wild animals for years, October 19, 2011 at http://blog.cleveland.com/pdextra/2011/10/ohio_has_had_loose_leash_on_se.html.

³ Association of Zoos and Aquariums, Why Wild Animals Don't Make Good Pets, February 19, 2009 at <https://www.aza.org/pressroom/detail.aspx?id=391> (last visited July 20, 2014).

⁴ “The AVMA has concerns about animal welfare, husbandry, infectious diseases, public health and safety, and environmental impacts relative to ownership of wild animal species and their hybrids.” If owners or caretakers cannot ensure these aspects, the AVMA recommends prohibiting ownership or possession of wild animal species or their hybrids.” American Veterinary Medical Association policy statement, Ownership or Possession of Wild Animals or Their Hybrids, at <https://www.avma.org/KB/Policies/Pages/Ownership-or-Possession-of-Wild-Animals-or-Their-Hybrids.aspx> (last visited July 20, 2014).

⁵ “When wild animals are kept as pets, the results may often be tragic for the animals and the owners.” American Animal Hospital Association, Wild Animals as Pets Position Statement at <https://www.aahanet.org/Library/WildAnimalPets.aspx> (last visited July 20, 2014).

⁶ Bruno B. Chomel et al, Wildlife, Exotic Pets, and Emerging Zoonoses, Centers for Disease Control and Prevention, January 2007, at http://wwwnc.cdc.gov/eid/article/13/1/06-0480_article.

⁷ USDA Position Statement, Large Wild and Exotic Cats Make Dangerous Pets, at http://www.aphis.usda.gov/animal_welfare/downloads/big_cat/position.pdf (last visited July 20, 2014).

⁸ Captive Wild Animal Protection Campaign, a Program of Global Federation of Animal Sanctuaries at <http://cwapc.org/resources/faqs/#sthash.BUOwkrik.dpbs> (last visited July 20, 2014).

estimated “30,000 captive great cats, bears, wolves and other large carnivores living in substandard conditions throughout the U.S.”⁹ Each year privately owned dangerous wild animals seriously injure or kill humans, including children, such as the ten-year-old North Carolina boy who was “mauled by his aunt’s 400-pound tiger that she kept in her backyard.”¹⁰ In addition to the danger to public safety and the animals themselves, dangerous wild animals can cause harm to other animals and disrupt ecosystems.¹¹

According to the Centers for Disease Control, wild animals carry diseases, such as Herpes B and salmonella, which harm and kill humans.¹² International experts in infectious diseases warn that “[m]ost emerging infectious diseases are zoonotic (contagious diseases spread between animals and humans) [and] wildlife constitutes a large and often unknown reservoir.”¹³ One of the causes of the emergence of such diseases is the keeping of dangerous wild animals as pets.¹⁴ A recent U.N. report indeed found that “seventy percent (70%) of the new diseases that have emerged in humans over recent decades are of animal origin.”¹⁵

Dangerous wild animals have complex needs and require highly specific care. The AVMA advises that anyone who owns a dangerous wild animal should be educated in animal husbandry, welfare, and safety.¹⁶ However, several states that regulate ownership, such as Texas, still do not require any special training or relevant qualifications in animal husbandry before granting a permit to own a dangerous wild animal.¹⁷ The humane treatment of dangerous wild animals also requires proper shelter and species-appropriate space, yet many state laws often require only a cage, a pen, or a room.¹⁸

Responsible ownership also requires a significant financial commitment in order to provide proper food, medical care, and housing to these animals.¹⁹ Current state laws that regulate ownership of dangerous wild animals do not require proof of financial ability to meet the needs of dangerous wild animals. Wisely, some states do require liability insurance to be carried by

⁹ The Wild Animal Sanctuary, Major Programs at <http://www.wildanimalsanctuary.org/aboutus/majorprograms.html> (last visited July 20, 2014).

¹⁰ 2004 Legislative Review, 11 Animal Law 325, 337 (2005).

¹¹ Invasive species slithering around Florida, Washington Post, February 15, 2013 at http://www.washingtonpost.com/national/health-science/invasive-species-slithering-around-florida/2013/02/15/a0e3daae-77d7-11e2-95e4-6148e45d7adb_graphic.html (last visited July 20, 2014).

¹² Nina Marano & G. Gale Galland, Animal-Associated Hazards, Centers for Disease Control and Prevention, at <http://wwwnc.cdc.gov/travel/yellowbook/2014/chapter-2-the-pre-travel-consultation/animal-associated-hazards> (last visited July 20, 2014).

¹³ Chomel et al, supra note 7.

¹⁴ Id.

¹⁵ Food and Agriculture Organization of the United Nations, Surge in diseases of animal origin necessitates new approach to health – report, Dec. 16, 2013, at <http://www.fao.org/news/story/en/item/210621/icode/> (last visited July 20, 2014).

¹⁶ AVMA, supra note 5.

¹⁷ TEX. HEALTH & SAFETY CODE ANN. § 822.104.

¹⁸ See e.g. TEX. HEALTH & SAFETY CODE ANN. 822.101(7)(“Primary enclosure” means any structure used to immediately restrict an animal to a limited amount of space, including a cage, pen, run, room, compartment, or hutch.”).

¹⁹ Captive Wild Animal Protection Campaign, supra note 9.

anyone possessing dangerous wild animals.²⁰ But liability insurance policies only cover harm to others, and do not address the care of the animal throughout the course of his or her lifetime.

State regulatory schemes vary considerably on requirements related to public safety, health and animal welfare. Federal law currently provides no protection for dangerous wild animals kept as pets.²¹ Thus, the Section believes that the only way for government authorities to fully protect the public health and safety, and to eliminate animal welfare risks, is to prohibit the private ownership of dangerous wild animals.

Avoidable Tragedies

Zanesville, Ohio

On January 6, 2011, Ohio's then-Governor Ted Strickland enacted a comprehensive Executive Order that prohibited the private "possession, sale, breeding and transfer of dangerous wild animals."²² The order was prompted in part by the death of Brent Kandra, who died from over 600 wounds sustained in an attack while feeding black bears at a privately owned "exotic animal farm" in Columbia Station, Ohio.²³ Gov. Strickland's order put substantial restrictions on private possession, including: prohibiting the acquisition of any new animals; requiring all existing animals to be registered; and ordering facilities containing dangerous wild animals to be regularly inspected by state officials.²⁴ At the time Gov. Strickland's Executive Order was issued, Ohio was one of seven states that had no regulation at all regarding the private possession of dangerous wild animals.²⁵

When John Kasich assumed the Ohio Governorship in April 2011, he decided to let the existing Dangerous Wild Animals Executive Order expire.²⁶ His rationale was that the State did not have the right to regulate dangerous wild animals that were not native to Ohio—despite the fact that there had been no such challenge from any affected third party, and that similar prohibitions on

²⁰ TEX. HEALTH & SAFETY CODE ANN. §822.107. LIABILITY INSURANCE. ("An owner of a dangerous wild animal shall maintain liability insurance coverage in an amount of not less than \$100,000 for each occurrence for liability for damages for destruction of or damage to property and death or bodily injury to a person caused by the dangerous wild animal.").

²¹ Federal law currently only regulates interstate commerce in large cats and requires public exhibitors of dangerous wild animals to be licensed by the USDA.

²² Ohio Executive Order 2010 17S, at <http://www.rexano.org/StatePages/execorder10-17s.pdf> (last visited June 7, 2014). Gov. Strickland's Executive Order suspended the regular rulemaking process and allowed the immediate, emergency adoption of Rule 1501:31-19-05 by the Ohio Department of Natural Resources Division of Wildlife).

²³ Joe Guillen, Outgoing Gov. Ted Strickland bans ownership of exotic animals, cites recent bear attack, *The Plain Dealer*, January 06, 2011 at

http://www.cleveland.com/open/index.ssf/2011/01/strickland_bans_ownership_of_e.html (last visited June 7, 2014).

²⁴ Ohio Administrative Code, Rule 1501:31-19-05, at http://www.rexano.org/StatePages/OH_exotic_rule2011.pdf (last visited July 20, 2014). For a summary of the rules see Peggy Hall, Ohio Governor Issues Emergency Rule on Ownership of Wild Animals, January 7, 2011 at <http://ohioaglaw.wordpress.com/2011/01/07/ohio-governor-issues-emergency-rule-on-ownership-of-wild-animals/>.

²⁵ See the Humane Society of the United States, Ohio Rule issued to prohibit dangerous wild animals as pets, at http://www.humanesociety.org/news/press_releases/2011/01/ohio_exotic_pet_rule_010611.html (last visited July 20, 2014).

²⁶ Bob Downing, Ohio will draft new rules for exotic animals; Kasich allows Strickland's executive order to lapse, *Ohio.com* April 7, 2011 at <http://www.ohio.com/news/ohio-will-draft-new-rules-for-exotic-animals-1.206485> (last visited July 20, 2014).

possession already existed in many other states.²⁷ Indeed, “courts have almost universally upheld the validity of exotic pet regulations as a legitimate exercise of state police power that does not infringe on the constitutional protections of equal protection, due process, or takings.”²⁸

Six months later, on October 18, 2011, convicted felon Terry Thompson of Zanesville, Ohio, who owned more than 50 large, dangerous wild animals, including tigers, lions, monkeys, and grizzly bears, cut the fences, released all the animals, and then took his own life.²⁹ As these suddenly freed animals made their way into the countryside, frantic 911 calls began pouring in to local authorities, who immediately closed local schools and flashed warning signs on interstate highways. When law enforcement officials arrived at the scene they quickly had to choose between using lethal force to stop the animals or risking harm to human life. With nightfall approaching the difficult decision was made, and over the next few hours police officers shot and killed 49 of the dangerous wild animals that Thompson had released. The final death tally included 18 Bengal Tigers, 17 Lions, 6 Black Bears, 2 Grizzly Bears, 3 Mountain Lions, 2 Wolves and 1 Baboon.³⁰

What makes the Zanesville incident all the more tragic is that it was entirely preventable. Under Gov. Strickland’s Executive Order, Terry Thompson’s dangerous wild animals would have been confiscated as of May 1, 2011, due to his prior convictions for animal cruelty.³¹ Such convictions would have disqualified him from the Order’s grandfather provisions for dangerous wild animals already in private possession at the time the Order was passed.³² As a Muskingum County Deputy Sheriff pointedly told reporters, “I feel like me and the other deputies were forced into this situation due to Ohio’s lax laws in reference to exotic animals.”³³ The danger posed by Thompson’s private menagerie certainly was no secret to local law enforcement who had been called out to his property to investigate incidents related to the animals’ confinement and treatment on at least 27 occasions during just the previous 6 years: “16 times for reports of animals at large, 8 times for animal complaints, and 3 times for animal cruelty.”³⁴

²⁷ Id.

²⁸ Matthew Liebman, Detailed Discussion of Exotic Pet Laws, Animal Legal and Historical Center 2004 at <http://www.animallaw.info/articles/ddusexoticpets.htm> (last visited June 7, 2014).

²⁹ ABC News Nightline, October 19, 2011, 11:35 - 12:00am EDT, <http://abcnews.go.com/US/zanesville-animal-massacre-included-18-rare-bengal-tigers/story?id=14767017>. Transcript at https://archive.org/details/WJLA_20111020_033500_Nightline.

³⁰ The ones that got away: Sad survivors of exotic animal bloodbath after 'time bomb' private zoo owner opened the cages and shot himself, Daily Mail, October 21, 2011 at <http://www.dailymail.co.uk/news/article-2051418/Ohio-reserve-owner-Terry-Thompson-released-exotic-animals-killed-himself.html> (last visited July 20, 2014).

³¹ Alan Johnson, Order that Kasich rejected would have barred man from having exotic animals, The Columbus Dispatch, October 19, 2011 at <http://www.dispatch.com/content/stories/local/2011/10/19/humane-society-head-wants-ohio-exotic-animal-ban.html> (last visited July 20, 2014).

³² Rule 1501:31-19-05 §B(2), supra note 25 (stating that exemptions do not apply to any person who has “been convicted of an offense involving the abuse or neglect of any animal pursuant to any state, local, or federal law.”)

³³ ABC News Nightline, supra note 30.

³⁴ Owner Of Released Wild Animals ‘Was An Unusual Fella’ Says The Mayor Of Zanesville, Oct. 19, 2011 at <http://radaronline.com/exclusives/2011/10/wild-animals-owner-terry-thompson-unusual-fellow-says-mayor-zanesville/> (last visited July 20, 2014).

As a result of the Zanesville tragedy, the Ohio legislature eventually passed the Ohio Dangerous Wild Animals and Restricted Snakes Act³⁵—the type of comprehensive regulation of the private possession of dangerous wild animals recommended in this Report. On December 20, 2012, the U.S. District Court for the Southern District of Ohio, Eastern Division, upheld that Act’s restrictions, ruling that “animals subject to the Act are dangerous and the Act is necessary to protect the general public.”³⁶ The court further held the plaintiffs had only “limited property interest in their exotic animals or dangerous wild animals (as described in the Act), such that a fundamental constitutional right is not implicated.”³⁷

Stamford, Connecticut

Another recent high-profile calamity involved a 55-year old Connecticut woman, Charla Nash, who was brutally attacked by her neighbor’s pet chimpanzee. Nash’s face was almost entirely torn and bitten off. The victim was left permanently disfigured, had both of her hands amputated, and also contracted a virus from the chimpanzee that required her eyes to be removed. She currently resides in a nursing home. Prior to the attack, Connecticut prohibited private possession of certain species of dangerous wild animals, but did not restrict primates—an example of the pressing need for more comprehensive state laws. Nash settled a case against the chimpanzee owner’s estate for \$4 million, but her claim against the State of Connecticut for failing to prohibit and protect the public from privately held dangerous primates was denied due to the state’s sovereign immunity law.³⁸

Current Legal Regime

a) Federal Laws

Congress and the U.S. Fish and Wildlife Service have attempted to partially regulate the possession of dangerous wild animals by prohibiting interstate trade in certain species.³⁹ Although this approach has reduced the interstate movement of these animals it has not kept dangerous wild animals entirely out of private hands.⁴⁰ Accordingly, in July of 2014, the U.S. Senate Committee on Environment & Public Works recently held a hearing on the Big Cats and Public Safety Protection Act (S.1381, 2013).⁴¹ Consistent with this Recommendation and Report, S.1381 would amend the Lacey Act to federally prohibit all future private possession and

³⁵ Ohio Rev. Code §935.01-99, enacted June 6, 2012.

³⁶ Wilkins v. Daniels, Slip Copy, 2012 WL 6644465 (S.D. Ohio, 2012).

³⁷ Id. at 17.

³⁸ Sasha Goldstein, Charla Nash, mauled by Travis the chimp, denied the right to sue Connecticut for \$150M, NY Daily News, April 2, 2014, at <http://www.nydailynews.com/news/national/charla-nash-mauled-bychimp-denied-sue-conn-150m-article-1.1743457> (last visited July 20, 2014).

³⁹ See U.S. Fish & Wildlife Service, Captive Wildlife Safety Act: What Big Cat Owners Need to Know at <http://www.fws.gov/le/pdf/CaptiveWildlifeSafetyActFactsheet.pdf> (last visited July 20, 2014); U.S. Fish & Wildlife Service, Questions and Answers Listing of Four Non-native Snake Species as Injurious Under the Lacey Act at http://www.fws.gov/injuriouswildlife/pdf_files/Four_snakes_QsAs_final.pdf (last visited July 24, 2014). Congress is currently considering the Captive Primate Safety Act (H.R.2856 / S. 1463), which would extend these same interstate trade restrictions to monkeys, apes and other primates.

⁴⁰ The Wild Animal Sanctuary, *supra* note 10.

⁴¹ S.1381, “To amend the Lacey Act Amendments of 1981 to clarify provisions enacted by the Captive Wildlife Safety Act, to further the conservation of certain wildlife species, and for other purposes.” 113th Congress, 1st Session, introduced July 29, 2013.

breeding of lions, tigers, and other big cats nationwide. It also would require current big cat owners to register their animals. While this would be a positive step in the proper direction, it still only would apply to large cats and not any of the other categories of dangerous wild animals.

b) State Laws

With no federal laws directly addressing the private possession of dangerous wild animals in the U.S., the issue currently is governed by an inconsistent regulatory patchwork of state and local laws. Twenty-one states and Washington, D.C. already prohibit the possession of some wild animals (big cats, bears, wolves, non-human primates, and most dangerous reptiles).⁴² Another thirteen states ban some, but not all, of these species.⁴³ Eleven other states allow private possession but regulate the keeping of these animals by requiring a permit.⁴⁴ However, five U.S. states still have absolutely no laws regulating the possession of dangerous wild animals.⁴⁵

The following are the central elements of existing laws (legislation and/or regulations):

- 1) Degrees of regulation (from outright ban, to mere registration, to little or no regulation);
- 2) Animals covered by the law (big cats, wolves, bears, venomous reptiles, alligators and crocodiles, and non-human primates are the most common);
- 3) Exempted entities;
- 4) Grandfather clauses and their requirements;
- 5) Punishment for violations (this can range from imprisonment to fines as much as \$2,000 per animal per day, as well as the mandatory seizure of animals and court-imposed financial responsibility for the cost of such seizure and care); and,
- 6) Requirements to carry mandatory liability insurance.

Public Safety Risks

Since 1990, there have been more than 1,200 dangerous incidents involving captive big cats, bears, primates, and large constrictor snakes nationwide, resulting in more than 40 human deaths (including eight children) and nearly 700 other persons injured.⁴⁶

Deaths from large constrictor snake incidents in the United States include one person who suffered a heart attack during a violent struggle with his python, and a woman who died from a

⁴² Alaska, California, Colorado, Georgia, Hawaii, Illinois, Iowa, Kentucky, Massachusetts, Maryland, Montana, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Utah, Vermont, Washington, and West Virginia. For direct links to the various state laws governing private possession of dangerous wild animals, see Summary of State Laws Relating to Private Possession of Exotic Animals, Born Free USA at http://www.bornfreeusa.org/b4a2_exotic_animals_summary.php (last visited July 20, 2014). For a comprehensive list of all state laws on the subject, see Possession of Wild Animals: Related Statutes, Animal Legal & Historical Center at <http://www.animallaw.info/statutes/topicstatutes/sttopwa.htm> (last visited July 20, 2014).

⁴³ Arizona, Arkansas, Connecticut, Florida, Kansas, Louisiana, Maine, Michigan, Minnesota, Nebraska, Tennessee, Virginia and Wyoming.

⁴⁴ Delaware, Idaho, Indiana, Mississippi, Missouri, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, and Texas.

⁴⁵ Alabama, Nevada, North Carolina, South Carolina, and Wisconsin.

⁴⁶ Dangerous Exotic Pets: Big Cats, Humane Society of the United States, May 24, 2013 at http://www.humanesociety.org/issues/exotic_pets/facts/dangerous-exotic-pets-big-cats.html (last visited July 20, 2014).

Salmonella infection (reptiles especially pose the threat of such infections as discussed below).⁴⁷ Scores of adults and children have been injured in attacks by these deadly predators. Children, parents, and authorities are finding released or escaped pet pythons, boa constrictors, and anacondas all over the country, where they endanger communities, threaten ecosystems, and in many cases suffer tragic deaths.⁴⁸

Monkeys are the most common non-human primates to be privately held.⁴⁹ After the age of two, though, monkeys tend to exhibit unpredictable behavior—the males can become aggressive, and both males and females often bite to defend themselves or establish dominance.⁵⁰

Just since January 2013, there have been over a dozen dangerous attacks involving big cats, including at least two incidents during which big cat handlers were killed.⁵¹ A few of these dangerous encounters from the past year include:

- October 25, 2013 (Wynnewood, OK), a tiger severed the arm of an employee at a roadside zoo.⁵²
- June 21, 2013 (Clay County, IN), a woman was severely mauled by a tiger while cleaning a cage. She was admitted to the intensive care unit at a local hospital where she was listed in critical condition.⁵³
- April 21, 2013 (Salina, KS), a woman found a tiger in a restroom after the cat had escaped handlers at a Shrine Circus.⁵⁴
- March 6, 2013 (Dunlap, CA), a woman was fatally mauled by a lion while cleaning its enclosure.⁵⁵

The legal liability and insurance issues related to such attacks are substantial.

⁴⁷ Dangerous Exotic Pets: Snakes, Humane Society of the United States, May 24, 2013 at http://www.humanesociety.org/issues/exotic_pets/facts/dangerous-exotic-pets-constrictor-snakes.html (last visited July 20, 2014).

⁴⁸ Washington Post, *supra* note 12.

⁴⁹ Nicole Paquette, Hearing Statement, U.S. Senate Committee on Environment & Public Works, June 16, 2003 at http://www.epw.senate.gov/hearing_statements.cfm?id=213174 (last visited July 20, 2014).

⁵⁰ *Id.*

⁵¹ Big Cat Attacks, Big Cat Rescue at <http://bigcatrescue.org/big-cat-attacks/> (last visited July 20, 2014). A state-by-state spreadsheet of all big cat attacks since 1990 is available at https://docs.google.com/file/d/0B5WZ_cVR_hJQmpPY2VBNDdjQTQ/edit (last visited July 20, 2014).

⁵² Sarah Stewart, NEW: 911 call released on tiger attack at GW Exotic Animal Park, Oct. 8, 2013, at <http://kfor.com/2013/10/06/wynnewood-zoo-worker-to-undergo-surgery-monday-after-tiger-bite/> (last visited July 20, 2014).

⁵³ Gillian Mohney, Indiana Woman Mauled by Tiger, ABC News, June 22, 2013 at <http://abcnews.go.com/US/tiger-attack-leaves-indiana-woman-condition/story?id=19464198> (last visited July 20, 2014).

⁵⁴ Jenna Krehbiel, Kansas Woman, Finds Tiger In Bathroom At The Isis Shrine Circus In Salina, AP April 22, 2013 at http://www.huffingtonpost.com/2013/04/23/jenna-krehbiel-salina-kansas-tiger-circus_n_3139437.html (last visited July 20, 2014).

⁵⁵ Lateef Mungin and Cristy Lenz, Worker Mauled to Death by Lion at California Facility, CNN March 7, 2013 at <http://www.cnn.com/2013/03/06/us/california-lion-attack/> (last visited July 20, 2014).

Zoonotic Disease Risks

Another clear risk to humans posed by contact with dangerous wild animals is the transfer of animal diseases to humans. Examples include salmonella from reptiles, tuberculosis and Herpes B from primates, as well as polio, rabies, and parasites.⁵⁶ The Centers for Disease Control estimates that every year 70,000 people contract salmonella from pet reptiles.⁵⁷ Herpes B, also known as “monkey B” virus, can cause severe neurologic impairment or fatal encephalomyelitis if not treated.⁵⁸ Due to the hazards posed by the transmission of such zoonotic diseases, the American Veterinary Medical Association,⁵⁹ National Association of State Public Health Veterinarians,⁶⁰ Association of Zoos and Aquariums,⁶¹ Centers for Disease Control and Prevention,⁶² and United States Department of Agriculture⁶³ all have official policy statements condemning the private possession of certain species of dangerous wild animals.

Animal Welfare Concerns

It is difficult to ensure the basic welfare of dangerous wild animals in private possession even when that possession is regulated. Dangerous wild animals in private possession often are kept in poor conditions and subjected to de-fanging and de-clawing surgeries that leave them deformed and vulnerable to infections.⁶⁴ In October 2003, officials even discovered a 400-pound pet tiger and a 3-foot pet caiman living within the confines of a single New York City public housing apartment!⁶⁵

Another related problem is the frequency of abandonment when such animals become too large or unmanageable for untrained and unprepared private individuals to handle. Financial costs also play a role in the quality of care an animal receives. For example, wildlife officials raided the home of one private dangerous wild animal breeder to discover 90 tiger carcasses, “including big cats that had been tied to car bumpers and starved cubs in a freezer.”⁶⁶ Some estimates calculate that as many as 90 percent of reptiles die within their first 2 years of captivity.⁶⁷

⁵⁶ Marano et al, supra note 13.

⁵⁷ Centers for Disease Control and Prevention, at <http://www.cdc.gov/healthypets/pets/reptiles.html> (last visited July 20, 2014).

⁵⁸ Centers for Disease Control and Prevention, B Virus (herpes B, monkey B virus, herpesvirus simiae, and herpesvirus B) at <http://www.cdc.gov/herpesvirus/signs-symptoms.html> (last visited July 20, 2014).

⁵⁹ AVMA, supra note 5.

⁶⁰ Comments from the National Association of State Public Health Veterinarians (NASPHV) on “Proposed Revision of HHS/CDC Animal-Importation Regulations” at <http://www.nasphv.org/Documents/CorrespondenceANPRM-Exotic.pdf> (last visited July 20, 2014).

⁶¹ AZA, supra note 4.

⁶² Stephanie R. Ostrowski et al, B-virus from Pet Macaque Monkeys: An Emerging Threat in the United States?, March 1998 at http://wwwnc.cdc.gov/eid/article/4/1/98-0117_article (last visited July 20, 2014).

⁶³ USDA, supra note 8.

⁶⁴ USDA, Information Sheet on Declawing and Tooth Removal, August 2006 at http://www.aphis.usda.gov/animal_welfare/downloads/big_cat/declaw_tooth.pdf (last visited July 20, 2014).

⁶⁵ Lydia Polgreen and Jason George, Adult tiger evicted from Harlem public housing, October 6, 2003 at <http://www.sfgate.com/crime/article/Adult-tiger-evicted-from-Harlem-public-housing-2554345.php> (last visited July 20, 2014).

⁶⁶ Liebman, supra note 29.

⁶⁷ James M. Green, International Trade in Wild-Caught Reptiles, Animal Legal & Historical Center 2005 at <http://www.animallaw.info/articles/ddusitwr.htm> (last visited July 20, 2014).

Weak Laws, Loopholes, and Lack of Regulation

Weak laws fuel illegal trafficking. David Braun of National Geographic calls captive tigers a “ticking time bomb for the illegal wildlife trade.”⁶⁸ He reports that it is estimated that there are more than 5,000 privately owned tigers in captivity, far more than remain in the wild. While the U.S. supports conservation of endangered species, the combination of weak federal regulations, delegation of responsibility to the states, and thousands of tigers being kept in captivity, all open the door to the international black market for tiger parts.⁶⁹

The Captive Wildlife Safety Act, passed by the U.S. Congress in 2003, makes it “illegal to import, export, buy, sell, transport, receive or acquire certain live big cats across state lines or the U.S. border.”⁷⁰ However, there are several loopholes that allow violators to circumvent this federal law—and at the state level there is little regulation at all of sales that do not involve interstate commerce. The issue of supplying dangerous wild animals to those who seek to possess them poses its own hazards for the welfare and existence of these creatures, as many die while being smuggled into the U.S. for sale.⁷¹

Wild and exotic animal auctions are a primary source of dangerous wild animals for individuals seeking to purchase them for private possession. Many of these auctions are completely unregulated, and only three U.S. states even require the mere collection of the names and addresses of those purchasing or selling dangerous wild animals at auctions.⁷²

Revisiting the Zanesville tragedy, it is not coincidental that one of the largest auctions of dangerous wild animals regularly takes place in Ohio.⁷³ The Mid-Ohio Alternative Animal and Bird Sale in Mt. Hope, Ohio typically offers more than 100 different species of wild animals for sale, which until 2010 included primates, bears, tigers, lions, wolves, bison, camels, zebras, and giraffes.⁷⁴ These dangerous wild animals could be bought on a cash and carry basis, all with zero paperwork required to document the purchaser’s identity or the type of animal acquired.⁷⁵ In Missouri, the Lolli Bros. Livestock Market continues to sell big cats and bears as long as they are under 6 months of age.⁷⁶ Currently only 10 states have laws regulating wild and exotic

⁶⁸ David Braun, America’s 5,000 Backyard Tigers a Ticking Time Bomb, WWF Says, National Geographic October 21, 2010 at http://newswatch.nationalgeographic.com/2010/10/21/americas_5000_backyard_tigers/ (last visited July 20, 2014).

⁶⁹ Id.

⁷⁰ U.S. Fish & Wildlife Service, *supra* note 40.

⁷¹ Liebman, *supra* note 29.

⁷² See Laws Relating to Exotic Animal Auctions, Born Free USA at http://www.bornfreeusa.org/b4a2_exoticauctions.php (last visited July 20, 2014).

⁷³ Ohio is the Wall Street of the U.S. exotic animal trade, October 19, 2011 at <http://animaltourism.com/news/2011/10/19/zanesville> (last visited July 20, 2014).

⁷⁴ Dennis Cauchon and Dan Vergano, Ohio county must decide what will happen to exotic animals, October 21, 2011 at <http://usatoday30.usatoday.com/news/nation/2011-10-20-zanesville-ohio-exotic-animals.htm> (last visited July 20, 2014).

⁷⁵ Scott, *supra* note 3. See also, The Dirty Side of the Exotic Animal Pet Trade, Born Free USA, June 15 2003 at <http://www.bornfreeusa.org/articles.php?more=1&p=180> (last visited July 20, 2014).

⁷⁶ <http://www.lolliibros.com/ExoticSales/Nursery/tabid/58/Default.aspx> (last visited July 20, 2014). See also Sarah Maslin Nir, A Tighter Leash on Exotic Pets, New York Times, January 10, 2012 at <http://www.nytimes.com/2012/01/11/us/exotic-animals-business-faces-restrictions.html?pagewanted=all> (last visited July 20, 2014).

animal auctions, and Alabama is the only state with an outright ban.⁷⁷ These auctions provide an unregulated supply of animals that helps fuel the trade in dangerous wild animals.

The Internet is another unregulated source of dangerous wild animals.⁷⁸ Virtually any type of animal can be purchased without any legal oversight or background checks. Beyond the many websites of breeders and retailers, such as www.buytigers.com, www.exoticcatsrus.com, and www.aplusexotics.com, there even is a large, eBay-style, peer-to-peer website where private individuals can trade in dangerous wild animals without any regulation, oversight, or records.

Any legislative or regulatory attempt to stem the proliferation of privately possessed dangerous wild animals must address the unregulated nature of auctions and online purchase sites.

Factors to be considered in enacting laws Legislative bodies or governmental agencies seeking to enact or revise regulations on private possession of dangerous wild animals should consider the following provisions:

- a. Define the dangerous wild animals to be covered in the legislation;
- b. Prohibit all new possession and breeding of dangerous wild animals as pets;
- c. Prohibit all sales and transfers of existing dangerous wild animals, except as otherwise authorized within the law;
- d. Define the list of entities to be exempted from coverage of the law;
- e. Prohibit continued possession of dangerous wild animals by individuals who have been convicted of abuse or neglect of any animal pursuant to any state, local, or federal law, or who have been convicted of a felony;
- f. Allow other current owners to keep the animals they currently possess (grandfather clauses), but protect those grandfathered animals by giving officials the authority to regulate possession and to inspect the animals' living conditions and care they receive;
- g. Require placement of seized animals at accredited institutions; and,
- h. Require adequate liability insurance to be carried by any individuals or entities allowed to maintain possession of dangerous wild animals.

⁷⁷ Born Free USA supra note 73.

⁷⁸ Amelia Glynn, Pet lions and tigers and bears? Oh my!, (April 7, 2011) at <http://blog.sfgate.com/pets/2011/04/07/pet-lions-and-tigers-and-bears-oh-my/> (last visited on July 20, 2014).

Conclusion

Dangerous wild animals do not make good pets. Only through thorough regulation can there exist a uniform U.S. legal regime that safeguards the public, protects animals, allocates legal liability and insurance risk properly, furthers a policy of respect for nature, and considers the interests of present and future generations in accordance with the goals of the American Bar Association.

Michael Drumke, Chair
Tort Trial and Insurance Practice Section
February 2015

APPENDIX A:

Key Provisions to Include in Any Policy Reform Regulating the Keeping of Dangerous Wild Animals

To access Appendix A online, please use this link:

http://www.americanbar.org/content/dam/aba/administrative/tips/ALCDWAAAppendix_HODTIPSalc2015.pdf

Dangerous wild animal generally refers to any native or non-native non-domesticated species capable of inflicting serious bodily injury, illness, or death to a person or domestic animal. Legislation and regulations should clearly define dangerous wild animal. At a minimum, “dangerous wild animal” (“DWA”) should be defined as the following types of animals that are held in captivity, and any or all hybrids of these species:

1. Class Mammalia
 - a. Order Carnivora
 - i. Family Canidae: captive-bred red wolves (*Canis rufus*) and gray wolves (*Canis lupus*).
 - ii. Family Felidae: lions (*Panthera leo*), tigers (*Panthera tigris*), leopards (*Panthera pardus*), clouded leopards (*Neofelis nebulosa*, *Neofelis diardi*), snow leopards (*Panthera uncia*), jaguars (*Panthera onca*), cheetahs (*Acinonyx jubatus*), captive-bred mountain lions (*Puma concolor*).
 - iii. Family Hyaenidae: all species of hyena and aardwolf.
 - iv. Family Ursidae: Asiatic Black Bears (*Ursus thibetanus*), captive-bred American black bears (*Ursus americanus*), Brown Bears (*Ursus arctos*), Polar Bear (*Ursus maritimus*), Sloth Bears (*Melursus ursinus*), Sun Bears (*Helarctos malayanus*), Giant Panda Bears (*Ailuropoda melanoleuca*), Spectacled Bears (*Tremarctos ornatus*), including hybrids thereof.
 - v. Family Procyonidae: all species, excluding raccoons (*Procyon lotor*).
 - b. Order Primates: all species, excluding humans.
2. Class Reptilia
 - a. Order Crocodylia: all species of alligators, crocodiles, caimans, gharials.
 - b. Order Squamata –
 - i. Family Atractaspidae: all species, such as mole vipers.
 - ii. Family Boidae: anacondas (Genus *Eunectes*), boa constrictors (*Boa constrictor*), Burmese pythons (*Python molurus*), reticulated pythons (*Python reticulatus*), amethystine pythons (*Morelia amethystinus*), scrub pythons (*Morelia kinghorni*), Northern African pythons (*Python sebae*), Southern African pythons (*Python natalensis*).
 - iii. Family Colubridae: boomslangs (*Dispholidus typus*), twig snakes (Genus *Thelotornis*).
 - iv. Family Elapidae: all species, such as cobras, mambas, and coral snakes.

- v. Family Hydrophiidae: all species, such as sea snakes.
- vi. Family Viperidae: all species, such as rattlesnakes, pit vipers, and puff adders.

Exemptions should be considered carefully, as they can defeat the purpose of an otherwise strong law. Reasonable exemptions make certain that only sufficiently qualified, professionally run facilities with sufficient knowledge, experience, and resources are allowed to possess dangerous wild animals. This ensures that dangerous wild animals with unique and complex needs are provided appropriate, humane, safe, and long-term care. Exemptions should be limited to:

1. Zoos and aquariums accredited by the Association of Zoos and Aquariums (AZA)
2. Sanctuaries accredited by the Global Federation of Sanctuaries or wildlife sanctuaries defined as a nonprofit organization that:
 - Operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced animals are provided care for the lifetime of the animal;
 - Does not conduct any commercial activity with respect to dangerous wild animals, including, sale, trade, auction, lease, or loan, and does not use dangerous wild animals in any manner in a for-profit business;
 - Does not use dangerous wild animals for entertainment purposes or in a traveling exhibit;
 - Does not breed any dangerous wild animals; and,
 - Does not allow members of the public the opportunity to come into physical contact with dangerous wild animals.
3. Law enforcement and animal control authorities
4. Licensed veterinary hospitals for the purpose of providing veterinary care
5. Humane societies and animal shelters temporarily housing a Dangerous Wild Animal at the written request of law enforcement officers
6. Research institutions
7. Circuses that possess a class C license under the federal Animal Welfare Act, that are temporarily in the state, and that offer performances by live animals, clowns, and acrobats for public entertainment
8. A person temporarily transporting a legally owned dangerous wild animal through the state if the transit time is not more than 24 hours

Existing dangerous wild animals should be grandfathered so that people who currently have these animals can keep them for the remainder of the owners' lives, but breeding and new acquisitions of dangerous wild animal species should be prohibited. Current owners may be required to obtain a license or permit, register the animals, and comply with certain containment, husbandry, veterinary care, handling, and other requirements. If budgetary constraints prevent inspections or comprehensive oversight, current owners may simply be required to retain proof of ownership prior to the effective date of the law

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: Michael Drumke, Chair

1. Summary of Resolution(s).

The Resolution urges all federal, state, territorial, and local legislative bodies and/or governmental agencies to enact comprehensive laws that prohibit the private possession, sale, breeding, import, or transfer of dangerous wild animals, such as big cats, bears, wolves, primates, and dangerous reptiles, in order to protect public safety and health, and to ensure the humane treatment and welfare of such animals.

2. Approval by Submitting Entity.

TIPS Council voted to support the resolution and report on August 8, 2014.

3. Has this or a similar resolution been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

ABA Resolution 10B August, 1991 urges all nations to “adopt and implement appropriate measures to ensure that activities within its jurisdiction or control will be conducted with respect for Nature, and in a manner that accounts for the interests of present and future generations.”

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A

6. Status of Legislation. (If applicable)

There is currently no legislation related to this resolution.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. The Resolution will be used to support legislative efforts to strengthen laws governing private possession of dangerous wild animals in those jurisdictions that still inadequately regulate such possession.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

N/A

10. Referrals.

IR&R
Real Property
Admin Law
Environment, Energy Resources
Health Law
International Law
Science and Technology
State and Local Government
YLD

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Chris Green, Director of Legislative Affairs
Animal Legal Defense Fund
170 E. Cotati Ave.
Cotati, CA 94931
Cell: (312) 543-1876
Email: cgreen@aldf.org

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Holly M. Polglase, TIPS Delegate
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265 Franklin Street, 7th Floor
Boston, MA 02110
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EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges all federal, state, territorial, and local legislative bodies and/or governmental agencies to enact comprehensive laws that prohibit the private possession, sale, breeding, import, or transfer of dangerous wild animals, such as big cats, bears, wolves, primates, and dangerous reptiles, in order to protect public safety and health, and to ensure the humane treatment and welfare of such animals.

2. Summary of the Issue that the Resolution Addresses

Since 1990, there have been more than 1,200 dangerous incidents involving captive big cats, bears, primates, and large constrictor snakes nationwide, resulting in more than 40 human deaths (including eight children) and nearly 700 injuries. With no federal laws directly addressing the private possession of dangerous wild animals in the U.S., the issue currently is governed by an inconsistent regulatory patchwork of state and local laws. Twenty-one states and Washington, D.C. already prohibit the possession of some wild animals (big cats, bears, wolves, non-human primates, and most dangerous reptiles). Another thirteen states ban some, but not all, of these species. Eleven other states allow private possession but regulate the keeping of these animals by requiring a permit. However, five U.S. states still have absolutely no laws regulating the possession of dangerous wild animals.

3. Please Explain How the Proposed Policy Position will address the issue

The proposed policy position urges all federal, state, territorial, and local legislative bodies and/or governmental agencies to enact comprehensive laws that prohibit the private possession, sale, breeding, import, or transfer of dangerous wild animals. By encouraging such legislative action the proposed policy position will assist implementation of a uniform U.S. legal regime that safeguards the public, protects animals, allocates legal liability and insurance risk properly, furthers a policy of respect for nature, and considers the interests of present and future generations in accordance with the goals of the American Bar Association.

4. Summary of Minority Views

It was asked that an exemption for assistance monkeys be included in the Report. However, the American Veterinary Medical Association (AVMA) has a formal policy position stating, "The AVMA does not support the use of nonhuman primates as assistance animals because of animal welfare concerns, the potential for serious injury, and zoonotic risks." Furthermore, in 2011, the Department of Justice removed monkeys from the definition of service animals covered by the Americans with Disabilities Act (ADA). This was a deliberate move to close a loophole that many primate owners were exploiting to flout restrictions on owning dangerous wild animals.

Because assistance monkeys (trained or untrained) are no longer recognized as service animals by the Department of Justice under the ADA, and because the American Veterinary Medical Association also officially opposes the practice, we believe it would not be appropriate to recommend that these animals be exempted from future laws prohibiting private possession of dangerous wild animals.