

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 381

(Senator Smith, *et al.*)

Education, Health, and Environmental Affairs

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 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: General fund expenditures increase by \$37,400 in FY 2023 only. Potential minimal increase in special fund revenues beginning in FY 2023 due to the bill’s penalty and restitution provisions.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	37,400	0	0	0	0
Net Effect	(\$37,400)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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, leopard, sea turtle, and pangolin, among others. A “covered animal species part or product” means any item that contains or is wholly or partly made from a covered animal species.

The bill’s provisions apply to any sale or transfer of ownership that occurs in the course of a commercial transaction for which (1) the buyer takes physical possession of the covered animal species part or product in the State or (2) the seller is located in the State. The bill’s provisions do not apply to federal or State law enforcement activity, duties mandated by federal or State law, activity expressly authorized by federal law, or a covered animal species part or product that is a fixed component of an antique, a musical instrument, a knife, or a firearm if specified conditions are met. In addition, unless prohibited by federal law, DNR may allow the following institutions to sell, barter, or trade any lawfully acquired covered animal species part or product: (1) a *bona fide* scientific or educational institution or (2) a scientific or educational institution authorized by DNR to sell, barter, or trade for scientific or educational purposes. On request, a list of institutions authorized by DNR to sell, barter, or trade any lawfully acquired covered animal species part or product for scientific or educational purposes must be made available.

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 or (2) if the value of the part or product exceeds \$250, a person is guilty of a misdemeanor and subject to a fine of up to the greater of \$10,000 or three times the value of the part or product. The calculation of 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 for the part or product.

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, 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.

State Expenditures: General fund expenditures for the Judiciary increase by \$37,358 in fiscal 2023 only for one-time programming costs to set up functionality within its computer system to collect and distribute fines to the State Wildlife Management and Protection Fund for any cases that are contested through the court.

DNR can implement the bill with existing budgeted resources assuming enforcement is complaint-based. DNR notes that most of the species listed under the bill are already explicitly protected under federal law. In addition, DNR advises that, historically, the number of related cases is low.

Additional Information

Prior Introductions: HB 712 of 2018, a similar bill, received a hearing in the House Environment and Transportation Committee, but no further action was taken. HB 686 of 2017, a similar bill, 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. Similar legislation was also introduced in the 2016 session.

Designated Cross File: HB 52 (Delegate Love, *et al.*) - Environment and Transportation.

Information Source(s): Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Natural Resources; U.S. Fish and Wildlife Service; Department of Legislative Services

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