

SENATE, No. 3416

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED AUGUST 10, 2015

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

SYNOPSIS

Prohibits possession, transport, import, export, processing, sale, or shipment of certain animal species threatened with extinction.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain animal species threatened with
2 extinction and amending P.L.1973, c.309 and R.S.23:4-27.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 2 of P.L.1973, c.309 (C.23:2A-2) is amended to read
8 as follows:

9 2. The Legislature hereby finds and declares the following:

10 a. That it is the policy of this State to manage all forms of
11 wildlife to insure their continued participation in the ecosystem;

12 b. That species or subspecies of wildlife indigenous to the State
13 which may be found to be endangered should be accorded special
14 protection in order to maintain and to the extent possible enhance
15 their numbers; and

16 c. That the State should assist in the protection of species or
17 subspecies of wildlife which are deemed to be endangered or
18 threatened elsewhere by regulating the taking, possession,
19 transportation, importation, exportation, processing, sale or offer for
20 sale, or shipment within this State of species or subspecies of
21 wildlife including the big five African species, those on any
22 [Federal] federal endangered or threatened species list, and those
23 species or subspecies appearing on the lists described in paragraphs
24 (4) and (5) of subsection a. of section 6 of P.L.1973,
25 c. 309 (C.23:2A-6).

26 (cf: P.L.1973, c.309, s.2)

27
28 2. Section 3 of P.L.1973, c.309 (C.23:2A-3) is amended to read
29 as follows:

30 For the purposes of [this act] P.L.1973, c. 309 (C.23:2A-1 et
31 seq.), unless the context clearly requires a different meaning:

32 "Big five African species" means the following species of
33 wildlife: (1) African elephant (*Loxodonta Africana*); (2) African
34 leopard (*Panthera pardus*); (3) African lion (*Panthera leo*); (4)
35 black rhinoceros (*Diceros bicornis*) and white rhinoceros
36 (*Ceratotherium simum*); and (5) Cape buffalo (*Syncerus caffer*);

37 [a.] "Commissioner" means the Commissioner of the Department
38 of Environmental Protection;

39 [b.] "Department" means the Department of Environmental
40 Protection;

41 [c.] "Endangered species" means any species or subspecies of
42 wildlife whose prospects of survival or recruitment are in jeopardy
43 or are likely within the foreseeable future to become so due to any
44 of the following factors: (1) the destruction, drastic modification,
45 or severe curtailment of its habitat, or (2) its over-utilization for
46 scientific, commercial or sporting purposes, or (3) the effect on it of

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 disease, pollution, or predation, or (4) other natural or manmade
2 factors affecting its prospects of survival or recruitment within the
3 State, or (5) any combination of the foregoing factors. The term
4 shall also be deemed to include any species or subspecies of
5 wildlife appearing on any Federal endangered species list;

6 [d.] "Nongame species" means any wildlife for which a legal
7 hunting or trapping season has not been established or which has
8 not been classified as an endangered species by statute or regulation
9 of this State;

10 [e.] "Take" means to harass, hunt, capture, kill, or attempt to
11 harass, hunt, capture, or kill, wildlife;

12 [f.] "Wildlife" means any wild mammal, bird, reptile, amphibian,
13 fish, mollusk, crustacean or other wild animal or any part, product,
14 egg or offspring or the dead body or parts thereof.

15 (cf: P.L.1981, c.281, s.1)

16
17 3. Section 4 of P.L.1973, c.309 (C.23:2A-4) is amended to read
18 as follows:

19 4. a. The commissioner shall conduct investigations concerning
20 wildlife indigenous to the State in order to develop information
21 relating to populations, distribution, habitat needs, limiting factors
22 and other biological and ecological data to determine management
23 measures necessary for their continued ability to sustain themselves
24 successfully. On the basis of such determinations the commissioner
25 shall develop management programs which shall be designed to
26 insure the continued ability of wildlife to perpetuate themselves
27 successfully.

28 b. On the basis of such investigations of wildlife and other
29 available scientific and commercial data the commissioner may by
30 rule or regulation promulgate a list of those species and subspecies
31 of wildlife indigenous to the State which are determined to be
32 endangered, giving their common and scientific names by species
33 and subspecies. The commissioner shall periodically review the
34 State list of endangered species and may by regulation amend the
35 list making such additions or deletions as are deemed appropriate.

36 (cf: P.L.1981, c.511, s.14)

37
38 4. Section 5 of P.L.1973, c.309 (C.23:2A-5) is amended to read
39 as follows:

40 5. a. The commissioner shall have the power to formulate and
41 promulgate, adopt, amend and repeal rules and regulations, limiting,
42 controlling and prohibiting the taking, possession, transportation,
43 importation, exportation, sale or offer for sale, or shipment of any
44 nongame species or any wildlife on the State list of endangered
45 species [list], and for the purposes of implementing section 6 of
46 P.L.1973, c.309 (C.23:2A-6). Such rules and regulations shall be
47 designed to promote the public health, safety and welfare and shall
48 be adopted in accordance with the "Administrative Procedure [Act]"

1 (P.L.1968, c.410, C.52:14B-1 et seq.)] Act," P.L.1968,
2 c.410 (C.52:14B-1 et seq.).

3 b. The commissioner is authorized to conduct periodic
4 inspections in order to determine compliance with the rules and
5 regulations adopted pursuant to this section, and, to that end, is
6 authorized to charge and collect fees in an amount sufficient to
7 cover the costs of the inspections and services performed pursuant
8 to [this amendatory act] P.L.1973, c.309 (C.23:2A-1 et seq.). Such
9 fees shall be devoted entirely and exclusively to carrying out the
10 purposes and provisions of [this amendatory act] P.L.1973,
11 c.309 (C.23:2A-1 et seq.). Inspection fees shall be established in
12 accordance with a fee schedule adopted by the department as a rule
13 and regulation pursuant to the provisions of the [aforesaid]
14 "Administrative Procedure Act."
15 (cf: P.L.1981, c.281, s.2)

16

17 5. Section 6 of P.L.1973, c.309 (C.23:2A-6) is amended to read
18 as follows:

19 6. a. Except as otherwise provided in [this act] P.L.1973, c.309
20 (C.23:2A-1 et seq.) or the rules or regulations adopted thereunder,
21 no person shall take, possess, transport, import, export, process, sell
22 or offer for sale, or ship, and no common or contract carrier shall
23 knowingly transport or receive for shipment, any big five African
24 species or any species or subspecies of wildlife appearing on the
25 following lists: (1) the list of wildlife determined to be endangered
26 by the commissioner pursuant to [this act] P.L.1973, c.309
27 (C.23:2A-1 et seq.); (2) the list of nongame species regulated
28 pursuant to [this act] P.L.1973, c.309 (C.23:2A-1 et seq.); [and] (3)
29 any [Federal] federal list of endangered or threatened species; (4)
30 Appendix I or Appendix II of the Convention on International Trade
31 in Endangered Species of Wild Fauna and Flora; and (5) the
32 International Union for Conservation of Nature and Natural
33 Resources Red List of Threatened Species, as either critically
34 endangered, endangered, or vulnerable. [Any species or subspecies
35 of wildlife appearing on any of the foregoing lists which enters the
36 State from another state or from a point outside the territorial limits
37 of the United States and which is transported across the State
38 destined for a point beyond the State may be so entered and
39 transported without restriction in accordance with the terms of any
40 Federal permit or permit issued under the laws or regulations of
41 another state.]

42 b. Unless such activity is prohibited by federal or other State
43 law, rule, or regulation, the following exceptions and defenses
44 apply to the prohibition in subsection a. of this section:

45 (1) the wildlife was lawfully possessed within the State prior to
46 the date of enactment of P.L. , c. (C.) (pending before the
47 Legislature as this bill), and the legal owner has obtained a

1 certificate of possession from the commissioner, as provided
2 pursuant to subsection c. of this section, within 180 days after the
3 date of enactment of P.L. , c. (C.) (pending before the
4 Legislature as this bill);

5 (2) the wildlife is being used or displayed for scientific,
6 zoological, or educational purposes, for propagation in captivity of
7 such wildlife, or for other special purposes, all as authorized by the
8 commissioner; or

9 (3) the wildlife is conveyed directly to a legal beneficiary of a
10 trust or to a legal heir, provided that: (a) the wildlife was lawfully
11 possessed by the decedent prior to the date of enactment of P.L. ,
12 c. (C.) (pending before the Legislature as this bill); (b) after
13 transfer to the beneficiary or heir, the wildlife is not thereafter sold,
14 offered for sale, or otherwise distributed to any private party; and
15 (c) the beneficiary or heir obtains a certificate of possession from
16 the commissioner, as provided pursuant to subsection c. of this
17 section, within 180 days after obtaining the wildlife.

18 c. The department shall adopt, pursuant to the "Administrative
19 Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), such rules
20 and regulations as may be necessary to implement this section.
21 These rules and regulations shall include a process for applying for
22 the certificate of possession required pursuant to subsection b. of
23 this section. The department may charge a reasonable fee to defray
24 the cost of issuing a certificate of possession.

25 d. Nothing in this section shall be construed to preclude a
26 person violating this section from also being liable for any
27 applicable violation of P.L.2014, c.22 (C.23:2A-13.1 et seq.),
28 R.S.23:4-27, or any other State law, rule, or regulation.

29 (cf: P.L.1981, c.281, s.4)

30
31 6. Section 7 of P.L.1973, c.309 (C.23:2A-7) is amended to read
32 as follows:

33 7. a. The commissioner shall establish such programs,
34 including acquisition of land or aquatic habitats, as are deemed
35 necessary for the conservation and management of nongame and
36 endangered species of wildlife.

37 b. In carrying out programs authorized by [this act] P.L.1973,
38 c.309 (C.23:2A-1 et seq.), the commissioner may enter into
39 agreements with [Federal] federal agencies, with political
40 subdivisions of the State, or with private persons for administration
41 and management of any area established under this section or
42 utilized for management of nongame or endangered species of
43 wildlife.

44 c. With the approval of the Governor, the commissioner may
45 cooperate with and receive money from the [Federal Government,
46 or] federal government, any county or municipal government, or
47 [from] private sources for the purposes of [this act] P.L.1973,
48 c. 309 (C.23:2A-1 et seq.). The commissioner may establish a

1 separate fund from these contributions for the support of nongame
2 and endangered species programs and for the purposes of P.L.1973,
3 c. 309 (C.23:2A-1 et seq.).

4 d. The commissioner may authorize, under such terms and
5 conditions as may be prescribed by rule or regulation, the taking,
6 possession, transportation, importation, exportation, sale or offer for
7 sale, or shipment of nongame species and wildlife which appear on
8 the State list of endangered species for scientific, zoological, or
9 educational purposes, for propagation in captivity of such wildlife,
10 or for other special purposes.

11 e. The commissioner shall appoint a committee of experts to
12 advise and assist the commissioner in carrying out the intent of [this
13 act] P.L.1973, c.309 (C.23:2A-1 et seq.). [Said] These experts shall
14 include persons actively involved in the conservation of wildlife.
15 (cf: P.L.1981, c.281, s.5)

16
17 7. R.S.23:4-27 is amended to read as follows:

18 23:4-27. a. No person shall sell or purchase wildlife, except as
19 authorized pursuant to this section or any other law or as may be
20 authorized by rule or regulation adopted by the division pursuant to
21 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
22 seq.).

23 b. The provisions of subsection a. of this section shall not
24 apply to the sale or purchase of wildlife authorized or regulated by
25 chapter 2A or 2B of this title, R.S.23:3-28 through R.S.23:3-39,
26 section 4 of P.L.1970, c.247 (C.23:3-65), R.S.23:4-50, R.S.23:5-2,
27 or Title 50 of the Revised Statutes, or any rule or regulation adopted
28 pursuant thereto, provided that the wildlife was taken and possessed
29 in a lawful manner.

30 c. Unless prohibited or restricted by rule or regulation adopted
31 by the division, the raw or processed hide of the white-tailed deer
32 (*Odocoileus virginianus*), the tail of the white-tailed deer, the
33 portion of the front leg of a white-tailed deer limited to the carpal,
34 metacarpal, and phalange bones, or the portion of the hind leg of a
35 white-tailed deer limited to the tarsus, metatarsus, and phalange
36 bones may be sold or purchased, provided that those parts or
37 products are from a white-tailed deer that was taken and possessed
38 in a lawful manner.

39 d. Notwithstanding the provisions of subsection a. of this
40 section to the contrary:

41 (1) the dead body or any part or product thereof of the following
42 wildlife may be sold or purchased, provided that the wildlife was
43 taken and possessed in a lawful manner:

44 Virginia Opossum	<i>Didelphis virginiana</i>
45 Beaver	<i>Castor canadensis</i>
46 Muskrat	<i>Ondatra zibethicus</i>
47 Nutria	<i>Myocaster coypus</i>
48 Coyote	<i>Canis latrans</i>

1	Red Fox	Vulpes vulpes
2	Gray Fox	Urocyon cinereoargenteus
3	Raccoon	Procyon lotor
4	Long Tail Weasel	Mustela frenata
5	Short Tail Weasel	Mustela erminea
6	Mink	Mustela vison
7	Striped Skunk	Mephitis mephitis
8	River Otter	Lutra canadensis

9 (2) wildlife not native to this State that originated from a state or
10 other jurisdiction where it is legal to sell or purchase that wildlife
11 and the wildlife was sold or purchased in accordance with the laws
12 of that state or other jurisdiction, may be sold or purchased in this
13 State unless prohibited by federal law, rule, or regulation, "The
14 Endangered and Nongame Species Conservation Act," P.L.1973,
15 c.309 (C.23:2A-1 et seq.), P.L.2014, c.22 (C.23:2A-13.1 et seq.), or
16 any other State law, rule, or regulation; provided that the wildlife is
17 labeled with the state or other jurisdiction of origin, the name and
18 address of the exporter, and all applicable permit numbers until the
19 expected final retail transaction has been made.

20 e. The division shall adopt, pursuant to the "Administrative
21 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules
22 and regulations as may be necessary to implement this section and
23 to otherwise provide for the control and regulation of the sale and
24 purchase of wildlife, including but not limited to wildlife not
25 specifically listed in this section.

26 f. In addition to any penalties that may be prescribed by any
27 other applicable law:

28 (1) a person who violates this section shall be:

29 (a) subject to a civil penalty of not less than \$200 and not more
30 than \$1,000 for the first offense, and not less than \$500 and not
31 more than \$3,000 for each subsequent offense. If the violation
32 involves the sale or purchase of a black bear (*Ursus americanus*),
33 turkey (*Meleagris gallapavo*), white-tailed deer (*Odocoileus*
34 *virginianus*), bobcat (*Felis rufus*), or illegally taken river otter
35 (*Lutra canadensis*), the civil penalty shall be not less than \$1,000
36 and not more than \$2,000 for the first offense, and not less than
37 \$1,500 and not more than \$3,000 for each subsequent offense; and
38 (b) assessed the replacement value of the animal, as prescribed
39 by section 10 of P.L.1990, c.29 (C.23:3-22.2); and

40 (2) a person who purposely violates this section when the total
41 value of the sale or purchase is:

42 (a) less than \$200 shall be guilty of a disorderly persons
43 offense;

44 (b) \$200 or more, but less than \$500, shall be guilty of a crime
45 of the fourth degree;

46 (c) \$500 or more shall be guilty of a crime of the third degree.

47 g. For the purposes of this section, "sell or purchase" means to
48 sell or offer for sale, possess for sale, purchase or agree to purchase,

1 receive compensation, barter or offer to barter, trade or offer to
2 trade, or transfer or offer to transfer, or conspire for any of those
3 purposes.

4 (cf: P.L.1997, c.291, s.2)

5
6 8. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill would amend the “The Endangered and Nongame
12 Species Conservation Act” to expand the list of species protected
13 under that act.

14 Under current law, no person may take, possess, transport,
15 export, process, sell or offer for sale, or ship, and no common or
16 contract carrier may knowingly transport or receive for shipment
17 any species of wildlife appearing on: (1) the State list of
18 endangered species; (2) the list of nongame species regulated by the
19 Department of Environmental Protection (DEP); and (3) the federal
20 list of endangered species. This bill would expand the prohibition
21 to include the big five African species (African elephant, African
22 leopard, African lion, black rhinoceros and white rhinoceros, and
23 Cape buffalo) and any species appearing on: (4) Appendix I or
24 Appendix II of the Convention on International Trade in
25 Endangered Species of Wild Fauna and Flora; and (5) the
26 International Union for Conservation of Nature and Natural
27 Resources Red List of Threatened Species, as either critically
28 endangered, endangered, or vulnerable. These latter two lists
29 contain additional species, which are not currently listed on the
30 State or federal lists.

31 The bill would also establish three limited exceptions and
32 defenses to the prohibition for: (1) wildlife that was lawfully
33 possessed within the State prior to the date of enactment of this bill
34 into law, provided the legal owner obtains a certificate of
35 possession from the DEP commissioner within 180 days after the
36 date of enactment; (2) wildlife that is being used or displayed for
37 scientific, zoological, or educational purposes, for propagation in
38 captivity of such wildlife, or for other special purposes, all as
39 authorized by the commissioner; or (3) wildlife that is conveyed
40 directly to a legal beneficiary of a trust or to a legal heir, provided
41 that (a) the wildlife was lawfully possessed by the decedent prior to
42 the date of enactment of the bill into law, (b) after transfer to the
43 beneficiary or heir, the wildlife is not thereafter sold, offered for
44 sale, or otherwise distributed to any private party, and (c) the
45 beneficiary or heir obtains a certificate of possession from the DEP
46 commissioner within 180 days after obtaining the wildlife.

47 A person who violates the bill would be subject to the penalties
48 set forth in the “The Endangered and Nongame Species

1 Conservation Act.” Specifically, a violator would be guilty of a
2 crime of the third degree, and be subject to a criminal fine of
3 between \$5,000 and \$50,000, a civil penalty of up to \$25,000, and a
4 civil administrative penalty of up to \$25,000 per day of violation, as
5 well as other penalties.

6 The bill would clarify that the importation of any listed species is
7 also prohibited. The bill would also clarify that nothing in the bill
8 may be construed to preclude a person violating the bill from also
9 being liable for violations of P.L.2014, c.22 (C.23:2A-13.1 et seq.)
10 (bans ivory trafficking), R.S.23:4-27 (regulates the sale and
11 purchase of certain wildlife), or any other State law, rule, or
12 regulation. Finally, the bill would clarify that the prohibitions in
13 the bill apply regardless of whether the wildlife originated from a
14 state or other jurisdiction where it is legal to sell or purchase that
15 wildlife and the wildlife was sold or purchased in accordance with
16 the laws of that state or other jurisdiction.