

OFFICE OF LEGISLATIVE COUNSEL
DRAFT BILL

BLOOM
MAR 06 2014

Meredith 12:27

RN: 1406638

This request was prepared for you in accordance with instructions provided to us by Guy Strahl.

LCB Deputy Contact: Ann Burastero at 341-8314.

The boxes checked below, if any, apply to this request:

- Cover letter:** This request is accompanied by a cover letter, to bring to your attention legal or practical issues that may be raised by this bill, if introduced.
- Unbacked bill:** The attached bill draft has **not** been backed for introduction. When a Member has decided to introduce this bill draft, the draft should be returned to the Office of Legislative Counsel as soon as possible so that it can be prepared for introduction by that Member.
- Spot bill:** This bill, if introduced, may not be qualified for referral to a committee, if it is deemed a bill that makes no substantive change in or addition to existing law, or that would not otherwise affect the ongoing operations of state or local government (see, for example, Assembly Rule 51.5).
- Bill related to the budget:** In order for this measure to be deemed a bill "providing for appropriations related to the budget" within the meaning of Section 12 of Article IV of the California Constitution, thereby allowing the measure to be passed by a majority vote and to take effect immediately upon enactment, it is necessary that this measure contain an appropriation and be identified in the Budget Bill as a measure related to the state budget.
- Reintroduced bill:** This bill, if introduced, may violate the rule that, except as specified, a Member may not author a bill during a session that would have substantially the same effect as a bill he or she previously introduced during that session (Joint Rule 54(c)).

An act to add Section 4502 to the Fish and Game Code, relating to marine mammals.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4502 is added to the Fish and Game Code, to read:

4502. (a) It is unlawful for any person to do any of the following:

(1) Hold in captivity, or use, a wild-caught or captive-bred orca for performance or entertainment purposes.

(2) Capture in state waters, or import from another state, any orca intended to be used for performance or entertainment purposes.

(3) Breed or impregnate an orca in captivity.

(4) 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.

(b) Every person, corporation, or institution that violates subdivision (a) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred thousand dollars (\$100,000), or by imprisonment in a county jail for not more than six months, or by both the fine and imprisonment.

(c) (1) This section does not apply to an orca that is held for rehabilitation after a rescue or stranding, or for research purposes. However, an orca that is held for rehabilitation or research purposes shall be returned to the wild whenever possible, and, if return to the wild is not possible, the orca shall be held in a sea pen that is open to the public and not used for performance or entertainment purposes.

(2) Orcas held for performance or entertainment purposes prior to the enactment of this section shall be rehabilitated and returned to the wild where possible, subject to any required state or federal permits. If it is not possible to return these orcas to the wild, as determined by the best available science, then those orcas shall be transferred



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and held in a sea pen that is open to the public and not used for performance or entertainment purposes.

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

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

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

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

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

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

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



SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: 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.

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

