

## PROPOSED BILL ANALYSIS: SB 958 (and companion bill HB 1546)

April 2011

### **BACKGROUND**

On May 9, 2001, House Bill 1362 (Dangerous Wild Animals) was passed by the Texas legislature, and the Bill took effect on September 1, 2001.

The intent of the Act was to “protect citizens from the dangers presented by the spread of dangerous wild animal ownership in Texas.” HB1362 did not ban private exotic wild animal ownership, but rather required Texans to register their exotics with the counties’ Sheriff’s Office or local municipality, pay a fee, and provide proof of proper animal care (i.e. veterinarian services/inspections). Those counties or municipalities not wishing to participate in the registration process were given the option to ban the private ownership of dangerous wild animals within its jurisdiction.

Certain categories of exotic wild animal owners were exempted from the Act, including governmental entities, research facilities, AZA accredited zoos and aquariums, film production companies, circuses, and universities using dangerous wild animals as their official mascots. Also exempted from this Act were licensed veterinarians caring for injured, infirmed or orphaned dangerous wild animals, an incorporated humane society or animal shelter, or a person holding a rehabilitation permit issued by Texas Parks and Wildlife.

### **COMPANION BILL:**

HB 1546 was authored by House Representative Lyle Larson.

### **ANALYSIS**

When the Act was passed, the *unintended* consequence resulted in the majority of the wild animal sanctuaries operating illegally in the State of Texas. Sanctuaries are not considered “incorporated humane societies or shelters” as many sanctuaries could not qualify for a “shelter permit” since the mission of animal sanctuaries (permanent animal placement) differs from that of animal shelters (temporary housing).

It appears Senate Bill 958 (hence forth known as SB 958) attempts to rectify the above mentioned unintended consequence.

The proposed Bill has one significant change to the original Dangerous Wild Animal Act:

an organization that is an accredited member of the American Zoo and Aquarium Association, ~~the American Sanctuary Association [ASA], or the~~ Global Federation of Animal Sanctuaries [GFAS];

Global Federation of Animal Sanctuaries is a relatively new non-profit sanctuary accreditation institution controlled by animal rights (AR) groups, such as HSUS, Born Free/API and IFAW. The majority of their small numbers of US based sanctuaries do not keep the ‘dangerous wild animals’.

Guidestar.org shows only one organization’s tax return on file for year 2008, with a small number of non-profit sanctuaries supposedly accredited under its organization.

In order for a sanctuary to be accredited, a GFAS animal care application must be completed along with a 78-page self-assessment; an inspection of the applicant site must be conducted by GFAS to ensure it meets standards set forth by the organization; and a future fee may be required to cover the costs of the application/self- appraisal reviews and site visits. Based on how an applicant sanctuary responds to the “self-assessment” and the results of GFAS’ self-defined site inspection, will determine whether or not a sanctuary can and will be accredited by GFAS. As to the GFAS inspections, will qualified inspectors, specializing in sanctuary operations and wild animal care, conduct the inspections or will the inspections be conducted by parties with no experience what-so-ever in this field?

Today joining GFAS is voluntary.

As previously noted, when this Bill was written, it did not include 501(c)(3) tax-exempt non-profit animal sanctuaries, and therefore most sanctuaries currently operate illegally in the State of Texas. Rather than include non-profit animal sanctuaries as part the SB 958 exemption list, SB 958 proposed only GFAS approved sanctuaries may be exempted from the mandates set forth in this Bill. That means, *membership* with GFAS will no longer be voluntary, but rather, mandatory in order to operate a non-profit 501 (c)(3) animal sanctuary in the state of Texas:

I am not aware of any law that mandates that a non-profit corporation must belong to or is accredited by another non-profit corporation.

### **UNINTENDED CONSEQUENCES IF SB 958 WAS PASSED**

It has not gone unnoticed that GFAS sent its lobbying group to persuade the Committee in removing ASA from the Bill, thereby ensuring *only* GFAS will have the authority to “sanction” wild animal sanctuaries in Texas if this Bill is passed in September.

Therefore, what remedy and funds will the Senate put in place and/or set aside in the event that a:

- a. Non-profit animal sanctuary does not want to join GFAS, if made mandatory to join, either because the non-profit corporation does not want be a part of a “political” animal organization (which may

- or may not represent their political views) or cannot afford the yearly membership or inspection fees;
- b. The sanctuary cannot meet the accreditation standards set forth by GFAS;
  - c. An accreditation sanctuary fails to meet any additional standards imposed on the sanctuary by GFAS at some future date;
  - d. A sanctuary that meets accreditation standards for GFAS, but the accrediting organization chooses NOT to accredit the facility due to political or personal reasons;
  - e. GFAS no longer want to accredit sanctuaries in the State of Texas due insufficient funding\*; and/or
  - f. New accreditation non-profit organization(s) would like to compete against GFAS in Texas—would the Senate Bill be modified once again to include the new accredited organization?

If the issues raised above are not addressed in SB 958, then many sanctuaries will be forced to operate illegally in Texas—again. Sadly, there are not enough exotic wild animal sanctuaries in the United States to absorb displaced animals. Therefore, what governmental body will be directly responsible for seizing and destroying exotic wild animals residing “illegally” in various wild animal sanctuaries throughout this State?

In Texas, there are over 300 USDA exhibitor licensed facilities alone, not including various non-USDA regulated animal sanctuaries (classified by the IRS as exempted non-profit 501(c)(3)) which currently cares for thousands of displaced or abused exotic wild animals. SB 958’s unintentional outcome would ultimately be the destruction of innocent animals (to include tigers, lions, cougars, bobcats, servals, caracals, bears, wolves, non-human primates, chimpanzees, etc.) and the possible elimination of jobs throughout our State.

A Federal amendment to the Lacey Act Amendments (Public Law 108-191-Dec, 19, 2003), (2) (C), defines an *accredited sanctuary* as:

- (i) a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code 1986 and described in sections 501(c)(3) and 170(b)(1)(A)(vi) of such Code;
- (ii) does not commercially trade in animals listed in section 2(g), including offspring, parts, and byproducts of such animals;
- (iii) does not propagate animals listed in section 2(g); and
- (iv) does not allow direct contact between the public and animals.

The federal law does not state that an accredited sanctuary must belong to GFAS.

\*GFAS is a new nonprofit organization and could, like their forerunner, The Association of Sanctuaries (TAOS), go out of business if they fail to obtain sufficient funding. That is the reason why the federal bill, the Captive Wildlife Safety Act, which prohibited the interstate transportation of big cats, refused to list ASA or TAOS in the Bill. They were concerned that any nonprofit organization could go out of business.

## **FISCAL NOTE**

If SB 958 passes in September 2011, then GFAS will be in the position of requesting assistance from local or state law enforcement agencies to close down those sanctuaries GFAS deems as “inappropriate.” Undoubtedly, many sanctuaries will test the constitutionality of SB 958 in court if Texas law enforcement officers attempt to close down animal sanctuaries without the express approval of the sanctuary’s board of directors.

A significant constitutional issue which will undoubtedly be challenged in Texas courts is that Texas is still a “right to work” state and forcing sanctuaries to “join” a non-profit accreditation non-profit agency, else go out of business, is akin to forcing non-profit corporations to join a union-style organization that is not even based in Texas!

Texas is a right-to-work state. This means that under the [Texas Labor Code](#), a person cannot be denied employment because of membership or non-membership in a labor union or other labor organization. [Tex. Labor Code Ann. §§ 101.001](#), et al.

Texas laws protect employees from threats, force, intimidation, or coercion for choosing to either participate or not participate in a union. In other words, the choice of whether to join a labor union is yours; you may not be required to join or pay dues to a union as a condition of employment, nor may you be denied employment because you have joined a union.

Monies will need to be set aside for State legal court challenges as well as law enforcement costs to seize and control sanctuaries not accredited by GFAS.

## **RECOMMENDATION**

Recognize wild animal sanctuaries operating in the States of Texas that meet the definition of accredited sanctuary as defined by the Lacey Act Amendments (Public Law 108-191-Dec, 19, 2003), (2) (C) as an exempt entity from the original HB 1362 (Dangerous Wild Animal) in SB 958 and remove any mention of accreditation from a non-profit corporation (to include GFAS) from SB 958.

More Info: <http://www.rexano.org/StatePages/TexasFrame.htm>