

Assembly Bill No. 820

CHAPTER 698

An act to amend Sections 2117, 2120, 2125, 2150, 2150.4, 2185, 2186, and 2187 of, to add Sections 2127, 2157, 2193, and 2195 to, and to repeal Section 2020 of, the Fish and Game Code, relating to captive wild animals.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 820, Strickland. Wild animals.

(1) Existing law prohibits the importation into this state of wild animals specified on a list published by the State Department of Health Services without a permit issued by that department, except that existing law does not authorize the importation, transportation, or possession of live animals enumerated in specified provisions of the Fish and Game Code or regulations of the Fish and Game Commission adopted pursuant thereto. Those Fish and Game Code provisions prohibit the importation, transportation, possession, or release into this state of certain wild animals without a permit issued by the Department of Fish and Game (hereafter department). Existing law requires the commission, in cooperation with the State Department of Food and Agriculture, to promulgate regulations relative to wild animals, as specified. Existing law requires the regulations to be designed to prevent damage to the native wildlife or agricultural interests of the state, as specified. Existing law defines "enforcing officers" for the purposes of provisions regulating the importation, transportation, and sheltering of restricted live animals. Existing law establishes civil penalties for a violation of specified provisions and requires fees collected pursuant to the provisions relating to wild animals to be deposited in the Fish and Game Preservation Fund. Existing law authorizes the department to reimburse eligible local entities, as defined, pursuant to a memorandum of understanding, for certain costs in connection with the administration and enforcement of provisions governing the possession, handling, or care of wild animals, and authorizes the director to enter into memorandums of understanding with eligible local entities, as defined, for the purpose of paying those costs. Existing law permits the department or an eligible local entity to issue a written permit to import into this state, possess, or transport within this state any specified wild animal, upon a determination that the animal is not detrimental or that no damage or detriment can be caused to agriculture, native wildlife, the public health or safety, or the welfare of the animal and requires the department or an eligible local entity to inspect the wild animal facilities. Existing law requires the department, on or before May 1, 1991, to establish and keep current written policies relating to the

housing, possession, importation, and transportation of wild animals. Existing law also requires the commission to revoke or deny a permit under certain circumstances.

This bill would enumerate specific criteria for the adoption of regulations required to be promulgated with respect to wild animals, and would require the commission to develop and adopt these regulations, on or before January 1, 2007. This bill would modify the definition of “enforcing officers” and would specify that enforcing officers are authorized and empowered to enforce provisions and regulations relating to the importation, transportation, and sheltering of restricted live animals. The bill would allow the department to revoke or deny a permit under specified circumstances. The bill would revise existing law relating to the reimbursement of eligible local entities, as defined, pursuant to a memorandum of understanding, for certain costs, in connection with the administration and enforcement of provisions governing the possession, handling, or care of wild animals, and the authority of the director to enter into memorandums of understanding with eligible local entities, as defined, for the purpose of paying those costs. The bill would require the department, no later than January 1, 2007, to develop, implement, and enter into memorandums of understanding with eligible local entities if the department elects not to inspect every wild animal facility and to adopt and implement a policy describing the department’s issuance of breeding permits, including specific criteria, developed in cooperation with a specified committee, concerning the method by which the department determines that the breeding of a species listed on the permittee’s inventory will not result in unneeded or uncared for animals, and the means by which those specific criteria will be implemented and enforced.

The bill would require every person holding a wild animal permit to uniquely identify each wild animal that poses a risk to the health and safety of the public, and to report the identification to the department for maintenance in a registry. The bill would require the department to develop and adopt regulations for this purpose on or before January 1, 2007. The bill would require any person who possesses a permit for the importation or transportation of a wild animal, and every zoo, to immediately report the escape or release of the animal, and would make the possessor liable for all expenses associated with efforts to recapture the animal. The bill would specify that the exhibition of a wild animal on a movie set, film set, television set, still photography set, or any other professional activity allowable under permit, does not constitute an intentional or unintentional escape or release of the wild animal unless the person exhibiting the wild animal has lost control of the wild animal. The bill would require any person who possesses a permit for the importation or transportation of a wild animal to provide prior notice to the department relating to certain action taken in connection with, or related to, the animal, except under specified circumstances. The bill would require a person claiming a confiscated wild animal to pay to the department or the new custodian of the animal an amount sufficient to cover all reasonable

expenses expected to be incurred in caring for and providing for the animal, as provided. The bill would permit the department to euthanize the animal or place the wild animal with an appropriate wild animal facility upon the expiration of a 2nd 30-day period, as specified. The bill would permit the new custodian of a specified wild animal to bring a civil action against the previous possessor for all reasonable costs incurred by the new owner for the relocation of the animal, to construct new caging to house the animal, and to return the animal to a healthy state, as provided. The bill would expand the civil penalty for any person who violates certain wild animal provisions, and would specify that, except as otherwise provided, any violation of those provisions is a misdemeanor punishable by imprisonment in the county jail for not more than 6 months, or by a fine of not more than \$1,000.

(2) Existing law generally provides that a violation of the fish and game laws is a crime.

Because this bill would impose additional requirements on every person holding a specified wild animal permit for which a violation thereof would be a crime, this bill would impose a state-mandated local program by creating a new crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 2020 of the Fish and Game Code is repealed.

SEC. 2. Section 2117 of the Fish and Game Code is amended to read:

2117. As used in this chapter, “enforcing officers” means the department, the state plant quarantine officers, the local law enforcement agents, the county sheriffs, and the county agricultural commissioners. These enforcing officers are authorized and empowered to enforce the provisions of this chapter or any regulation implementing this chapter.

SEC. 3. Section 2120 of the Fish and Game Code is amended to read:

2120. (a) The commission, in cooperation with the State Department of Food and Agriculture, shall promulgate regulations governing (a) the entry, importation, possession, transportation, keeping, confinement, or release of any and all wild animals which will be or which have been imported into this state pursuant to the provisions of this chapter, and (b) the possession of all other wild animals. The regulations shall be designed to prevent damage to the native wildlife or agricultural interests of this state resulting from the existence at large of any such wild animals, and to provide for the welfare of wild animals.

(b) The regulations shall also include criteria for all of the following:

(1) Receiving, processing, and issuing of a permit and conducting inspections.

(2) Contracting out inspection activities.

(3) Responding to public reports and complaints.

(4) Notification of the revocation, termination, or denial of permits, and related appeals.

(5) The method by which the department determines that the breeding of wild animals pursuant to a single event breeding permit for exhibitor and a breeding permit is necessary and will not result in unneeded or uncared for animals, and the means by which the criteria will be implemented and enforced.

(6) How a responding agency will respond to an escape of a wild animal. This shall include, but not be limited to, the establishment of guidelines for the safe recapture of the wild animal and procedures outlining when lethal force would be used to recapture the wild animal.

(c) These regulations shall be developed and adopted by the commission, on or before January 1, 2007.

SEC. 4. Section 2125 of the Fish and Game Code is amended to read:

2125. (a) In addition to any other penalty provided by law, any person who violates this chapter or any regulations implementing this chapter, is subject to a civil penalty of not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000) for each violation. Except as otherwise provided, any violation of this chapter or of any regulations implementing this chapter is a misdemeanor punishable by imprisonment in the county jail for not more than six months, or by a fine of not more than one thousand dollars (\$1,000).

(b) The Attorney General, or the city attorney of the city or the district attorney or county counsel of the county in which a violation of this article occurs, may bring a civil action to recover the civil penalty in subdivision (a) and the costs of seizing and holding the animal listed in Section 2118, except to the extent that those costs have already been collected as provided by subdivision (d). The civil action shall be brought in the county in which the violation occurs and any penalty imposed shall be transferred to the Controller for deposit in the Fish and Game Preservation Fund in accordance with Section 13001.

(c) In an action brought under this section, in addition to the penalty specified in subdivision (a), the reasonable costs of investigation, reasonable attorney's fees, and reasonable expert witness' fees may also be recovered and those amounts shall be credited to the same operating funds as that from which the expenditures for those purposes were derived.

(d) (1) If an animal is confiscated because the animal was kept in contravention of this chapter or any implementing regulations, the person claiming the animal shall pay to the department or the new custodian of the animal an amount sufficient to cover all reasonable expenses expected to be incurred in caring for and providing for the animal for at least 30 days, including, but not limited to, the estimated cost of food, medical care, and housing.

(2) If the person claiming the animal fails to comply with the terms of his or her permit and to regain possession of the animal by the expiration of the first 30-day period, the department may euthanize or place the animal with an appropriate wild animal facility at the end of the 30 days, unless the person claiming the animal pays all reasonable costs of caring for the animal for a second 30-day period before the expiration of the first 30-day period. If the permittee is still not in compliance with the terms of the permit at the end of the second 30-day period, the department may euthanize the animal or place the animal in an appropriate wild animal facility.

(3) The amount of the payments described in paragraphs (1) and (2) of this subdivision shall be determined by the department, and shall be based on the current reasonable costs to feed, provide medical care for, and house the animal. If the person claiming the animal complies with the terms of his or her permit and regains possession of the animal, any unused portion of the payments required pursuant to paragraphs (1) and (2) of this subdivision shall be returned to the person claiming the animal no later than 90 days after the date on which the person regains possession of the animal.

SEC. 5. Section 2127 is added to the Fish and Game Code, to read:

2127. (a) The department may reimburse eligible local entities, pursuant to a memorandum of understanding entered into pursuant to this section, for costs incurred by the eligible local entities in the administration and enforcement of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal designated pursuant to Section 2118, by any person.

(b) The department may enter into memorandums of understanding with eligible local entities for the administration and enforcement of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal designated as such pursuant to Section 2118, or a cat specified in Section 3005.9.

(c) The Fish and Game Commission shall adopt regulations that establish specific criteria an eligible local entity shall meet in order to qualify as an eligible local entity.

(d) For purpose of this division, “eligible local entity” means a county, local animal control officer, local humane society official, an educational institution, or trained private individual that enters into a memorandum of understanding with the department pursuant to this section.

SEC. 6. Section 2150 of the Fish and Game Code is amended to read:

2150. (a) (1) The department, in cooperation with the Department of Food and Agriculture, may, upon application, issue a written permit to import into, possess, or transport within this state any wild animal enumerated in, or designated pursuant to, Section 671 of Title 14 of the California Code of Regulations, upon a determination that the animal is not detrimental or that no damage or detriment can be caused to agriculture, native wildlife, the public health or safety, or the welfare of the animal, as a result of the importation, transportation, or possession.

(2) A permit may be issued to any person only upon application and payment of a nonrefundable application fee in an amount determined by the department pursuant to Section 2150.2. Application forms shall be provided by the department and shall be designed to ascertain the applicant's ability to properly care for the wild animal or animals the applicant seeks to import, transport, or possess. Proper care includes providing adequate food, shelter, and veterinary care, and other requirements the commission may designate.

(b) The commission or the department shall deny a permit and the commission shall revoke a permit if it finds that a permittee or applicant has failed to meet, or is unable to meet, the requirements for importing, transporting, possessing, or confining any wild animal as established pursuant to Section 2120.

(c) A zoo is exempt from any permit requirement pursuant to this chapter except for animals whose importation, transportation, or possession is determined by the department, in cooperation with the Department of Food and Agriculture, to be detrimental or cause damage to agriculture, native wildlife, or the public health or safety. For purposes of this section, "zoo" means any organization which is accredited as meeting the standards and requirements of the American Zoo and Aquarium Association (AZA). Any California organization which is not accredited by the AZA may apply to the department for a waiver of specified permit requirements of this chapter. The department may grant or deny the request for a waiver for justified reasons. Foreign zoos outside this state are not subject to the permit requirements of this chapter beyond those specific permit requirements affecting California zoos or organizations with which they are collaborating. Any organization may appeal the determination of the department to the commission.

(d) An exhibitor licensed by the United States Department of Agriculture or a dealer who is so licensed who buys any animal specified in subdivision (c) from a zoo within the state, may sell or transfer it only to a private individual who has a permit issued pursuant to this section prior to the receipt of the animal or to a public or private organization that has a permit issued pursuant to this section prior to the receipt of the animal. The exhibitor or dealer who sells or transfers that animal shall pay a fee pursuant to Section 2150.2 to the department.

(e) Any university, college, governmental research agency, or other bona fide scientific institution, as defined in regulations adopted by the commission, engaging in scientific or public health research is exempt from any permit requirement pursuant to this chapter except for animals whose importation, transportation, or possession is determined by the department, in cooperation with the Department of Food and Agriculture, to be detrimental or cause damage to agriculture, native wildlife, or the public health or safety.

(f) Notwithstanding the provisions of this section, every zoo, university, college, governmental research agency, or other bona fide scientific institution shall comply with the requirements of subdivision (a) of Section

2193 for all animals the zoo, university, college, governmental research agency, or other bona fide scientific institution possesses that are enumerated in, or designated pursuant to, Section 671 of Title 14 of the California Code of Regulations.

SEC. 7. Section 2150.4 of the Fish and Game Code is amended to read:

2150.4. (a) Consistent with Section 3005.91, the department or an eligible local entity shall inspect the wild animal facilities, as determined by the director's advisory committee, of each person holding a permit issued pursuant to Section 2150 authorizing the possession of a wild animal.

(b) In addition to the inspections specified in subdivision (a), the department or an eligible local entity, pursuant to the regulations of the commission, may inspect the facilities and care provided for the wild animal of any person holding a permit issued pursuant to Section 2150 for the purpose of determining whether the animal is being cared for in accordance with all applicable statutes and regulations. The department shall collect an inspection fee, in an amount determined by the department pursuant to Section 2150.2.

(c) No later than January 1, 2007, the department, in cooperation with the committee created pursuant to Section 2150.3, shall develop, implement, and enter into memorandums of understanding with eligible local entities if the department elects not to inspect every wild animal facility pursuant to subdivisions (a) and (b). Eligible local entities shall meet the criteria established in regulations adopted pursuant to subdivision (b) of Section 2127.

SEC. 8. Section 2157 is added to the Fish and Game Code, to read:

2157. (a) Every person holding a permit issued pursuant to Section 2150 shall uniquely identify each wild mammal that poses a risk to the health and safety of the public and report this identification to the department to maintain in a registry.

(b) The commission shall adopt regulations that address the following:

(1) Identify the mammals that pose a risk to the health and safety of the public and are subject to subdivision (a). This identification shall include the following species of mammals: wild cats, elephants, nonhuman primates, bears, and wolves.

(2) Acceptable forms of identification.

(3) How and when a permittee must notify the department of the unique identifier required in subdivision (a).

(c) The department shall establish a registry listing the permit number, type, expiration date, the name and address of the permittee, and an inventory of each mammal and to the identification assigned or affixed to the mammal pursuant to subdivision (a) that is covered by the permit.

(d) These regulations shall be developed and adopted by the commission, on or before January 1, 2007.

SEC. 9. Section 2185 of the Fish and Game Code is amended to read:

2185. (a) Any person who transports, receives, or imports into the State, or transports within the State, any live wild animal enumerated in or

designated pursuant to Section 2118, shall hold said animal in confinement for inspection and immediately notify the nearest enforcing officer of the arrival thereof. If there is found in any shipment any species not specified in the permit issued under this chapter, or more than the number of any species specified, said animals shall be refused admittance as provided in Section 2188 of this chapter.

(b) Notwithstanding Section 2117, for the purposes of this section, “enforcing officer” means the enforcement personnel of the department, the state plant quarantine officers, and county agricultural commissioners.

SEC. 10. Section 2186 of the Fish and Game Code is amended to read:

2186. (a) If during inspection upon arrival any wild animal is found to be diseased, or there is reason to suspect the presence of disease, or there is reason to suspect the presence of disease which is or may be detrimental to agriculture, to native wildlife, or to the public health or safety, the diseased animal, and if necessary, the entire shipment shall be destroyed by, or under the supervision of the enforcing officer, unless no detriment can be caused by its detention in quarantine for a time and under conditions satisfactory to the enforcing officer for disinfection, treatment, or diagnosis, or no detriment can be caused by its return to its point of origin at the option and expense of the owner or bailee.

(b) Notwithstanding Section 2117, for the purposes of this section, “enforcing officer” means the enforcement personnel of the department, the state plant quarantine officers, and county agricultural commissioners.

SEC. 11. Section 2187 of the Fish and Game Code is amended to read:

2187. (a) Whenever any wild animal is brought into this state under permit, as provided in this chapter, the enforcing officers shall, from time to time, examine the conditions under which such species is kept, and report to the department any suspicion or knowledge of any disease or violations of the conditions of the permit or of the regulations promulgated under the provisions of this chapter. The enforcing officer may order the transfer of the animal to new owners or the correction of the conditions under which the species is being kept if not in conformance with the terms of the permit, at the expense of the owner or bailee. If neither transfer or improvement of conditions is accomplished, the officer may order destruction of the animal.

(b) Notwithstanding Section 2117, for the purposes of this section, “enforcing officer” means the enforcement personnel of the department, the state plant quarantine officers, and county agricultural commissioners.

SEC. 12. Section 2193 is added to the Fish and Game Code, to read:

2193. (a) Every person who holds a permit issued pursuant to Section 2150 shall immediately report by telephone the intentional or unintentional escape or release of the wild animal, to the department and the nearest enforcing officer of the city or county in which the wild animal was released or escaped. The permitholder shall be liable for all expenses associated with efforts to recapture the wild animal. For the purposes of this subdivision, the exhibition of a wild animal on a movie set, film set, television set, still photography set, or any other professional activity

allowable under a permit issued pursuant to Section 2150, does not constitute an intentional or unintentional escape or release of the wild animal unless the person exhibiting the wild animal has lost control of the wild animal.

(b) The commission shall promulgate regulations establishing the criteria for permitholders to notify the department prior to taking possession of or transferring an animal and upon the death of an animal.

(c) These regulations shall be developed and adopted by the commission on or before January 1, 2007.

SEC. 13. Section 2195 is added to the Fish and Game Code, to read:

2195. When a wild animal enumerated in, or designated pursuant to, Section 671 of Title 14 of the California Code of Regulations is properly confiscated by the department, the new custodian with whom the animal is placed by the department may bring a civil action to recover the reasonable costs incurred by the custodian for any necessary relocation of the animal to a new facility, any actual and necessary costs to construct new caging to house the animal, and any actual and necessary costs to return the animal to a healthy state, to the extent that the department or new custodian has not already collected the costs pursuant to paragraphs (1) and (2) of subdivision (d) of Section 2125. The prior owner or possessor from whom the animal was confiscated shall be liable for these costs only if the conditions that led to the animal's confiscation were the result of acts or omissions of the prior owner or possessor.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.