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

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

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;

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 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 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:

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

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

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

(b) “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.

(c) “Rhinoceros horn” means the horn, or 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.

(d) “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.

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

§612 Prohibited Acts.

(a) 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.

(b) The prohibitions set forth in subdivision (a) shall not apply to any of the following:

(1) An employee or agent of the federal or state government undertaking a law enforcement activity pursuant to 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, but not limited to, a string or wind instrument or piano, and that is less than 15 percent by volume of the instrument, if the owner or seller provides historical documentation 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 five percent by volume of the antique, if the antique status is established by the owner or seller of the antique with historical documentation demonstrating provenance and showing the antique to be not less than 100 years old.

(c) The Department of Natural Resources and Environmental Control may 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 both of the following criteria are satisfied:

(1) The purchase, sale, offer for sale, possession with intent to sell, or import with intent to sell the ivory or rhinoceros horn is not prohibited by federal law.

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

(e) The Department may promulgate regulations consistent with this subchapter.

(f) For a violation of any provision of this section, or any rule, regulation, or order adopted pursuant to this section, the following criminal penalties shall be imposed:

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

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

(3) For a second or subsequent conviction, where the total value of the ivory or rhinoceros horn is two hundred fifty dollars ($250) or less, the offense shall be a misdemeanor punishable by a fine of not less than five thousand dollars ($5,000), nor more than forty thousand dollars ($40,000), imprisonment for not more than one year, or by 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 two hundred fifty dollars ($250), the offense shall be a misdemeanor punishable by a fine of not less than ten thousand dollars ($10,000), nor more than fifty thousand dollars ($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 by both the fine and imprisonment.

(g) In addition to, and separate from, any criminal penalty provided for under subparagraph (f), a civil or administrative fine of up to ten thousand dollars ($10,000) may be imposed for a violation of any provision of this section, or any rule, regulation, or order adopted pursuant to this section. Civil penalties authorized pursuant to this subdivision may be imposed administratively by the Department.

(h) For any conviction or other entry of judgment for a violation of this section resulting in a fine, the Department may, upon appropriation by the Legislature, pay one-half of the fine, but not to exceed five hundred dollars ($500), to any

person giving information that led to the conviction or other entry of judgment. This reward shall not apply if the informant is a regular salaried law enforcement officer, or officer or agent of the Department.

(i) Upon conviction or other entry of judgment for a violation of this section, any seized ivory or rhinoceros horn shall be forfeited and, upon forfeiture, either maintained by the Department for educational or training purposes, donated by the Department to a bona fide educational or scientific institution, or destroyed.

(j) The Superior Court shall have exclusive original jurisdiction over all criminal violations of this subchapter.

SYNOPSIS

This bill would prohibit 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, and would make this prohibition enforceable by the Department of Natural Resources and Environmental Control. The bill would make a violation of this act, or any rule, regulation, or order adopted pursuant to this provision a misdemeanor subject to specified criminal penalties. By creating a new crime, the bill would impose a state-mandated local program. In addition to the specified criminal penalties, the bill would authorize the Department to impose a civil penalty of up to $10,000 for a violation of this act or any rule, regulation, or order adopted pursuant to this act. The bill would authorize 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 certain criteria are satisfied.

Author: Senator Peterson