

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 713
Judiciary

(Delegate Luedtke, *et al.*)

Natural Resources - Trade in Ivory and Rhinoceros Horn - Prohibition

This bill prohibits a person from purchasing, selling, offering for sale, possessing with the intent to sell, or importing with the intent to sell any ivory or rhinoceros horn, subject to specified exceptions. The bill establishes a presumption that a person possesses ivory or rhinoceros horn with the intent to sell under certain circumstances.

The bill specifies penalties for a violation of the prohibition and a method for calculating the value of ivory and rhinoceros horn. The bill further specifies that any restitution paid by a person as a result of a violation must be remitted to the Birdwatcher's Fund. Finally, the bill authorizes the Department of Natural Resources (DNR) to adopt regulations to implement the bill.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances. Any impact on State revenues from penalties and restitution and any impact on State incarceration expenditures is anticipated to be minimal. DNR can implement the bill with existing resources.

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

Small Business Effect: Minimal or none.

Analysis

Bill Summary: The bill prohibits a person from purchasing, selling, offering for sale, possessing with the intent to sell, or importing with the intent to sell any ivory or rhinoceros

horn. The prohibition does not apply to (1) federal or State law enforcement activity; (2) activity authorized by federal law; or (3) a scientific or education institution authorized by DNR to purchase or possess ivory or rhinoceros horn for scientific or educational purposes. A scientific or educational institution may purchase or possess ivory or rhinoceros horn that was legally acquired before October 1, 1990, and is not transferred for profit after October 1, 2015.

The bill establishes a presumption that a person possesses ivory or rhinoceros horn with the intent to sell if the ivory or rhinoceros horn is possessed in a retail or wholesale outlet commonly used for the buying or selling of similar items. A person who violates the prohibitions established under the bill:

- for a first offense, is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000;
- for a second or subsequent offense for which the value of the ivory or rhinoceros horn in question does not exceed \$250, is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$5,000; or
- for a second or subsequent offense for which the value of the ivory or rhinoceros horn in question exceeds \$250, is guilty of a felony and subject to imprisonment for up to three years and/or a fine of up to \$5,000.

The calculation of the value of ivory or rhinoceros horn is the greater of the fair market value of the actual price paid for the ivory or rhinoceros horn.

In addition to any penalties assessed, the court is authorized to order a person convicted of violating the bill to pay restitution to the State in an amount not exceeding two times the value of the ivory or rhinoceros horn in question. Restitution paid by a person under the bill must be credited to DNR for the benefit of the Birdwatcher's Fund to be used only for the preservation of threatened or endangered species. Seized ivory or rhinoceros horn is forfeited by the person and may be maintained by DNR for educational or training purposes, donated by DNR to a scientific or an educational institution, or destroyed.

DNR is authorized to adopt regulations to implement the bill.

Current Law: Established under the Endangered Species Nongame and Endangered Species Conservation Act, the Birdwatcher's Fund is for, among other things, the dissemination of information pertaining to nongame wildlife species and threatened and endangered species conservation, management, and value. In addition, the fund is for the propagation, distributions, protection, and restoration of nongame wildlife species and threatened and endangered species. Money in the Birdwatcher's Fund may only be expended for the preservation of nongame wildlife species and threatened and endangered

species. Currently, the only source of revenue for the Birdwatcher's Fund is derived from fees for birdwatcher's stamps and decals.

If any fine is imposed by the District Court for a violation of any provision of Title 10 (Wildlife) of the Natural Resources Article, the fine is collected pursuant to the provisions of law of the District Court system (and paid into the general fund). If any fine is imposed by the circuit court of any county, the fine, less the costs of collection, is paid into the State Wildlife Management and Protection Fund and used to finance the scientific investigation, protection, propagation, and management of wildlife.

If a person is convicted of violating any provision of Title 10 (Wildlife) of the Natural Resources Article and the violation causes or results in the injury, death, or destruction of any wildlife, in addition to any other penalty provided, the court may order the person to pay restitution to the State for the resource value of the wildlife, as determined by the court, taking into account DNR regulations. Restitution paid under this provision must be credited to DNR to be used only for the replacement, habitat management, or enforcement programs for injured, killed, or destroyed wildlife or protected species of animals.

Background: The United States has voluntarily agreed to abide by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The stated purpose of CITES is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Approximately 180 nations are a party to CITES. In addition, the federal Endangered Species Act, African Elephant Conservation Act, and specified regulations and executive orders impose certain restrictions and prohibitions on the import, export, and domestic sale of specified endangered animal parts, such as ivory and rhinoceros horns.

Under such restrictions, for instance, the commercial importation of ivory is banned; however, noncommercial importation of ivory is allowed for (1) sport-hunted trophies; (2) law enforcement and scientific specimens; and (3) specified ivory legally acquired and removed from the wild prior to February 26, 1976 (considered "CITES permitted" or "preconvention ivory"). The commercial exportation of ivory is allowed for specified types of CITES permitted ivory, including antiques. Federal law also prohibits ivory sales within and across state lines, except for CITES permitted ivory.

Additional Information: Similar legislation was enacted in New Jersey in 2014 and introduced in Illinois, Iowa, Virginia, and Washington in 2015.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Convention on International Trade in Endangered Species of Wild Fauna and Flora, Department of Natural Resources, University System of Maryland, U.S. Fish and Wildlife Service, Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2015
md/lgc

Analysis by: Matthew B. Jackson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510