

HOUSE BILL 713

M2

5r1812
CF 5r2722

By: **Delegates Luedtke, Atterbeary, Carr, Cassilly, Fraser-Hidalgo, Frush, Gilchrist, Kelly, Korman, Lafferty, Lam, Moon, Pendergrass, Reznik, S. Robinson, Stein, and Zucker**

Introduced and read first time: February 12, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources – Trade in Ivory and Rhinoceros Horn – Prohibition**

3 FOR the purpose of prohibiting a person from purchasing, selling, offering for sale,
4 possessing with the intent to sell, or importing with the intent to sell any ivory or
5 rhinoceros horn, subject to certain exceptions; establishing under certain
6 circumstances a presumption that a person possesses ivory or rhinoceros horn with
7 the intent to sell; establishing certain penalties for a violation of this Act; authorizing
8 a court to order that a person who violates this Act pay certain restitution to be used
9 for certain purposes; establishing a certain additional source of revenue for the
10 Birdwatcher's Fund; providing for the disposal of any seized ivory or rhinoceros
11 horns; authorizing the Department of Natural Resources to adopt certain
12 regulations; providing for the calculation of the value of ivory or rhinoceros horn for
13 certain purposes; defining certain terms; and generally relating to the prohibition
14 against the trade in ivory and rhinoceros horns in the State.

15 BY repealing and reenacting, with amendments,
16 Article – Natural Resources
17 Section 10–2A–06.1
18 Annotated Code of Maryland
19 (2012 Replacement Volume and 2014 Supplement)

20 BY adding to
21 Article – Natural Resources
22 Section 10–2A–08.1
23 Annotated Code of Maryland
24 (2012 Replacement Volume and 2014 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Natural Resources

10–2A–06.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Birdwatcher” means a person who engages in birdwatching.

(3) (i) “Birdwatching” means identifying, studying, and recording the presence of wild birds in their natural surroundings.

(ii) “Birdwatching” does not include incidental sightings of wild birds in their natural surroundings.

(b) The purpose of this section is to provide a special fund that shall be expended for the preservation of nongame wildlife species and threatened and endangered species.

(c) There is a Birdwatcher’s Fund.

(d) (1) **[All] THE BIRDWATCHER’S FUND CONSISTS OF:**

(I) ALL revenue that the Department derives from the issuance of birdwatcher’s stamps and decals [shall be credited to the Birdwatcher’s Fund]; AND

(II) RESTITUTION PAID FOR VIOLATIONS RELATING TO THE TRADE IN IVORY AND RHINOCEROS HORN UNDER § 10–2A–08.1 OF THIS SUBTITLE.

(2) The Secretary shall administer the Birdwatcher’s Fund.

(3) Money in the Birdwatcher’s Fund shall be expended only for the preservation of nongame wildlife species and threatened and endangered species.

(e) (1) The fee for a birdwatcher’s stamp or decal is \$5.

(2) Private contributions, grants and donations may be made to the Birdwatcher’s Fund.

(3) Any person engaged in a retail business who desires to sell birdwatcher’s stamps and decals as an agent under the Department’s control and supervision shall apply on forms prepared and prescribed by the Department.

(4) An agent may retain 25 cents out of the birdwatcher’s stamp or decal fee for each birdwatcher’s stamp or decal the agent sells.

1 (5) The Department, by regulation, shall provide procedures and forms for
2 the sale of birdwatcher's stamps and decals.

3 (f) The purpose of this Fund is:

4 (1) Dissemination of information pertaining to nongame wildlife species
5 and threatened and endangered species conservation, management, and values;

6 (2) Scientific investigation and survey of nongame wildlife species and
7 threatened and endangered species for better protection and conservation;

8 (3) Propagation, distribution, protection, and restoration of nongame
9 wildlife species and threatened and endangered species;

10 (4) Research and management of nongame wildlife species and threatened
11 and endangered species;

12 (5) Development of habitats for nongame wildlife species and threatened
13 and endangered species;

14 (6) Acquisition of habitats for nongame wildlife species and threatened and
15 endangered species; and

16 (7) Matching of funds available to the Department under federal programs
17 for projects and activities authorized under this section.

18 **10-2A-08.1.**

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

21 (2) (I) "IVORY" MEANS ANY TOOTH OR TUSK, OR ANY PIECE OF A
22 TOOTH OR TUSK, FROM ANY SPECIES OF WILDLIFE, INCLUDING ALL SPECIES OF
23 ELEPHANT, HIPPOPOTAMUS, WALRUS, WHALE, OR NARWHAL.

24 (II) "IVORY" INCLUDES:

25 1. RAW OR WORKED IVORY; AND

26 2. ANY PRODUCT CONTAINING, OR ADVERTISED AS
27 CONTAINING, IVORY.

28 (3) (I) "RHINOCEROS HORN" MEANS A HORN, OR ANY PIECE OF A
29 HORN, OF ANY SPECIES OF RHINOCEROS.

(II) "RHINOCEROS HORN" INCLUDES:

1. ANY DERIVATIVE OF A RHINOCEROS HORN, SUCH AS RHINOCEROS HORN POWDER; AND

2. ANY PRODUCT CONTAINING, OR ADVERTISED AS CONTAINING, RHINOCEROS HORN.

(B) IN THIS SECTION, THE CALCULATION OF THE VALUE OF IVORY OR RHINOCEROS HORN SHALL BE THE GREATER OF THE FAIR MARKET VALUE OF OR THE ACTUAL PRICE PAID FOR THE IVORY OR RHINOCEROS HORN.

(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A PERSON MAY NOT PURCHASE, SELL, OFFER FOR SALE, POSSESS WITH THE INTENT TO SELL, OR IMPORT WITH THE INTENT TO SELL ANY IVORY OR RHINOCEROS HORN.

(D) (1) THIS SECTION DOES NOT APPLY TO:

(I) FEDERAL OR STATE LAW ENFORCEMENT ACTIVITY;

(II) ACTIVITY AUTHORIZED BY FEDERAL LAW; OR

(III) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A SCIENTIFIC OR EDUCATIONAL INSTITUTION AUTHORIZED BY THE DEPARTMENT TO PURCHASE OR POSSESS IVORY OR RHINOCEROS HORN FOR SCIENTIFIC OR EDUCATIONAL PURPOSES.

(2) A SCIENTIFIC OR EDUCATIONAL INSTITUTION MAY PURCHASE OR POSSESS UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION ONLY IVORY OR RHINOCEROS HORN THAT:

(I) WAS LEGALLY ACQUIRED BEFORE OCTOBER 1, 1990; AND

(II) IS NOT TRANSFERRED FOR PROFIT AFTER OCTOBER 1, 2015.

(E) THERE IS 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.

(F) (1) A PERSON WHO VIOLATES THIS SECTION:

1 **(I) FOR A FIRST OFFENSE, IS GUILTY OF A MISDEMEANOR AND**
2 **ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE**
3 **NOT EXCEEDING \$1,000 OR BOTH;**

4 **(II) FOR A SECOND OR SUBSEQUENT OFFENSE FOR WHICH THE**
5 **VALUE OF THE IVORY OR RHINOCEROS HORN IN QUESTION DOES NOT EXCEED \$250,**
6 **IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT**
7 **NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$5,000 OR BOTH; OR**

8 **(III) FOR A SECOND OR SUBSEQUENT OFFENSE FOR WHICH THE**
9 **VALUE OF THE IVORY OR RHINOCEROS HORN IN QUESTION EXCEEDS \$250, IS GUILTY**
10 **OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING**
11 **3 YEARS OR A FINE NOT EXCEEDING \$5,000 OR BOTH.**

12 **(2) (I) IF A PERSON IS CONVICTED OF VIOLATING THIS SECTION, IN**
13 **ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS TITLE, THE COURT MAY**
14 **ORDER THE PERSON TO PAY RESTITUTION TO THE STATE IN AN AMOUNT NOT**
15 **EXCEEDING TWO TIMES THE VALUE OF THE IVORY OR RHINOCEROS HORN IN**
16 **QUESTION.**

17 **(II) MONEY PAID UNDER THIS PARAGRAPH SHALL BE CREDITED**
18 **TO THE DEPARTMENT FOR THE BENEFIT OF THE BIRDWATCHER'S FUND**
19 **ESTABLISHED UNDER § 10-2A-06.1 OF THIS TITLE, TO BE USED ONLY FOR THE**
20 **PRESERVATION OF THREATENED OR ENDANGERED SPECIES.**

21 **(3) ON A CONVICTION UNDER THIS SECTION, ANY SEIZED IVORY OR**
22 **RHINOCEROS HORN:**

23 **(I) SHALL BE FORFEITED; AND**

24 **(II) MAY BE:**

25 **1. MAINTAINED BY THE DEPARTMENT FOR**
26 **EDUCATIONAL OR TRAINING PURPOSES;**

27 **2. DONATED BY THE DEPARTMENT TO A SCIENTIFIC OR**
28 **AN EDUCATIONAL INSTITUTION; OR**

29 **3. DESTROYED.**

30 **(G) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS**
31 **SECTION.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2015.