

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2993/P1dn  
RCT:sac:rs

October 16, 2013

This is preliminary draft of the proposal relating to dangerous wild animals. It should be reviewed carefully. There are some notes in the draft raising issues about specific provisions.

1. The instructions indicate that there should be a penalty for violating the dangerous animal law, but did not indicate what the penalty should be. I included a forfeiture of up to \$1,000 per animal as a placeholder. This is a civil, rather than criminal, penalty. You may want to review the penalties in related statutes, including the captive wildlife statutes. Please let me know what penalty or penalties the draft should provide.

2. Chapter 169 of the statutes relates to captive wild animals. Under ch. 169, the Department of Natural Resources (DNR) issues licenses for a number of facilities and activities. The chapter primarily relates to native wild animals, but some provisions relate to nonnative wild animals. Chapter 169 is very complex and it is difficult to determine how to change it so that it does not conflict with this proposal.

One set of complications relates to bears. Under current law, some provisions in ch. 169 apply to both black bears, which are native to Wisconsin, and all other bears, which are not native to Wisconsin, and some relate only to black bears. In this preliminary version of the draft, I have tried to reconcile ch. 169 and your proposal by having ch. 169 continue to apply to black bears, but not to nonnative bears, and having the new provisions about dangerous wild animals apply to nonnative bears.

Under this version of the draft, DNR may still authorize the possession of a black bear under a captive wild animal farm license, scientific research license, nonprofit educational exhibiting license, or nonresident temporary exhibiting license and a person with a hound dog training license or dog trial license may still possess a black bear. Under the draft, DNR may no longer designate any nonnative bear to be a harmful wild animal under s. 169.11, and by doing that, the draft eliminates the prohibition on possessing any nonnative bear without DNR's authorization. I am uncertain whether it is also necessary to specify that DNR may not authorize possession of a nonnative bear under a captive wild animal farm license, nonprofit educational exhibiting license, or nonresident temporary exhibiting license. If this approach to dealing with bears is not consistent with your intent, we should discuss how to change the draft.

This draft does not resolve the conflicts between the proposal and current law relating to cougars. Under s. 169.11, cougars are designated as harmful wild animals, which

generally means that a person may not possess, or take other specified actions related to, a cougar without the permission of DNR. DNR may authorize possession of a cougar under a captive wild animal farm license, nonprofit educational exhibiting license, nonresident temporary exhibiting license, or, I believe, a scientific research license. Cougars are also regulated as a protected species under section NR 10.02 of the Wisconsin Administrative Code, which prohibits a person from taking, transporting, or possessing a cougar without authorization from DNR. If you want to eliminate DNR's authority to regulate the possession of cougars, please let me know. Otherwise, this draft should be changed so that the definition of dangerous wild animals does not include cougars.

It may be difficult in practice for some kinds of native wild animals to be under DNR's control in relation to hunting and introduction, and other matters such as the sale of body parts, while DNR would not have control over the possession of captive animals of those kinds. If there is a concern about how captive black bears and cougars are regulated under current law, one approach would be to change how DNR regulates them by changing ch. 169. If you decide not to cover any native wild animals under this proposal, we could use the term "dangerous exotic animal," which might be more clear.

Section 169.11 also authorizes DNR to designate species of nonnative wild animals as harmful wild animals if other requirements are met. The law generally prohibits a person from possessing, importing, or taking other actions with respect to a harmful wild animal without permission from DNR. This draft prohibits DNR from designating as a harmful wild animal any animal that is a dangerous wild animal under the draft.

Chapter 169 also requires a license from DNR for a person to possess an animal of a species that is indigenous to the United States or Canada and is identified on the federal list of endangered or threatened species. If this proposal designates as dangerous animals any animals that are indigenous to the United States or Canada and that are identified on the federal list of endangered or threatened species, there is a conflict between this proposal and ch. 169.

3. The instructions also indicated that the draft should allow the confiscation of dangerous wild animals to ensure compliance with the provisions concerning dangerous animals and to protect public safety and animal welfare. The provisions of ss. 173.13 to 173.23 for taking custody of animals, holding them for cause, review of seizure or withholding, and disposition of the animals, apply to all animals, including dangerous wild animals. A dangerous wild animal may be taken into custody under current law (s. 173.13 (1)) if it is abandoned, stray, unwanted, or mistreated in violation of the criminal laws related to animals or if it caused damage to persons or property. Note that current law requires a humane officer or law enforcement officer who takes custody of an animal to explain to the animal's owner the procedure by which the person may seek to recover the animal.

This draft adds language to ch. 173 that is specific to dangerous wild animals. The draft allows a dangerous wild animal to be seized, and to be withheld from the owner, if there are reasonable grounds to believe that the animal was possessed, imported into

this state, sold, transferred, or bred in violation of the prohibitions in the draft. The owner of the animal could challenge the seizure or withholding in court.

Without additional changes in current law, a municipality that seized a dangerous wild animal would generally have to get a court order to dispose of the animal, as provided in s. 173.23 (2) and (3). A dangerous wild animal that was unwanted could be released, sold at public auction, or euthanized (s. 173.23 (1m)). [Perhaps s. 173.23 (1m) should be modified to clarify that a dangerous wild animal may not be released or sold to a person unless the person may legally possess the animal under the provisions in this draft.] The municipality could have the animal euthanized if it posed an imminent threat to the public or its custodian or if it was severely injured. Please let me know if you want to provide other options. Also, let me know if you decide that you want a different approach than current ss. 173.13 to 173.23 for dealing with dangerous wild animals that are taken into custody. These statutes are complicated so don't hesitate to ask any questions that you have about them.

4. The instructions discuss who should have oversight of the new provision about dangerous wild animals. I think that it is not necessary to cover that in the draft. Section 173.07 (1) authorizes humane officers to enforce ch. 173. By creating the new provision in ch. 173, the draft automatically gives humane officers enforcement authority. Local law enforcement agencies have general authority to enforce state laws. Under current law and under this draft, municipalities and counties may assign some duties related to animal control to other agencies, health offices, for example.

5. Changes to some provisions in ch. 29 may need to be added to this draft. There are a number of statutes in that chapter with exemptions for wild animals that are subject to regulation as captive wild animals under ch. 169. See s. 29.011 (3), for example. If some animals that are currently subject to regulation under ch. 169 would no longer be subject to regulation under that chapter, we will need to consider whether to exempt them from any of the relevant statutes in ch. 29.

Please contact me with any questions. We can meet to discuss desired changes to the draft. If you would prefer to provide redraft instructions in writing, please provide me with an explanation of the desired changes.

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