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HOUSE BILL NO. 920

Offered January 10, 2018

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A BILL to amend and reenact §§ 29.1-563, 29.1-564, and 29.1-567 of the Code of Virginia, relating to certain endangered species; sale of items containing animal parts; penalty.

Patron—Lopez

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 29.1-563, 29.1-564, and 29.1-567 of the Code of Virginia are amended and reenacted as follows:

§ 29.1-563. Definitions.

For the purposes of this article:

"Conservation plan" means a document developed by the Department and approved by the Director that describes the Department's approach to managing and, if possible, recovering an endangered or threatened species of fish or wildlife.

"De minimis amount" means (i) less than 20 percent of the fair market value of an item or of the actual price paid for the item, whichever is greater, (ii) less than 20 percent of an item by volume, or (iii) less than 200 grams in weight when examined as a separate component.

"Endangered species" means any species which that is in danger of extinction throughout all or a significant portion of its range.

"Experimental population" means any population of an endangered or threatened species of fish or wildlife, excluding those species appearing on the federal list specified in § 29.1-564, that is (i) established through deliberate introduction by humans; (ii) designated by regulation of the Board; and (iii) explicitly delineated in a conservation plan.

"Fish or wildlife" means any member of the animal kingdom, vertebrate or invertebrate, except for the class Insecta, and includes any part, products, egg, or the dead body or parts thereof.

"Incidental take" means any taking of an endangered or threatened species of fish or wildlife, excluding those species appearing on the federal list specified in § 29.1-564, that otherwise would be prohibited by this article or by regulation, if such taking is incidental to but not the purpose of an otherwise lawful activity allowed in accordance with regulations adopted pursuant to § 29.1-568.

"Person" means any individual, firm, corporation, association, or partnership.

"Sale" or "sell" means any act of selling, trading, or bartering, for monetary or nonmonetary consideration, and includes any transfer of ownership that occurs in the course of a commercial transaction but does not include a nonmonetary transfer of ownership to a legal beneficiary of a trust or to a person by way of gift, donation, inheritance, or bequest.

"Threatened species" means any species which that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

§ 29.1-564. Taking, transportation, sale, etc., of endangered species or items containing parts of certain animals prohibited.

A. The taking, transportation, possession, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States U.S. Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568.

B. No person in Virginia shall purchase from, sell to, offer for sale to, or possess with intent to sell to another person in Virginia any item that the person knows or should know contains or is made of, wholly or partially, an animal part or by-product that is derived from any species of elephant, rhinoceros, whale, tiger, lion, leopard, cheetah, jaguar, pangolin, sea turtle, shark, ray, mammoth, narwhal, walrus, or hippopotamus that is extinct or appears on any list of threatened or endangered species published by the U.S. Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973.

C. The prohibition of subsection B shall not apply to:

1. An activity permitted pursuant to § 29.1-568.

2. An antique that contains a de minimis amount of an animal part or by-product derived from any species listed in subsection B if the animal part or by-product is a fixed component of the antique and the owner or seller of the antique establishes with documentation evidencing provenance of the antique that the antique is at least 100 years old.

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59 3. A musical instrument, including a piano, string instrument and bow, wind instrument, or  
60 percussion instrument, that contains a de minimis amount of an animal part or by-product derived from  
61 any species listed in subsection B if the owner or seller of the musical instrument (i) possesses every  
62 certification or permit required by federal law for the sale of the musical instrument and (ii) establishes  
63 with documentation evidencing provenance that the musical instrument was acquired legally.

64 4. A knife or firearm that contains an animal part or by-product derived from any species listed in  
65 subsection B if (i) the animal part or by-product is a fixed part of the knife or firearm and originated in  
66 or was legally imported to the United States, (ii) the owner or seller of the knife or firearm establishes  
67 with documentation evidencing provenance that the knife or firearm was acquired legally, and (iii) all  
68 applicable requirements for the sale of the knife or firearm set forth in federal and state law are met.

69 5. A sale to a bona fide scientific or educational institution of an item that contains an animal part  
70 or by-product derived from any species listed in subsection B if the owner or seller of the item (i)  
71 possesses all applicable certifications or permits required by federal law for the sale of the item and (ii)  
72 establishes with documentation evidencing provenance that the item was acquired legally.

73 6. Any item that contains an animal part or by-product derived from any species listed in subsection  
74 B for which the owner or seller has obtained all applicable certifications or permits required by federal  
75 law for the sale of the item or that is specifically authorized for sale by federal law, if all applicable  
76 requirements for the sale of the item set forth in federal or state law have been met.

77 D. The prohibitions contained in subsections A and B shall not apply to any activity undertaken by a  
78 law-enforcement agency or officer pursuant to federal or state law.

79 **§ 29.1-567. Penalties; authority of conservation police officers and police officers; disposition of**  
80 **property seized.**

81 A. Any person who violates ~~the provisions~~ any provision of § 29.1-564 or § 29.1-566, or any  
82 ~~regulations~~ regulation issued pursuant to these such sections, or ~~whoever~~ violates any regulation or  
83 permit issued under § 29.1-568 ~~shall be~~ is guilty of a Class 1 misdemeanor; however, the sale, offering  
84 for sale, purchasing, or offering to purchase within the Commonwealth of any fish or wildlife appearing  
85 on a list of threatened or endangered species as prohibited by subsection A of § 29.1-564 ~~shall be~~ is  
86 punishable as provided in § 29.1-553.

87 B. Any judicial officer or other officer authorized to issue criminal warrants shall have authority to  
88 issue a warrant for the search and seizure of any goods, business records, merchandise, *items*, or fish or  
89 wildlife taken, employed, or used in connection with a violation of any provision of this article. All such  
90 search warrants shall be issued and executed pursuant to Chapter 5 (§ 19.2-52 et seq.) of Title 19.2.

91 C. Goods, merchandise, fish or wildlife, *items*, or records seized under the provisions of subsection B  
92 ~~of this section~~ shall be held by an officer or agent of the Department at the direction of the judge or  
93 court pending disposition of court proceedings, and thereafter be forfeited to the Commonwealth for  
94 destruction or disposition as the Director may deem appropriate. However, prior to forfeiture, the  
95 Director may direct the transfer of fish or wildlife so seized to a qualified zoological, educational, or  
96 scientific institution for safekeeping, with costs assessable to the defendant. The Board is authorized to  
97 issue regulations to implement this section.

98 D. In addition to applicable criminal penalties, a person who violates a provision of subsection B of  
99 § 29.1-564, upon conviction, shall pay a civil penalty not to exceed \$6,500 or an amount equal to four  
100 times the fair market value of the item that is the subject of the violation, whichever is greater. Civil  
101 penalties collected pursuant to this subsection shall be deposited in the Nongame Cash Fund of the  
102 Game Protection Fund in accordance with the provisions applicable to nongame wildlife voluntary  
103 contributions under subdivision B 1 of § 58.1-344.3.

104 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
105 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0  
106 for periods of imprisonment in state adult correctional facilities and cannot be determined for  
107 periods of commitment to the custody of the Department of Juvenile Justice.