

COMPARISON OF THE ANIMAL WELFARE ACT
AND THE EXHIBITION ANIMAL PROTECTION ACT

Proposed Exhibition
Animal Protection Act

Intent.

The Exhibition Animal Protection Act (the "Act") focuses on humane use and training of animals used for exhibition purposes.

Prohibitions.

Prohibits certain conduct on the part of any person who uses, exhibits or trains an animal to be used or exhibited at a carnival, circus, animal act, zoo, rodeo, education exhibit or for the making of a film.

Animals Covered.

Covers any non-human vertebrate.

Exhibitors Covered.

This Act will amend the definition of "exhibitor" in the AWA to make it clear that it also includes persons who train animals to be used by other exhibitors or by any executive producer of a film in which an animal is used. Persons

Animal Welfare Act

The Animal Welfare Act (the "AWA") does not specify what uses of animals and what training practices are prohibited.

The AWA does not contain prohibitions. Instead, it sets up licensing requirements for exhibitors and requires the Secretary of Agriculture (the "Secretary") to promulgate standards for handling, care, treatment and transportation of animals. The AWA specifically excludes rodeos. It is also unclear under the AWA that animals used in films are covered.

Definition of animal is much narrower. The AWA only covers warm-blooded species (thereby excluding reptiles and amphibians). Also excludes horses not used for research purposes and other farm animals (the Secretary has provided that horses and farm animals used for exhibition purposes are covered). The Secretary pursuant to a regulation has provided that birds, rats and mice would not be protected in research, testing or exhibition.

Persons exhibiting animals in rodeos are specifically not covered by the AWA.

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exhibiting animals in rodeos
are also covered.

Handling.

The Act provides that it is unlawful for an exhibitor to handle an animal in a manner which would tend to injure, kill, or otherwise cause behavioral stress, pain, or suffering to the animal.

Physical Environment.

Penalizes exhibitors for failure to provide animals used for exhibition purposes with a physical environment adequate to promote their psychological well-being.

Overbreeding.

The Act provides that it is a violation for an exhibitor to fail to establish and maintain an animal population control program to avoid overbreeding animals and an animal disposition program to ensure that animals in the exhibitor's care and custody are not sold, given, exchanged or otherwise transferred to any person for hunting, experimentation, testing or other practice which would jeopardize the health and well-being of such animals.

Extraterritorial Application
of the Act

The prohibitions in the Act apply to any person who eludes any provision of the Act by (i) leaving the United States to engage in any prohibited act or (ii) procuring any other person to do an act outside the United States which would be punishable under the Act

Animal Welfare Act

The AWA does not contain prohibitions.

No requirement that animals (other than primates) be provided with a physical environment adequate to promote their psychological well-being.

The AWA contains no such provisions.

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if committed within the United States, if, in either case, such person has reason to know that such animal or film will be transported in commerce or that such animal or film were purchased in commerce or will affect commerce.

Prior Notification.

The Act also requires prior notification to the Secretary of the movement of animals.

The AWA contains no such provisions.

Inspection.

To enforce the Act and any rule promulgated thereunder, the Secretary or any person duly designated by the Secretary (which may include representatives of duly incorporated humane organizations) are empowered to conduct inspections to determine whether any person has or is violating the Act or any rule promulgated thereunder.

The Secretary is empowered to make inspections.

Regulations.

The Secretary must not later than one year after the date of enactment promulgate the regulations.

The Secretary is empowered to promulgate the regulations.

The regulations promulgated are to establish standards for a physical environment adequate to promote the psychological well-being of animals covered by the Act, for the humane use, handling and disposition of such animals and may also include provisions for the submission to the Secretary by the executive producer of that portion of the film script which calls for the use of animals. In addition, the Act specifies that an advisory board is to be established by the Secretary to make recommendations to the Secretary on the regulations

The AWA contains no such provisions for animals used for exhibition purposes.

to carry out and effectuate the purposes and provisions of the Act not later than three months after its enactment.

Civil Penalties.

Civil penalty of not more than \$25,000 for each violation (penalty for failure to observe a cease and desist order is \$25,000 for each offense and each day during which such failure continues). In determining the penalty, the Secretary is required to take into account, all factors relevant, including the nature and circumstances, extent and gravity of the prohibited conduct, the degree of culpability, and any history of prior offenses.

Civil penalty of not more than \$2,500 for each violation (penalty for failure to observe a cease and desist order is \$1,500 for each offense and each day during which such failure continues). In determining the penalty, the Secretary is required to consider the size of the business of the person involved, the gravity of the violation, the person's good faith and the history of any previous violations.

Injunctive Relief Provisions.

The Secretary can seek an injunction to enjoin the exhibition of a film in the United States if the Secretary determines an animal has been handled in a manner which would tend to injure, kill or cause pain and suffering to an animal solely for the production of a film.

No such provisions.

Certain Payments.

Upon the recommendation of the Secretary, the Secretary of the Treasury may pay one-half of the civil penalty (not to exceed \$2,500) to any person who furnishes information which leads to finding a civil violation.

Exemptions.

With the exception of rodeos, the same categories exempted from the AWA are exempted from the Act.