

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2140

Introduced by Assembly Member Bloom
(Coauthor: Assembly Member Stone)
(Coauthor: Senator Leno)

February 20, 2014

~~An act to amend Section 701.3 of the Fish and Game Code, relating to the Department of Fish and Wildlife.~~ *An act to add Section 4502 to the Fish and Game Code, relating to marine mammals.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2140, as amended, Bloom. ~~Department of Fish and Wildlife: deputy director.~~ *Marine mammals: protection of orcas: unlawful activities.*

(1) Existing law makes it unlawful to take any marine mammal, as defined, except as provided under specified federal laws.

This bill would make it unlawful to hold in captivity, or use, a wild-caught or captive-bred orca, as defined, for performance or entertainment purposes, as defined, to capture in state waters, or import from another state, any orca intended to be used for performance or entertainment purposes, to breed or impregnate an orca in captivity, or to export, collect, or import from another state the semen, other gametes, or embryos of an orca held in captivity for the purpose of artificial insemination, except as provided. The bill would make every person, corporation, or institution that violates those provisions guilty of a misdemeanor punishable by a fine of not more than \$100,000 or by imprisonment in a county jail for not more than 6 months, or by both

the fine and imprisonment. By creating a new crime, the bill would impose a state-mandated local program.

(2) 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.

~~Under existing law, the Department of Fish and Wildlife is required to enforce and administer the fish and game laws pursuant to the policies formulated by the Fish and Game Commission. The department is administered by the Director of Fish and Wildlife. There is one deputy director of the department.~~

~~This bill would make nonsubstantive changes to the latter provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. Section 4502 is added to the Fish and Game Code,
- 2 to read:
- 3 4502. (a) It is unlawful for any person to do any of the
- 4 following:
- 5 (1) Hold in captivity, or use, a wild-caught or captive-bred orca
- 6 for performance or entertainment purposes.
- 7 (2) Capture in state waters, or import from another state, any
- 8 orca intended to be used for performance or entertainment
- 9 purposes.
- 10 (3) Breed or impregnate an orca in captivity.
- 11 (4) Export, collect, or import from another state the semen,
- 12 other gametes, or embryos of an orca held in captivity for the
- 13 purpose of artificial insemination.
- 14 (b) Every person, corporation, or institution that violates
- 15 subdivision (a) is guilty of a misdemeanor and, upon conviction
- 16 thereof, shall be punished by a fine of not more than one hundred
- 17 thousand dollars (\$100,000), or by imprisonment in a county jail
- 18 for not more than six months, or by both the fine and imprisonment.
- 19 (c) (1) This section does not apply to an orca that is held for
- 20 rehabilitation after a rescue or stranding, or for research purposes.
- 21 However, an orca that is held for rehabilitation or research

1 *purposes shall be returned to the wild whenever possible, and, if*
2 *return to the wild is not possible, the orca shall be held in a sea*
3 *pen that is open to the public and not used for performance or*
4 *entertainment purposes.*

5 *(2) Orcas held for performance or entertainment purposes prior*
6 *to the enactment of this section shall be rehabilitated and returned*
7 *to the wild where possible, subject to any required state or federal*
8 *permits. If it is not possible to return these orcas to the wild, as*
9 *determined by the best available science, then these orcas shall*
10 *be transferred and held in a sea pen that is open to the public and*
11 *not used for performance or entertainment purposes.*

12 *(3) Until an appropriate sea pen has been established, captive*
13 *orcas held in the state may be kept in existing enclosures. Those*
14 *orcas shall not be exported or used for gametes, or embryos*
15 *intended for artificial insemination. Where, based on the best*
16 *available science, it is determined that an orca has the potential*
17 *to return to the wild under paragraph (2), that orca may be*
18 *exported from the state to facilitate its rehabilitation in native*
19 *waters, subject to any required state or federal permits.*

20 *(d) For purposes of this section, the following terms have the*
21 *following meanings:*

22 *(1) "Orca" means a killer whale (Orcinus orca).*

23 *(2) "Performance or entertainment purposes" includes, but is*
24 *not limited to, any routinely scheduled public exhibition that is*
25 *characterized by music or other sound effects, choreographed*
26 *display or training for that display, or unprotected contact between*
27 *humans and orcas. Holding of an orca is not, by itself, a*
28 *performance or entertainment purpose.*

29 *(3) "Unprotected contact" means physical contact between a*
30 *human and an orca that occurs in the absence of a protective*
31 *barrier or distance between the trainer and the orca, unless*
32 *required for veterinarian veterinary care.*

33 *(4) "Sea pen" means an in-water enclosure that is anchored to*
34 *the sea floor, and attached to the shore.*

35 *(e) The provisions of this section are severable. If any provision*
36 *of this section or its application is held invalid, that invalidity shall*
37 *not affect other provisions or applications that can be given effect*
38 *without the invalid provision or application.*

39 *SEC. 2. No reimbursement is required by this act pursuant to*
40 *Section 6 of Article XIII B of the California Constitution because*

1 *the only costs that may be incurred by a local agency or school*
2 *district will be incurred because this act creates a new crime or*
3 *infraction, eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section 17556 of*
5 *the Government Code, or changes the definition of a crime within*
6 *the meaning of Section 6 of Article XIII B of the California*
7 *Constitution.*

8 SECTION 1. ~~Section 701.3 of the Fish and Game Code is~~
9 ~~amended to read:~~

10 ~~701.3. There shall be one deputy director of the department~~
11 ~~who shall be a civil executive officer and shall be appointed by~~
12 ~~the Governor and serve at the pleasure of the Governor. The~~
13 ~~compensation of the deputy director shall be fixed by the director~~
14 ~~pursuant to law. The deputy director shall have those duties~~
15 ~~assigned, from time to time, by the director, and shall be~~
16 ~~responsible to the director for the performance of those duties.~~