

[First Reprint]

SENATE, No. 977

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 4, 2016

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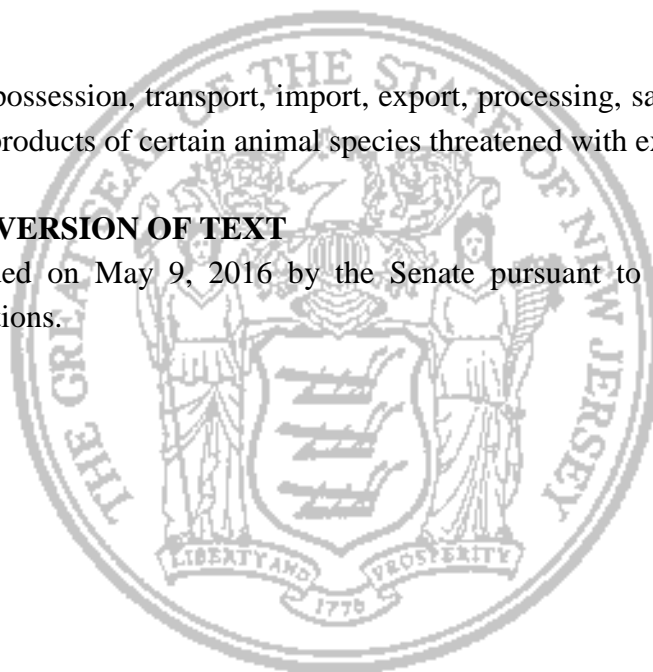
Senators Whelan, Allen and Assemblywoman Jasey

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended on May 9, 2016 by the Senate pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 3/15/2016)

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

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

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

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

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

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

17 c. That the State should assist in the protection of species or
18 subspecies of wildlife which are deemed to be endangered ¹**[or**
19 **threatened]**¹ elsewhere by regulating the taking, possession,
20 transportation, importation, exportation, processing, sale or offer for
21 sale, or shipment within this State of species or subspecies of
22 wildlife including those on any **[Federal]** federal endangered ¹**[or**
23 **threatened]**¹ species list ¹**[, and those threatened with extinction**
24 **due to the trafficking of their parts and products]**¹ .

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

26
27 2. Section 3 of P.L.1973, c.309 (C.23:2A-3) is amended to read
28 as follows:

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

31 **[a.]** "Commissioner" means the Commissioner of the
32 Department of Environmental Protection;

33 **[b.]** "Department" means the Department of Environmental
34 Protection;

35 **[c.]** "Endangered species" means any species or subspecies
36 of
37 wildlife whose prospects of survival or recruitment are in jeopardy
38 or are likely within the foreseeable future to become so due to any
39 of the following factors: (1) the destruction, drastic modification,
40 or severe curtailment of its habitat, or (2) its over-utilization for
41 scientific, commercial or sporting purposes, or (3) the effect on it of
42 disease, pollution, or predation, or (4) other natural or manmade
43 factors affecting its prospects of survival or recruitment within the

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

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate amendments adopted in accordance with Governor's
recommendations May 9, 2016.

1 State, or (5) any combination of the foregoing factors. The term
2 shall also be deemed to include any species or subspecies of
3 wildlife appearing on any **【Federal】** federal endangered ¹**【or**
4 **threatened】**¹ species list;

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

9 **【e.】** "Take" means to harass, hunt, capture, kill, or attempt to
10 harass, hunt, capture, or kill, wildlife;

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

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

15

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

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

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

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

36

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

39 5. a. The commissioner shall have the power to formulate and
40 promulgate, adopt, amend and repeal rules and regulations, limiting,
41 controlling and prohibiting the taking, possession, transportation,
42 importation, exportation, sale or offer for sale, or shipment of any
43 nongame species or any wildlife on the State list of endangered
44 species **【list】**, and for the purposes of implementing section 6 of
45 P.L. , c. (C.) (pending before the Legislature as this bill).
46 Such rules and regulations shall be designed to promote the public
47 health, safety and welfare and shall be adopted in accordance with

1 the "Administrative Procedure **Act**" (P.L.1968, c.410, C.52:14B-1
2 et seq.) **Act**," P.L.1968, 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 **aforsaid**
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. 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 species or
24 subspecies of wildlife appearing on the following lists: (1) the list
25 of wildlife determined to be endangered by the commissioner
26 pursuant to **this act** P.L.1973, c.309 (C.23:2A-1 et seq.); (2) the
27 list of nongame species regulated pursuant to **this act** P.L.1973,
28 c.309 (C.23:2A-1 et seq.); **and** and (3) any **Federal** federal list
29 of endangered ¹[or threatened]¹ species. Any species or subspecies
30 of wildlife appearing on any of the foregoing lists which enters the
31 State from another state or from a point outside the territorial limits
32 of the United States and which is transported across the State
33 destined for a point beyond the State may be so entered and
34 transported without restriction in accordance with the terms of any
35 **Federal** federal permit or permit issued under the laws or
36 regulations of another state ¹[, provided that such transport is not
37 prohibited by section 6 of P.L. , c. (C.) (pending before the
38 Legislature as this bill), section 3 of P.L.2014, c.22 (C.23:2A-13.3),
39 or any other applicable law]¹ .

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

41

42 6. (New section) a. Notwithstanding the provisions of section
43 6 of P.L.1973, c.309 (C.23:2A-6) or any other law, or any rule or
44 regulation adopted pursuant thereto, to the contrary, no person shall
45 possess, transport, import, export, process, sell or offer for sale, or
46 ship, and no common or contract carrier shall knowingly transport
47 or receive for shipment any part or product of: (1) any ¹**[big five]**

1 specified¹ African species; or (2) any species or subspecies of
2 elephant, rhinoceros, tiger, lion, leopard, cheetah, pangolin, marine
3 turtle, or ray listed ¹[(a)]¹ in Appendix I or Appendix II of the
4 Convention on International Trade in Endangered Species of Wild
5 Fauna and Flora ¹[(b)]¹; or (b) as critically endangered, endangered, or
6 vulnerable on the International Union for Conservation of Nature
7 and Natural Resources Red List of Threatened Species¹ .

8 b. ¹Unless such activity is prohibited by federal or other State
9 law, rule, or regulation, the] The¹ following exceptions and
10 defenses shall apply to the prohibition in subsection a. of this
11 section:

12 (1) the part or product was lawfully possessed within the State
13 prior to the effective date of P.L. , c. (C.) (pending before
14 the Legislature as this bill) ¹[(a)]¹, and the legal owner has obtained a
15 certificate of possession from the commissioner, as provided
16 pursuant to subsection c. of this section, within 180 days after the
17 effective date of P.L. , c. (C.) (pending before the
18 Legislature as this bill)]¹;

19 (2) the part or product is being used or displayed for scientific,
20 zoological, or educational purposes ¹[(a)]¹as authorized by the
21 commissioner pursuant to State law¹ ;

22 (3) the part or product is conveyed directly to a devisee, heir, or
23 beneficiary, provided that ¹[(a)]¹ the part or product was lawfully
24 possessed by the decedent prior to the effective date of this section;
25 ¹[(b)]¹ after transfer to the devisee, heir, or beneficiary, the part or
26 product is not thereafter sold, offered for sale, or otherwise
27 distributed to any private party; and (c) the devisee, heir, or
28 beneficiary obtains a certificate of possession from the
29 commissioner, as provided pursuant to subsection c. of this section,
30 within 180 days after obtaining the part or product;¹ or

31 (4) the person lawfully possesses any ivory, ivory product,
32 rhinoceros horn, or rhinoceros horn product in compliance with
33 section 3 of P.L.2014, c.22 (C.23:2A-13.3).

34 c. The department ¹[(shall)] may¹ adopt, pursuant to the
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
36 seq.), such rules and regulations as may be necessary to implement
37 this section. ¹[(These)]¹ These rules and regulations shall include a process
38 for applying for the certificate of possession required pursuant to
39 subsection b. of this section. The department may charge a
40 reasonable fee to defray the cost of issuing a certificate of
41 possession.

42 d. Notwithstanding the penalties provided for in section 10 of
43 P.L.1973, c.309 (C.23:2A-10), any person who possesses a part or
44 product in violation of this section and who fails to obtain a
45 certificate of possession within 180 days after the effective date of
46 this section, shall be subject only to a civil penalty of up to \$25 for
47 each day that person possesses the prohibited part or product

1 without a certificate, to be collected in a civil action by a summary
2 proceeding under the "Penalty Enforcement Law of 1999,"
3 P.L.1999, c.274 (C.2A:58-10 et seq.).

4 e. **d.**¹ Nothing in this section shall be construed to preclude a
5 person violating this section from also being liable for any
6 applicable violation of P.L.2014, c.22 (C.23:2A-13.1 et seq.),
7 R.S.23:4-27, or any other State law, rule, or regulation.

8 **f.** **e.**¹ As used in this section:

9 "Beneficiary" has the same meaning as that term is defined in
10 N.J.S.3B:1-1.

11 " **Big five** Specified¹ African species" means the following
12 species of wildlife: (1) African elephant (*Loxodonta Africana*); (2)
13 African leopard (*Panthera pardus*); (3) African lion (*Panthera leo*);
14 (4) black rhinoceros (*Diceros bicornis*) ¹; ¹ and ¹(5)¹ white
15 rhinoceros (*Ceratotherium simum*) ¹; and (5) Cape buffalo
16 (*Syncerus caffer*)¹ .

17 "Devisee" has the same meaning as that term is defined in
18 N.J.S.3B:1-1.

19 "Heir" has the same meaning as that term is defined in
20 N.J.S.3B:1-1.

21

22 7. (New section) Notwithstanding the provisions of section 6
23 of P.L.1973, c.309 (C.23:2A-6), section 6 of P.L. , c. (C.)
24 (pending before the Legislature as this bill), or any other State law,
25 or any rule or regulation adopted pursuant thereto, to the contrary,
26 unless such activity is otherwise prohibited by federal law, a person
27 may possess, transport, import, export, process, sell or offer for
28 sale, or ship wildlife ¹, or part or product thereof: (1)¹ for purposes
29 related to the conduct of biomedical research at a facility licensed
30 by the United States Department of Agriculture pursuant to the
31 federal "Animal Welfare Act," 7 U.S.C. s.2131 et seq., or at a
32 facility conducting biomedical research in compliance with the
33 "Public Health Service Policy on Humane Care and Use of
34 Laboratory Animals" issued by the United States National
35 Institutes of Health ¹; (2) in accordance with the terms of any
36 federal permit or permit issued under the laws or regulations of
37 another state, if the wildlife, or part or product thereof, enters the
38 State from another state or from a point outside the territorial limits
39 of the United States, and is transported across the State destined for
40 a point beyond the State; or (3) in the course of undertaking any law
41 enforcement activities pursuant to federal or State law, or other
42 mandatory duties required by federal or State law, if the person is
43 an employee or agent of the federal government, the State
44 government, or a bi-state authority¹ .

45

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

1 7. a. The commissioner shall establish such programs,
2 including acquisition of land or aquatic habitats, as are deemed
3 necessary for the conservation and management of nongame and
4 endangered species of wildlife.

5 b. In carrying out programs authorized **【by this act】** P.L.1973,
6 c.309 (C.23:2A-1 et seq.), the commissioner may enter into
7 agreements with **【Federal】** federal agencies, with political
8 subdivisions of the State, or with private persons for administration
9 and management of any area established under this section or
10 utilized for management of nongame or endangered species of
11 wildlife.

12 c. With the approval of the Governor, the commissioner may
13 cooperate with and receive money from the **【Federal Government,**
14 **or】** federal government, any county or municipal government,
15 **【from】** private sources for the purposes of **【this act】** P.L.1973,
16 c.309 (C.23:2A-1 et seq.). The commissioner may establish a
17 separate fund from these contributions for the support of nongame
18 and endangered species programs and for the purposes of P.L.1973,
19 c.309 (C.23:2A-1 et seq.).

20 d. The commissioner may authorize, under such terms and
21 conditions as may be prescribed by rule or regulation, the taking,
22 possession, transportation, importation, exportation, sale or offer for
23 sale, or shipment of nongame species and wildlife which appear on
24 the State list of endangered species for scientific, zoological, or
25 educational purposes, for propagation in captivity of such wildlife,
26 or for other special purposes.

27 e. The commissioner shall appoint a committee of experts to
28 advise and assist the commissioner in carrying out the intent of
29 **【this act】** P.L.1973, c.309 (C.23:2A-1 et seq.). **【Said】** These
30 experts shall include persons actively involved in the conservation
31 of wildlife.

32 (cf: P.L.1981, c.281, s.5)

33
34 9. R.S.23:4-27 is amended to read as follows:

35 23:4-27. a. No person shall sell or purchase wildlife, except as
36 authorized pursuant to this section or any other law or as may be
37 authorized by rule or regulation adopted by the division pursuant to
38 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
39 seq.).

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

47 c. Unless prohibited or restricted by rule or regulation adopted
48 by the division, the raw or processed hide of the white-tailed deer

1 (Odocoileus virginianus), the tail of the white-tailed deer, the
 2 portion of the front leg of a white-tailed deer limited to the carpal,
 3 metacarpal, and phalange bones, or the portion of the hind leg of a
 4 white-tailed deer limited to the tarsus, metatarsus, and phalange
 5 bones may be sold or purchased, provided that those parts or
 6 products are from a white-tailed deer that was taken and possessed
 7 in a lawful manner.

8 d. Notwithstanding the provisions of subsection a. of this
 9 section to the contrary:

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

13	Virginia Opossum	Didelphis virginiana
14	Beaver	Castor canadensis
15	Muskrat	Ondatra zibethicus
16	Nutria	Myocaster coypus
17	Coyote	Canis latrans
18	Red Fox	Vulpes vulpes
19	Gray Fox	Urocyon cinereoargenteus
20	Raccoon	Procyon lotor
21	Long Tail Weasel	Mustela frenata
22	Short Tail Weasel	Mustela erminea
23	Mink	Mustela vison
24	Striped Skunk	Mephitis mephitis
25	River Otter	Lutra canadensis

26 (2) wildlife not native to this State that originated from a state or
 27 other jurisdiction where it is legal to sell or purchase that wildlife
 28 and the wildlife was sold or purchased in accordance with the laws
 29 of that state or other jurisdiction, may be sold or purchased in this
 30 State unless prohibited by federal law, rule, or regulation, "The
 31 Endangered and Nongame Species Conservation Act," P.L.1973,
 32 c.309 (C.23:2A-1 et seq.), P.L.2014, c.22 (C.23:2A-13.1 et seq.), or
 33 any other State law, rule, or regulation; provided that the wildlife is
 34 labeled with the state or other jurisdiction of origin, the name and
 35 address of the exporter, and all applicable permit numbers until the
 36 expected final retail transaction has been made.

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

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

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

46 (a) subject to a civil penalty of not less than \$200 and not more
 47 than \$1,000 for the first offense, and not less than \$500 and not
 48 more than \$3,000 for each subsequent offense. If the violation

1 involves the sale or purchase of a black bear (*Ursus americanus*),
2 turkey (*Meleagris gallapavo*), white-tailed deer (*Odocoileus*
3 *virginianus*), bobcat (*Felis rufus*), or illegally taken river otter
4 (*Lutra canadensis*), the civil penalty shall be not less than \$1,000
5 and not more than \$2,000 for the first offense, and not less than
6 \$1,500 and not more than \$3,000 for each subsequent offense; and
7 (b) assessed the replacement value of the animal, as prescribed
8 by section 10 of P.L.1990, c.29 (C.23:3-22.2); and
9 (2) a person who purposely violates this section when the total
10 value of the sale or purchase is:
11 (a) less than \$200 shall be guilty of a disorderly persons
12 offense;
13 (b) \$200 or more, but less than \$500, shall be guilty of a crime
14 of the fourth degree;
15 (c) \$500 or more shall be guilty of a crime of the third degree.
16 g. For the purposes of this section, "sell or purchase" means to
17 sell or offer for sale, possess for sale, purchase or agree to purchase,
18 receive compensation, barter or offer to barter, trade or offer to
19 trade, or transfer or offer to transfer, or conspire for any of those
20 purposes.
21 (cf: P.L.1997, c.291, s.2)
22
23 10. This act shall take effect immediately.