Indicates Matter Stricken

Indicates New Matter

Committee Report

March 07, 2024

H. 4874

Introduced by Reps. Hixon, Chapman and Forrest

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Read the first time January 17, 2024

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The committee on House Agriculture, Natural Res. and Environmental Affairs

To whom was referred a Bill (H. 4874) to amend the South Carolina Code of Laws by adding Chapter 17 to Title 50 so as to regulate captive wildlife by defining terms, outlining the permitting process, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

Amend the bill, as and if amended, SECTION 1, by striking Section 50-17-30(A) and (B) and inserting:

(A) The department may charge twenty‑five dollars for wildlife rehabilitation, apprentice wildlife rehabilitation, and wildlife education and exhibition permits issued used under this chapter. Wildlife rehabilitation, apprentice wildlife rehabilitation, and wildlife education and exhibition permits issued under this chapter are valid for three years after issuance.

(B) The department may charge twenty-five dollars for wildlife research permits under this chapter. Wildlife research permits issued under this chapter are valid for one year after issuance.

(C) No one convicted of a major wildlife violation or a crime that carries a penalty of more than one year in prison within the last five years is eligible to be permitted under this chapter. The department may make this prohibition permanent based on the severity of the violation.

Renumber sections to conform.

Amend title to conform.

WILLIAM “BILL” HIXON for Committee.

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING CHAPTER 17 TO TITLE 50 SO AS TO REGULATE CAPTIVE WILDLIFE BY DEFINING TERMS, OUTLINING THE PERMITTING PROCESS, LISTING EXCEPTIONS, AND PROVIDING PENALTIES FOR VIOLATIONS, AMONG OTHER THINGS; BY AMENDING SECTION 50‑16‑40, RELATING TO EXCEPTIONS TO THE PERMIT REQUIREMENT FOR WILDLIFE IMPORTED FOR EXHIBITION PURPOSES, SO AS TO LIMIT THE EXCEPTIONS; AND BY REPEALING SECTION 50‑11‑1180 RELATING TO THE AUTHORITY OF THE DEPARTMENT TO ISSUE PERMITS TO COLLECT PROTECTED WILDLIFE FOR SCIENTIFIC OR PROPAGATING PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 50 of the S.C. Code is amended by adding:

CHAPTER 17

Captive Wildlife

Section 50‑17‑10. For purposes of this chapter:

(1) “AZA” means the Association of Zoos & Aquariums.

(2) “Captive wildlife” means any wildlife, game animal, furbearing animal, part, product, egg, offspring, nest, dead body, derivative, or part thereof which is managed, protected, or the taking of which is specifically regulated by the department.

(3) “CDC” means the United States Centers for Disease Control or its successors.

(4) “Department” means the South Carolina Department of Natural Resources, or its successors.

(5) “DBPH” means the South Carolina Department of Behavioral and Public Health or its successors, to include county health departments and any person authorized to act on behalf of the Department of Behavioral and Public Health.

(6) “Commercial purposes” means to sell, barter, transfer possession of, or trade, with the intent to derive income or other benefit.

(7) “Major wildlife violation” means a violation of any state or federal wildlife laws where the penalty carries more than one year in prison, results in the revocation of a state hunting or fishing license, or carries a fine of more than one thousand dollars.

(8) “Rabies vector species” means a bat, bobcat, coyote, fox, raccoon, and skunk.

(9) “Registered animal” means wildlife that was possessed by a registered party prior to the enactment of this chapter.

(10) “Registered party” means an individual, partnership, corporation, organization, or any other legal entity who has registered any individual protected wildlife that was possessed prior to the enactment of this chapter.

(11) “Temporarily possess” means the possession of wildlife by individuals who are otherwise not authorized, licensed, or permitted to possess wildlife by this title, solely for the purpose of delivery or transportation to a wildlife rehabilitator, other authorized entities, or for the purpose of euthanasia.

(12) “Wildlife educator and exhibitor” means anyone who possesses and uses wildlife for wildlife‑related educational programs, exhibits, or activities requiring an exhibitor’s license under the United States Department of Agriculture’s Animal Welfare Act.

(13) “Wildlife rehabilitator” means an individual, partnership, corporation, organization, or any other legal entity, who receives, harbors, or possesses living, sick, injured, impaired, or orphaned wildlife to provide care so as to be able to return the animal to its natural habitat as soon as practicable.

(14) “Wildlife rehabilitator apprentice” means an individual who is sponsored by and is under the direction and supervision of an authorized wildlife rehabilitator.

(15) “Wildlife rehabilitation volunteer” means any individual acting under the authority of a wildlife rehabilitator.

(16) “Wildlife researcher” means anyone who studies wildlife occurring in the State and whose research requires observing, capturing, or handling of wildlife.

Section 50‑17‑20. The department may promulgate regulations related to wildlife possession and to implement this chapter.

Section 50‑17‑30. The department is authorized to issue permits for wildlife rehabilitation, apprentice wildlife rehabilitation, wildlife education and exhibition, and wildlife research under this chapter.

(A) The department may charge twenty‑five dollars annually for permits used under this chapter.

(B) No one convicted of a major wildlife violation or a crime that carries a penalty of more than one year in prison within the last five years is eligible to be permitted under this chapter. The department may make this prohibition permanent based on the severity of the violation.

Section 50‑17‑40. (A) Unless otherwise authorized by this title, the following activities are prohibited:

(1) the possession of live, captive wildlife without a permit or other authorization issued by the department;

(2) the importation or possession of any recognized live North American furbearer species;

(3) the sale, trade, transfer of possession, or barter of live furbearing animals destined for export out of the United States, notwithstanding any provision of Article 12, Chapter 11, Title 50.

(4) the import or export of live, captive wildlife into the State without an import or export permit from the department; and

(5) breeding captive wildlife except in recognized AZA breeding programs.

(B) Possession of native reptiles and amphibians as regulated by Chapter 15, Title 50 is exempt from this chapter.

(C) Unless otherwise authorized under this chapter, captive wildlife already in possession before the effective date of this chapter must be registered with the department and will be allowed to remain with the registered party so long as the registered animal or animals remain alive. No reproduction is permitted.

Section 50‑17‑50. (A) A wildlife research permit is valid for one year from the date of issuance. The permit fee is not required if the wildlife research is being contracted or under a cooperated agreement with or sponsored by the department.

(B) Anyone applying for a captive wildlife research permit must submit qualifications related to his education or expertise which qualifies the applicant to conduct wildlife research, along with a sufficiently detailed research proposal outlining the wildlife research, scientific collection, or propagation that is to take place. Permits may be granted by the department to any properly accredited, competent person permitting the collection of captive wildlife for strictly scientific or propagating purposes only. Captive wildlife research permits are not transferable, but any assistant work under the direct supervision of the permittee in collection or research activities may participate under the permit.

Section 50‑17‑60. (A) The following persons or activities are not required to obtain a department‑issued permit as required by this chapter:

(1) employees of the department while working in their official capacity;

(2) employees of other local, state, or federal agencies operating in their official capacity;

(3) zoos and other facilities accredited or certified by the AZA;

(4) zoological displays that do not possess native North American wildlife;

(5) transient circuses not based in this State;

(6) persons otherwise authorized by this title, by permit, or license to possess captive wildlife during specified seasons;

(7) transportation agents or companies traveling with legally possessed captive wildlife through, but not originating in, the State where the destination state or country has issued an importation permit;

(8) transportation agents or companies traveling with protected wildlife out of state where the department has issued an exportation permit;

(9) wildlife research not involving capture, handling, disturbance, or any kind of taking of protected wildlife on private lands;

(10) wildlife research not involving capture, handling, disturbance, or any kind of taking of wildlife on Wildlife Management Areas (WMA), Heritage Preserves, or any other property owned or managed by the department; and

(11) licensed hunters possessing a live raccoon for no more than seven days during the raccoon hunting season and only for the purposes of dog training. The raccoon must be released no more than seven calendar days from when it came into the hunter’s possession.

(B) Persons exempt from the permitting requirements for wildlife research on WMAs, Heritage Preserves, or any other property managed by the department may only enter the property when open to the general public. The exemption granted under this section provides no special access or privileges to any department‑owned or department‑managed property.

(C) Persons or facilities exempt from the permitting requirement in this section may be required to obtain permits from the department elsewhere in Title 50.

Section 50‑17‑70. (A) Unless otherwise promulgated by regulation, the minimum standards for the humane confinement of wildlife possessed as authorized by this chapter are as follows:

(1) Anyone permitted under the authority of this chapter as a wildlife rehabilitator or apprentice wildlife rehabilitator must adhere to the standards of wildlife rehabilitation as prescribed in the publication, Minimum Standards for Wildlife Rehabilitation, Fourth Edition*,* 2012, or any department-approved deviation.

(2) Others possessing live captive wildlife must, at a minimum, provide clean food, water, and secure shelter unless it is medically or biologically necessary to temporarily withhold food or water. Captive wildlife must be protected from the elements, housed with sufficient room for normal postural and social adjustments with adequate freedom of movement. Permanent tethering of captive wildlife is not allowed.

(B) Pets, livestock, and nonnative exotic animals possessed by wildlife rehabilitators or apprentice wildlife rehabilitators must be kept separate from captive wildlife.

(C) The department may require other measures for captive wildlife to prevent the spread of disease by regulation, agreement, judicial action, or other appropriate means.

Section 50‑17‑80. (A) The department may seize captive wildlife for:

(1) failing to register an animal as required;

(2) failing to obtain or maintain required permits;

(3) failing to provide proper care;

(4) failing to maintain captive wildlife in an acceptable condition after notification from the department of deficiencies;

(5) failure to report annual activities as required; or

(6) any other violation pursuant to this chapter, emergency, or exigent circumstance, as determined by the department.

(B) The department reserves the right to seize captive wildlife in situations where wildlife is being housed or kept in deplorable conditions in which the deficiencies are such that it is reasonable to believe that the permit holder cannot or will not be able to correct the deficiencies within twenty‑four hours, or that the department deems the conditions show a pattern of neglect so that the wildlife must be seized immediately.

(C) The department reserves the right to place seized captive wildlife in another authorized facility, at its discretion, with the approval of the receiving facility. The name and location of the facility are confidential.

(D) The department may request the aid of local county and city governments to assist with seizures of wildlife or other animals and temporary housing of seized animals.

(E) The department reserves the right to euthanize or authorize euthanasia of seized captive wildlife or wildlife that has escaped from captivity as needed and at its discretion.

(F) Seizure is deemed a final agency action subject to review under the Administrative Procedures Act.

(G) The permittee or any other person or entity from whom captive wildlife was seized is liable for any reasonable costs incurred by the department or its agent as a result of the care provided to the seized captive wildlife pending the outcome of any permit revocation or charges under this statute including, but not limited to, veterinary care, shelter, evaluation, treatment, or euthanasia.

(H) The department is not liable for the escape and/or destruction caused by captive wildlife that was possessed by others under the authority of this chapter or title.

(I) The department may charge a permittee or any other person or entity for any reasonable costs in the capture or destruction of escaped wildlife that was possessed under the authority of this chapter or title.

Section 50‑17‑90. (A) Anyone permitted under the authority of this chapter as a wildlife rehabilitator, wildlife rehabilitator apprentice, or wildlife educator who possesses rabies vector species must be inoculated with the pre-exposure rabies prophylaxis (Rabies PrEP) vaccine as recommended by the CDC. Documentation of sufficient titer levels must be provided for a rabies vector species endorsement.

(B) Rabies vector species outside of their enclosures must be restrained at all times so as not to present a danger to the public.

(C) Any bites from a rabies vector species must be reported immediately to DBPH.

(D) For the purposes of rabies testing, DBPH can demand the immediate surrender or submission of any possessed rabies vector species at its discretion.

(E) Any party that possesses rabies vector species and whose actions cause a rabies exposure, as determined by DBPH, is solely liable for the cost of any rabies postexposure prophylaxis. Actions which may cause exposure include, but are not limited to, taking or displaying the animal out in public, allowing the animal to roam free of confinement, or failing to prevent escape. The department is not liable for any costs associated with rabies vector species seized under this chapter.

Section 50‑17‑100. (A) The department may require the keeping and submission of records of activities authorized under this chapter as described in regulation.

(B) The department may inspect any location where captive wildlife are being held during reasonable hours, as described in regulation, to inspect required records, the condition of the facility, location, or enclosures, assess permit compliance, and inspect any captive wildlife contained therein.

(C) The captive wildlife permit of any current permittee who refuses to allow inspection authorized under this section is subject to immediate permit suspension or revocation.

Section 50‑17‑110. A person who digitally manipulates documents, applications, or photographs in order to deceive or mislead the department, or who wilfully makes false or misleading statements on any required application, document, report, or form, in order to obtain or renew any permit for the possession, taking, or other permitted use of captive wildlife is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both. Each deceptive photograph or document constitutes a separate offense.

Section 50‑17‑120. (A) Except as otherwise provided, a person who violates a section of this chapter, a condition of a permit, or the promulgated regulations pursuant to this chapter, is guilty of a misdemeanor and, upon conviction, must be:

(1) for a first offense, fined not less than fifty dollars nor more than five hundred dollars, imprisoned not more than thirty days, or both;

(2) for a second offense within two years of a conviction for the first offense, fined not less than five hundred dollars nor more than one thousand dollars, imprisoned not more than thirty days, or both; and

(3) for a third or subsequent offense within two years of a conviction for the second offense, fined not less than one thousand dollars nor more than five thousand dollars, imprisoned for not more than six months, or both.

(B) If the department seizes captive wildlife possessed under the authority of this chapter for neglect, confined abandonment, or maltreatment, the fine must be not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned for not more than six months, or both.

(1) Any person convicted under this section is no longer eligible to possess wildlife or to be permitted to work under the authority of a permittee for a minimum of five years.

(2) The court may make this ineligibility longer or permanent.

(3) The court may order restitution.

(C) Each wildlife possessed in violation of this chapter constitutes a separate offense under this section.

(D) An enforcement officer authorized by the department, or an officer of the State, or a municipality or county within the State, may conduct searches as provided by law to search for and seize equipment, business records, merchandise, or captive wildlife taken, used, or possessed in connection with a violation of this article. Any property subject to forfeiture under this article may be seized by the department having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection in compliance with this article;

(2) the property has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(3) the department has probable cause to believe that the property was used or is intended to be used in violation of this article.

(E) In the event of seizure, proceedings under this section regarding forfeiture and disposition must be instituted within a reasonable time.

(F) All property used or intended for use in violation of this chapter and all proceeds derived from, realized from, or traced back to property used or intended for use in violation of this chapter is contraband and subject to forfeiture. Equipment, merchandise, wildlife, or records seized under subsection (D) must be held by an officer or an agent of the department pending disposition of court proceedings and forfeited to the State for destruction or disposition as provided by law. Before forfeiture, the department may direct the transfer of wildlife seized to a qualified zoological, educational, or scientific institution for safekeeping. The costs of holding the confiscated captive wildlife and items are assessable to the defendant upon conviction.

(G) Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the department making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property is forfeited and transferred to the department upon illegal use. Seizure and forfeiture proceedings confirm the transfer.

(H) For the purposes of this section, whenever the seizure of property subject to seizure is accomplished as a result of a joint effort by more than one agency, the agency initiating the investigation is considered to be the agency making the seizure.

(I) The department seizing property pursuant to this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be moved to an appropriate place for storage. Monies seized must be deposited into an interest‑bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

(J) When property or anything else of any value is seized, within ten days or a reasonable period of time after the seizure, the department shall produce a report with the following information:

(1) description of the property seized;

(2) circumstances of seizure;

(3) present custodian and where the property is being stored or its location;

(4) name of the owner;

(5) name of the lienholder, if any; and

(6) seizing agency.

(K) Forfeiture of property must be accomplished by petition of the department to the magistrate court for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and must provide the facts upon which the seizure was made. The petition must describe the property and include the names of all owners of record and lienholders of record. The petition must identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances also must include the make, model, and year of the conveyance, the person in whose name the conveyance is registered, and the person who holds the title to the conveyance. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail, to the last known address as it appears in the records of the governmental agency which records the title or lien.

(L) All property, conveyances, and equipment which will not be reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred may not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state agency pursuant to the provisions of this subsection, its use and retainage by that agency is at the discretion and approval of the Department of Administration.

(M) If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided, and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a Department of Corrections facility, a county detention facility, or other facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

(N) Any forfeiture may be affected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice under this section may consent to some issues and have the judge determine the remaining issues.

(O) Disposition of forfeited property under this section must be accomplished as follows:

(1) Property forfeited under this section shall first be applied to payment for any reasonable costs incurred by the department or its agent as a result of the care provided to the seized captive wildlife pending the outcome of any permit revocation or charges under this statute including, but not limited to, veterinary care, shelter, evaluation, treatment, euthanasia, or any rabies postexposure prophylaxis.

(2) The department and any other governmental entities who assisted shall receive the balance of the value of the property forfeited to be divided equally.

Section 50‑17‑130. (A) It is unlawful for anyone to display or otherwise exhibit wildlife to the public where a permit, license, or registration is required by this chapter or by federal law.

(B) Any wildlife exhibited to the public in violation of this section by a registered or unpermitted party under this chapter is subject to seizure by the department.

SECTION 2. Section 50‑16‑40 of the S.C. Code is amended to read:

Section 50‑16‑40. Wildlife imported for exhibition purposes only by state wildlife departments, municipal zoos accredited by the Association of Zoos and Aquariums or parks, public museums, public zoological parks, and public scientific or educational institutions operated not for profit, and transient circuses based out of state are not required to procure a permit under Section 50‑16‑20. Nothing in this chapter prohibits the department or its duly authorized agents from possessing, importing, or releasing wildlife.

SECTION 3. Section 50‑11‑1180 of the S.C. Code is repealed.

SECTION 4. This act takes effect upon approval by the Governor.

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