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March 9, 2014

Via Facsimile to 304.558.2722
Governor Earl Ray Tomblin
State Capitol
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Re: HB 4393

Dear Governor Tomblin:

I write to you as the president and CEO of the United States Herpetoculture Alliance (USHA) as well as the Chair of the DuPage County Bar Association Animal Law Committee. USHA is a non-profit conservation and education organization whose primary mission is the conservation of reptiles and amphibians through captive breeding programs. We have more than 18,000 supporters world-wide, with hundreds in the state of West Virginia who are your constituents.

I write regarding concerns over HB 4393, which I understand awaits only your signature before becoming law in the State of West Virginia. I wrote to you in 2012 when you had the courage and conviction to veto SB 477, a virtually identical bill, and I strongly encourage you to exercise your power of veto again regarding HB 4393, which is fraught with the same constitutional concerns as its predecessor.

HB 4393 was rushed through the legislative process without input from the many businesses and private individuals whose livelihoods will be destroyed by its provisions. This is an important matter of economics in a struggling economy. The pet industry nationwide generated \$53.33 billion in revenues in 2012 alone. HB 4393 will adversely affect business in your state.

In addition, I believe HB 4393 has significant constitutional concerns. Both the definitions of “domestic animal” and “dangerous wild animal” are unconstitutionally vague. For example, but not by way of limitation, a “domestic animal” is defined as an animal which “through extremely long association with humans, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation or other attributes of the species to an extent that makes them unique and distinguishable from wild individuals of their species . . .” This provision alone is impossible to enforce and will make it incumbent upon your state to use DNA testing to prosecute violations of this bill. There is no other way to ascertain that an animal has undergone “genetic changes.” Temperament, color and conformation can be changed in wild specimens in a minimal number of generations with proper selection.



Also problematic is the definition of “dangerous wild animal” which is defined to include, “a mammal, bird, reptile, amphibian or aquatic animal, including a hybrid, that is dangerous to humans, other animals or the environment due to its inherent nature.” This definition is so vague and overbroad that it will include several species of freshwater aquarium fishes.

Violations of HB 4393 will result in “immediate confiscation” or destruction of the animal without any provisions for hearings or due process. Since animals are property under the law, immediate confiscation or destruction without due process would violate the Fourteenth Amendment of the U.S. Constitution.

I have done research on incidents with dangerous animals in your state. Since 1990, there have been three incidents of primates biting or injuring humans with none resulting in death. In that same time frame, there was a single incident involving a reptile, and that involved a snake handling preacher.

Certainly, West Virginia has a great interest in proactively protecting its residents against dangerous animals. I encourage you to accomplish that by vetoing HB 4393, which misses the mark, will harm your economy and small business owners and is unconstitutionally vague and send it back to the legislature for more careful drafting.

Thank you for your time and consideration.

Very truly yours,

U.S. HERPETOCULTURE ALLIANCE

A handwritten signature in black ink, appearing to read "Erika N. Walsh", with a long horizontal flourish extending to the right.

ERIKA N. WALSH
PRESIDENT & CEO