

By the Committee on Environmental Preservation and Conservation;
and Senator Constantine

592-02163-10

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1 A bill to be entitled

2 An act relating to wildlife; amending s. 379.231,
3 F.S.; revising provisions relating to the sale or
4 release of wild animals; amending s. 379.3761, F.S.;
5 revising violations for the sale and exhibition of
6 wildlife in the state unless authorized by the Fish
7 and Wildlife Conservation Commission; amending s.
8 379.401, F.S.; revising Level Three violations;
9 amending s. 379.4015, F.S.; revising nonnative and
10 captive wildlife penalties; providing provisions for
11 civil penalties; amending s. 379.374, F.S.; providing
12 provisions for bonding requirements for the possession
13 of wildlife; directing the commission to evaluate the
14 need to further restrict or ban the possession of
15 certain species; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 379.231, Florida Statutes, is amended to
20 read:

21 379.231 Regulation of wild ~~foreign~~ animals not native to
22 the state.—

23 (1) It is unlawful to import for sale or use, or to release
24 within this state, any species of wild ~~the animal kingdom~~ not
25 native ~~indigenous~~ to Florida unless authorized by ~~without having~~
26 ~~obtained a permit to do so from~~ the Fish and Wildlife
27 Conservation Commission.

28 ~~(2) The Fish and Wildlife Conservation Commission is~~
29 ~~authorized to issue or deny such a permit upon the completion of~~

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30 ~~studies of the species made by it to determine any detrimental~~
31 ~~effect the species might have on the ecology of the state.~~

32 ~~(2)(3)~~ A person in violation of this section commits a
33 Level Three violation under s. 379.4015 ~~s. 379.401~~.

34 Section 2. Subsections (1) and (4) of section 379.3761,
35 Florida Statutes, are amended to read

36 379.3761 Exhibition or sale of wildlife; fees;
37 classifications.-

38 (1) In order to provide humane treatment and sanitary
39 surroundings for wild animals kept in captivity, no person,
40 firm, corporation, or association shall have, or be in
41 possession of, in captivity for the purpose of public display
42 with or without charge or for public sale any wildlife,
43 specifically birds, mammals, amphibians, and reptiles, whether
44 indigenous to Florida or not, without having first secured a
45 permit from the commission authorizing such person, firm, or
46 corporation to have in its possession in captivity the species
47 and number of wildlife specified within such permit; however,
48 this section does not apply to any wildlife not protected by law
49 and the rules of the commission. No person shall sell any
50 wildlife in the state unless authorized by the commission. A
51 sale where delivery occurs in Florida regardless of origin of
52 the sale or location of the initial transaction is subject to
53 this restriction.

54 (4) The provisions of this section relative to licensing
55 for exhibition do not apply to any municipal, county, state, or
56 other publicly owned wildlife exhibit. The provisions of this
57 section relative to licensing for exhibition do not apply to any
58 traveling zoo, circus, or exhibit licensed as provided by

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59 chapter 205.

60 Section 3. Paragraph (a) of subsection (3) of section
61 379.401, Florida Statutes, is amended to read:

62 379.401 Penalties and violations; civil penalties for
63 noncriminal infractions; criminal penalties; suspension and
64 forfeiture of licenses and permits.—

65 (3) (a) LEVEL THREE VIOLATIONS.—A person commits a Level
66 Three violation if he or she violates any of the following
67 provisions:

68 1. Rules or orders of the commission prohibiting the sale
69 of saltwater fish.

70 2. Rules or orders of the commission prohibiting the
71 illegal importation or possession of exotic marine plants or
72 animals.

73 3. Section 379.407(2), establishing major violations.

74 4. Section 379.407(4), prohibiting the possession of
75 certain finfish in excess of recreational daily bag limits.

76 5. Section 379.28, prohibiting the importation of
77 freshwater fish.

78 ~~6. Section 379.231, prohibiting the importation of~~
79 ~~nonindigenous species of the animal kingdom without a permit~~
80 ~~issued by the commission.~~

81 6.7. Section 379.354(17), prohibiting the taking of game,
82 freshwater fish, or saltwater fish while a required license is
83 suspended or revoked.

84 7.8. Section 379.3014, prohibiting the illegal sale or
85 possession of alligators.

86 8.9. Section 379.404(1), (3), and (6), prohibiting the
87 illegal taking and possession of deer and wild turkey.

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88 ~~9.10.~~ Section 379.406, prohibiting the possession and
89 transportation of commercial quantities of freshwater game fish.

90 Section 4. Section 379.4015, Florida Statutes, is amended
91 to read:

92 379.4015 Nonnative and captive wildlife penalties.—

93 (1) LEVEL ONE.—Unless otherwise provided by law, the
94 following classifications and penalties apply:

95 (a) A person commits a Level One violation if he or she
96 violates any of the following provisions:

97 1. Rules or orders of the commission requiring free permits
98 or other authorizations to possess captive wildlife.

99 2. Rules or orders of the commission relating to the filing
100 of reports or other documents required of persons who are
101 licensed to possess captive wildlife.

102 3. Rules or orders of the commission requiring permits to
103 possess captive wildlife for which a fee is charged, when the
104 person being charged was issued the permit and the permit has
105 expired less than 1 year prior to the violation.

106 (b) Any person cited for committing any offense classified
107 as a Level One violation commits a noncriminal infraction,
108 punishable as provided in this section.

109 (c) Any person cited for committing a noncriminal
110 infraction specified in paragraph (a) shall be cited to appear
111 before the county court. The civil penalty for any noncriminal
112 infraction is \$50 if the person cited has not previously been
113 found guilty of a Level One violation and \$250 if the person
114 cited has previously been found guilty of a Level One violation,
115 except as otherwise provided in this subsection. Any person
116 cited for failing to have a required permit or license shall pay

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117 an additional civil penalty in the amount of the license fee
118 required.

119 (d) Any person cited for an infraction under this
120 subsection may:

121 1. Post a bond, which shall be equal in amount to the
122 applicable civil penalty; or

123 2. Sign and accept a citation indicating a promise to
124 appear before the county court. The officer may indicate on the
125 citation the time and location of the scheduled hearing and
126 shall indicate the applicable civil penalty.

127 (e) Any person charged with a noncriminal infraction under
128 this subsection may:

129 1. Pay the civil penalty, either by mail or in person,
130 within 30 days after the date of receiving the citation; or

131 2. If the person has posted bond, forfeit bond by not
132 appearing at the designated time and location.

133 (f) If the person cited follows either of the procedures in
134 subparagraph (e)1. or subparagraph (e)2., he or she shall be
135 deemed to have admitted the infraction and to have waived his or
136 her right to a hearing on the issue of commission of the
137 infraction. Such admission shall not be used as evidence in any
138 other proceedings except to determine the appropriate fine for
139 any subsequent violations.

140 (g) Any person who willfully refuses to post bond or accept
141 and sign a summons commits a misdemeanor of the second degree,
142 punishable as provided in s. 775.082 or s. 775.083. Any person
143 who fails to pay the civil penalty specified in this subsection
144 within 30 days after being cited for a noncriminal infraction or
145 to appear before the court pursuant to this subsection commits a

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146 misdemeanor of the second degree, punishable as provided in s.
147 775.082 or s. 775.083.

148 (h) Any person electing to appear before the county court
149 or who is required to appear shall be deemed to have waived the
150 limitations on the civil penalty specified in paragraph (c). The
151 court, after a hearing, shall make a determination as to whether
152 an infraction has been committed. If the commission of an
153 infraction has been proven, the court may impose a civil penalty
154 not less than those amounts in paragraph (c) and not to exceed
155 \$500.

156 (i) At a hearing under this chapter, the commission of a
157 charged infraction must be proved beyond a reasonable doubt.

158 (j) If a person is found by the hearing official to have
159 committed an infraction, she or he may appeal that finding to
160 the circuit court.

161 (2) LEVEL TWO.—Unless otherwise provided by law, the
162 following classifications and penalties apply:

163 (a) A person commits a Level Two violation if he or she
164 violates any of the following provisions:

165 1. Unless otherwise stated in subsection (1), rules or
166 orders of the commission that require a person to pay a fee to
167 obtain a permit to possess captive wildlife or that require the
168 maintenance of records relating to captive wildlife.

169 2. Rules or orders of the commission relating to captive
170 wildlife not specified in subsection (1) or subsection (3).

171 3. Rules or orders of the commission that require housing
172 of wildlife in a safe manner when a violation results in an
173 escape of wildlife other than Class I wildlife.

174 4. Rules or orders of the commission relating to wild

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175 animal life identified by commission rule as either conditional
176 species or prohibited species.

177 ~~5.4.~~ Section 379.372, relating to capturing, keeping,
178 possessing, transporting, or exhibiting venomous reptiles or
179 reptiles of concern.

180 ~~6.5.~~ Section 379.373, relating to requiring a license or
181 permit for the capturing, keeping, possessing, or exhibiting of
182 venomous reptiles or reptiles of concern.

183 ~~7.6.~~ Section 379.374, relating to bonding requirements for
184 public exhibits of venomous reptiles.

185 ~~8.7.~~ Section 379.305, relating to commission rules and
186 regulations to prevent the escape of venomous reptiles or
187 reptiles of concern.

188 ~~9.8.~~ Section 379.304, relating to exhibition or sale of
189 wildlife.

190 ~~10.9.~~ Section 379.3761, relating to exhibition or sale of
191 wildlife.

192 ~~11.10.~~ Section 379.3762, relating to personal possession of
193 wildlife.

194 (b) A person who commits any offense classified as a Level
195 Two violation and who has not been convicted of a Level Two or
196 higher violation within the past 3 years commits a misdemeanor
197 of the second degree, punishable as provided in s. 775.082 or s.
198 775.083.

199 (c) Unless otherwise stated in this subsection, a person
200 who commits any offense classified as a Level Two violation
201 within a 3-year period of any previous conviction of a Level Two
202 or higher violation commits a misdemeanor of the first degree,
203 punishable as provided in s. 775.082 or s. 775.083 with a

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204 minimum mandatory fine of \$250.

205 (d) Unless otherwise stated in this subsection, a person
206 who commits any offense classified as a Level Two violation
207 within a 5-year period of any two previous convictions of Level
208 Two or higher violations commits a misdemeanor of the first
209 degree, punishable as provided in s. 775.082 or s. 775.083, with
210 a minimum mandatory fine of \$500 and a suspension of all
211 licenses issued under this chapter related to captive wildlife
212 for 1 year.

213 (e) A person who commits any offense classified as a Level
214 Two violation within a 10-year period of any three previous
215 convictions of Level Two or higher violations commits a
216 misdemeanor of the first degree, punishable as provided in s.
217 775.082 or s. 775.083, with a minimum mandatory fine of \$750 and
218 a suspension of all licenses issued under this chapter related
219 to captive wildlife for 3 years.

220 (f) A person who commits a Level Two violation that is a
221 violation of s. 379.372 or rules or orders relating to
222 conditional species or prohibited species shall, in addition to
223 being subject to the penalties prescribed in paragraphs (b)-(e),
224 receive at least a minimum mandatory fine of \$100 and must
225 immediately surrender the wildlife that is the basis of the
226 violation to the commission unless a permit for possession is
227 lawfully obtained.

228 (3) LEVEL THREE.—Unless otherwise provided by law, the
229 following classifications and penalties apply:

230 (a) A person commits a Level Three violation if he or she
231 violates any of the following provisions:

232 1. Rules or orders of the commission that require housing

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233 of wildlife in a safe manner when a violation results in an
234 escape of Class I wildlife.

235 2. Rules or orders of the commission related to captive
236 wildlife when the violation results in serious bodily injury to
237 another person by captive wildlife that consists of a physical
238 condition that creates a substantial risk of death, serious
239 personal disfigurement, or protracted loss or impairment of the
240 function of any bodily member or organ.

241 3. Rules or orders of the commission relating to the use of
242 gasoline or other chemical or gaseous substances on wildlife.

243 4. Rules or orders of the commission prohibiting the
244 release of wildlife for which only conditional possession is
245 allowed.

246 5. Rules or orders of the commission prohibiting knowingly
247 entering false information on an application for a license or
248 permit when the license or permit is to possess wildlife in
249 captivity.

250 6. Rules or orders of the commission relating to the
251 illegal importation and possession of ~~nonindigenous~~ marine
252 plants and animals not native to the state.

253 7. Rules or orders of the commission relating to the
254 importation, possession, or release of fish and wildlife for
255 which possession is prohibited.

256 8. Section 379.231, relating to illegal importation or
257 release introduction of wild animals not native to the state
258 ~~foreign wildlife~~.

259 9. Section 379.305, relating to release or escape of
260 nonnative venomous reptiles or reptiles of concern.

261 (b)1. A person who commits any offense classified as a

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262 Level Three violation and who has not been convicted of a Level
263 Three or higher violation within the past 10 years commits a
264 misdemeanor of the first degree, punishable as provided in s.
265 775.082 or s. 775.083.

266 2. A person who commits any offense classified as a Level
267 Three violation within a 10-year period of any previous
268 conviction of a Level Three or higher violation commits a
269 misdemeanor of the first degree, punishable as provided in s.
270 775.082 or s. 775.083, with a minimum mandatory fine of \$750 and
271 permanent revocation of all licenses or permits to possess
272 captive wildlife issued under this chapter.

273 (4) LEVEL FOUR.—Unless otherwise provided by law, the
274 following classifications and penalties apply:

275 (a) A person commits a Level Four violation if he or she
276 violates any Level Three provision after the permanent
277 revocation of a license or permit.

278 (b) A person who commits any offense classified as a Level
279 Four violation commits a felony of the third degree, punishable
280 as provided in s. 775.082 or s. 775.083.

281 (5) SUSPENSION OR REVOCATION OF LICENSE.—The court may
282 order the suspension or revocation of any license or permit
283 issued to a person to possess captive wildlife pursuant to this
284 chapter if that person commits a criminal offense or a
285 noncriminal infraction as specified under this section.

286 (6) CIVIL PENALTY.—In addition to other applicable
287 penalties, the commission may impose against any person, firm,
288 or corporation that is convicted of a criminal violation of any
289 provision of s. 379.231, s. 379.372, s. 379.3761, or s. 379.3762
290 a civil penalty of not more than \$10,000 per animal and not less

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291 than \$1,000 in total unless mitigated as authorized below.

292 (a) The history of noncompliance of the violator for any
293 previous violation of this chapter or rules or orders of the
294 commission shall be considered in determining the amount of the
295 civil penalty.

296 (b) The direct economic benefit gained by the violator from
297 the violation may be added to the scheduled civil penalty.

298 (c) The costs incurred by the commission related to the
299 escape, recovery, and care of the wildlife subject of the
300 violation shall be added to the civil penalty.

301 (d) The civil penalty assessed for any particular violation
302 may not exceed \$5,000 per animal against any one violator unless
303 the violator has a history of noncompliance, the economic
304 benefit of the violation as described in paragraph (b) exceeds
305 \$5,000, or the costs incurred by the commission related to the
306 escape, recovery, and care of the wildlife subject of the
307 violation exceeds \$5,000. The total civil penalty may not exceed
308 \$10,000 per assessment for all related violations attributable
309 to a specific violator per animal.

310 (e) The civil penalty assessed pursuant to this subsection
311 may be reduced by the commission for mitigating circumstances,
312 including good faith efforts to comply prior to or after
313 discovery of the violations by the commission.

314 (f) The proceeds of all civil penalties collected pursuant
315 to this subsection shall be deposited into the State Game Trust
316 Fund.

317 (7) ~~(6)~~ CONVICTION DEFINED.—For purposes of this section,
318 the term “conviction” means any judicial disposition other than
319 acquittal or dismissal.

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320 (8)~~(7)~~ COMMISSION LIMITATIONS.—Nothing in this section
321 shall limit the commission from suspending or revoking any
322 license to possess wildlife in captivity by administrative
323 action in accordance with chapter 120. For purposes of
324 administrative action, a conviction of a criminal offense shall
325 mean any judicial disposition other than acquittal or dismissal.

326 Section 5. Subsection (2) of section 379.374, Florida
327 Statutes, is amended to read

328 379.374 Bond required, amount.—

329 (2) No person, party, firm, or corporation shall possess or
330 exhibit to the public either with or without charge or admission
331 fee, any Class I wildlife, as defined in s. 379.303 and
332 commission rule, without having first guaranteed financial
333 responsibility, in the sum of \$10,000, for any liability which
334 may be incurred in the exhibition to the public of Class I
335 wildlife. The commission shall adopt, by rule, the methods of
336 payment that satisfy the financial responsibility, which may
337 include cash, the establishment of a trust fund, an irrevocable
338 letter of credit, casualty insurance, a corporate guarantee, or
339 any combination thereof, in the sum of \$10,000 which shall be
340 posted with the commission. In lieu of the \$10,000 financial
341 responsibility guarantee required in this subsection, the
342 exhibiter has the option to maintain comprehensive general
343 liability insurance, with minimum limits of \$2 million per
344 occurrence and \$2 million annual aggregate, as shall protect the
345 exhibiter from claims for damage for personal injury, including
346 accidental death, as well as claims for property damage which
347 may arise. Proof of such insurance shall be submitted to the
348 commission.

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349 Section 6. By January 1, 2015, the Fish and Wildlife
350 Conservation Commission shall evaluate the need for further
351 restricting the possession of reptiles of concern, including
352 evaluating the need to ban the possession of those species.

353 Section 7. This act shall take effect July 1, 2010.