

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 712 (Delegate Luedtke, *et al.*)
Environment and Transportation

Natural Resources - Wildlife Trafficking Prevention

This bill establishes provisions relating to wildlife trafficking. Specifically, the bill prohibits a person from purchasing, selling, offering for sale, or possessing with the intent to sell, any item that the person knows, or should know, is a “covered animal species” part or product, with specified exceptions. A violator is guilty of a misdemeanor, and in certain circumstances a felony, and subject to specified fines and restitution. Fines and restitution imposed under the bill are credited to the existing State Wildlife Management and Protection Fund within the Department of Natural Resources (DNR). The bill also establishes provisions for the disposition of any seized covered animal species part or product. DNR may adopt implementing regulations.

Fiscal Summary

State Effect: Special fund revenues may increase annually by an indeterminate amount. The bill can be implemented with existing resources if enforced on a complaint basis only. To the extent active investigation is undertaken, general fund expenditures increase annually, as discussed below.

Local Effect: The bill is not expected to materially affect local operations or finances.

Small Business Effect: Minimal or none.

Analysis

Bill Summary: “Covered animal species” means any of a number of listed species including bonobo, elephant (including mammoth), leopard, and sea turtle, among others.

The bill's provisions do not apply to federal or State law enforcement activity, duties mandated by federal or State law, activity authorized by federal law, or a covered animal species part that is a component of an antique or musical instrument if several specified conditions are met. In addition, unless prohibited by federal law, DNR may, with respect to any lawfully acquired covered animal species part or product, authorize the purchase of a part or product by a scientific or educational institution, or the sale of, offer for sale of, or possession of with the intent to sell a part or product to a scientific or educational institution.

The bill establishes a rebuttable presumption that a person possesses a covered animal species part or product with the intent to sell if the covered animal species part or product is possessed in a retail or wholesale establishment commonly used for the buying or selling of similar items.

A person who violates the bill's provisions is, for a first offense, guilty of a misdemeanor and subject to a fine of up to the greater of \$3,000 or two times the value of the covered animal species part or product. For a second or subsequent offense, (1) if the value of the covered animal species part or product in question does not exceed \$250, a person is guilty of a misdemeanor and subject to a fine of up to \$6,000, and (2) if the value of the part or product exceeds \$250, a person is guilty of a felony and subject to a fine of up to the greater of \$10,000 or three times the value of the part or product. The value of a covered animal species part or product is the greater of the fair market value of the part or product or the actual price paid.

In addition to any other penalty, the court may order a person convicted of violating the bill's provisions to pay restitution to the State in an amount up to two times the value of the covered animal species part or product.

Fines and restitution imposed under the bill's provisions are credited to the State Wildlife Management and Protection Fund to be used for the preservation of threatened or endangered species.

On a conviction under the bill, any seized covered animal species part or product must be forfeited and may be maintained by DNR for educational or training purposes, donated by DNR to a scientific or educational institution, or destroyed.

Current Law:

State Law

The State Wildlife Management and Protection Fund receives revenues from hunting license, stamp, and other fees, as well as certain fines and restitution, collected under

Title 10 (Wildlife) of the Natural Resources Article. The fund is used primarily for the scientific investigation, protection, propagation, and management of wildlife.

The State's Nongame and Endangered Species Conservation Act, and DNR regulations implementing the act, generally prohibit taking, possession, transportation, or trade of threatened and endangered species, subject to specified exceptions. "Endangered species" is defined as any species whose continued existence as a viable component of the State's wildlife or plants is determined to be in jeopardy, including any species of wildlife or plant determined to be an endangered species pursuant to the federal Endangered Species Act (ESA). "Threatened species" is any species of wildlife or plants which appears likely, within the foreseeable future, to become endangered, including any determined to be a threatened species pursuant to ESA.

The Nongame and Endangered Species Conservation Act includes a finding by the General Assembly that the State should assist in the protection of species of wildlife and plants which are determined to be "threatened" or "endangered" elsewhere pursuant to ESA by prohibiting the taking, possession, transportation, exportation, processing, sale, offer for sale, or shipment within the State of endangered species and by carefully regulating these activities with regard to threatened species.

Federal Law

ESA seeks to conserve threatened and endangered species in the United States and to take appropriate steps to achieve the purposes of international treaties and conventions focused on endangered species conservation, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international agreement aimed at ensuring that international trade in specimens of wild animals and plants does not threaten their survival. ESA generally prohibits taking, possession, transport, or trade in interstate or foreign commerce of species determined to be endangered pursuant to the act. It also prohibits a person subject to the jurisdiction of the United States from engaging in any trade in any specimens contrary to the provisions of CITES.

The Lacey Act, among other things, prohibits a person from importing, exporting, transporting, selling, receiving, acquiring, or purchasing any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or any Indian tribal law. The act also prohibits a person from importing, exporting, transporting, selling, receiving, acquiring, or purchasing in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State, or in violation of any foreign law.

Background: Illegal wildlife trafficking is described as an international crisis. A federal *National Strategy for Combating Wildlife Trafficking* released in 2015 by a presidential

task force led by the Departments of State, Justice, and the Interior referred to the wildlife trafficking crisis – threatening an array of species including elephants, rhinos, tigers, sea turtles, and great apes – as growing at an alarming rate and posing a serious and urgent threat to conservation and global security. More recently, a November 2017 U.S. Department of State report discusses progress made in the federal effort to combat wildlife trafficking, through coordination, increased efficiency, and outreach, but indicates there is much work remaining to be done.

State Revenues: Special fund revenues may increase annually by an indeterminate amount due to the bill’s penalty and restitution provisions. The extent of any special fund revenue increase may be affected by whether active investigation of violations (discussed below) is undertaken.

State Expenditures: The bill can be implemented with existing resources if enforced on a complaint basis only. However, if the bill is enforced through active investigation to identify and prosecute violations, general fund expenditures increase by at least \$243,500 in fiscal 2019 (and by \$174,400 in fiscal 2020 and similar amounts in future years) to hire two Natural Resources Police officers, who will be specially trained and who will actively investigate violations of the bill. This estimate accounts for salaries, fringe benefits, one-time start-up costs (vehicles, uniforms, firearms, ruggedized computers, radios), and ongoing operating expenses. Two officers is expected to be the minimum number of officers needed to undertake active investigation of violations of the bill.

Additional Information

Prior Introductions: HB 686 of 2017 received a hearing in the House Environment and Transportation Committee, but no further action was taken. Its cross file, SB 560, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. HB 542 of 2016, a similar bill, received an unfavorable report from the House Environment and Transportation Committee. Its cross file, SB 991, was withdrawn.

Cross File: None.

Information Source(s): Department of Natural Resources; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Legislative Services

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