



House of Representatives

General Assembly

File No. 418

February Session, 2016

Substitute House Bill No. 5578

House of Representatives, April 4, 2016

The Committee on Environment reported through REP. ALBIS of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROHIBITING THE SALE AND TRADE OF IVORY AND RHINOCEROS HORN.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2017*) (a) For the purposes of this
2 section:

3 (1) "Bona fide educational or scientific institution" means an
4 institution that establishes through documentation either of the
5 following: (A) An educational or scientific tax exemption, from the
6 federal Internal Revenue Service or such institution's national or state
7 tax authority; or (B) accreditation as an educational or scientific
8 institution, from a qualified national or state authority for the
9 institution's location;

10 (2) "Ivory" means a tooth or tusk from a species of elephant,
11 hippopotamus, mammoth, walrus, whale, or narwhal, or a piece
12 thereof, including any product that contains or that is advertised as
13 containing ivory;

14 (3) "Rhinoceros horn" means the horn or a piece or derivative
15 thereof, such as powder, of a species of rhinoceros, including any
16 product containing or advertised as containing rhinoceros horn;

17 (4) "Sale" or "sell" means selling, trading, bartering for monetary or
18 nonmonetary consideration, or giving away in conjunction with a
19 commercial transaction; and

20 (5) "Total value" means either the fair market value or the actual
21 price paid for ivory or rhinoceros horn, whichever is greater.

22 (b) Except as provided in subsections (c) and (d) of this section, no
23 person shall purchase, sell, offer for sale or possess with the intent to
24 sell any ivory or rhinoceros horn.

25 (c) The prohibitions in subsection (b) of this section shall not apply
26 to any of the following:

27 (1) Any employee or agent of the federal or state government
28 undertaking a law enforcement activity pursuant to federal or state
29 law or a mandatory duty required by federal law;

30 (2) Any activity expressly authorized by federal law;

31 (3) Ivory that is part of an antique provided:

32 (A) Such ivory was removed from the wild prior to February 26,
33 1976, if such ivory is elephant ivory;

34 (B) Such ivory is a fixed component of a larger manufactured item
35 and is not, in its current form, the primary source of the total value for
36 such item;

37 (C) The total volume of the ivory component is less than twenty per
38 cent;

39 (D) The manufactured item is not made wholly or primarily of
40 ivory;

41 (E) The ivory is not raw, unaltered or minimally changed by
42 carving; and

43 (F) The owner or seller provides historical documentation or a
44 sworn affidavit executed by an expert demonstrating provenance that
45 verifies that the antique is not less than one hundred years old;

46 (4) The noncommercial transfer of ownership of ivory or rhinoceros
47 horn to a legal beneficiary of an estate, trust or other inheritance; or

48 (5) The purchase, sale, offer for sale, or possession with intent to sell
49 of an ivory or rhinoceros horn article by a bona fide educational or
50 scientific institution or a museum.

51 (d) The prohibitions in subsection (b) of this section shall not apply
52 to ivory that is part of a musical instrument that was made prior to
53 February 26, 1976.

54 (e) It shall be presumptive evidence of possession with intent to sell
55 ivory or rhinoceros horn if the ivory or rhinoceros horn is possessed in
56 a retail or wholesale outlet commonly used for the buying or selling of
57 similar items. Such presumption shall not preclude a finding of intent
58 to sell based on any other evidence that may serve to independently
59 establish such intent.

60 (f) Any person who violates any provision of this section or any
61 rule, regulation, or order adopted pursuant to this section shall be
62 guilty of a class B misdemeanor provided: (1) For the first offense,
63 such person shall be fined not less than three thousand dollars or an
64 amount equal to two times the total value of the article involved,
65 whichever is greater, or imprisoned for not more than six months, or
66 both; and (2) for a second or any subsequent violation, such person
67 shall be fined not less than six thousand dollars or an amount equal to
68 three times the total value of the article involved, whichever is greater,
69 or imprisoned not more than one year, or both.

70 (g) Upon conviction or other entry of judgment for a violation of
71 this section, any seized ivory or rhinoceros horn shall be forfeited and,

72 upon forfeiture, either be maintained by the Department of Energy and
 73 Environmental Protection for educational or training purposes,
 74 donated by the department to a bona fide educational or scientific
 75 institution or destroyed.

76 (h) The Commissioner of Energy and Environmental Protection, in
 77 consultation with the Attorney General, may adopt regulations, in
 78 accordance with chapter 54 of the general statutes, to implement the
 79 provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2017	New section

ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Resources of the General Fund	GF - Potential Revenue Gain	None	See Below
Correction, Dept.; Judicial Dept. (Probation)	GF - Potential Cost	None	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill bans purchasing, selling, or possessing ivory, ivory products, and/or rhinoceros horn.¹

The bill creates new class B misdemeanors for violations of provisions of the bill. To the extent that offenders are prosecuted for new offenses under this bill, potential costs for incarceration or probation supervision in the community, or judicial revenue would result. On average, it costs the state \$7,260 (including benefits) to supervise an inmate in the community as opposed to \$61,320 (including benefits) to incarcerate an offender.

The bill also requires the Department of Energy and Environmental Protection (DEEP) to retain any seized ivory or rhinoceros horn for educational or training purposes, or requires DEEP to donate those pieces to certain institutions. This is not anticipated to result in a fiscal

¹ Exemptions to the ban include certain antiques or musical instruments, transfers to beneficiaries, and activities by educational or scientific institutions or museums.

impact.²

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations.

² It is estimated four to eight cases may be prosecuted annually.

OLR Bill Analysis

sHB 5578

AN ACT PROHIBITING THE SALE AND TRADE OF IVORY AND RHINOCEROS HORN.

SUMMARY:

This bill generally bans purchasing, selling, offering for sale, or possessing with the intent to sell ivory, rhinoceros horn, or products made from them. It includes trading, bartering, or giving away as part of a commercial transaction.

The bill exempts from the ban (1) law enforcement activity or activity allowed under federal law, (2) certain antiques or musical instruments containing ivory, (3) noncommercial transfers to legal beneficiaries, and (4) activity by a bona fide educational or scientific institution or museum.

The bill makes a violation a class B misdemeanor. It requires forfeiture of seized ivory or horn upon a conviction or other entry of judgment. Forfeited ivory or horn may be destroyed, used by the Department of Energy and Environmental Protection (DEEP) for educational or training purposes, or donated by DEEP to an educational or scientific institution.

The bill specifies that possessing ivory, horn, or an associated product in a retail or wholesale location commonly used to buy or sell similar items is presumptive evidence of possession with intent to sell. But the presumption does not preclude a finding of intent to sell based on other evidence that may independently establish it.

The bill allows the DEEP commissioner, in consultation with the attorney general, to adopt regulations implementing the ban. Existing law allows the commissioner to adopt regulations on the trade of raw

elephant ivory or products made from ivory if he finds that it contributes to elephant endangerment or extinction (CGS § 26-315).

EFFECTIVE DATE: July 1, 2017

SCOPE OF BAN

The bill's ban applies to:

1. tooth or tusk, or any part of it, from an elephant, hippopotamus, mammoth, narwhal, walrus, or whale;
2. horn, or any part or derivative (e.g., powder) of it, from any rhinoceros species; and
3. any product that has, or is advertised to have, ivory or rhinoceros horn.

The bill exempts the following activities involving ivory, rhinoceros horn, or associated products:

1. activity expressly allowed by federal law;
2. state or federal law enforcement activity or a mandatory duty under federal law;
3. noncommercial ownership transfers to a legal beneficiary of an estate, trust, or other inheritance; and
4. actions by bona fide education or scientific institutions or museums.

The ban also does not apply to ivory that is part of (1) a musical instrument made before February 26, 1976 or (2) certain antiques. For ivory that is part of an antique, the exemption only applies if it:

1. was removed from the wild before February 26, 1976, if it is elephant ivory;
2. is a fixed component of a larger manufactured item and is not,

in its current form, the main source of the item's value;

3. makes up less than 20% of the item;
4. is not raw, unaltered, or minimally changed by carving; and
5. is at least 100 years old, as shown by historical documentation from the owner or seller or a sworn affidavit executed by an expert to verify the age.

PENALTIES FOR VIOLATIONS

Criminal Penalties

The bill makes violating the ban, or any rule, regulation, or order adopted under the bill's provisions, a class B misdemeanor, punishable by prison time, a fine, or both.

A first-time violator is subject to up to six months in prison and a fine of at least \$3,000 or twice the total value of the ivory, horn, or product, whichever is greater.

Second or subsequent violations are punishable by up to one year in prison and a fine of at least \$6,000 or three times the total value of the ivory, horn, or product, whichever is greater.

Under the bill, the total value is the greater of the (1) fair market value or (2) actual price paid.

Confiscation

Under the bill, any ivory or rhinoceros horn seized as a result of a ban violation must be forfeited on conviction or other entry of judgment. After forfeiture, the ivory or horn must be (1) maintained by DEEP for educational or training purposes, (2) donated by DEEP to a bona fide educational or scientific institution, or (3) destroyed.

The bill defines a "bona fide educational or scientific institution" as an institution with documentation to show that it (1) has a national or state educational or scientific tax exemption or (2) is accredited as an educational or scientific institution by a qualified national or state

authority from the institution's location.

BACKGROUND

Related International and Federal Law

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international treaty under which governments agree to restrict international trade in certain plants and animals, including elephants and rhinoceri, and products derived from them.

CITES provides a framework for countries to follow when adopting legislation to implement the treaty. Trade in protected species must be licensed, with different levels of protection based on a species' endangered status. Currently, 181 countries, including the United States, are parties to the treaty.

The United States regulates trade in elephant ivory and rhinoceros horn through CITES and laws such as the Endangered Species Act (15 U.S.C. § 1531 et seq.). Specifically, trade of these species requires permits, at minimum. The U.S. Fish and Wildlife Service is engaged in efforts to amend its regulations to increase commercial trade restrictions on elephant ivory.

Related Bill

sSB 227, reported favorably by the Environment Committee, generally bans importing, possessing, selling or offering for sale, or transporting five animal species, including African elephants and certain rhinoceri. It exempts ivory.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 19 Nay 10 (03/16/2016)