

**PLAINTIFFS' EXHIBIT 5**

To Plaintiffs' Opposition to Defendant Feld  
Entertainment, Inc.'s Motion for Leave to Amend  
Answers to Assert Additional Defense and Rico  
Counterclaim  
Civ. No. 03-2006 (EGS/JMF)

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 777**

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**Introduced by Assembly Member Levine**

February 22, 2007

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An act to amend Section 596.5 of the Penal Code, relating to animal cruelty.

LEGISLATIVE COUNSEL'S DIGEST

AB 777, as introduced, Levine. Animal cruelty: elephants.

Existing law makes it a misdemeanor for an owner or manager of an elephant to abuse an elephant, as specified.

This bill would prohibit specified conduct in relation to housing, possessing, contacting, or traveling with, an elephant and would require a person or entity who possesses, keeps, or maintains an elephant at a stationary facility to meet certain conditions at the facility, as specified. This bill would also subject any person or entity who engages in the prohibited conduct or who fails to meet the specified conditions to misdemeanor penalties.

Because this bill would create new crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

AB 777

— 2 —

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 596.5 of the Penal Code is amended to  
2 read:

3 596.5. (a) ~~It shall be a misdemeanor for any owner or manager~~  
4 ~~of an elephant to engage in abusive behavior towards the elephant,~~  
5 ~~which behavior shall include the discipline of the elephant by any~~  
6 ~~of the following methods unlawful for any person or entity who~~  
7 *houses, possesses, is in contact with, or travels with, an elephant*  
8 *within the state to engage in any of the following with relation to*  
9 *the elephant:*

10 ~~(a)~~

11 (1) Deprivation of food, water, or rest.

12 ~~(b)~~

13 (2) Use of electricity.

14 ~~(c)~~

15 (3) Physical punishment resulting in damage, scarring, or  
16 breakage of skin.

17 ~~(d)~~

18 (4) Insertion of any instrument into any bodily orifice.

19 ~~(e)~~

20 (5) Use of martingales.

21 ~~(f)~~

22 (6) Use of block and tackle.

23 (7) *Use of any implement or device on an elephant that may*  
24 *reasonably result in harm to the elephant, including, but not limited*  
25 *to, damage, scarring, or breakage of an elephant's skin. Any*  
26 *implement or device that is used, purchased, contrived, or*  
27 *constructed for the purpose of shocking, poking, striking, hitting,*  
28 *stabbing, piercing, pinching, or other physical contact with an*  
29 *elephant shall be deemed to be an implement or device that may*  
30 *reasonably result in harm to an elephant. For purposes of this*  
31 *paragraph, an implement or device that may reasonably result in*  
32 *harm to an elephant includes, but is not limited to, a bullhook,*  
33 *ankus, or other similar device.*

34 (8) *Possession of any implement or device on an elephant that*  
35 *may reasonably result in harm to the elephant, including, but not*  
36 *limited to, the damage, scarring, or breakage of the elephant's*  
37 *skin. Any implement or device that is used, purchased, contrived,*  
38 *or constructed for the purpose of shocking, poking, striking, hitting,*

1 *stabbing, piercing, pinching, or other physical contact with an*  
2 *elephant shall be deemed to be an implement or device that may*  
3 *reasonably result in harm to an elephant. For purposes of this*  
4 *paragraph, an implement or device that may reasonably result in*  
5 *harm to an elephant includes, but is not limited to, a bullhook,*  
6 *ankus, or other similar device.*

7 *(9) Use of a chain or similar device to restrain an elephant,*  
8 *except if utilized for the shortest amount of time necessary to*  
9 *provide actual medical treatment.*

10 *(b) Any person or entity that possesses, keeps, or maintains an*  
11 *elephant at a stationary facility shall meet all of the following*  
12 *conditions:*

13 *(1) Allow elephants in the facility to walk an average of at least*  
14 *five miles per day, demonstrable through the use of a global*  
15 *positioning system or other comparable technology.*

16 *(2) Provision of a variety of enrichment activities designed to*  
17 *provide an elephant with exercise and mental stimulation. The*  
18 *enrichment activities may include, but are not limited to, hiding*  
19 *food in the enclosure to force the animal to seek out the food*  
20 *source, remote dispensers of food throughout the enclosure that*  
21 *dispense food at irregular times, devices, or stimuli that allow the*  
22 *animals to safely play.*

23 *(3) Provision of a bath, pool, or lake within the facility that is*  
24 *at least seven feet in depth and large enough to allow the largest*  
25 *elephant to submerge at least 75 percent of the elephant's body.*

26 *(4) The majority of the facility's exterior substrate walkable*  
27 *areas must be of an appropriate, soft, natural substrate which will*  
28 *not cause or aggravate problems with the elephant's feet and*  
29 *allows for the normal wear of feet. The planting of natural and*  
30 *nonharmful grasses and shrubs is encouraged, but where this is*  
31 *not possible, the substrate shall be rototilled to prevent the surface*  
32 *from becoming hard packed. The rototilling shall be done on a*  
33 *daily basis when possible, but no less than once a week.*

34 *(5) Except when necessary for immediate medical treatment of*  
35 *an elephant, no portion of the enclosure, including, but not limited*  
36 *to, any interior area designed to house an elephant overnight, may*  
37 *have a substrate consisting entirely of concrete, metal, or gravel.*  
38 *The majority of the interior area shall consist of an appropriate,*  
39 *soft substrate, such as rubber matting.*

AB 777

— 4 —

1 (c) (1) No person or entity that possesses, keeps, or maintains  
2 one or more elephants at a stationary facility shall be required to  
3 comply with subdivision (b) until the person or entity expends  
4 capital funds for the purpose of expanding or renovating the  
5 elephant enclosure. A person or entity that expends capital funds  
6 prior to the effective date of this chapter for the purpose of  
7 expanding or renovating the elephant enclosure is not required to  
8 comply with subdivision (b) unless additional capital funds are  
9 expended for that purpose after the effective date of this chapter.

10 (2) Capital funds shall not be deemed expended for the purpose  
11 of expanding or renovating the elephant enclosure if the funds are  
12 expended only for necessary repairs to the facility, so long as the  
13 basic size and nature of the enclosure is not changed.

14 (d) (1) Any person or entity who violates any provision of this  
15 section is guilty of a misdemeanor.

16 (2) Each day that a violation continues shall constitute a  
17 separate and distinct offense.

18 (e) Nothing in this section shall prevent any prosecution under  
19 Section 597.

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

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