

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 782 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Farming, Agribusiness and Food Systems

Date Completed: 12-17-99

RATIONALE

Apparently, there has been a growing interest in the ownership of large carnivores such as wild cats and bears, because some people are fascinated with the uniqueness of the animals or seek them as status pets, while others are attracted by the financial gain of selling the offspring.

The practice of breeding and owning large wild cats and bears as pets has raised a number of public health and safety concerns. Reportedly, most wild cats and bears are poorly adapted to be pets and there have been several injurious attacks and costly searches after escape. According to the Michigan Humane Society, large wild cats and bears often are neglected, or are abandoned or released by their owners when they become difficult to handle. Even if the animals are cared for properly, they can be dangerous to possess because wild animals often exhibit unpredictable predatory and territorial behavior.

Some people believe that since large wild cats and bears can pose a serious risk of danger to the public, their future possession should be prohibited, handling and care should be regulated, and standards for keeping these wild animals should be imposed. In addition, they suggest that owners' responsibilities in instances of attacks should be clearly specified.

CONTENT

The bill would create the "Large Carnivore Act" to do the following:

- Prohibit a person from possessing a large carnivore unless the person possessed the animal when the bill took effect and obtained a permit for the animal.
- Require the payment of an annual permit fee.
- Require an owner to have an identification number placed on the animal.
- Prohibit a large carnivore from being tethered outside on a leash or chain or

being allowed to run at-large, and require a large carnivore to be kept in a facility, as described in the bill, to prevent escape and injury.

- Permit an owner to keep an animal at his or her residence, under certain conditions, including supervision by a person who was at least 21 years of age.
- Require an owner to post signs on the property where a large carnivore was being kept.
- Specify the physical conditions under which a large carnivore would have to be housed.
- Permit a law enforcement authority to inspect a facility where a large carnivore was kept.
- Establish requirements for the transportation of a large carnivore.
- Require the reporting of the potential exposure to rabies by a large carnivore as the result of a bite, scratch or abrasion, and require the large carnivore to be euthanized under certain circumstances.
- Establish misdemeanor penalties for violations of the bill, and permit the seizure of a large carnivore under certain circumstances.
- Permit a local unit to adopt an ordinance that was more restrictive than the bill.
- Exempt certain animal protection shelters, zoological parks, and veterinarians from the bill's provisions.

The bill would define "large carnivore" as any of the following cats of the Felidae family, whether wild or captive bred, including a hybrid cross with such a cat: a lion, a leopard (including a snow leopard or clouded leopard), a jaguar, a tiger, a cougar, a panther, or a cheetah; or a bear of a species that is native or nonnative to this State, whether wild or captive bred.

The following is a more detailed description of the

bill.

Prohibitions

A person could not own or possess a large carnivore except in compliance with the bill; transfer a large carnivore unless the person were exporting it to another State or country in compliance with the bill; or breed a large carnivore. ("Person" would mean an individual, partnership, corporation, association, governmental entity, or other legal entity.)

Permits

A person could not possess one or more large carnivores unless the person owned the large carnivores, possessed them on the bill's effective date, applied for a permit for the animals within 90 days after the bill took effect, and obtained a permit for them. The permit would apply only to the individual large carnivores, would not be transferable to another person except through testate or intestate succession (inheritance with or without a will), and would be valid in any local unit in which possession of the large carnivores was not prohibited by ordinance.

A person would have to file a permit application with the person specified by the first of the following that applied:

- The city or village agency to which an animal control officer was assigned, if the large carnivores were kept in a city or village and it employed an animal control officer.
- The township agency to which an animal control officer was assigned, if the large carnivores were kept in a township and it employed an animal control officer.
- The county agency to which an animal control officer was assigned, if the county in which the large carnivores were kept employed an animal control officer.
- The sheriff of the county where the animals were kept, if none of the above applied.

The applicant would have to include with the application an annual permit fee, which would have to be established by the governing body of the local unit whose agency issued the permit. The fee could not be less than the greater of the following:

- \$25 or, at the option of the local unit if the applicant kept more than one large carnivore in that local unit, \$25 for each large carnivore.
- An amount needed to cover the local unit's actual, reasonable costs of enforcing the bill.

The permit application also would have to include a

written statement that specified the number of large carnivores that the applicant owned; described in detail each large carnivore owned by the applicant, including its identification number; and specified the name, address, and telephone number of the person from whom the owner obtained the large carnivore, if known.

A local unit could not issue a permit unless it found that the above requirements were met, and that the applicant was at least 21 years of age, had not been convicted of or found responsible for violating a local ordinance or State law prohibiting neglect or mistreatment of an animal, had not within the past 10 years been convicted of a felony, and was not subject to a court order requiring the forfeiture of a large carnivore or prohibiting the ownership or possession of a large carnivore. In addition, the local unit would have to find that the facility and the conditions in which each large carnivore would be kept complied with the bill.

A permit would have to include all of the following: the name and address of the permit holder and the address where each large carnivore would be kept, if different from that of the permit holder; the number of large carnivores owned by the permit holder; the identification number of each large carnivore; the name and address of the veterinarian who was expected to provide veterinary care to the large carnivore; and any other reasonable information as determined by the local unit. This information could include, but would not be limited to, a designation of permits required by a local unit, the Michigan Department of Agriculture (MDA), the Department of Community Health, the Department of Natural Resources (DNR), the U.S. Department of Agriculture, or the Fish and Wildlife Service of the U.S. Department of the Interior. A local unit that issued a permit would have to notify the MDA of the name and address of the permit holder and the number of large carnivores owned by the permit holder.

A large carnivore owner annually would have to pay to the local unit the annual permit fee.

A large carnivore owner would have to have an identification number placed on the animal by way of subcutaneous microchip, at the owner's expense, by or under the supervision of a veterinarian.

Control of Large Carnivore

A large carnivore could not be tethered outdoors, such as on a leash or chain, or allowed to run at-large. Except as otherwise provided, the animal would have to be kept constantly in a facility that was sufficiently secure to prevent the animal's escape and protect the animal from injury; was constructed

of cement blocks, bricks, concrete, chain link fence, wires, or bars of suitable thickness, gauge, or diameter to prevent the animal's escape and to protect the animal from injury; and was well braced and securely anchored at ground level or, if the facility were located in a residence or other building, at floor level and used metal clamps, ties, or braces, of a strength sufficient for cage construction for that species of large carnivore. The facility also would have to be enclosed within a secondary fence that was located at least three feet outside of the facility's walls and was adequate to prevent a human from coming into contact with the large carnivore; had an entrance with a lock that was kept locked at all times when the animal was kept in the facility; and, had a floor area that met or exceeded the minimum standards for housing as prescribed under the Federal Animal Welfare Act and regulations promulgated under it. ("Facility" would mean an indoor or outdoor cage, pen, or similar enclosure where a large carnivore was kept.)

The owner could, on a permanent or temporary basis, keep the animal in his or her residence and not in a facility, if the animal were under the supervision of a person who was at least 21 years of age. The owner could take the animal outdoors if all of the following requirements were met: the owner held the animal under control on a secure leash; the animal was within a securely fenced area; and, the animal was being moved between any two of the following: the large carnivore's facility, the owner's residence, a shift cage, or a vehicle, pursuant to the bill.

Owner Requirements

The owner of a large carnivore would have to present a permit for the animal upon the request of a law enforcement authority, and could not place the animal under the supervision of a person who was less than 21 years of age.

An owner would have to post and maintain signs on property where a large carnivore was kept. The signs would have to state: "A potentially dangerous large carnivore is kept on this property." Each sign would have to use block letters at least one-half inch high. A sign would have to be posted at each fence gate providing access to a residence on the property, providing access to a building in which the large carnivore's facility was located, or providing access to the facility. In addition, a sign would have to be posted on the outside of each door providing access to a residence on the property or providing access to any building in which the animal's facility was located, and on each side of the animal's facility, unless it were located in a residence or other building.

The large carnivore could not be mistreated or neglected. The conditions in which the animal was kept would have to be safe and conducive to the animal's physical health and comfort, and would have to promote normal behavior. The conditions would include temperature, ventilation, humidity, drainage, sanitation, diet, and exercise. Potable drinking water would have to be provided at least twice daily in a clean, accessible container, unless otherwise directed by a veterinarian. Swimming or wading pools would have to be cleaned as needed to ensure sufficiently sanitary water quality, and there would have to be adequate drainage of surface water from the facility. Food would have to be unspoiled and not contaminated with insects, fecal material, or any other substance that could cause the food to be unpalatable, that could decrease its nutrient value, or that could pose a health risk to the large carnivore. Fecal and food wastes would have to be removed from the facility daily and stored or disposed of in a manner that prevented noxious odors, insect pests, or risks to human or animal health or the environment. Hard floors would have to be scrubbed and disinfected weekly. Large facilities with dirt floors would have to be raked every day and the raked waste would have to be removed daily. A large carnivore could be kept in a shift cage while the animal's facility was being cleaned. The shift cage would have to be appropriate in size for the animal and of an adequate construction to contain the animal safely.

At the owner's expense, care for the large carnivore would have to be provided by a veterinarian as needed. The veterinarian would have to keep up-to-date records of the care and retain the records until the animal died. When the large carnivore died, the owner would have to arrange to have the death certified in writing by a veterinarian, law enforcement authority, or the permitting agency, which would have to submit the certification to the MDA within 20 business days after the animal's death.

Transporting a Large Carnivore

A person transporting a large carnivore in a vehicle would have to comply with the standards in "International Air Transport Ass'n. Live Animal Regulations (26th ed., 1999)" applicable to the large carnivore species. In addition, a person transporting a large carnivore would have to comply with the requirements described below.

The large carnivore would have to be caged individually and securely, even while inside a passenger vehicle or in the bed of a truck; however, a female large carnivore and each of her unweaned offspring, if any, would have to be transported in the same cage. The vehicle would have to provide fresh air without injurious drafts and provide adequate

protection from the elements to the animal. The animal's cargo area would have to be as free as possible of engine exhaust fumes. Fecal and food wastes would have to be removed from the animal's transport cage at least daily. The temperature within the cage could not be harmful to the animal's health. The cage would have to be large enough to ensure that the animal had sufficient space to stand erect, turn around, and lie naturally. The animal could not be placed in a cage over or next to another animal unless each enclosure had a fitted floor or lateral partition that prevented excreta from entering lower or adjacent enclosures. The large carnivore would have to be given potable water at least twice daily and fed at least once daily, unless otherwise directed by a licensed veterinarian.

Rabies Exposure, Vaccination

If a large carnivore potentially exposed a human to rabies by any penetration of the skin by teeth, any scratch or abrasion that caused penetration of the skin, or contamination of open wounds or mucous membranes with saliva or other infectious material, the large carnivore's owner would have to report the potential exposure to the local health department within 24 hours. If a large carnivore potentially exposed livestock or a mammalian pet to rabies by a means described above, the large carnivore's owner would have to report the potential exposure to the permitting agency within 24 hours. In either case, the large carnivore would have to be euthanized humanely by a veterinarian. The animal also would have to be examined immediately for rabies in the manner provided by rules promulgated under the Public Health Code.

If a rabies vaccination were or became approved by the Federal government for use on a species of large carnivore, the owner of an large carnivore of that species would have to have the animal vaccinated for rabies by a veterinarian.

Liability

A large carnivore's entry onto a field or enclosure that was owned or leased by a livestock or poultry producer would constitute a trespass, and the large carnivore's owner would be liable in damages.

The owner of a large carnivore would be liable in a civil action for the death or injury of a person and for property damage, including the death or injury of another animal, caused by the large carnivore.

If a large carnivore escaped or were released, intentionally or unintentionally, the owner immediately would have to report the loss, escape, or release to a law enforcement officer of the local unit where the escape or release occurred. The owner would be liable for all expenses associated with

efforts to recapture the large carnivore. The owner could bring against a person who was responsible in whole or part for the escape or release of the animal a civil action for damages, including damages and expenses under these provisions.

Inspections and Violations

The facility where a large carnivore was kept in captivity would be subject to inspection at reasonable hours by a law enforcement authority to ensure compliance with the bill.

If there were probable cause to believe that the bill was being violated, a law enforcement authority would have to issue to the large carnivore's owner a notice of the violation (as described below); arrest the owner or seek a warrant for his or her arrest, as appropriate under the Code of Criminal Procedure, for a misdemeanor violation of the bill; or, file a sworn complaint for forfeiture of the animal.

A law enforcement authority could give notice of a violation in writing to the owner of a large carnivore. The notice would have to identify the violation and include a copy of the bill. Within 30 days after the notice was delivered, the owner would have to transfer the animal or correct the violation and notify the law enforcement authority of the action taken. If the violation were failure to obtain a permit and it had been committed knowingly, within 14 days after the notice was delivered, the owner would have to transfer the animal and notify the law enforcement authority of the action taken.

A large carnivore transferred under these provisions would have to be transferred to an animal control shelter or animal protection shelter; a person licensed or approved by the DNR or the U.S. Fish and Wildlife Service; a zoological park approved and accredited by the American Zoo and Aquarium Association; or a person approved by the Association of Sanctuaries. Notice that the animal was transferred would have to include evidence of the transfer satisfactory to the law enforcement authority.

Unless the large carnivore's owner notified the law enforcement authority that the animal had been transferred, the authority would have to conduct an inspection at a reasonable time at least 30 days after notice of the violation had been delivered. When the second inspection was conducted, the animal owner would have to pay a \$25 inspection fee or actual, reasonable costs of the inspection, whichever was greater, to the law enforcement authority. If the law enforcement authority found that the owner had not complied with the bill, the enforcement authority would have to seek forfeiture of the animal, as provided under the bill.

Penalties/Forfeiture

A person who violated the bill, other than a law enforcement authority, veterinarian, or permitting agency, would be guilty of a misdemeanor, punishable by a fine of at least \$250, plus prosecution costs; or, if the person failed to obtain a permit for the exotic animal, by a fine of at least \$500, plus prosecution costs. In addition, the person could be punished by one or more of the following: imprisonment for up to 93 days; community service work for up to 500 hours; or the loss of privileges to own or possess any animal.

If a person who owned or possessed a large carnivore violated the bill, the animal and any other large carnivore owned by that person would be subject to civil forfeiture. In a criminal action for a violation, the prosecuting attorney could file a petition requesting that the court issue an order for civil forfeiture of all of the large carnivores owned by that person.

Any person could file with a court having jurisdiction a complaint alleging that a person was violating the bill and requesting the court to order the civil forfeiture of all of the large carnivores owned by that person.

A law enforcement officer would have to seize a large carnivore pursuant to a seizure order issued by a court having jurisdiction over the large carnivore, upon a showing of probable cause that the animal was subject to forfeiture under the bill.

A large carnivore subject to forfeiture could be seized without process under any of the following circumstances:

- The seizure was incident to a lawful arrest for a violation of the bill.
- The seizure was pursuant to a valid search warrant.
- The seizure was pursuant to an inspection under a valid administrative inspection warrant.
- There was probable cause to believe that the conditions under which the animal or another large carnivore owned by the same person was kept were directly or indirectly dangerous to human or animal health or safety.
- Exigent circumstances precluded obtaining a court order, and there was probable cause to believe that the bill had been violated.
- The large carnivore or any other large carnivore owned by the same person was the subject of a prior judgment in favor of the State in a forfeiture proceeding.

If a seizure were to be accomplished by capture, tranquilization or other humane methods would have

to be used for the capture.

A large carnivore seized under the bill would not be subject to any other action to recover personal property, but would be considered to be in the custody of the seizing agency, subject only to the bill's provisions concerning return of a large carnivore, or to an order and judgment of the court having jurisdiction over the forfeiture proceedings. When a large carnivore was seized, the law enforcement authority could remove the animal to a place designated by the court.

Return of Large Carnivore

A large carnivore that belonged to the victim of a crime would have to be returned promptly to the victim, except in the following circumstances:

- When the crime victim last possessed the large carnivore, he or she was in violation of the bill's permitting provisions.
- Until the dispute was resolved, if the ownership of the animal were disputed.
- If the property were required to be retained as evidence pursuant to the Crime Victim's Rights Act.

A law enforcement authority could return a seized large carnivore to its owner if the law enforcement authority were satisfied that the conditions resulting in the seizure had been corrected. If the large carnivore were seized pursuant to process issued by a court, the law enforcement authority would have to obtain approval of the court before returning the animal.

Unless the animal had been returned, the law enforcement authority, within 10 days after the animal was seized, would have to give written notice of the seizure and intent to forfeit the animal to the large carnivore's owner and any person who had been injured or whose property had been damaged by the animal. The notice would have to be delivered in person or sent by certified mail. If the name and address of the person were not reasonably ascertainable or personal delivery could not be accomplished reasonably, the notice would have to be published in a newspaper of general circulation in the county in which the large carnivore had been seized for 10 successive publishing days. Proof of written notice or publication would have to be filed with the court having jurisdiction over the seizure or forfeiture.

Immediately after the seizure, the law enforcement authority would have to notify the prosecuting attorney for the county in which the large carnivore had been seized or, if the Attorney General were actively handling a case involving or relating to the

large carnivore, the Attorney General of the seizure of the animal and any intent to forfeit the animal under the bill.

A person could file a motion with the court having jurisdiction to return the large carnivore on the grounds that the animal was seized illegally or was not subject to forfeiture under the bill. The court would have to hear the motion within 30 days after it was filed. At the hearing on the motion, the Attorney General, or the attorney for the local unit in which the large carnivore had been seized, would have to establish probable cause to believe that the animal was subject to forfeiture under the bill and, if the person filing the motion claimed the large carnivore had been seized illegally, that the animal was seized properly. If the Attorney General or the attorney for the local unit failed to sustain his or her burden of proof, the court would have to order the return of the large carnivore. The testimony of a person at a hearing held on the motion would not be admissible against the individual in any criminal proceeding except in a criminal prosecution for perjury. The bill also specifies that the testimony would not waive the person's constitutional right against self-incrimination.

A law enforcement authority would have to return a seized large carnivore to its owner within seven days after the occurrence of any of the following: the failure to issue a warrant against the owner of the animal for committing a misdemeanor under the bill or to file a complaint under the bill within 10 days after the large carnivore was seized; the dismissal of charges against the large carnivore's owner or of a complaint under the bill, as applicable; the court's determination that an order for the large carnivore to be forfeited could not be entered; the acquittal of the large carnivore's owner of any charges under the bill; or entry of a court order for the return of the large carnivore.

If a large carnivore were returned, the law enforcement authority would have to give written notice of the return to the persons who received notice of the forfeiture. The notice would have to be delivered in person or sent by certified mail. If the name and address of a person were not reasonably ascertainable or personal delivery of the notice could not be accomplished reasonably, the notice would have to be published in a newspaper of general circulation in the county in which the large carnivore had been seized for 10 successive publishing days.

Forfeiture Costs

If the court ordered a large carnivore to be forfeited, the forfeiture order would have to direct that each large carnivore be transferred to a wildlife sanctuary approved by the Association of Sanctuaries, an

animal protection shelter, or a zoo accredited by the American Zoo and Aquarium Association, where the large carnivore would be cared for safely and humanely. Subject to the bill's provisions on a large carnivore's potentially exposing a human or other animals to rabies, if the large carnivore killed or injured a human being or animal, the forfeiture order could direct that the large carnivore be humanely euthanized by a veterinarian. A forfeiture order also would have to revoke any permit that could have been issued for the large carnivore under the bill and order payment of costs of placement and care. The forfeiture would be a civil forfeiture.

If a large carnivore were seized, the animal's owner would be liable for the costs of placement and care for the animal from the time of seizure until the time of return or forfeiture and, if a large carnivore were ordered to be forfeited and euthanized, for the costs of humanely euthanizing and disposing of the animal. The bill specifies that this provision would not apply if the animal were returned.

Exemptions

The bill specifies that provisions on possessing a large carnivore and obtaining a permit for the animal, placing an identification number on the animal, and keeping a large carnivore in a facility would not apply to the following: an animal control shelter or animal protection shelter, a zoological park approved or accredited by the American Zoo and Aquarium Association, a law enforcement officer acting under the authority of the bill, a veterinarian temporarily in possession of a large carnivore to provide veterinary care for or humanely euthanize the animal, or a person licensed or approved by the DNR or the U.S. Fish and Wildlife Service (except a person who possessed at least one black bear under the authority of a permit to hold wildlife in captivity issued by the DNR).

Other Provisions

A person could not export or attempt to export a large carnivore to another state or country unless the animal's import and possession were lawful in the other state or country, and the destination and proposed new owner of the animal had been approved by the regulatory agency in the other state or country having authority to do so, if any.

A law enforcement authority or other person could kill a large carnivore if the person saw the animal chasing or attacking a person or livestock, poultry, or any other animal. A person would not be liable in damages or otherwise for killing or attempting to kill a large carnivore under these circumstances.

A local unit could adopt an ordinance governing large

carnivores that was more restrictive than the bill. The bill also specifies that its requirements would be in addition to any other requirements governing a large carnivore under State and Federal law.

The MDA would have to provide each pet shop, animal control shelter, and animal protection shelter with information on the bill's requirements.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

It is inappropriate and inhumane for large carnivores, such as exotic cats and bears, to be possessed as domestic pets. These animals are essentially wild animals and tend to exhibit unpredictable predatory and territorial behavior, sometimes resulting in fatal or serious injuries to people. The bill would implement State-wide regulations that would diminish the grave danger these animals pose to people and the community and provide proper safety precautions.

In addition, very few large carnivore owners are willing or able to provide the special care, feeding, proper exercise, and sanitary and adequate housing conditions the animal requires. The bill would afford greater protection to the animals by establishing minimum standards for their care, transportation, and housing as a condition of acquiring and maintaining a large carnivore permit. These requirements should prevent the type of situation described in a *Detroit Free Press* article (12-9-97) that featured a recovery of three lion cubs seized from owners who had mistreated them. The animals were undernourished when found, crudely defanged, and so poorly declawed that their forepaws were permanently deformed.

Response: The bill could be improved. For example, the bill should not require an owner to post signs on the property where a large carnivore was being kept. Although the signs would warn those concerned about encountering the animals, they also would provide notice to thrill-seekers that the animals were there. In addition, bill also should prohibit the future possession of and regulate the handling and care of nonhuman primates since they pose a serious public health risk. Many nonhuman primates carry serious diseases, such as hepatitis, that are harmful and contagious to people and animals.

Supporting Argument

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

Large carnivores kept as pets often escape or are released when owners become overwhelmed by the demands of caring for them. Reportedly, local and county law enforcement authorities have spent significant time and money unsuccessfully trying to track and capture these animals. For example, an article in the *Detroit News* (5-28-98) reported police efforts to capture a large cat that was spotted in the community of Woodhaven. Apparently, a man was seen dumping the animal in the woods. Officers set up steel cage traps baited with raw meat and used helicopters equipped with an infrared camera in hopes of catching the animal.

Opposing Argument

Many large carnivores make good domestic pets and do not cause problems. It is unfair for government to restrict the choice of pets. This is a local issue and should be decided on a local level through ordinances. Many communities have rejected attempts to ban these animals, and should have the right to continue to allow them.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would result in an indeterminate, but probably negligible increase in State Department of Agriculture administrative costs. Local units of government that do not have a permitting program currently, or that do not have an ordinance banning ownership of large carnivores, would experience indeterminate increases in both administrative and enforcement costs. The bill would allow affected local governments to assess permit fees to generate revenue sufficient to cover these costs. As the bill would bar ownership of large carnivores that were not already in the possession of an individual prior to the effective date of the bill, the increase in local government costs and revenues would be temporary.

Fiscal Analyst: P. Graham