

HOUSE BILL REPORT

HB 1131

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to ivory and rhinoceros horn trafficking.

Brief Description: Concerning ivory and rhinoceros horn trafficking.

Sponsors: Representatives Pettigrew, Buys, Fitzgibbon, Appleton, Gregerson, S. Hunt, Stanford, Walkinshaw, Muri and Goodman.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/20/15, 1/27/15, 2/3/15 [DPS].

Brief Summary of Substitute Bill

- Makes unlawful the sale, purchase, trade, traffic, barter, or distribution of any ivory article or rhinoceros horn product, except for in four circumstances.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; Dunshee, Hurst, Pettigrew, Stanford and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives Dent, Assistant Ranking Minority Member; Chandler, Orcutt and Schmick.

Minority Report: Without recommendation. Signed by 1 member: Representative Kretz.

Staff: Peter Clodfelter (786-7127).

Background:

The Fish and Wildlife Code (Title 77) prohibits certain conduct related to possessing, selling, or otherwise transferring fish and wildlife. For example, the Fish and Wildlife Code prohibits conduct like:

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- selling, offering to sell, purchasing, offering to purchase, or otherwise exchanging a shark fin or shark fin derivative product for commercial purposes, or preparing or processing a shark fin or shark fin derivative product for human or animal consumption for commercial purposes;
- knowingly possessing fish, shellfish, or wildlife that was taken in violation of another state or country's laws or regulations;
- knowingly importing, moving within the state, or exporting fish, shellfish, or wildlife in violation of a Washington Department of Fish and Wildlife (WDFW) rule regulating the transportation or movement of the fish, shellfish, or wildlife; and
- trafficking in fish, shellfish, or wildlife when it is classified as game, food fish, shellfish, game fish, or protected wildlife and the trafficking is not specifically authorized by law or WDFW rule, or trafficking in unclassified fish, shellfish, or wildlife that is contrary to law or WDFW rule.

Fish and Wildlife Code offenses are classified as infractions, misdemeanors, gross misdemeanors, class C felonies, and class B felonies.

Summary of Substitute Bill:

A new Fish and Wildlife Code (Title 77) offense is created that makes unlawful the sale, purchase, trade, traffic, barter, or distribution of any ivory article or rhinoceros horn product, except for in four circumstances. Those four circumstances are when the ivory or rhinoceros horn distributed is:

- less than 5 percent by volume of a bona fide antique that is at least 100 years old;
- for an educational or scientific purpose, or when the transfer is to a museum chartered by certain educational institutions;
- to a legal beneficiary of a trust or to an heir or person receiving a distribution from an estate; or
- part of a firearm, sword, knife, trinket, or musical instrument that was not acquired in violation of federal law.

Included in the prohibition are all types of elephant ivory, rhinoceros horn, and products made with elephant ivory or rhinoceros horn. The WDFW is authorized to seize and dispose of any unlawfully distributed ivory article or rhinoceros horn product.

The offense is punishable as a gross misdemeanor. Additionally a violation may also be punishable under the state Criminal Profiteering Act (chapter 9A.82 RCW).

The WDFW must make available to the public information about the new prohibition on transferring ivory articles and rhinoceros horn products and the exemptions to the prohibition.

Substitute Bill Compared to Original Bill:

Mammoth ivory is excluded from the prohibition. Also, the requirement that a person obtain a permit from the WDFW in order to distribute an ivory article or rhinoceros horn product pursuant to one of the four exemptions is eliminated. Additionally, an exemption for guns, knives, and trinkets that were not acquired in violation of federal law is added to the musical instrument exemption. A musical instrument must also have been acquired not in violation of federal law to meet the exemption. Last, a violation is punishable as a gross misdemeanor rather than as a class C or class B felony, and a violation may also be punishable pursuant to the State Criminal Profiteering Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill is a necessary small step towards stopping the killing of African elephants and rhinoceros and preventing their extinction. In Africa, 96 elephants are killed each day. Poachers are militarized and will continue poaching elephants as long as there is a demand for ivory. The bill is a step towards reducing the demand on ivory and rhinoceros horn. The bill complements and fills gaps in federal regulation of ivory sales by focusing on intrastate distributions. If mammoth ivory is exempted from the prohibition there might be a loophole that lessens the effectiveness of the bill. The state of New York has a similar law and New York determined that including mammoth ivory in the prohibition was necessary because it is difficult to distinguish between elephant and mammoth ivory without specialized training and analysis and items made from elephant ivory can be altered to resemble mammoth ivory.

Although the bill is necessary to help reduce the demand for ivory and rhinoceros horn, issuing a permit for each individual distribution could be burdensome and it could be easier administratively if there is one certification for each item, which would follow the item so new permits are not necessary for subsequent distributions. Also, it could be clearer what the burden on a person is to show that they meet an exemption. Further, the exemptions could be more clearly defined because people will not likely know exactly what percent of an item is ivory or rhinoceros horn.

(Opposed) The bill will not accomplish the goal of saving elephants from slaughter and extinction. Most ivory in the United States is legally imported and sales in the United States do not materially contribute to the illegal ivory trade. China and other countries account for the majority of the demand for poached ivory. Also, prohibiting the distribution of mammoth ivory does not help save elephants. Mammoths are extinct already and mammoth ivory is found by chance. Additionally, mammoth ivory can be easily differentiated from elephant ivory by comparing things like the ivory's color, tone, and the ivory's schreger lines.

The prohibition is unfair to citizens who relied on federal law to acquire ivory or who operate businesses that sell ivory or rhinoceros horn products in compliance with federal law. People have acquired ivory with the expectation that they will be able to transfer it someday and the bill does not compensate those people. Also, artists use ivory to make a wide variety of items, which this bill would generally prohibit artists from doing. Further, some Alaskan natives earn money by selling mammoth ivory they find; this bill would hurt those Alaskan natives. Further still, knife makers and gun makers use legal ivory, but most would not have the resources necessary to demonstrate that the ivory they use fits one of the exemptions in the bill. Moreover, the bill would impact people in the state who sell vintage guitars, pianos, violin bows, and a variety of other musical instruments.

The law unfairly places a burden on people to prove that their ivory fits an exemption, which switches the usual burden of proof associated with a criminal law. Also, the exemptions are unreasonable and hard to fit in—it is unclear how a person must document that the ivory or rhinoceros horn is less than 5 percent of the total item's volume. For instance, people who own guns that contain some ivory do not know what percent of the total volume of their gun is ivory. Additionally, it is also unclear what a person who receives an ivory or rhinoceros horn item under the terms of a will or trust may do with the item; this creates a problem for family members who inherit ivory or rhinoceros horn items. Further, there should be exemptions for small trinkets, musical instruments made after 1976 with small amounts of ivory, and ivory that was legally acquired under federal law. Last, the requirement that a person show documented evidence of the item's provenance should be stricken.

Persons Testifying: (In support) Representative Pettigrew, prime sponsor; Aaron Pointer, Metro Parks Tacoma; Deborah Jensen and Fred Koontz, Woodland Park Zoo Seattle; John Houck, Keefe Kamp, Michaela McGibbon, Claire Drouillard, John Garner, and Karen Goodrowe Beck, Point Defiance Zoo and Aquarium; Grant Zahajko, Seattle Auction Services; Mike McConnell and Jennifer Reichert, District Auction; Mike Cency, Department of Fish and Wildlife; Dan Paul, The Humane Society of the United States; Dune Ives, Vulcan Incorporated; and Craig Standridge, Metro Parks Tacoma.

(Opposed) Kurt Tripp and Courtney Tripp Reader, Ivory Jacks; Pete Lange; Wendy Huber; Brian Judy, National Rifle Association; Todd Rathner, Knife Rights; Gary Wagner, Wagner Instruments; Cynthia Nochowitz; Phil Watson, Citizens Committee for the Right to Keep and Bear Arms; Stuart Holson, Legal Ivory Rights Coalition; Mike Vellekamp, Fox Knives USA; Tim Wegner, Blade-Tech Industry Incorporated; Mark Pidgeon, Hunters Heritage Council; Paul Gjurding, Seattle Symphony; and Mariann Leone and David Boone, Boone Trading Company.

Persons Signed In To Testify But Not Testifying: None.