SPONSOR: Sen. Peterson & Rep. Lynn
Sens. Bushweller, Townsend; Reps. Baumbach, Bennett, Keeley, Kowalko, Osienski, K. Williams

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 156

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE IMPORT, SALE, PURCHASE, TRADE, BARTER OR POSSESSION OF IVORY AND RHINOCEROS HORN.

WHEREAS, there is worldwide concern regarding the plight of elephants and rhinoceroses, who are being poached at alarming rates — an average of 96 elephants per day are killed in Africa; and

WHEREAS, illegal poaching and wildlife trafficking is the fourth largest transnational crime, and ivory helps fund the military operations of notorious terrorist groups. Smuggling gangs move tons of tusks to markets thousands of miles away; and

WHEREAS, international, federal, and state laws are all being strengthened to protect these iconic species from cruelty and extinction. The states of California, New York, and New Jersey recently enacted strong prohibitions on intra-state ivory and rhinoceros horn commerce, and the federal government has proposed strengthened ivory trade and import regulations.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 6, Title 7 of the Delaware Code by designating §§ 601 through 605 of Title 7 as part of a new Subchapter I by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter I. Prohibitions on the Importation, Possession, and Sale of Certain Species.

Section 2. Further amend Chapter 6, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. Ivory and Rhinoceros Horn Trafficking.

§ 611. Definitions.

As used in this subchapter:

(1) "Bona fide educational or scientific institution" means an institution that establishes through documentation either of the following:

a. Educational or scientific tax exemption, from the federal Internal Revenue Service or the institution's national, state, or local tax authority.

b. Accreditation as an educational or scientific institution, from a qualified national, regional, state, or local authority for the institution's location.

(2) "Department" means the Department of Natural Resources and Environmental Control.

(3) "Ivory" means a tooth or tusk from a species of elephant, hippopotamus, mammoth, walrus, whale, or narwhal, or a piece thereof, whether raw ivory or worked ivory, and includes a product containing, or advertised as containing, ivory.

(4) "Rhinoceros horn" means the horn, a piece thereof, or a derivative such as powder of a species of rhinoceros, and includes a product containing, or advertised as containing, rhinoceros horn.

(5) "Sale" or "sell" means selling, trading, bartering for monetary or nonmonetary consideration, giving away in conjunction with a commercial transaction, or giving away at a location where a commercial transaction occurred at least once during the same or the previous calendar year.

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

§ 612. Prohibited acts.

Except as otherwise provided in this subchapter, it shall be unlawful for any person to purchase, sell, offer for sale, possess with intent to sell, or import with intent to sell ivory or rhinoceros horn.

§ 613. Exceptions.

The prohibitions set forth in § 612 of this title do not apply to any of the following:

(1) An employee or agent of the federal or state government undertaking a law-enforcement activity under federal or state law, or a mandatory duty required by federal law.

(2) An activity that is authorized by an exemption or permit under federal law or that is otherwise expressly authorized under federal law.

(3) Ivory or rhinoceros horn that is part of a musical instrument, including a string or wind instrument or piano, and that is less than 20% by volume of the instrument, if the owner or seller provides either of the following:

a. Historical documentation demonstrating provenance and showing the item was manufactured no later than 1975.

b. An appraisal performed by a member of the National Antique and Art Dealers Association of America or the Antique Dealers' Association of America, Inc., demonstrating provenance and showing the item was manufactured no later than 1975.

(4) Ivory or rhinoceros horn that is part of a bona fide antique and that is less than 20% by volume of the antique, if the antique status is established by the owner or seller of the antique by either of the following methods:

a. Historical documentation demonstrating provenance and showing the antique to be not less than 100 years old.

b. An appraisal performed by a member of the National Antique and Art Dealers Association of America or the Antique Dealers' Association of America, Inc., demonstrating provenance and showing the antique to be not less than 100 years old.

(5) Ivory or rhinoceros horn that is conveyed to a legal beneficiary upon the death of the owner of the ivory or rhinoceros horn or in anticipation of that death.

§ 614. Permit for bona fide educational or scientific institution.

The Department may issue a permit for the purchase of, sale of, offer for sale of, possession with intent to sell, or importation with intent to sell ivory or rhinoceros horn for educational or scientific purposes by a bona fide educational or scientific institution if the purchase of, sale of, offer for sale of, possession with intent to sell, or importation with intent to sell the ivory or rhinoceros horn is not prohibited by federal law.

§ 615. Regulatory authority.

The Department may promulgate regulations consistent with this subchapter.

§ 616. Enforcement.

Any law-enforcement officer, as defined in § 222 of Title 11, may enforce a violation of any provision of this subchapter or any rule, regulation, or order adopted under this subchapter.

§ 617. Jurisdiction.

The Superior Court has exclusive original jurisdiction over all criminal violations of this subchapter.

§ 618. Presumption of evidence.

(a) The possession of ivory or rhinoceros horn in a retail or wholesale outlet commonly used for the buying or selling of similar items is presumptive evidence of possession with intent to sell ivory or rhinoceros horn.

(b) Subsection (a) of this section does not preclude a finding of possession intent to sell based on any other evidence that may serve to independently establish that intent.

§ 619. Criminal penalties.

For a violation of any provision of this subchapter or any rule, regulation, or order adopted under this subchapter, the following criminal penalties shall be imposed:

(1) For a first conviction, where the total value of the ivory or rhinoceros horn is $250 or less, the offense shall be a misdemeanor punishable by a fine of not less than $1,000, nor more than $10,000, imprisonment for not more than 30 days, or both the fine and imprisonment.

(2) For a first conviction, where the total value of the ivory or rhinoceros horn is more than $250, the offense shall be a misdemeanor punishable by a fine of not less than $5,000, nor more than $40,000, imprisonment for not more than one year, or both the fine and imprisonment.

(3) For a second or subsequent conviction, where the total value of the ivory or rhinoceros horn is $250 or less, the offense shall be a misdemeanor punishable by a fine of not less than $5,000, nor more than $40,000, imprisonment for not more than one year, or both the fine and imprisonment.

(4) For a second or subsequent conviction, where the total value of the ivory or rhinoceros horn is more than $250, the offense shall be a misdemeanor punishable by a fine of not less than $10,000, nor more than $50,000 or the amount equal to two times the total value of the ivory or rhinoceros horn involved in the violation, whichever is greater, imprisonment for not more than one year, or both the fine and imprisonment.

§ 620. Civil or administrative penalties.

(a) In addition to, and separate from, any criminal penalty provided for under § 619 of this title, a civil or administrative fine of up to $10,000 may be imposed by the Department for a violation of any provision of this subchapter or any rule, regulation, or order adopted under this subchapter.

(b) Civil penalties authorized by this section may be imposed administratively by the Department.

§ 621. Rewards.

(a) For any conviction or other entry of judgment for a violation of this subchapter resulting in a fine, the Department may, upon appropriation by the General Assembly, pay one-half of the fine, not to exceed $500, to any person giving information that led to the conviction or other entry of judgment.

(b) Subsection (a) of this section does not apply if the informant is a regular salaried law-enforcement officer, as defined in § 222 of Title 11, or an officer or agent of the Department.

§ 622. Forfeiture.

(a) Upon conviction or other entry of judgment for a violation of this subchapter, the Superior Court shall order any seized ivory or rhinoceros horn forfeited to the Department.

(b) Upon forfeiture under subsection (a) of this section, the seized ivory or rhinoceros horn shall be maintained by the Department for educational or training purposes, donated by the Department to a bona fide educational or scientific institution, or destroyed by the Department.

Section 3. Amend § 1304, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1304. Environmental misdemeanors, environmental violations, sentences and fines.

(a) Violations of Chapters 1, 5, ~~6,~~ 7, 9, 18, 19, 21, 23, 24, 25, 26, 27, and 28 of this title and of subchapter I of Chapter 6 and subchapter I of Chapter 11 of this title or Department orders, rules or regulations promulgated to implement provisions of these chapters or subchapters are designated as environmental misdemeanors and violations.

(c) Any violation of Chapters 1, 5, ~~6~~ or 7 of this title or of subchapter I of Chapter 6 or subchapter I of Chapter 11 of this title for which there is no prescribed penalty shall be a class C environmental violation.

SYNOPSIS

This Act prohibits a person from purchasing, selling, offering for sale, possessing with intent to sell, or importing with intent to sell ivory or rhinoceros horn, except as specified. A violation of this Act or any rule, regulation, or order adopted under this Act is a misdemeanor subject to fines, imprisonment, or both, as specified in this Act. In addition to the specified criminal penalties, this Act authorizes the Department of Natural Resources and Environmental Control to impose a civil penalty of up to $10,000 for a violation of this Act or any rule, regulation, or order adopted under this Act. This Act authorizes the Department to permit the purchase, sale, offer for sale, possession with intent to sell, or importation with intent to sell ivory or rhinoceros horn for educational or scientific purposes by a bona fide educational or scientific institution if not prohibited by federal law.

Author: Senator Peterson