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SENATE BILL NO. 1215

Offered January 14, 2015

Prefiled January 13, 2015

A *BILL to amend the Code of Virginia by adding in Article 3 of Chapter 12 of Title 18.2 a section numbered 18.2-511.2 and by adding in Chapter 22.2 of Title 19.2 a section numbered 19.2-386.36 relating to sale of ivory and rhinoceros horn; forfeiture; penalties.*

Patron—Ebbin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 12 of Title 18.2 a section numbered 18.2-511.2 and by adding in Chapter 22.2 of Title 19.2 a section numbered 19.2-386.36 as follows:

§ 18.2-511.2. Sale, etc., of ivory and rhinoceros horn and their products prohibited; exceptions; penalties.

As used in this section, unless the context requires otherwise:

A. "Ivory" means any tooth or tusk composed of ivory from any animal, including an elephant, hippopotamus, narwhal, walrus, or whale, or any piece thereof, whether raw ivory or worked ivory or made into, or part of, an ivory product.

"Ivory product" means any item that contains, or that is wholly or partially made from, any ivory.

"Raw ivory" means any ivory the surface of which, polished or unpolished, is unaltered or minimally changed by carving.

"Rhinoceros horn" means the horn, or any piece thereof, of any species of rhinoceros.

"Rhinoceros horn product" means any item that contains, or is wholly or partially made from, any rhinoceros horn.

B. Any person who imports, sells, offers for sale, purchases, barter, or possesses with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product is guilty of a Class 1 misdemeanor for a first offense and of a Class 6 felony for a second or subsequent offense.

C. It shall be presumptive evidence of possession with intent to sell when any ivory, ivory product, rhinoceros horn, or rhinoceros horn product is possessed in a retail or wholesale outlet commonly used for the buying or selling of similar products; however, nothing in this subsection shall preclude a finding of intent to sell based on any other evidence that may serve to independently establish such intent. The act of obtaining an appraisal of ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product alone shall not constitute possession with intent to sell.

D. The prohibitions of subsection B shall not apply to:

1. A person who conveys ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product to the legal beneficiary of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product that is part of an estate or other items being conveyed to lawful beneficiaries upon the death of the owner of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product or in anticipation of that death;

2. Employees or agents of the Commonwealth or the federal government undertaking law-enforcement activities pursuant to applicable laws; or

3. Importation expressly authorized by federal license or permit.

§ 19.2-386.36. Forfeiture of ivory and rhinoceros horn and their products.

Any ivory, ivory product, rhinoceros horn, or rhinoceros horn product imported, sold, offered for sale, purchased, bartered, or possessed with intent to sell in violation of § 18.2-511.2 shall be forfeited to the Commonwealth in accordance with the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.), applied *mutatis mutandis*.

2. That the provisions of this act shall become effective on January 1, 2016.

3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2014, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

SB1215