

**MEMORANDUM**

September 7, 2017

TO: Public Safety Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: **Worksession:** Bill 23-17, Animal Control – Performance Animal - Violations

Bill 23-17, Animal Control – Performance Animal - Violations, sponsored by Lead Sponsors Councilmembers Rice and Leventhal, Co-Sponsors Councilmembers Katz, Navarro, Riemer, Elrich, Hucker, and Council President Berliner, was introduced on June 27. A public hearing was held on July 18.

The sponsors of Bill 23-17 want to protect wild animals. The Bill does this by removing the financial incentives to exhibit such animals.

Bill 23-17 would:

- (1) Define the term “exhibit”;
- (2) Define the term performance animal;
- (3) Prohibit the exhibition of performance animals;
- (4) Authorize the Animal Control Division to enforce prohibited act; and
- (5) Generally amend the provisions concerning animal cruelty.

Issues

*Why prohibit performance animals?*

The use of animals as a form of amusement, entertainment or display is detrimental to the safety of the public, including children and trainers. Wild animals pose a significant danger to audience members, trainers, and the public at large. Travel or confinement impairs the animals' physical, psychological, and social needs, while close confinement, lack of exercise, pressure to perform, and other physical requirements of performing render the animals unable to express natural behaviors and socialize appropriately. In addition, the training techniques, devices, or agents used to make the animals perform are many times abusive, cruel, and/or stressful, causing suffering to the animals and creating a greater threat to the public.<sup>1</sup>

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<sup>1</sup> Animal Law Resource Center; <http://www.animallaw.com/Model-Law-Circuses.cfm>.

*What is the scope of prohibited activity?*

As introduced, Bill 23-17 would prohibit a person or business from exhibiting or financially benefiting from the exhibition of any performance animal in a traveling animal act. Performance animals are defined in the Bill.<sup>2</sup> A traveling animal act is not defined in the Bill as introduced.

Staff recommends adding a definition of traveling animal act:

The term ‘traveling animal act’ means any performance of animals where such animals are transported to, from, or between locations for the purpose of such performance, in a mobile or traveling housing facility.<sup>3</sup>

With that definition, a “mobile or traveling housing facility” should be defined:

The term ‘mobile or traveling housing facility’ means a transporting vehicle such as a truck, car, trailer, airplane, ship, or railway car, used to transport or house animals while traveling to, from, or between locations for performance purposes.<sup>2</sup>

Currently it is a violation of the County Animal Control law to import, sell, trade, buy, barter, breed, raise, keep, or possess a wild animal.<sup>4</sup> This provision has never been used to ban traveling animal acts in the County. The act that causes a violation under Bill 23-17 is the exhibition of performance animals in a traveling animal act.

*Should there be exemptions for animals cared for by certified humane zoos?*

Some legislation exempt animals from facilities accredited by the Association of Zoos and Aquariums (AZA). The organization started the voluntary accreditation process in 1974. Of the approximately 2,800 animal exhibitors licensed by the USDA across the country, less than 10% are AZA-accredited.

Another accrediting organization is the Zoological Association of America (ZAA). This is a much younger organization. ZAA was formed in 2005.<sup>5</sup> The standards for animal care between the 2 organizations are different.<sup>6</sup>

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<sup>2</sup> The Bill lists specific “orders” or “families” of animals with examples or exclusions. Within the science of taxonomy, all living organisms are classified by their kingdom, phylum, class, **order**, family, genus and species.

<sup>3</sup> This definition is identical to the definition of the same term in H.R. 1759 the “Traveling Exotic Animal and Public Safety Protection Act”.

<sup>4</sup> Section 5-202 (a) 1; a wild animal is defined as, “An animal of a species of an untamable disposition, a species in a state of nature, or a native self-sustaining species. All animals of these species are wild animals even if a particular animal has characteristics that reflect domestication or taming.” An exotic animal is defined in the code as, “a non-native species **kept as a pet or livestock**, other than a rodent, rabbit or hare, or hoofed animal.

<sup>5</sup> The ZAA was established by the merger of two pre-existing organizations - The International Society of Zooculturists and the United Zoological Association.

<sup>6</sup> The Humane Society of the United States clearly believes that the ZAA has “weak standards that endorses poorly run roadside zoos, traveling zoos, and private menageries and promotes the private ownership of exotic pets as well as the commercialization of wildlife.” <https://bigcatrescue.org/wp-content/uploads/2014/07/ZAA-Factsheet.pdf>

The Council must avoid delegating its authority to a private party. Allowing accreditation by a third party to exempt some animal acts would be such a delegation. One alternative would be to approve the standards of care that the Council believes is acceptable equal to the accreditation standards of either accrediting organization. Another alternative would be to allow standards to be determined by Executive Regulations.

*Would the enactment of Bill 23-17 have any effect on the Montgomery County Agricultural Fair or Agricultural fairs in general?*

Due to the Fair's location, the Fair would not be impacted by Bill 23-17. The fairground is located in the City of Gaithersburg. The City is not subject to the Animal Control Chapter of the Montgomery County Code. The prohibition on performance animals would be part of the Animal Control Chapter.

The animals listed as on display at the Fair would not be impacted by Bill 23-17. The animals listed on the Fair's website as being on display are: donkeys, mules, goats, horses, pigs, poultry, water fowl, rabbits, and sheep.

**If the Fairgrounds were not in the City of Gaithersburg**, the income of the Montgomery County Agricultural Center Inc, who owns the fairgrounds would be negatively impacted. The fairground has been rented to traveling shows with performance animals.

It is not the intent of Bill 23-17 to prohibit any agricultural fair that displays domesticated animals that are raised for food, fiber, or common household pets. (In the following issue, staff recommends excluding llamas, alpacas, emus, and ostriches from the list of prohibited traveling animal acts.) The Bill as introduced would only prohibit traveling animal acts.

*Where did the list of prohibited animals come from and is it too broad?*

Staff did not have the competence to create the list of prohibited wild and exotic creatures in Bill 23-17. <sup>7</sup> The list of animal orders, families and exclusions follows the model ordinance available on the Born Free web site.<sup>8</sup> The major difference from that list is the inclusion of elasmobranchii (sharks) and pinnipedia (seals, sea lions, and walruses).

Testimony noted that the list would prohibit domesticated animals such as llamas, alpacas, ostriches, and emus.

As everyone knows:<sup>9</sup>

Artiodactyla<sup>10</sup> includes llamas and alpacas

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<sup>7</sup> Staff's single contribution to any form of biological science was an academic composition on "Our Friend the Frog". This paper was never published and was written decades before staff found gainful employment.

<sup>8</sup>[http://466a221d5f0081643b32-e5fd6e4345ef06428c08a34c1e533de0.r4.cf1.rackcdn.com/Model\\_City\\_Legislation\\_Traveling\\_Circus.pdf](http://466a221d5f0081643b32-e5fd6e4345ef06428c08a34c1e533de0.r4.cf1.rackcdn.com/Model_City_Legislation_Traveling_Circus.pdf)

<sup>9</sup> That is everyone who has had the time to research taxonomy.

<sup>10</sup>This order is characterized by either two or four (usually) hooved toes on each foot, except for the peccary which has four toes on each forefoot, but only three on the hind. The American forms of the order are divisible into two groups based on the structure of the teeth, presence or absence of horns, and structure of the stomach and feet. The pig group

Struthioniformes<sup>11</sup> includes ostriches

Casuariiformes<sup>12</sup> includes emus

Staff agrees these are domestic animals (used for food, fiber, or pets) in the county and should be excluded from the definition of performance animals.

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has crushing cheek teeth, upper incisors, a simple stomach, no horns, four hoofed toes, and includes the peccaries. The cow group has rasping cheek teeth, no upper incisors, two or four hoofed toes on each foot, complex stomach, and horns or antlers in most species. It includes the deer, elk and allies; cows and allies; and the pronghorn.

<sup>11</sup> This is a small order of weak-flying, partridge-like birds and giant, flightless ratite birds found in the southern continents. The struthioniforms are characterized by a palaeognathous palate, a break in the postnasal strut, close approximation of the zygomatic process to the quadrate, and the structure of the rhamphotheca (the horny sheath covering a bird's beak).

<sup>12</sup> The Casuariiformes is an order of large flightless bird that has four surviving members: the three species of cassowary, and the only remaining species of emu. They are classified as one family Casuariidae or two, with the emu split off into its own family Dromaiidae. All four living members are native to Australia-New Guinea, but some possible extinct taxa occurred in other landmasses.

Bill No. 23-17  
Concerning: Animal Control -  
Performance Animal - Violations  
Revised: June 27, 2017 Draft No. 4  
Introduced: June 27, 2017  
Expires: December 27, 2018  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsors: Councilmembers Rice and Leventhal  
Co-Sponsors: Councilmembers Katz, Navarro, Riemer, Elrich, Hucker and Council President  
Berliner

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**AN ACT** to:

- (1) Define the term "exhibit";
- (2) Define the term performance animal;
- (3) Prohibit the exhibition of performance animals;
- (4) Authorize the Animal Control Division to enforce prohibited act; and
- (5) Generally amend the provisions concerning animal cruelty.

By amending

Montgomery County Code  
Chapter 5, Animal Control  
Sections 5-101, 5-102, and 5-201

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Sections 5-101, 5-102, and 5-201 are amended as follows:**

**5-101. Definitions.**

In this Chapter, the following words and phrases have the following meanings:

\* \* \*

Display: Any exhibit, fair, act, circus, ride, or similar undertaking in which a performance animal is required to perform tricks, give rides, or participate as accompaniments for the entertainment, amusement, or benefit of another.

\* \* \*

Exhibit: The display of a performance animal for the financial benefit of any person or business.

\* \* \*

Performance animal: The following animals are performance animals. The animals listed in parentheses are intended to act as examples and are not to be construed as an exhaustive list or limit the generality of each group of animals, unless otherwise specified:

- (1) non-human primates and prosimians (such as chimpanzees, baboons, monkeys, etc.) – all species;
- (2) felidae (such as lions, tigers, cougars, leopards, ocelots, servals, etc.) – all species except domestic cats;
- (3) canidae (such as wolves, coyotes, etc.) – all species except domestic dogs;
- (4) ursidae (such as bears) – all species;
- (5) marsupialia (such as kangaroos, etc.) – all species;
- (6) proboscidae (such as elephants) – all species;
- (7) crocodilia (such as crocodiles, alligators, etc.) – all species;
- (8) squamata (all species of snakes only);

- 27 (9) artiodactyla (such as hippopotamuses, giraffes, camels, etc.) – all
- 28 species except domestic cattle, swine, sheep, or goats;
- 29 (10) perissodactyla (such as zebras, rhinos, and tapirs) – all species except
- 30 domestic horses, donkeys, or mules;
- 31 (11) struthioniformes (such as ostriches) – all species;
- 32 (12) casuariiformes (such as emus) – all species;
- 33 (13) Elasmobranchii (including nurse sharks and lemon sharks); and
- 34 (14) Pinnipedia (including seals, sea lions, and walruses).

\* \* \*

**5-102. Administration.**

\* \* \*

(e) Enforcement of [state] animal control laws. To the extent allowed by State law, the Division may enforce any State animal control law and any law under this Chapter. A reference in a State animal control law to the "appropriate authority" (or any similar term) in the County means the Division and any other County agency designated by regulation adopted under method (3).

\* \* \*

**5-201. Cruelty.**

(a) Violation under State Laws. A person must not violate State laws against cruelty to animals, such as by:

\* \* \*

(b) Additional violation: A person or business must not exhibit or financially benefit from the exhibition of any performance animal in a traveling animal act.



## LEGISLATIVE REQUEST REPORT

Bill 23-17

*Animal Control – Performance Animal - Violations*

**DESCRIPTION:** This Bill defines performance animals and prohibits a person or business from exhibiting or financially benefit from the exhibition of any performance animal. It also allows enforcement of the prohibition.

**PROBLEM:** Profiting by exhibition of wide animals creates an incentive for the capture those animals and creates an excessive opportunity for animal cruelty.

**GOALS AND OBJECTIVES:** The goal is to remove the financial incentive for displaying wide animals.

**COORDINATION:** Police Department – Animal Control Division

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Jeff Zyontz, Senior Legislative Analyst, 240 777 7896

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** Violations with be subject Class A violation