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P.L. 2002, CHAPTER 122, *approved December 12, 2002*

Assembly Committee Substitute for
Assembly, Nos. 2674, 2754 and 2755

1 AN ACT concerning the possession and release of certain animals,
2 amending the title and body of P.L.1962, c.127, and repealing
3 P.L.1970, c.149.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. The title to P.L.1962, c.127 is amended to read as follows:

9 AN ACT [providing for the regulation of the possession and the
10 release, liberation, or distribution of [certain mammals, birds,
11 reptiles, or amphibians] concerning the possession and release of
12 certain animals, and supplementing Title 23 of the Revised
13 Statutes.

14 (cf: P.L.1962, c.127, Title)

15

16 2. Section 1 of P.L.1962, c.127 (C.23:4-63.3) is amended to read
17 as follows:

18 1. [The Fish and Game Council of the Division of Fish and Game
19 in the Department of Conservation and Economic Development may,
20 in its discretion, adopt regulations supplementing the Fish and Game
21 Code, to control and regulate the possession for other than agricultural
22 purposes, and to control, regulate or prohibit the release, liberation,
23 or distribution of any mammals, birds, reptiles, or amphibians into the
24 fields, woodlands, or marshes of this State which it has reason to
25 believe will menace, damage, or consume agricultural crops or create
26 a hazard to the welfare of the citizens of New Jersey.]

27 a. No person may possess any live indigenous animal, live exotic
28 animal, live potentially dangerous indigenous animal, or live potentially
29 dangerous exotic animal except as authorized pursuant to a permit
30 issued by the Department of Environmental Protection or as may be
31 authorized otherwise by the Fish and Game Council pursuant to rules
32 and regulations adopted pursuant to the "Administrative Procedure
33 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

34 b. No person may release any live indigenous animal into the
35 environment of the State except as authorized pursuant to a permit
36 issued by the department or as may be authorized otherwise by the
37 council pursuant to rules and regulations adopted pursuant to the
38 "Administrative Procedure Act."

39 c. No person may release any live exotic animal into the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 environment of the State except as authorized pursuant to a permit
2 issued by the department or as may be authorized otherwise by the
3 council pursuant to rules and regulations adopted pursuant to the
4 "Administrative Procedure Act."

5 d. No person may release any live potentially dangerous
6 indigenous animal into the environment of the State except as
7 authorized pursuant to a permit issued by the department or as may be
8 authorized otherwise by the council pursuant to rules and regulations
9 adopted pursuant to the "Administrative Procedure Act."

10 e. No person may release any live potentially dangerous exotic
11 animal into the environment of the State except as authorized pursuant
12 to a permit issued by the department or as may be authorized
13 otherwise by the council pursuant to rules and regulations adopted
14 pursuant to the "Administrative Procedure Act."

15 f. Every pet shop licensed in the State pursuant to section 8 of
16 P.L.1941, c.151 (C.4:19-15.8) shall post in a conspicuous place in the
17 pet shop a notice about the existence of this act and a copy of its
18 provisions.

19 g. The department may attach such conditions to any permit issued
20 or other authorization granted pursuant to this section as the
21 department deems appropriate and necessary for the purpose of
22 protecting indigenous animals or plants, the environment, agriculture,
23 or the public health, safety, or welfare.

24 h. (1) The council shall adopt, pursuant to the "Administrative
25 Procedure Act," such rules and regulations to supplement the State
26 Fish and Game Code as may be necessary to implement this section.

27 (2) The council, by rule or regulation adopted pursuant to the
28 "Administrative Procedure Act," may exempt from the requirements
29 and provisions of this section any species of indigenous animal, exotic
30 animal, potentially dangerous indigenous animal, or potentially
31 dangerous exotic animal, provided that the possession or release of
32 such animals would not pose a significant threat to indigenous animals
33 or plants, the environment, agriculture, or the public health, safety, or
34 welfare.

35 (3) This section shall not apply to any activities of the Division of
36 Fish and Wildlife concerning the possession and release of animals.

37 i. The requirements and provisions of this section, or any permit
38 issued or rule or regulation adopted pursuant thereto, shall be in
39 addition to those concerning the possession or release of live
40 indigenous animals, live exotic animals, live potentially dangerous
41 indigenous animals, or live potentially dangerous exotic animals, as
42 may be established by any other law or any permit issued or rule or
43 regulation adopted pursuant thereto, including but not limited to the
44 "The Endangered and Nongame Species Conservation Act," P.L.1973,
45 c.309 (C.23:2A-1 et seq.), R.S.23:4-50, R.S.23:4-52, and the State
46 Fish and Game Code.

1 j. For the purposes of this section:

2 "Council" means the Fish and Game Council;

3 "Department" means the Department of Environmental Protection;

4 "Exotic animal" means any species of mammal, bird, reptile,
5 amphibian, fish, mollusk, or crustacean that is not indigenous to New
6 Jersey as determined by the Fish and Game Council in rules and
7 regulations adopted pursuant to the "Administrative Procedure Act,"
8 and shall include the young or eggs of any such species, but shall not
9 include (1) domesticated companion animals or farm livestock as
10 defined by the Fish and Game Council, or (2) fish, shellfish, or game
11 species not indigenous to New Jersey for which fishing, harvesting,
12 hunting, or trapping is authorized and regulated pursuant to law, the
13 State Fish and Game Code, or rules and regulations of the Fish and
14 Game Council;

15 "Indigenous animal" means any species of mammal, bird, reptile,
16 amphibian, fish, mollusk, or crustacean that is indigenous to New
17 Jersey as determined by the Fish and Game Council in rules and
18 regulations adopted pursuant to the "Administrative Procedure Act,"
19 and shall include the young or eggs of any such species;

20 "Potentially dangerous exotic animal" means any species of exotic
21 animal that has been determined by the Fish and Game Council in rules
22 and regulations adopted pursuant to the "Administrative Procedure
23 Act," to: (1) be capable of inflicting serious or fatal injuries to
24 humans, livestock, or pets; or (2) possess the potential for becoming
25 a significant threat to indigenous animals or plants, the environment,
26 agriculture, or the public health, safety, or welfare; and

27 "Potentially dangerous indigenous animal" means any species of
28 indigenous animal that has been determined by the Fish and Game
29 Council in rules and regulations adopted pursuant to the
30 "Administrative Procedure Act," to: (1) be capable of inflicting
31 serious or fatal injuries to humans, livestock, or pets; or (2) possess
32 the potential for becoming a significant threat to indigenous animals
33 or plants, the environment, agriculture, or the public health, safety, or
34 welfare.

35 (cf: P.L.1962, c.127, s.1)

36

37 3. Section 2 of P.L.1962, c.127 (C.23:4-63.4) is amended to read
38 as follows:

39 2. [No person shall possess, release, liberate or distribute any
40 mammal, bird, reptile or amphibian and no person shall possess in such
41 a manner as may permit the same to be released, liberated, or
42 distributed contrary to the provisions of this act or of the Fish and
43 Game Code and regulations adopted pursuant to this act, under a
44 penalty of not less than \$100.00 nor more than \$500.00 for the first
45 offense, and not less than \$500.00 nor more than \$1,000.00 for any
46 subsequent offense.]

1 a. If any person violates any provision of section 1 of P.L.1962,
2 c.127 (C.23:4-63.3), or any permit issued or rule or regulation
3 adopted pursuant thereto, the Department of Environmental Protection
4 may institute a civil action in a court of competent jurisdiction for
5 injunctive relief to prohibit and prevent the violation and the court may
6 proceed in the action in a summary manner.

7 b. (1) Any person who violates subsection a. or subsection b. of
8 section 1 of P.L.1962, c.127 (C.23:4-63.3), or any permit issued or
9 rule or regulation adopted pursuant thereto, shall be liable to a civil
10 penalty of not less than \$100 nor more than \$500 for the first offense,
11 and not less than \$500 nor more than \$1,000 for any subsequent
12 offense.

13 (2) Any person who violates subsection c. of section 1 of
14 P.L.1962, c.127 (C.23:4-63.3), or any permit issued or rule or
15 regulation adopted pursuant thereto, shall be liable to a civil penalty
16 of not less than \$100 nor more than \$1,000 for the first offense, and
17 not less than \$500 nor more than \$2,000 for any subsequent offense.

18 (3) Any person who violates subsection d. or subsection e. of
19 section 1 of P.L.1962, c.127 (C.23:4-63.3), or any permit issued or
20 rule or regulation adopted pursuant thereto, shall be liable to a civil
21 penalty of not less than \$500 nor more than \$2,500 for the first
22 offense, and not less than \$1,000 nor more than \$5,000 for any
23 subsequent offense.

24 (4) The owner or operator of any pet shop that violates subsection
25 f. of section 1 of P.L.1962, c.127 (C.23:4-63.3) shall be liable to a
26 civil penalty of up to \$100 for each offense.

27 (5) Civil penalties established pursuant to this subsection may be
28 collected in a civil action by a summary proceeding under the "Penalty
29 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) or
30 in any case before a court of competent jurisdiction wherein injunctive
31 relief has been requested pursuant to subsection a. of this section, and
32 shall be remitted as provided pursuant to R.S.23:10-19. The Superior
33 Court and municipal court shall have jurisdiction to enforce the
34 "Penalty Enforcement Law of 1999."

35 (6) For the purposes of this subsection, each individual indigenous
36 animal, exotic animal, potentially dangerous indigenous animal, or
37 potentially dangerous exotic animal unlawfully possessed or released
38 shall constitute an additional, separate and distinct offense, except in
39 the case of the unlawful possession or release of the eggs of an
40 amphibian, fish, mollusk, or crustacean, each egg mass shall constitute
41 an additional, separate and distinct offense.

42 c. In addition to liability for any civil penalties established
43 pursuant to subsection b. of this section, any person who violates any
44 provision of subsection d. or subsection e. of section 1 of P.L.1962,
45 c.127 (C.23:4-63.3), or any permit issued or rule or regulation
46 adopted pursuant thereto, shall also be liable to pay all reasonable

1 costs incurred by the department or any other State or local
2 government entity in eradicating or controlling the unlawfully released
3 potentially dangerous indigenous animal or potentially dangerous
4 exotic animal, as the case may be, and their progeny if any.

5 d. The department is hereby authorized and empowered to
6 compromise and settle any claim for a penalty or costs which may be
7 assessed pursuant to subsection b. or subsection c. of this section in
8 such amount in the discretion of the department as may appear
9 appropriate and equitable under all of the circumstances.

10 e. (1) Any person who purposely or knowingly violates subsection
11 e. of section 1 of P.L.1962, c.127 (C.23:4-63.3) shall be guilty of a
12 crime of the third degree.

13 (2) Any person who recklessly or negligently violates subsection
14 e. of section 1 of P.L.1962, c.127 (C.23:4-63.3) shall be guilty of a
15 crime of the fourth degree.

16 (3) For the purposes of this subsection, each individual potentially
17 dangerous exotic animal unlawfully released shall constitute an
18 additional, separate and distinct offense, except in the case of the
19 unlawful possession or release of the eggs of an amphibian, fish,
20 mollusk, or crustacean, each egg mass shall constitute an additional,
21 separate and distinct offense.

22 (cf: P.L.1973, c.167, s.1)

23
24 4. P.L.1970, c.149 (C.23:5-33.1 et seq.) is repealed.

25
26 5. This act shall take effect on the 180th day after the date of
27 enactment.

28
29
30 _____
31
32 Revises law concerning possession and release into the environment
33 of certain animals.

ASSEMBLY, No. 2674

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2002

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblyman REED GUSCIORA

District 15 (Mercer)

SYNOPSIS

Revises law concerning possession and release into the environment of certain animals.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the possession and release of certain animals,
2 amending the title and body of P.L.1962, c.127, and repealing
3 P.L.1970, c.149.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. The title to P.L.1962, c.127 is amended to read as follows:

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12 certain animals, and supplementing Title 23 of the Revised Statutes.

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14 2. Section 1 of P.L.1962, c.127 (C.23:4-63.3) is amended to read
15 as follows:

16 1. [The Fish and Game Council of the Division of Fish and Game
17 in the Department of Conservation and Economic Development may,
18 in its discretion, adopt regulations supplementing the Fish and Game
19 Code, to control and regulate the possession for other than agricultural
20 purposes, and to control, regulate or prohibit the release, liberation,
21 or distribution of any mammals, birds, reptiles, or amphibians into the
22 fields, woodlands, or marshes of this State which it has reason to
23 believe will menace, damage, or consume agricultural crops or create
24 a hazard to the welfare of the citizens of New Jersey.]

25 a. No person may possess any live indigenous animal except as
26 authorized pursuant to a permit issued by the Department of
27 Environmental Protection or as may be authorized otherwise by the
28 department pursuant to rules and regulations adopted pursuant to the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.).

31 b. No person may possess any live exotic animal except as
32 authorized pursuant to a permit issued by the department or as may be
33 authorized otherwise by the department pursuant to rules and
34 regulations adopted pursuant to the "Administrative Procedure Act."

35 c. No person may release any live exotic animal into the
36 environment of the State except as authorized pursuant to a permit
37 issued by the department or as may be authorized otherwise by the
38 department pursuant to rules and regulations adopted pursuant to the
39 "Administrative Procedure Act."

40 d. No person may release any live potentially dangerous exotic
41 animal into the environment of the State except as authorized pursuant
42 to a permit issued by the department or as may be authorized

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 otherwise by the department pursuant to rules and regulations adopted
2 pursuant to the "Administrative Procedure Act."

3 e. The department may attach such conditions to any permit issued
4 or other authorization granted pursuant to this section as the
5 department deems appropriate and necessary for the purpose of
6 protecting indigenous animals or plants, the environment, agriculture,
7 or the public health, safety, or welfare.

8 f. (1) The department shall adopt, pursuant to the "Administrative
9 Procedure Act," such rules and regulations as may be necessary to
10 implement this section.

11 (2) The department, by rule or regulation adopted pursuant to the
12 "Administrative Procedure Act," may exempt from the requirements
13 and provisions of this section any species of indigenous animal or
14 exotic animal, provided that the possession or release of such animals
15 would not pose a significant threat to indigenous animals or plants, the
16 environment, agriculture, or the public health, safety, or welfare.

17 g. The requirements and provisions of this section, or any permit
18 issued or rule or regulation adopted pursuant thereto, are in addition
19 to those concerning the possession or release of live indigenous
20 animals or exotic animals as may be established by any other law or
21 any permit issued or rule or regulation adopted pursuant thereto,
22 including but not limited to the "The Endangered and Nongame
23 Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.),
24 R.S.23:4-50, R.S.23:4-52, and the State Fish and Game Code.

25 h. For the purposes of this section:

26 "Department" means the Department of Environmental Protection;

27 "Exotic animal" means any species of mammal, bird, reptile,
28 amphibian, fish, mollusk, or crustacean that is not indigenous to New
29 Jersey as determined by the department in rules and regulations
30 adopted pursuant to the "Administrative Procedure Act," and shall
31 include the young or eggs of any such species, but shall not include (1)
32 domesticated companion animals or farm livestock as defined by the
33 department, or (2) fish, shellfish, or game species not indigenous to
34 New Jersey for which fishing, harvesting, hunting, or trapping is
35 authorized and regulated pursuant to law, the State Fish and Game
36 Code, or rules and regulations of the department;

37 "Indigenous animal" means any species of mammal, bird, reptile,
38 amphibian, fish, mollusk, or crustacean that is indigenous to New
39 Jersey as determined by the department in rules and regulations
40 adopted pursuant to the "Administrative Procedure Act," and shall
41 include the young or eggs of any such species; and

42 "Potentially dangerous exotic animal" means any species of exotic
43 animal that has been determined by the department in rules and
44 regulations adopted pursuant to the "Administrative Procedure Act,"
45 to: (1) be capable of inflicting serious or fatal injuries to humans,
46 livestock, or pets; or (2) possess the potential for becoming a

1 significant threat to indigenous animals or plants, the environment,
2 agriculture, or the public health, safety, or welfare.

3 (cf: P.L.1962, c.127, s.1)

4

5 3. Section 2 of P.L.1962, c.127 (C.23:4-63.4) is amended to read
6 as follows:

7 2. [No person shall possess, release, liberate or distribute any
8 mammal, bird, reptile or amphibian and no person shall possess in such
9 a manner as may permit the same to be released, liberated, or
10 distributed contrary to the provisions of this act or of the Fish and
11 Game Code and regulations adopted pursuant to this act, under a
12 penalty of not less than \$100.00 nor more than \$500.00 for the first
13 offense, and not less than \$500.00 nor more than \$1,000.00 for any
14 subsequent offense.]

15 a. If any person violates any provision of section 1 of P.L.1962,
16 c.127 (C.23:4-63.3), or any permit issued or rule or regulation
17 adopted pursuant thereto, the Department of Environmental Protection
18 may institute a civil action in a court of competent jurisdiction for
19 injunctive relief to prohibit and prevent the violation and the court may
20 proceed in the action in a summary manner.

21 b. (1) Any person who violates subsection a. or subsection b. of
22 section 1 of P.L.1962, c.127 (C.23:4-63.3), or any permit issued or
23 rule or regulation adopted pursuant thereto, shall be liable to a civil
24 penalty of not less than \$100 nor more than \$500 for the first offense,
25 and not less than \$500 nor more than \$1,000 for any subsequent
26 offense.

27 (2) Any person who violates subsection c. of section 1 of
28 P.L.1962, c.127 (C.23:4-63.3), or any permit issued or rule or
29 regulation adopted pursuant thereto, shall be liable to a civil penalty
30 of not less than \$100 nor more than \$1,000 for the first offense, and
31 not less than \$500 nor more than \$2,000 for any subsequent offense.

32 (3) Any person who violates subsection d. of section 1 of
33 P.L.1962, c.127 (C.23:4-63.3), or any permit issued or rule or
34 regulation adopted pursuant thereto, shall be liable to a civil penalty
35 of not less than \$500 nor more than \$2,500 for the first offense, and
36 not less than \$1,000 nor more than \$5,000 for any subsequent offense.

37 (4) Civil penalties established pursuant to this subsection may be
38 collected in a civil action by a summary proceeding under the "Penalty
39 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) or
40 in any case before a court of competent jurisdiction wherein injunctive
41 relief has been requested pursuant to subsection a. of this section, and
42 shall be remitted as provided pursuant to R.S.23:10-19. The Superior
43 Court and municipal court shall have jurisdiction to enforce the
44 "Penalty Enforcement Law of 1999."

45 (5) For the purposes of this subsection, each individual indigenous
46 animal unlawfully possessed, and each individual exotic animal or

1 potentially dangerous exotic animal unlawfully possessed or released,
2 shall constitute an additional, separate and distinct offense, except in
3 the case of the unlawful possession or release of the eggs of an
4 amphibian, fish, mollusk, or crustacean, each egg mass shall constitute
5 an additional, separate and distinct offense.

6 c. In addition to liability for any civil penalties established pursuant
7 to subsection b. of this section, any person who violates any provision
8 of subsection d. of section 1 of P.L.1962, c.127 (C.23:4-63.3), or any
9 permit issued or rule or regulation adopted pursuant thereto, shall also
10 be liable to pay all reasonable costs incurred by the department or any
11 other State or local government entity in eradicating or controlling the
12 potentially dangerous exotic animal unlawfully released and its
13 progeny if any.

14 d. The department is hereby authorized and empowered to
15 compromise and settle any claim for a penalty or costs which may be
16 assessed pursuant to subsection b. or subsection c. of this section in
17 such amount in the discretion of the department as may appear
18 appropriate and equitable under all of the circumstances.

19 e. (1) Any person who purposely or knowingly violates subsection
20 d. of section 1 of P.L.1962, c.127 (C.23:4-63.3) shall be guilty of a
21 crime of the third degree.

22 (2) Any person who recklessly or negligently violates subsection
23 d. of section 1 of P.L.1962, c.127 (C.23:4-63.3) shall be guilty of a
24 crime of the fourth degree.

25 (3) For the purposes of this subsection, each individual potentially
26 dangerous exotic animal unlawfully released shall constitute an
27 additional, separate and distinct offense, except in the case of the
28 unlawful possession or release of the eggs of an amphibian, fish,
29 mollusk, or crustacean, each egg mass shall constitute an additional,
30 separate and distinct offense.

31 (cf: P.L.1973, c.167, s.1)

32
33 4. P.L.1970, c.149 (C.23:5-33.1 et seq.) is repealed.

34
35 5. This act shall take effect on the 180th day after the date of
36 enactment.

37
38
39 STATEMENT

40
41 This bill revises the law concerning the possession and release of
42 various types of animals into the environment of the State.

43 The bill requires any person who wishes to possess a live
44 indigenous or exotic animal, or release a live exotic animal into the
45 environment, to obtain a permit or other authorization therefor from
46 the Department of Environmental Protection (DEP). The bill

1 authorizes the DEP to attach any conditions to these permits or other
2 authorizations as the DEP deems appropriate and necessary to protect
3 indigenous animals or plants, the environment, agriculture, or the
4 public health, safety, or welfare.

5 The bill defines an "exotic animal" as any species of mammal, bird,
6 reptile, amphibian, fish, mollusk, or crustacean that is not indigenous
7 to New Jersey as determined by the DEP, and shall include the young
8 or eggs of any such species, but shall not include (1) domesticated
9 companion animals or farm livestock as defined by the DEP, or (2)
10 fish, shellfish, or game species not indigenous to New Jersey for which
11 fishing, harvesting, hunting, or trapping is authorized and regulated
12 pursuant to law, the State Fish and Game Code, or DEP rules and
13 regulations. "Indigenous animal" is defined as any species of mammal,
14 bird, reptile, amphibian, fish, mollusk, or crustacean that is indigenous
15 to New Jersey as determined by the DEP, and includes the young or
16 eggs of any such species.

17 Persons violating the bill's provisions would be subject to various
18 civil, and in some cases criminal, penalties, which escalate depending
19 upon the severity of the violation or the number of prior offenses.
20 Each animal illegally possessed or released into the environment would
21 constitute a separate offense. The civil fine for illegal possession of an
22 animal would continue to be \$100 to \$500 for a first offense and \$500
23 to \$1,000 for any subsequent offense. The civil fine for illegal release
24 of an exotic animal into the environment would be \$100 to \$1,000 for
25 a first offense and \$500 to \$2,000 for any subsequent offense.

26 The strongest penalties are reserved for violations involving the
27 release into the environment of a potentially dangerous exotic animal,
28 which is defined as any species of exotic animal that has been
29 determined by the DEP to: (1) be capable of inflicting serious or fatal
30 injuries to humans, livestock, or pets; or (2) possess the potential for
31 becoming a significant threat to indigenous animals or plants, the
32 environment, agriculture, or the public health, safety, or welfare. For
33 potentially dangerous exotic animal releases, the civil fine would be
34 \$500 to \$2,500 for a first offense, and \$1,000 to \$5,000 for any
35 subsequent offense, plus payment of costs incurred by governmental
36 entities in eradicating or controlling the released animal and its
37 progeny if any. Also, persons convicted of purposely or knowingly
38 releasing a potentially dangerous exotic animal would be guilty of a
39 third degree crime, and persons convicted of recklessly or negligently
40 doing so would be guilty of a fourth degree crime.

41 Finally, the bill repeals a law that provides for assessment of a \$100
42 fine for the release of fish or fish eggs into State waters. The bill's
43 provisions are stronger and, therefore, the current law on such releases
44 is no longer needed.

45 This bill is necessary to act as a deterrent and to provide proper
46 punishment for those who might upset the delicate balance of the

1 State's various ecosystems through either an intentional or accidental
2 release into the environment of an animal not indigenous to New
3 Jersey. It is prompted in part by the recent, intentional release of the
4 northern snakehead fish in Maryland waters. This fish, a species native
5 to China which has been nicknamed the "Frankenfish," is an extremely
6 aggressive and adaptable predator. Invasive species such as the
7 snakehead and others which are now already in New Jersey or nearby
8 states may pose significant threats to indigenous animals or plants, the
9 environment, agriculture, or the public health, safety, or welfare. It is
10 critical for the State to apply a maximum effort to ensure that these
11 exotic animals do not become established in New Jersey. This bill is
12 part of that effort.

ASSEMBLY, No. 2754

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2002

Sponsored by:

Assemblyman NICHOLAS ASSELTA

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Bans sale, possession, and release of live snakehead fish.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning snakehead fish and supplementing Title 23 of the
2 Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. No person shall release into the environment of the State a live
8 northern snakehead or any other species of snakehead fish.

9

10 2. No person shall sell or offer for sale in the State live northern
11 snakehead or any other species of snakehead fish, except for scientific,
12 zoological, or educational purposes under authority of a permit issued
13 therefor by the Department of Environmental Protection. The
14 department may attach any conditions to the issuance of a permit for
15 those authorized purposes that the department deems necessary or
16 appropriate to protect the environment and the public health, safety,
17 and welfare.

18

19 3. No person shall possess for any purpose in the State live
20 northern snakehead or any other species of snakehead fish except
21 under authority of a permit issued therefor by the Department of
22 Environmental Protection pursuant to section 4 of this act.

23

24 4. a. (1) Any person possessing, as of the date of enactment of
25 this act, a live northern snakehead or any other species of snakehead
26 fish for hobby, scientific, zoological, or educational purposes shall,
27 within 30 days after the date of enactment of this act, apply to the
28 department for a permit to possess the fish for any of those authorized
29 purposes.

30 The department may issue a permit pursuant to this subsection only
31 if the applicant (a) demonstrates to the satisfaction of the department
32 that the fish is kept in a manner that would prevent its accidental
33 introduction into the environment, (b) certifies in writing that the
34 applicant will not knowingly release the fish into the environment, (c)
35 certifies in writing that the applicant will notify the department
36 immediately of any known or possible release of the fish into the
37 environment, regardless of the cause of the release, and will cooperate
38 fully with the department in its response to that release, and (d)
39 certifies in writing to abide by all other conditions which may be
40 attached to the permit that the department deems necessary or
41 appropriate to protect the environment and the public health, safety,
42 and welfare.

43 (2) All possession permits to be issued by the department pursuant
44 to this subsection for which properly filed applications have been
45 received shall be issued within 60 days after the date of enactment of

1 this act, shall be valid for such term as the department deems
2 appropriate, not to exceed one year, and may be renewable.

3 b. (1) After the 60th day after the date of enactment of this act,
4 the department may issue a permit for the possession of a live northern
5 snakehead or any other species of snakehead fish only for (a)
6 scientific, zoological, or educational purposes, or (b) shipment or
7 transportation through the State to a legally authorized destination
8 outside of the State, provided that the applicant complies with all
9 requirements and conditions prescribed for a possession permit issued
10 pursuant to subsection a. of this section. No possession permits may
11 be issued pursuant to this subsection for any other purpose.

12 (2) All possession permits to be issued by the department pursuant
13 to this subsection shall be valid for such term as the department deems
14 appropriate, not to exceed one year, and may be renewable.

15

16 5. a. The Department of Environmental Protection shall conduct
17 a study to determine whether northern snakehead or any other species
18 of snakehead fish has been introduced into the environment of the
19 State, and, if so, where and to what extent the fish have been
20 introduced and how, why, and by whom they were introduced.

21 b. The department shall develop and implement a plan to prevent
22 the introduction of northern snakehead or any other species of
23 snakehead into the environment of the State and to eradicate, or at
24 least control, any populations of those fish that may become
25 established in the State. The plan shall include a public education
26 effort and may include, but need not be limited to, such eradication
27 and control strategies as creating a public reward or other incentive
28 program and adopting appropriate measures to facilitate and promote
29 harvest of the fish by recreational anglers in the event the fish
30 population becomes sizable.

31 c. The department shall transmit a copy of the study report and
32 plan required pursuant to this section to the Governor and the
33 Legislature within 18 months after the date of enactment of this act.
34 Copies of the study report and plan shall also be made available to the
35 public upon request at no cost or for a fee not to exceed the cost of
36 reproduction.

37

38 6. a. If any person violates any provision of this act, or any
39 permit issued or rule or regulation adopted pursuant thereto, the
40 Department of Environmental Protection may institute a civil action in
41 a court of competent jurisdiction for injunctive relief to prohibit and
42 prevent the violation and the court may proceed in the action in a
43 summary manner.

44 b. Any person who violates any provision of this act, or any
45 permit issued or rule or regulation adopted pursuant thereto, shall be
46 liable to a civil penalty of not less than \$500 nor more than \$1,000 for

1 the first offense, and a civil penalty of \$1,500 for any subsequent
2 offense. Civil penalties established pursuant to this subsection may be
3 collected in a civil action by a summary proceeding under the "Penalty
4 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) or
5 in any case before a court of competent jurisdiction wherein injunctive
6 relief has been requested pursuant to subsection a. of this section, and
7 shall be remitted as provided pursuant to R.S.23:10-19. The Superior
8 Court and municipal court shall have jurisdiction to enforce the
9 "Penalty Enforcement Law of 1999."

10 For the purposes of this subsection, each individual northern
11 snakehead or any other species of snakehead fish unlawfully released,
12 sold, offered for sale, or possessed shall constitute an additional,
13 separate and distinct offense.

14 c. In addition to liability for any civil penalties established
15 pursuant to subsection b. of this section, any person who violates any
16 provision of this act, or any permit issued or rule or regulation
17 adopted pursuant thereto, shall also be liable to pay all reasonable
18 costs incurred by the department or any other State or local
19 government entity in eradicating or controlling the northern snakehead
20 or any other species of snakehead fish unlawfully released and its
21 progeny if any.

22 d. The department is hereby authorized and empowered to
23 compromise and settle any claim for a penalty or costs which may be
24 assessed pursuant to subsection b. or subsection c. of this section in
25 such amount in the discretion of the department as may appear
26 appropriate and equitable under all of the circumstances.

27 e. The penalties established pursuant to this section shall be in
28 addition to those established by section 1 of P.L.1970, c.149 (C.23:5-
29 33.1) or any other applicable law.

30

31 7. The Department of Environmental Protection shall adopt,
32 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
33 (C.52:14B-1 et seq.), such rules and regulations as may be necessary
34 to implement this act.

35

36 8. Sections 2 of this act shall take effect on the 10th day after the
37 date of enactment, section 3 of this act shall take effect on the 61st
38 day after the date of enactment of this act, and the remainder of this
39 act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill would prohibit the sale and possession of live northern
45 snakehead fish without a permit issued by the Department of
46 Environmental Protection (DEP). The bill would also prohibit the

1 release of these fish into the environment. Possession permits for
2 current owners of these fish could be issued for hobby, scientific,
3 zoological, or educational purposes and only if the applicant meets
4 certain stringent requirements set forth in the bill. Persons seeking to
5 possess live northern snakehead fish after the 60th day after enactment
6 of the bill into law could do so only for scientific, zoological,
7 educational, or interstate transport purposes and would be required to
8 meet those same stringent standards as well.

9 Any person violating the bill's provisions would be subject to a civil
10 penalty of between \$500 and \$1,000 for a first offense and a civil
11 penalty of \$1,500 for any subsequent offense, as well as liability for
12 certain response costs.

13 In addition, the bill requires the DEP to conduct a study to
14 determine whether northern snakehead or any other species of
15 snakehead fish has been introduced into the environment of the State,
16 and, if so, where and to what extent the fish have been introduced and
17 how, why, and by whom they were introduced. The bill also requires
18 the DEP to develop and implement a plan to prevent the introduction
19 of northern snakehead or any other species of snakehead into the
20 environment of the State and to eradicate, or at least control, any
21 populations of those fish that may become established in the State.
22 The plan would include a public education effort and may include, but
23 need not be limited to, such eradication and control strategies as
24 creating a public reward or other incentive program and adopting
25 appropriate measures to facilitate and promote harvest of the fish by
26 recreational anglers in the event the fish population becomes sizable.

27 This bill is a direct response to the intentional and alarming release
28 in Maryland of the northern snakehead fish, a species native to China
29 which has been nicknamed the "Frankenfish" because of its aggressive
30 predatory habits and remarkable survivability. If this fish species were
31 to be introduced into New Jersey waters, the consequences for both
32 the environment in general and individual native fish species in
33 particular could be devastating.

ASSEMBLY, No. 2755

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2002

Sponsored by:

Assemblyman NICHOLAS ASSELTA

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Increases penalties for possession and release of certain invasive or potentially invasive animals into the environment.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the possession and release of certain invasive or
2 potentially invasive animals and amending P.L.1962, c.127 and
3 P.L.1970, c.149.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1962, c.127 (C.23:4-63.3) is amended to read
9 as follows:

10 1. The Fish and Game Council of the Division of Fish and
11 **[Game] Wildlife** in the Department of **[Conservation and Economic**
12 **Development may, in its discretion,] Environmental Protection shall**
13 **adopt rules and regulations supplementing the Fish and Game Code,**
14 **to control **[and] , regulate or prohibit** the possession for other than**
15 **agricultural purposes of any mammals, birds, reptiles, or amphibians,**
16 **and to control, regulate or prohibit the release, liberation, or**
17 **distribution of any mammals, birds, reptiles, or amphibians into the**
18 ****[fields, woodlands, or marshes] environment** of this State which it has**
19 **reason to believe will harm native species or the environment, menace,**
20 **damage, or consume agricultural crops , or create a hazard to the**
21 **health, safety, or welfare of the citizens of New Jersey.**

22 (cf: P.L.1962, c.127, s.1)

23

24 2. Section 2 of P.L.1962, c.127 (C.23:4-63.4) is amended to read
25 as follows:

26 2. No person shall possess, release, liberate , or distribute any
27 mammal, bird, reptile , or amphibian , and no person shall possess in
28 such a manner as may permit the same to be released, liberated, or
29 distributed , contrary to the provisions of **[this act] P.L.1962, c.127**
30 **(C.23:4-63.3 et seq.) or of the Fish and Game Code and rules and**
31 **regulations adopted pursuant to **[this act] P.L.1962, c.127 ,** under a**
32 **penalty of not less than **[\$100.00] \$100** nor more than **[\$500.00]****
33 **\$500 for the first offense, and not less than **[\$500.00] \$500** nor more**
34 **than **[\$1,000.00] \$1,000** for any subsequent offense. If the mammal,**
35 **bird, reptile, or amphibian is a species not native to New Jersey and is**
36 **invasive or potentially invasive, as defined and determined by the**
37 **Department of Environmental Protection in rules and regulations**
38 **adopted pursuant to the "Administrative Procedure Act," P.L.1968,**
39 **c.410 (C.52:14B-1 et seq.), the penalty for a first offense shall be not**
40 **less than \$500 nor more than \$1,000, and the penalty for any**
41 **subsequent offense shall be \$1,500.**

42 **Each individual mammal, bird, reptile, or amphibian possessed,**

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 released, liberated, or distributed in violation of P.L.1962, c.127
2 (C.23:4-63.3 et seq.) shall constitute an additional, separate and
3 distinct offense.

4 (cf: P.L.1973, c.167, s.1)

5
6 3. Section 1 of P.L.1970, c.149 (C.23:5-33.1) is amended to read
7 as follows:

8 1. Fish or fish eggs shall not be placed into, turned into, drained
9 into, or placed where they can run, flow, wash or be emptied into, or
10 where they can find their way into any of the fresh waters of the State
11 unless a permit is first obtained from the division, under a penalty of
12 [\$100.00 for each offense] not less than \$100 nor more than \$500 for
13 the first offense, and not less than \$500 nor more than \$1,000 for any
14 subsequent offense. If the fish or fish eggs is a species not native to
15 New Jersey and is invasive or potentially invasive, as defined and
16 determined by the Department of Environmental Protection in rules
17 and regulations adopted pursuant to the "Administrative Procedure
18 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the penalty for a first
19 offense shall be not less than \$500 nor more than \$1,000, and the
20 penalty for any subsequent offense shall be \$1,500. Each individual
21 fish or fish egg mass released in violation of this section shall
22 constitute an additional, separate and distinct offense.

23 No permit shall be required to place fish or fish eggs in an aquarium
24 or waters privately owned and having no inlet or outlet.

25 (cf: P.L.1970, c.149, s.1)

26
27 4. This act shall take effect on the 180th day after the date of
28 enactment.

29
30
31 STATEMENT

32
33 This bill would increase the penalties for the possession and release
34 into the environment of nonnative mammals, birds, reptiles,
35 amphibians, fish, or fish eggs which are invasive or potentially
36 invasive.

37 Current law provides that the illegal possession or release into the
38 environment of certain types of mammals, birds, reptiles, or
39 amphibians is punishable by a fine of not less than \$100 nor more than
40 \$500 for the first offense, and not less than \$500 nor more than \$1,000
41 for any subsequent offense. For the illegal release of a fish or fish
42 eggs, the penalty is a fine of \$100 for each offense.

43 This bill increases the fine for the illegal release of a fish or fish
44 eggs to match that set for mammals, birds, reptiles, and amphibians.
45 The bill also provides that, in the case of a nonnative and invasive or
46 potentially invasive species of mammal, bird, reptile, amphibian, fish,

1 or fish egg mass, as determined by the Department of Environmental
2 Protection, the penalty for a first offense would be not less than \$500
3 nor more than \$1,000, and the penalty for any subsequent offense
4 would be \$1,500. Finally, the bill clarifies that each individual
5 mammal, bird, reptile, amphibian, fish, or fish egg mass illegally
6 possessed or released would constitute an additional, separate and
7 distinct offense.

8 This bill is a direct response to the intentional and alarming release
9 in Maryland of the northern snakehead fish, a species native to China
10 which has been nicknamed the "Frankenfish" because of its aggressive
11 predatory habits and remarkable survivability. The introduction into
12 the environment of the State of nonnative, invasive species can have
13 devastating consequences both to the environment in general and to
14 individual native species in particular. This bill would help discourage
15 people from engaging in reckless and ecologically destructive actions
16 such as those involved in the release in Maryland of the northern
17 snakehead fish, and would provide for the proper punishment of those
18 who do.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2674, 2754, and 2755

STATE OF NEW JERSEY

DATED: SEPTEMBER 30, 2002

The Assembly Agriculture and Natural Resources Committee reports favorably an Assembly committee substitute for Assembly Bill Nos. 2674, 2754, and 2755.

This committee substitute revises the law concerning the possession and release of various types of animals into the environment of the State.

The committee substitute requires any person who wishes to possess, or release into the environment, a live indigenous animal, exotic animal, potentially dangerous indigenous animal, or potentially dangerous exotic animal to obtain a permit or other authorization therefor from the Department of Environmental Protection ("DEP") or the Fish and Game Council ("council"). The committee substitute authorizes the DEP to attach any conditions to these permits or other authorizations as the DEP deems appropriate and necessary to protect indigenous animals or plants, the environment, agriculture, or the public health, safety, or welfare.

The committee substitute defines an "exotic animal" as any species of mammal, bird, reptile, amphibian, fish, mollusk, or crustacean that is not indigenous to New Jersey as determined by the council, and shall include the young or eggs of any such species, but shall not include (1) domesticated companion animals or farm livestock as defined by the council, or (2) fish, shellfish, or game species not indigenous to New Jersey for which fishing, harvesting, hunting, or trapping is authorized and regulated pursuant to law, the State Fish and Game Code, or council rules and regulations. "Indigenous animal" is defined as any species of mammal, bird, reptile, amphibian, fish, mollusk, or crustacean that is indigenous to New Jersey as determined by the council, and includes the young or eggs of any such species.

Persons violating the committee substitute's provisions would be subject to various civil, and in some cases criminal, penalties, which escalate depending upon the severity of the violation or the number of prior offenses. Each animal illegally possessed or released into the environment would constitute a separate offense. The civil fine for illegal possession of an animal would continue to be \$100 to \$500 for

a first offense and \$500 to \$1,000 for any subsequent offense. The same fine would apply to the illegal release of an indigenous animal into the environment. The civil fine for illegal release of an exotic animal into the environment would be \$100 to \$1,000 for a first offense and \$500 to \$2,000 for any subsequent offense.

The strongest penalties are reserved for violations involving the release into the environment of a potentially dangerous indigenous animal or potentially dangerous exotic animal, which are defined as any species of indigenous animal or exotic animal that has been determined by the council to: (1) be capable of inflicting serious or fatal injuries to humans, livestock, or pets; or (2) possess the potential for becoming a significant threat to indigenous animals or plants, the environment, agriculture, or the public health, safety, or welfare. For potentially dangerous indigenous animal or potentially dangerous exotic animal releases, the civil fine would be \$500 to \$2,500 for a first offense, and \$1,000 to \$5,000 for any subsequent offense, plus payment of costs incurred by governmental entities in eradicating or controlling the released animal and its progeny if any. Also, persons convicted of purposely or knowingly releasing a potentially dangerous exotic animal would be guilty of a third degree crime, and persons convicted of recklessly or negligently doing so would be guilty of a fourth degree crime.

The committee substitute also requires every licensed pet shop to post a notice in a conspicuous place in the pet shop about the existence of this law and a copy of its provisions. The civil penalty for a violation of this requirement would be a fine of upto \$100.

Finally, the committee substitute repeals a law that provides for assessment of a \$100 fine for the release of fish or fish eggs into State waters. The committee substitute's provisions are stronger and, therefore, the current law on such releases is no longer needed.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 2674, 2754 and 2755

STATE OF NEW JERSEY

DATED: OCTOBER 24, 2002

The Senate Environment Committee reports favorably Assembly Bill Nos. 2674, 2754 and 2755 (ACS).

The Assembly Committee Substitute for Assembly Bill Nos. 2674, 2754 and 2755 would revise the law concerning the possession and release of various types of animals into the environment of the State.

The committee substitute would require any person who wishes to possess, or release into the environment, a live indigenous animal, exotic animal, potentially dangerous indigenous animal, or potentially dangerous exotic animal to obtain a permit or other authorization therefor from the Department of Environmental Protection (DEP) or the Fish and Game Council (Council). The committee substitute would authorize the DEP to attach any conditions to these permits or other authorizations as the DEP deems appropriate and necessary to protect indigenous animals or plants, the environment, agriculture, or the public health, safety, or welfare.

The committee substitute defines an "exotic animal" as any species of mammal, bird, reptile, amphibian, fish, mollusk, or crustacean that is not indigenous to New Jersey as determined by the Council, and shall include the young or eggs of any such species, but shall not include (1) domesticated companion animals or farm livestock as defined by the Council, or (2) fish, shellfish, or game species not indigenous to New Jersey for which fishing, harvesting, hunting, or trapping is authorized and regulated pursuant to law, the State Fish and Game Code, or rules and regulations of the Council. "Indigenous animal" is defined as any species of mammal, bird, reptile, amphibian, fish, mollusk, or crustacean that is indigenous to New Jersey as determined by the Council, and includes the young or eggs of any such species.

Persons violating the provisions of the committee substitute would be subject to various civil, and in some cases criminal, penalties, which escalate depending upon the severity of the violation or the number of prior offenses. Each animal illegally possessed or released into the environment would constitute a separate offense. The civil fine for illegal possession of an animal would continue to be \$100 to \$500 for a first offense and \$500 to \$1,000 for any subsequent offense. The

same fine would apply to the illegal release of an indigenous animal into the environment. The civil fine for illegal release of an exotic animal into the environment would be \$100 to \$1,000 for a first offense and \$500 to \$2,000 for any subsequent offense.

The strongest penalties are reserved for violations involving the release into the environment of a potentially dangerous indigenous animal or potentially dangerous exotic animal, which are defined as any species of indigenous animal or exotic animal that has been determined by the Council to: (1) be capable of inflicting serious or fatal injuries to humans, livestock, or pets; or (2) possess the potential for becoming a significant threat to indigenous animals or plants, the environment, agriculture, or the public health, safety, or welfare. For potentially dangerous indigenous animal or potentially dangerous exotic animal releases, the civil fine would be \$500 to \$2,500 for a first offense, and \$1,000 to \$5,000 for any subsequent offense, plus payment of costs incurred by governmental entities in eradicating or controlling the released animal and its progeny if any. Also, persons convicted of purposely or knowingly releasing a potentially dangerous exotic animal would be guilty of a third degree crime, and persons convicted of recklessly or negligently doing so would be guilty of a fourth degree crime.

The committee substitute also would require every licensed pet shop to post a notice in a conspicuous place in the pet shop about the existence of this law and a copy of its provisions. The civil penalty for a violation of this requirement would be a fine of up to \$100.

Finally, the committee substitute repeals a law that provides for assessment of a \$100 fine for the release of fish or fish eggs into State waters. The provisions of the committee substitute are stronger and, therefore, the current law on such releases is no longer needed.

The Assembly Committee Substitute for Assembly Bill Nos. 2674, 2754 and 2755 is identical to the Senate Committee Substitute for Senate Bill Nos. 1791 and 1792.

SENATE, No. 1791

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2002

Sponsored by:

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

Senator JOSEPH A. PALAIA

District 11 (Monmouth)

Co-Sponsored by:

Senator Allen

SYNOPSIS

Bans sale, possession, and release of live snakehead fish.

CURRENT VERSION OF TEXT

As introduced.



S1791 CAFIERO, PALAIA

2

1 AN ACT concerning snakehead fish and supplementing Title 23 of the
2 Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. No person shall release into the environment of the State a live
8 northern snakehead or any other species of snakehead fish.

9

10 2. No person shall sell or offer for sale in the State live northern
11 snakehead or any other species of snakehead fish, except for scientific,
12 zoological, or educational purposes under authority of a permit issued
13 therefor by the Department of Environmental Protection. The
14 department may attach any conditions to the issuance of a permit for
15 those authorized purposes that the department deems necessary or
16 appropriate to protect the environment and the public health, safety,
17 and welfare.

18

19 3. No person shall possess for any purpose in the State live
20 northern snakehead or any other species of snakehead fish except
21 under authority of a permit issued therefor by the Department of
22 Environmental Protection pursuant to section 4 of this act.

23

24 4. a. (1) Any person possessing, as of the date of enactment of
25 this act, a live northern snakehead or any other species of snakehead
26 fish for hobby, scientific, zoological, or educational purposes shall,
27 within 30 days after the date of enactment of this act, apply to the
28 department for a permit to possess the fish for any of those authorized
29 purposes.

30 The department may issue a permit pursuant to this subsection only
31 if the applicant (a) demonstrates to the satisfaction of the department
32 that the fish is kept in a manner that would prevent its accidental
33 introduction into the environment, (b) certifies in writing that the
34 applicant will not knowingly release the fish into the environment, (c)
35 certifies in writing that the applicant will notify the department
36 immediately of any known or possible release of the fish into the
37 environment, regardless of the cause of the release, and will cooperate
38 fully with the department in its response to that release, and (d)
39 certifies in writing to abide by all other conditions which may be
40 attached to the permit that the department deems necessary or
41 appropriate to protect the environment and the public health, safety,
42 and welfare.

43 (2) All possession permits to be issued by the department pursuant
44 to this subsection for which properly filed applications have been
45 received shall be issued within 60 days after the date of enactment of

1 this act, shall be valid for such term as the department deems
2 appropriate, not to exceed one year, and may be renewable.

3 b. (1) After the 60th day after the date of enactment of this act,
4 the department may issue a permit for the possession of a live northern
5 snakehead or any other species of snakehead fish only for (a)
6 scientific, zoological, or educational purposes, or (b) shipment or
7 transportation through the State to a legally authorized destination
8 outside of the State, provided that the applicant complies with all
9 requirements and conditions prescribed for a possession permit issued
10 pursuant to subsection a. of this section. No possession permits may
11 be issued pursuant to this subsection for any other purpose.

12 (2) All possession permits to be issued by the department pursuant
13 to this subsection shall be valid for such term as the department deems
14 appropriate, not to exceed one year, and may be renewable.

15

16 5. a. The Department of Environmental Protection shall conduct
17 a study to determine whether northern snakehead or any other species
18 of snakehead fish has been introduced into the environment of the
19 State, and, if so, where and to what extent the fish have been
20 introduced and how, why, and by whom they were introduced.

21 b. The department shall develop and implement a plan to prevent
22 the introduction of northern snakehead or any other species of
23 snakehead into the environment of the State and to eradicate, or at
24 least control, any populations of those fish that may become
25 established in the State. The plan shall include a public education
26 effort and may include, but need not be limited to, such eradication
27 and control strategies as creating a public reward or other incentive
28 program and adopting appropriate measures to facilitate and promote
29 harvest of the fish by recreational anglers in the event the fish
30 population becomes sizable.

31 c. The department shall transmit a copy of the study report and
32 plan required pursuant to this section to the Governor and the
33 Legislature within 18 months after the date of enactment of this act.
34 Copies of the study report and plan shall also be made available to the
35 public upon request at no cost or for a fee not to exceed the cost of
36 reproduction.

37

38 6. a. If any person violates any provision of this act, or any
39 permit issued or rule or regulation adopted pursuant thereto, the
40 Department of Environmental Protection may institute a civil action in
41 a court of competent jurisdiction for injunctive relief to prohibit and
42 prevent the violation and the court may proceed in the action in a
43 summary manner.

44 b. Any person who violates any provision of this act, or any
45 permit issued or rule or regulation adopted pursuant thereto, shall be
46 liable to a civil penalty of not less than \$500 nor more than \$1,000 for

1 the first offense, and a civil penalty of \$1,500 for any subsequent
2 offense. Civil penalties established pursuant to this subsection may be
3 collected in a civil action by a summary proceeding under the "Penalty
4 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) or
5 in any case before a court of competent jurisdiction wherein injunctive
6 relief has been requested pursuant to subsection a. of this section, and
7 shall be remitted as provided pursuant to R.S.23:10-19. The Superior
8 Court and municipal court shall have jurisdiction to enforce the
9 "Penalty Enforcement Law of 1999."

10 For the purposes of this subsection, each individual northern
11 snakehead or any other species of snakehead fish unlawfully released,
12 sold, offered for sale, or possessed shall constitute an additional,
13 separate and distinct offense.

14 c. In addition to liability for any civil penalties established
15 pursuant to subsection b. of this section, any person who violates any
16 provision of this act, or any permit issued or rule or regulation
17 adopted pursuant thereto, shall also be liable to pay all reasonable
18 costs incurred by the department or any other State or local
19 government entity in eradicating or controlling the northern snakehead
20 or any other species of snakehead fish unlawfully released and its
21 progeny if any.

22 d. The department is hereby authorized and empowered to
23 compromise and settle any claim for a penalty or costs which may be
24 assessed pursuant to subsection b. or subsection c. of this section in
25 such amount in the discretion of the department as may appear
26 appropriate and equitable under all of the circumstances.

27 e. The penalties established pursuant to this section shall be in
28 addition to those established by section 1 of P.L.1970, c.149 (C.23:5-
29 33.1) or any other applicable law.

30

31 7. The Department of Environmental Protection shall adopt,
32 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
33 (C.52:14B-1 et seq.), such rules and regulations as may be necessary
34 to implement this act.

35

36 8. Sections 2 of this act shall take effect on the 10th day after the
37 date of enactment, section 3 of this act shall take effect on the 61st
38 day after the date of enactment of this act, and the remainder of this
39 act shall take effect immediately.

40

41

42

STATEMENT

43

44 This bill would prohibit the sale and possession of live northern
45 snakehead fish without a permit issued by the Department of
46 Environmental Protection (DEP). The bill would also prohibit the

1 release of these fish into the environment. Possession permits for
2 current owners of these fish could be issued for hobby, scientific,
3 zoological, or educational purposes and only if the applicant meets
4 certain stringent requirements set forth in the bill. Persons seeking to
5 possess live northern snakehead fish after the 60th day after enactment
6 of the bill into law could do so only for scientific, zoological,
7 educational, or interstate transport purposes and would be required to
8 meet those same stringent standards as well.

9 Any person violating the bill's provisions would be subject to a civil
10 penalty of between \$500 and \$1,000 for a first offense and a civil
11 penalty of \$1,500 for any subsequent offense, as well as liability for
12 certain response costs.

13 In addition, the bill requires the DEP to conduct a study to
14 determine whether northern snakehead or any other species of
15 snakehead fish has been introduced into the environment of the State,
16 and, if so, where and to what extent the fish have been introduced and
17 how, why, and by whom they were introduced. The bill also requires
18 the DEP to develop and implement a plan to prevent the introduction
19 of northern snakehead or any other species of snakehead into the
20 environment of the State and to eradicate, or at least control, any
21 populations of those fish that may become established in the State.
22 The plan would include a public education effort and may include, but
23 need not be limited to, such eradication and control strategies as
24 creating a public reward or other incentive program and adopting
25 appropriate measures to facilitate and promote harvest of the fish by
26 recreational anglers in the event the fish population becomes sizable.

27 This bill is a direct response to the intentional and alarming release
28 in Maryland of the northern snakehead fish, a species native to China
29 which has been nicknamed the "Frankenfish" because of its aggressive
30 predatory habits and remarkable survivability. If this fish species were
31 to be introduced into New Jersey waters, the consequences for both
32 the environment in general and individual native fish species in
33 particular could be devastating.

SENATE, No. 1792

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2002

Sponsored by:

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

Senator JOSEPH A. PALAIA

District 11 (Monmouth)

Co-Sponsored by:

Senator Allen

SYNOPSIS

Increases penalties for possession and release of certain invasive or potentially invasive animals into the environment.

CURRENT VERSION OF TEXT

As introduced.



S1792 CAFIERO, PALAIA

2

1 AN ACT concerning the possession and release of certain invasive or
2 potentially invasive animals and amending P.L.1962, c.127 and
3 P.L.1970, c.149.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 1 of P.L.1962, c.127 (C.23:4-63.3) is amended to read
9 as follows:

10 1. The Fish and Game Council of the Division of Fish and
11 **[Game]** Wildlife in the Department of **[Conservation and Economic**
12 **Development may, in its discretion,]** Environmental Protection shall
13 adopt rules and regulations supplementing the Fish and Game Code,
14 to control **[and]** , regulate or prohibit the possession for other than
15 agricultural purposes of any mammals, birds, reptiles, or amphibians,
16 and to control, regulate or prohibit the release, liberation, or
17 distribution of any mammals, birds, reptiles, or amphibians into the
18 **[fields, woodlands, or marshes]** environment of this State which it has
19 reason to believe will harm native species or the environment, menace,
20 damage, or consume agricultural crops , or create a hazard to the
21 health, safety, or welfare of the citizens of New Jersey.

22 (cf: P.L.1962, c.127, s.1)

23

24 2. Section 2 of P.L.1962, c.127 (C.23:4-63.4) is amended to read
25 as follows:

26 2. No person shall possess, release, liberate , or distribute any
27 mammal, bird, reptile , or amphibian , and no person shall possess in
28 such a manner as may permit the same to be released, liberated, or
29 distributed , contrary to the provisions of **[this act]** P.L.1962, c.127
30 (C.23:4-63.3 et seq.) or of the Fish and Game Code and rules and
31 regulations adopted pursuant to [this act] P.L.1962, c.127 , under a
32 penalty of not less than **[\$100.00]** \$100 nor more than **[\$500.00]**
33 \$500 for the first offense, and not less than **[\$500.00]** \$500 nor more
34 than **[\$1,000.00]** \$1,000 for any subsequent offense. If the mammal,
35 bird, reptile, or amphibian is a species not native to New Jersey and is
36 invasive or potentially invasive, as defined and determined by the
37 Department of Environmental Protection in rules and regulations
38 adopted pursuant to the "Administrative Procedure Act," P.L.1968,
39 c.410 (C.52:14B-1 et seq.), the penalty for a first offense shall be not
40 less than \$500 nor more than \$1,000, and the penalty for any
41 subsequent offense shall be \$1,500.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Each individual mammal, bird, reptile, or amphibian possessed,
2 released, liberated, or distributed in violation of P.L.1962, c.127
3 (C.23:4-63.3 et seq.) shall constitute an additional, separate and
4 distinct offense.

5 (cf: P.L.1973, c.167, s.1)

6
7 3. Section 1 of P.L.1970, c.149 (C.23:5-33.1) is amended to read
8 as follows:

9 1. Fish or fish eggs shall not be placed into, turned into, drained
10 into, or placed where they can run, flow, wash or be emptied into, or
11 where they can find their way into any of the fresh waters of the State
12 unless a permit is first obtained from the division, under a penalty of
13 [\$100.00 for each offense] not less than \$100 nor more than \$500 for
14 the first offense, and not less than \$500 nor more than \$1,000 for any
15 subsequent offense. If the fish or fish eggs is a species not native to
16 New Jersey and is invasive or potentially invasive, as defined and
17 determined by the Department of Environmental Protection in rules
18 and regulations adopted pursuant to the "Administrative Procedure
19 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the penalty for a first
20 offense shall be not less than \$500 nor more than \$1,000, and the
21 penalty for any subsequent offense shall be \$1,500. Each individual
22 fish or fish egg mass released in violation of this section shall
23 constitute an additional, separate and distinct offense.

24 No permit shall be required to place fish or fish eggs in an aquarium
25 or waters privately owned and having no inlet or outlet.

26 (cf: P.L.1970, c.149, s.1)

27
28 4. This act shall take effect on the 180th day after the date of
29 enactment.

30
31
32 STATEMENT

33
34 This bill would increase the penalties for the possession and release
35 into the environment of nonnative mammals, birds, reptiles,
36 amphibians, fish, or fish eggs which are invasive or potentially
37 invasive.

38 Current law provides that the illegal possession or release into the
39 environment of certain types of mammals, birds, reptiles, or
40 amphibians is punishable by a fine of not less than \$100 nor more than
41 \$500 for the first offense, and not less than \$500 nor more than \$1,000
42 for any subsequent offense. For the illegal release of a fish or fish
43 eggs, the penalty is a fine of \$100 for each offense.

44 This bill increases the fine for the illegal release of a fish or fish
45 eggs to match that set for mammals, birds, reptiles, and amphibians.
46 The bill also provides that, in the case of a nonnative and invasive or

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4

1 potentially invasive species of mammal, bird, reptile, amphibian, fish,
2 or fish egg mass, as determined by the Department of Environmental
3 Protection, the penalty for a first offense would be not less than \$500
4 nor more than \$1,000, and the penalty for any subsequent offense
5 would be \$1,500. Finally, the bill clarifies that each individual
6 mammal, bird, reptile, amphibian, fish, or fish egg mass illegally
7 possessed or released would constitute an additional, separate and
8 distinct offense.

9 This bill is a direct response to the intentional and alarming release
10 in Maryland of the northern snakehead fish, a species native to China
11 which has been nicknamed the "Frankenfish" because of its aggressive
12 predatory habits and remarkable survivability. The introduction into
13 the environment of the State of nonnative, invasive species can have
14 devastating consequences both to the environment in general and to
15 individual native species in particular. This bill would help discourage
16 people from engaging in reckless and ecologically destructive actions
17 such as those involved in the release in Maryland of the northern
18 snakehead fish, and would provide for the proper punishment of those
19 who do.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 1791 and 1792**

STATE OF NEW JERSEY

DATED: OCTOBER 24, 2002

The Senate Environment Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 1791 and 1792.

The Senate Committee Substitute for Senate Bill Nos. 1791 and 1792 would revise the law concerning the possession and release of various types of animals into the environment of the State.

The committee substitute would require any person who wishes to possess, or release into the environment, a live indigenous animal, exotic animal, potentially dangerous indigenous animal, or potentially dangerous exotic animal to obtain a permit or other authorization therefor from the Department of Environmental Protection (DEP) or the Fish and Game Council (Council). The committee substitute would authorize the DEP to attach any conditions to these permits or other authorizations as the DEP deems appropriate and necessary to protect indigenous animals or plants, the environment, agriculture, or the public health, safety, or welfare.

The committee substitute defines an "exotic animal" as any species of mammal, bird, reptile, amphibian, fish, mollusk, or crustacean that is not indigenous to New Jersey as determined by the Council, and shall include the young or eggs of any such species, but shall not include (1) domesticated companion animals or farm livestock as defined by the Council, or (2) fish, shellfish, or game species not indigenous to New Jersey for which fishing, harvesting, hunting, or trapping is authorized and regulated pursuant to law, the State Fish and Game Code, or rules and regulations of the Council. "Indigenous animal" is defined as any species of mammal, bird, reptile, amphibian, fish, mollusk, or crustacean that is indigenous to New Jersey as determined by the Council, and includes the young or eggs of any such species.

Persons violating the provisions of the committee substitute would be subject to various civil, and in some cases criminal, penalties, which escalate depending upon the severity of the violation or the number of prior offenses. Each animal illegally possessed or released into the environment would constitute a separate offense. The civil fine for illegal possession of an animal would continue to be \$100 to \$500 for a first offense and \$500 to \$1,000 for any subsequent offense. The

same fine would apply to the illegal release of an indigenous animal into the environment. The civil fine for illegal release of an exotic animal into the environment would be \$100 to \$1,000 for a first offense and \$500 to \$2,000 for any subsequent offense.

The strongest penalties are reserved for violations involving the release into the environment of a potentially dangerous indigenous animal or potentially dangerous exotic animal, which are defined as any species of indigenous animal or exotic animal that has been determined by the Council to: (1) be capable of inflicting serious or fatal injuries to humans, livestock, or pets; or (2) possess the potential for becoming a significant threat to indigenous animals or plants, the environment, agriculture, or the public health, safety, or welfare. For potentially dangerous indigenous animal or potentially dangerous exotic animal releases, the civil fine would be \$500 to \$2,500 for a first offense, and \$1,000 to \$5,000 for any subsequent offense, plus payment of costs incurred by governmental entities in eradicating or controlling the released animal and its progeny if any. Also, persons convicted of purposely or knowingly releasing a potentially dangerous exotic animal would be guilty of a third degree crime, and persons convicted of recklessly or negligently doing so would be guilty of a fourth degree crime.

The committee substitute also would require every licensed pet shop to post a notice in a conspicuous place in the pet shop about the existence of this law and a copy of its provisions. The civil penalty for a violation of this requirement would be a fine of up to \$100.

Finally, the committee substitute repeals a law that provides for assessment of a \$100 fine for the release of fish or fish eggs into State waters. The provisions of the committee substitute are stronger and, therefore, the current law on such releases is no longer needed.

The Senate Committee Substitute for Senate Bill Nos. 1791 and 1792 is identical to the Assembly Committee Substitute for Assembly Bill Nos. 2674, 2754 and 2755.