

---

# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

---

**Bill No:** SB 376                      **Hearing Date:** April 27, 2021  
**Author:** Stern  
**Version:** March 4, 2021  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Wildlife: prohibitions on possession, transportation, and importation of wild animals: live animal markets*

## HISTORY

**Source:** Social Compassion in Legislation

**Prior Legislation:** AB 2479 (Kuehl) Chapter 1061, Stats. 200

**Support:** Agriculture Fairness Alliance; Animal Defenders International; Animal Legal Defense Fund; Center for Biological Diversity; Compassionate Bay; Democrats for The Protection of Animals; Direct Action Everywhere; Eat for The Earth; Gayle Paul; Hector Hill Animal Sanctuary; Humane Society of The United States; Michelson Center for Public Policy; Mobius; Paw Project; Physicians Against Red Meat; Poison Free Malibu; Project Counterglow; Social Compassion in Legislation; St. John Creative; V-dog; Vegans of La; Over 200 Individuals

**Opposition:** Conservation Earth/dba Wildmind; Exotic Feline Foundation of America; Pet Industry Joint Advisory Council; Wild Wonders INC.; Wildlife Learning Center

## PURPOSE

*The purpose of this bill, as it relates to this Committee, is to expand the prohibitions on live animal markets to include a prohibition on providing any animal either a known or likely invasive species or of a taxa known for zoonotic transmission of disease; to change the penalties for violations by a live animal market; and to increase the statute of limitations for prosecuting these offenses.*

*Existing law* establishes the California Department of Fish and Wildlife (department) and the Fish and Game Commission (commission) in the California Natural Resources Agency. The department has statutory authority over the importation, transportation, possession, and live release of wild animals in the state. The department issues permits for the various activities involving wild animals through its established restricted species program, as specified (see Fish and Game Code (FGC) §§2116 *et seq.* and Title 14, California Code of Regulations, §§671 *et seq.* (14 CCR §§671 *et seq.*) for the restricted species program.)

*Existing law* provides that the department may publish a list of animals that may not be transported or imported into the state. (FGC §2119)

*Existing law* requires the department to issue a written permit to import into, possess, or transport with the state any wild animal subject to certain terms and limitations, as specified.

*Existing law* provides that any university, college, governmental research agency, or other bona fide scientific institution engaged in scientific or public health research is exempt from a restricted species permit unless that wild animal is determined to be detrimental. (FGC §2150)

*Existing law* bans the importation of any live aquatic plant or animal into the state without the prior written approval of the department, as specified,.(FGC §2271)

*Existing law* defines “Poultry” as domesticated fowl and domesticated rabbit which are intended for use for human food. (FAC §24657)

*Existing law* provides that every person who operates a live animal market shall do all of the following:

- Provide that no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while the animal is still alive.
- Provide that no live animals will be confined, held, or displayed in a manner that results, or is likely to result, in injury, starvation, dehydration, or suffocation. (Penal Code §597.3 (a))

*This bill* in addition the operator of a live animal market shall provide that no animal be a known or likely invasion species or of a taxa known or likely to be responsible for zoonotic transmission of a disease, as determined by Fish and Game Commission pursuant to Section 2273 of the Fish and Game Code.

*Existing law* defines “animal” and “live animal market” for the purposes of Penal Code Section 597.3. (Penal Code §597.3 (b))

*This bill* defines “poultry” for the purposes of Penal Code Section 597.3 as defined in Food and Agricultural Code Section 24657.

*Existing law* provides that any person who fails to comply with the regulations regarding live animal markets shall be given a warning, in the operator’s language, for a first offense. A second offence is an infraction punishable by a fine of \$250-\$1,000, plus penalty assessments. However, if there is a course available then the fine can be deferred for six months and not paid if the person takes the course. (Penal Code §597.3 (c))

*This bill* deletes the warning for a first offense and the ability to take a course to mitigate the fine.

*This bill* provides that moneys collected from a fine imposed pursuant to this section shall be apportioned pursuant to Section 13003 of the Fish and Game Code.

*This bill* provides that equivalent to 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the Department of Fish and Wildlife and used for law enforcement purposes.

*Existing law* generally provides that prosecution for an offense that is not a felony is within one year of the commission of the offense. (Penal Code § 802)

*This bill* provides that notwithstanding Section 802, prosecution of an offense punishable under this section shall be commenced within three years after commission of the offense.

*This bill* provides that the Fish and Game Commission shall adopt regulations governing the storing and sale of animals for live animal markets as defined in the Penal Code and to identify a list of prohibited animals known or likely to be an invasive species or of a taxa known or likely to be responsible for a zoonotic transmission of a disease.

*This bill* also makes a number of changes in Fish and Game Code related to the trafficking of certain wild and non-native animals.

## COMMENTS

### 1. Need for This Bill

The Wildlife Trafficking and Trade Act (SB 376) seeks to address the conditions which led, in part, to the emergence of the COVID-19 pandemic, namely wildlife trafficking and trade. This bill requires the Department of Fish and Wildlife to suspend import permits for species potentially linked to novel zoonotic disease transmission until studies show no link exists or individual animals may be adequately tested and screened. The bill also takes steps to protect our native wildlife by banning the sale of live turtles, frogs, or non-poultry birds who are known invasive species or be carriers of zoonotic diseases.

### 2. Live Animal Market

Existing law regulates live animal markets. It provides that no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while the animal is still alive, nor can it be kept in a manner that will lead to injury, starvation, dehydration, or suffocation. A violation is an infraction with the first offense a warning in the person's language, a second a fine of \$250-\$1,000, plus penalty assessments, unless a person takes an education class in which case the fine is waived.

#### a. Known or likely invasive species.

This bill will add the additional requirement that a market provide that no animal be a known or likely invasive species or of a taxa known or likely to be responsible for zoonotic transmission of a disease as determined by the Fish and Game Code. Is this language too vague to assume people will know which species without being informed?

This bill requires the Fish and Game Commission to create a list of the prohibited species. It does not require that the list be distributed to all live animal markets in the appropriate languages. It does not state how often the list can or should be updated.

## b. Infraction

This bill deletes the warning on the first offense and the ability to take a class just leaving the infraction with a fine of \$250-\$1,000.

Since the list of prohibited species is created by the Fish and Game Commission and not necessarily known by a person running a live animal market is this addition to the existing statute void for vagueness. A criminal statute has to be easily under the Supreme Court has required that a penal statute provide the definition of the offense with “sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” (*Kolendar v. Lawson* (1983) 461 US 352) A person of common intelligence should not have to guess what is prohibited by the criminal statute. (See for example *Connally v. General Const. Co* (1926) 264 US 385)

Should the bill either keep the warning on a first offense or clarify that the owner of the market needs to be informed regarding the invasive species list?

## c. Bounty

This bill provides that the fines from the existing and expanded infraction will now be distributed in the same manner as fines in the Fish and Game Code which is:

- i. One-half to the Treasurer, by warrant of the county auditor drawn upon the requisition of the clerk or judge of the court, for deposit in the Fish and Game Preservation Fund in the State Treasury on order of the Controller., city attorney, or the department, as appropriate.
- ii. One-half to the county in which the offense was committed.

Does providing half of the fine to the Fish and Game Preservation Fund create a bounty that encourages the citing of markets?

### 3. Statute of Limitations

Statutes of limitations require commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Penal Code § 804.) The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The Legislature enacted the current statutory scheme regarding statutes of limitations for crimes in 1984 in response to a report of the California Law Revision Commission:

The Commission identified various factors to be considered in drafting a limitations statute. These factors include: (a) The staleness factor. A person accused of crime should be protected from having to face charges based on possibly unreliable evidence and from losing access to the evidentiary means to defend. (b) The repose factor. This reflects society's lack of a desire to prosecute for crimes committed in

the distant past. (c) The motivation factor. This aspect of the statute imposes a priority among crimes for investigation and prosecution. (d) The seriousness factor. The statute of limitations is a grant of amnesty to a defendant; the more serious the crime, the less willing society is to grant that amnesty. (e) The concealment factor. Detection of certain concealed crimes may be quite difficult and may require long investigations to identify and prosecute the perpetrators.

The Commission concluded that a felony limitations statute generally should be based on the seriousness of the crime. Seriousness is easily determined based on classification of a crime as felony or misdemeanor and the punishment specified, and a scheme based on seriousness generally will accommodate the other factors as well. Also, the simplicity of a limitations period based on seriousness provides predictability and promotes uniformity of treatment.<sup>1</sup>

The United States Supreme Court has stated that statutes of limitations are the primary guarantee against bringing overly stale criminal charges. (*United States v. Ewell* (1966) 383 U.S. 116, 122.) There is a measure of predictability provided by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. Such laws reflect legislative assessments of relative interests of the state and the defendant in administering and receiving justice: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns – for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable. (*Stogner v. California* (2003) 539 U.S. 607, 615.)

Generally, the statute of limitations for misdemeanor offenses requires commencement of prosecution within one year of the commission of the offense (Pen. Code § 802) and for felony offenses, within three years of the commission of the offense (Pen. Code § 801). There are specified exceptions that either provides for a longer statute of limitations (Pen. Code, §§ 801.5, 802), tolls the time that the statute starts to run such as when the crime is discovered (Pen. Code § 803), or provides no statute of limitations at all (Pen. Code § 799). The statute of limitations for misdemeanors also applies to infractions. (Penal Code § 19.7)

This bill makes the statute of limitations for the infraction in this bill three years. Unlike a misdemeanor, a person charged with an infraction has no right to a trial by jury, no right to a public defender or other appointed counsel. (Penal Code §19.6) A misdemeanor generally has a one year statute of limitations because of the concern of staleness, and with a misdemeanor a person has the right to an attorney who can do some investigation as to whether the basis for charging a person was valid or if there are facts or circumstances that may lead to a case being dismissed or a jury acquitting the defendant. How is a person supposed to defend against an infraction, essentially a citation, for something that may have happened years ago? How can they defend against what may have been a onetime thing by an employee who is no longer employed by them and not their usual practice. How will they even necessarily be able to remember who was employed or what their inventory was over 2 years ago? And do so without the help of an attorney and with no ability to argue their case in front of a jury. There are still a

---

<sup>1</sup> 1 Witkin Cal. Crim. Law Defenses, Section 214 (3rd Ed. 2004), citing 17 Cal. Law Rev. Com. Reports, pp.308-314.

number of penalty assessments placed on criminal fines that can make the \$1,000 fine closer to \$4,000 which is a large amount to have to pay if you can't explain what happened over 2 years ago.

#### **4. Natural Resource and Water Jurisdiction**

This bill makes a number of other changes to the Fish and Game Code that were discussed in the Senate Committee on Natural Resources and Water. The bill passed that Committee on April 15 with a vote of 7-0.

#### **5. Argument in Support**

Social Compassion in Legislation, the sponsor of this bill states:

California must take the lead in protecting ourselves and our state's native species by ensuring that CDFW exercises its authority over live wild animals to prevent a future pandemic, while still authorizing the presence of these animals in the state. In addition, there is increased recognition due to the COVID-19 pandemic that protecting consistently address disease transmission – not just the risks of an apex predator getting loose. CDFW's efforts must fit within the existing framework to protect public health from wild animals and fill in any gaps. Similarly, this public health protection focus has highlighted the need to ensure consistent treatment of certain aquatic species. CDFW and the Fish and Game Commission must have the tools and legislative direction needed to take appropriate action.

SB 376 takes a number of steps to address the multi- faceted problem of zoonotic disease and biodiversity loss by: 1) Limiting contact with wild animals that potentially carry novel zoonotic disease by immediately suspending the authorization to import these animals; 2) Authorizing CDFW to allow individual wild animals in the state that have a disease transmissible to humans if testing and treatments, including quarantine, are available; 3) Allowing CDFW to develop regulations quickly using the emergency regulatory process to ban the importation of certain wild animals, as needed; 3) Limiting permits for zoonotic disease research in wild animals to entities which can demonstrate adequate biosafety equipment; 4) Preventing the live sale for human consumption of certain frogs, turtles, or non-poultry birds determined to be invasive species or likely to be responsible for zoonotic transmission of a disease, as specified; and 5) require that CDFW coordinate and share information with other states regarding wildlife trafficking.

#### **5. Argument in Opposition**

Pet Industry Joint Advisory Council opposes this bill stating:

We support the intent and method that California is proposing in order to prevent the future spread of disease, but we urge the legislature to be cautious of overly broad language that could be misconstrued or misused to adversely impact the broader animal trade in the state.

Like you, we are dedicated to preventing the spread of zoonotic diseases and addressing “wet markets,” where it is believed that some novel human diseases have originated, is an important step. We caution, however, that banning the trade in animals based solely on their potential for contracting every possible zoonotic disease, most of which are easily preventable through the use of common best practices, could needlessly decimate California’s already regulated pet trade. It is also important to point out that the COVID-19 virus was not spread internationally through wildlife, but instead through human-to-human contact.

As written, SB376 includes provisions that use such broad terms as “likely to be responsible for zoonotic transmission.” While the proposed amendment to Section 2120, subsection c.1. includes a specific reference to a “novel, not previously reported, readily transmissible human disease,” several other sections omit the requirement that the disease be novel.

Virtually any living thing is capable of transmitting one or more diseases to other living things, including to humans. We would suggest that language should specify the seriousness of the threat both in terms of likelihood of transmission and the danger posed by the disease, lest this become a mechanism for a blanket prohibition on a wide range of species that are currently in trade and responsibly handled.

-- END --