

23:4-50

LEGISLATIVE HISTORY CHECKLIST  
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NJSA: 23:4-50

(Birds--prohibit  
sale of "wild")

LAWS OF: 1991

CHAPTER: 253

Bill No: A649

Sponsor(s): Mazur and Kronick

Date Introduced: Pre-filed

Committee: Assembly: Conservation

Senate: Labor, Industry & Professions

Amended during passage: Yes Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: March 4, 1991

Senate: July 15, 1991

Date of Approval: August 12, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clippings--attached:

KBG/SLJ

[FIRST REPRINT]  
ASSEMBLY, No. 649

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Assemblymen MAZUR, KRONICK, Deverin, Assemblywoman Cooper, Assemblymen Albohn, Duch, Felice, Martin, Assemblywoman Farragher, Assemblymen Cimino, Penn, Assemblywoman Smith, Assemblymen Schwartz, Kenny, Patero, Assemblywomen Mullen, Ogden, Assemblyman Menendez, Assemblywoman Bush, Assemblymen Naples, DeCroce, Assemblywoman Crecco and Assemblyman Baer

1 AN ACT prohibiting the sale of wild birds <sup>1</sup>[,] and<sup>1</sup> amending  
2 R.S.23:4-50 <sup>1</sup>[, and making an appropriation]<sup>1</sup>.

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

6 1. R.S.23:4-50 is amended to read as follows:

7 23:4-50. a. As used in this <sup>1</sup>[act] section<sup>1</sup> , except as  
8 otherwise noted <sup>1</sup>[, "wild"] :

9 "Department" means the Department of Environmental  
10 Protection.

11 "Wild<sup>1</sup> bird" means any bird other than a <sup>1</sup>native, introduced,  
12 or feral<sup>1</sup> game bird as defined in R.S.23:4-49 <sup>1</sup>and other than a  
13 domesticated bird such as a chicken, turkey, guinea fowl, goose,  
14 duck, pigeon, or peafowl. "Wild bird" also means the egg of a  
15 wild bird<sup>1</sup> .

16 b. Except as may be otherwise provided by <sup>1</sup>[any provision of]<sup>1</sup>  
17 [provided by any provision of law, regulation, or of the State Fish  
18 and Game Code,] law, rule, or regulation, or by the State Fish and  
19 Game Code, no person shall[,] within this State[, at any time, by  
20 any means or in any manner] pursue, hunt, take, capture, kill,  
21 attempt to take, capture, or kill, or have in possession, living or  
22 dead, a wild bird [other than a game bird as defined in section  
23 23:4-49 of this Title,].

24 c. (1) Except <sup>1</sup>pursuant to a permit issued by the department<sup>1</sup>  
25 for scientific, zoological, or educational purposes <sup>1</sup>[, or except  
26 pursuant to a permit issued by the Department of Environmental  
27 Protection] or<sup>1</sup> to a licensed wild bird breeder for the purpose of  
28 obtaining new stock to increase genetic variety, no person shall  
29 within this State offer for sale, sell, offer to barter, barter, offer  
30 to purchase, purchase, deliver for shipment, ship, export, import,  
31 transport or<sup>1</sup> cause to be transported, carry or cause to be  
32 carried, or <sup>1</sup>receive or cause to be<sup>1</sup> received for shipment,  
33 transportation, carriage, or export, living or dead, any [such] wild  
34 bird, unless the wild bird was raised, and came from an egg <sup>1</sup>[laid]

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:  
<sup>1</sup> Assembly floor amendments adopted January 17, 1991.

1 produced by captive parents<sup>1</sup> and hatched, in captivity [after it  
2 has been killed or captured].

3 (2) The fact that a wild bird belongs to a species not native to  
4 this State shall <sup>1</sup>not<sup>1</sup> constitute <sup>1</sup>[no] a<sup>1</sup> defense to a violation of  
5 this subsection.

6 (3) Any wild bird <sup>1</sup>[which] that<sup>1</sup> enters <sup>1</sup>or is brought into<sup>1</sup> the  
7 State from another state or <sup>1</sup>[the United States and]<sup>1</sup> from a  
8 point outside the territorial limits of the United States <sup>1,1</sup> and  
9 which is transported <sup>1</sup>without significant delay but within not  
10 more than 48 hours<sup>1</sup> across the State destined for a point beyond  
11 the State <sup>1,1</sup> may be so entered <sup>1</sup>or brought into the State<sup>1</sup> and  
12 transported <sup>1</sup>[without restriction]<sup>1</sup> in accordance with the terms  
13 of any federal permit or permit issued under the laws, rules, or  
14 regulations of another state.

15 (4) <sup>1</sup>[This] The prohibitions of paragraphs (1) and (2) of this<sup>1</sup>  
16 subsection shall not apply to <sup>1</sup>the cockatiel (Nymphicus  
17 hollandicus), budgerigar (Melopsittacus undulatus), or common  
18 canary (Serinus canarius), nor to any<sup>1</sup> wild birds legally possessed  
19 before the 120th day after <sup>1</sup>the date of<sup>1</sup> enactment <sup>1</sup>of P.L. ,  
20 c. (C. ) (now before the Legislature as this bill)<sup>1</sup> .

21 The <sup>1</sup>[Department of Environmental Protection] department<sup>1</sup>  
22 shall provide for a <sup>1</sup>[mechanism] method or methods<sup>1</sup> to  
23 distinguish <sup>1</sup>[such] wild<sup>1</sup> birds <sup>1</sup>legally possessed before the 120th  
24 day after the date of enactment of P.L. , c. (C. ) (now  
25 before the Legislature as this bill)<sup>1</sup> from those entering <sup>1</sup>or being  
26 brought into<sup>1</sup> the State <sup>1</sup>[after] subsequent to<sup>1</sup> the 120th day  
27 after <sup>1</sup>such date of<sup>1</sup> enactment.

28 d. Except as may be otherwise provided by <sup>1</sup>[any provision of]<sup>1</sup>  
29 law, rule, or regulation, or by the State Fish and Game Code  
30 [Unless so otherwise provided], no part of plumage, skin or body  
31 of a wild bird [other than a game bird as defined in section  
32 23:4-49 of this Title] shall be sold or had in possession for sale.  
33 Plumage, as used in this section, includes any part of the  
34 feathers, head, wings, or tail of a wild bird, and refers equally to  
35 plumage of wild birds coming from without the State as to birds  
36 obtained within the State, but it shall not be construed to apply  
37 to the feathers of ostriches, domestic fowl <sup>1,1</sup> or domestic  
38 pigeons. The fact that a wild bird belongs to a [different] species  
39 [from that] not native [in] to this State shall <sup>1</sup>not<sup>1</sup> constitute  
40 <sup>1</sup>[no] a<sup>1</sup> defense to the possession of parts thereof.

41 e. The English or European house sparrow and the European  
42 starling are not included among the birds protected by this  
43 section. Nothing herein shall make it unlawful for the owner or  
44 occupant of land, the regular employees thereof, or an agent  
45 designated by the <sup>1</sup>[Department of Environmental Protection]  
46 department<sup>1</sup> [division] to control hawks or owls only when in the  
47 act of destroying poultry or livestock, provided that such control  
48 activities are conducted in compliance with all relevant State and  
49 [Federal] federal laws, rules, and regulations and that such owner,  
50 occupant, employee <sup>1,1</sup> or agent has first obtained all permits

1 required thereby.

2 f. Except as may be otherwise provided by <sup>1</sup>[any provision of]<sup>1</sup>  
3 law, rule, or regulation [any provision of law, regulation], or [of]  
4 by the State Fish and Game Code, no State permit shall be  
5 required to control yellow-headed, red-winged, bi-colored  
6 red-winged, tri-colored red-winged, Rusty and Brewer's  
7 blackbirds, cowbirds, grackles <sup>1,1</sup> and crows when found  
8 committing or about to commit depredations upon ornamental or  
9 shade trees, crops, livestock, or wildlife, or when concentrated in  
10 such manners or manner as to constitute a health hazard or other  
11 nuisance; provided, that none of the birds killed pursuant to this  
12 <sup>1</sup>[section] subsection<sup>1</sup>, nor their plumage, shall be sold or offered  
13 for sale, but may be possessed, transported <sup>1,1</sup> and otherwise  
14 disposed of or utilized.

15 g. Nothing herein contained shall prohibit the control of  
16 animals or birds <sup>1</sup>[which have become obnoxious in nature and  
17 habit or] in instances where there is specific documentation<sup>1</sup> that  
18 <sup>1</sup>they<sup>1</sup> are doing damage to wildlife or agricultural crops, by the  
19 [Division of Fish, Game and Shellfisheries] <sup>1</sup>[Department of  
20 Environmental Protection] department<sup>1</sup> or its employees on any  
21 lands in the State.

22 h. <sup>1</sup>[A person violating any of the provisions of this section  
23 shall be subject to a penalty of not less than \$50.00 nor more than  
24 \$200.00 for each bird or part thereof which is the subject of such  
25 violation.]

26 (1) If any person violates any provision of this section, the  
27 department may institute a civil action in a court of competent  
28 jurisdiction for injunctive relief to prohibit and prevent such  
29 violation, and the court may proceed in the action in a summary  
30 manner.

31 (2) A person violating any provision of this section shall be  
32 subject to:

33 (a) a penalty of not less than \$200 nor more than \$1000 for  
34 each offense;

35 (b) a penalty of \$500 for each bird or part thereof that is a  
36 subject of the violation; and

37 (c) forfeiture of any such bird or part thereof that is a subject  
38 of the violation, which penalties may be collected in a civil  
39 action by a summary proceeding pursuant to "the penalty  
40 enforcement law," N.J.S. 2A:58-1 et seq., or in any case before a  
41 court of competent jurisdiction wherein injunctive relief has been  
42 requested. The Superior Court and the municipal court shall have  
43 jurisdiction to enforce "the penalty enforcement law." If the  
44 violation is of a continuing nature, each day during which it  
45 continues shall constitute an additional, separate, and distinct  
46 offense.

47 (3) The department may compromise and settle any claim for a  
48 penalty under this section in such amount in the discretion of the  
49 department as may appear appropriate and equitable under all of  
50 the circumstances.

1       (4) The department may sell, sell at auction, or donate any wild  
 2 bird or part thereof forfeited pursuant to this subsection to any  
 3 permittee or licensee designated pursuant to paragraph (1) of  
 4 subsection c. of this section. The proceeds derived from such  
 5 sales of any wild birds or parts thereof, together with any  
 6 penalties collected pursuant to paragraph (2) of this subsection  
 7 and any fees collected pursuant to this section, shall be deposited  
 8 in a fund for use by the department in administering and  
 9 enforcing this section and "The Endangered and Nongame Species  
 10 Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.).<sup>1</sup>

11       i. The<sup>1</sup>[Department of Environmental Protection]  
 12 department<sup>1</sup> shall adopt rules and regulations pursuant to the  
 13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
 14 seq.), necessary to implement the provisions of this<sup>1</sup>[amendatory  
 15 act] section<sup>1</sup>, which<sup>1</sup> rules and<sup>1</sup> regulations<sup>1</sup> [shall] may<sup>1</sup> include  
 16 a list of species of<sup>1</sup> native, introduced, or feral<sup>1</sup> wild birds  
 17 determined by the department to be<sup>1</sup> exempt from the  
 18 prohibitions imposed by this<sup>1</sup>[amendatory act] section.

19       j. The prohibitions, restrictions, penalties, and other provisions  
 20 of this section shall be in addition to, and shall be implemented  
 21 and enforced in conjunction with, any set forth in, or adopted  
 22 pursuant to, "The Endangered and Nongame Species Conservation  
 23 Act," P.L.1973, c.309 (C.23:2A-1 et seq.).<sup>1</sup>  
 24 (cf: P.L.1979, c.212, s.2)

25       <sup>1</sup>[2. There is appropriated from the General Fund to the  
 26 Department of Environmental Protection the sum of \$25,000 to  
 27 carry out the provisions of this amendatory act.]<sup>1</sup>

28       <sup>1</sup>[3.]<sup>1</sup> 2.<sup>1</sup> This act shall take effect on the 120th day after  
 29 enactment.

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## NATURAL RESOURCES

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Prohibits sales of wild birds not raised in captivity.

1 h. A person violating any of the provisions of this section shall  
2 be subject to a penalty of not less than \$50.00 nor more than  
3 \$200.00 for each bird or part thereof which is the subject of such  
4 violation.

5 i. The Department of Environmental Protection shall adopt  
6 rules and regulations pursuant to the "Administrative Procedure  
7 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to  
8 implement the provisions of this amendatory act, which  
9 regulations shall include a list of species of wild birds exempt  
10 from the prohibitions imposed by this amendatory act.

11 2. There is appropriated from the General Fund to the  
12 Department of Environmental Protection the sum of \$25,000.00  
13 to carry out the provisions of this amendatory act.

14 3. This act shall take effect on the 120th day after enactment.  
15  
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#### 17 STATEMENT

18  
19 This bill would prohibit the sale of wild birds in New Jersey.  
20 Under current law the Division of Fish, Game and Wildlife in the  
21 Department of Environmental Protection has the authority to  
22 exempt certain species from the prohibition against the sale or  
23 destruction of wild birds in this State. This bill would allow the  
24 division to create exemptions only for the destruction of wild  
25 birds and not their sale. The bill includes an exemption for  
26 scientific, zoological, or educational purposes, and for birds  
27 raised in captivity. The bill would not apply to wild birds  
28 possessed within 120 days at its enactment. The bill would also  
29 make certain technical changes to the law which would divide the  
30 provisions of the law into sections, and provide a definition of  
31 "wild birds" in the law instead of incorporating one by reference  
32 to another section of law.  
33  
34

#### 35 ENVIRONMENT

36  
37 Prohibits sales of wild birds not raised in captivity.

ASSEMBLY CONSERVATION AND NATURAL RESOURCES  
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 649

STATE OF NEW JERSEY

DATED: APRIL 5, 1990

The Assembly Conservation and Natural Resources Committee reports Assembly Bill No. 649 without recommendation.

This bill would strengthen and broaden the current regulation of the sale of birds in New Jersey. Under current law, the Division of Fish, Game and Wildlife in the Department of Environmental Protection has the general authority to regulate the sale of birds and the authority to exempt certain species from the prohibition against the sale or taking of native wild birds. This bill would generally prohibit the sale of all wild birds, whether native to the State or not. However, it would authorize exemptions for scientific, zoological, or educational purposes, for birds sold pursuant to a permit issued by the department to a licensed wild bird breeder for the purpose of obtaining new stock to increase genetic variety, and for birds raised in captivity from eggs laid and hatched in captivity. The sale prohibition would not apply to wild birds legally possessed before the 120th day after enactment of the act.

Finally, the bill would appropriate \$25,000 to the department to carry out its provisions.

Numerous persons testified at the committee meeting in support and in opposition to the bill. Several of those supporting the bill cited statistics to assert that a significant percentage of the birds captured in the wild in tropical areas die in transit or while in quarantine and that the capture of wild birds for the pet trade is significantly affecting populations of a number of species in certain areas. Some of those opposing the bill also cited statistics to assert that the mortality rate of the captured birds is within an acceptable level. Among other things, those opposing the bill also asserted that there were federal and State regulations already in place that sufficiently police the trade in wild birds; that the bill, if enacted, would promote smuggling and the spread of bird diseases because of the resulting increase in smuggled birds not properly quarantined; that the bill, if enacted, would be difficult to enforce; and that a similar New York law is not working as intended. The New Jersey Division of Fish, Game and Wildlife supported the concept and intent of the bill but not its present wording, and also indicated that although the State presently regulates the sale of wild birds, it does not differentiate between wild-caught and captive-raised birds. The New Jersey Department of Agriculture, although sympathetic to

the intent of the bill, opposed it because of its possible effect on the spread of bird diseases to poultry. The New Jersey chapter of the Humane Society of the United States supported the bill. The Pet Industry Joint Advisory Council, the American Federation of Aviculture, and a number of persons engaged in the pet trade all opposed the bill. Persons in support and in opposition to the bill indicated a need for federal action in the area of controlling in-transit and quarantine mortality and illegal importing.

This bill was pre-filed for introduction in the 1990 session pending technical review, which has been performed.



SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 649

STATE OF NEW JERSEY

DATED: JUNE 24, 1991

The Senate Labor, Industry and Professions Committee reports favorably Assembly Bill No. 649 (1R).

This bill prohibits the importation, shipment, sale or purchase of wild birds in New Jersey except pursuant to permits issued by the Department of Environmental Protection for scientific, zoological or educational purposes or to licensed wild bird breeders for the purpose of obtaining new stock to increase genetic variety. This prohibition does not apply to wild birds hatched and raised in captivity; any cockatiel, budgerigar, or common canary; any wild bird legally possessed before the 120th day after the bill's enactment, or any native, introduced or feral wild bird exempted by the department from being so regulated. The department must provide a way to distinguish wild birds legally possessed prior to the 120th day after the bill's enactment from those entering into the State after that date.

The bill provides for injunctive relief to prohibit violations and includes penalties for violations consisting of a fine of not less than \$200 nor more than \$1,000 for each offense; a fine of \$500 for each bird or part thereof that is the subject of a violation; and forfeiture of any such bird or part thereof that is the subject of a violation.

The department is authorized to sell or donate forfeited birds or bird parts. The monies from such sales and the fines and other fees collected pursuant to the provisions of this bill must be used by the department to administer and enforce the provisions of this bill and "The Endangered and Nongame Species Conservation Act."

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# OFFICE OF THE GOVERNOR

## NEWS RELEASE

CN-001  
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Release: MONDAY  
AUGUST 12, 1991

### GOVERNOR FLORIO SIGNS LAW PROTECTING EXOTIC BIRDS Law Prevents Sale and Trade of Wild Birds

RIVER EDGE -- Governor Jim Florio today signed legislation that would help protect certain species of wild birds from extinction. The new law is the strongest such legislation in the nation.

Speaking at Van Saun Park Zoo, in Bergen County, Governor Florio began by saying, "Some people have said this whole thing is for the birds. Well, it is."

"Wild birds are a resource -- a limited one at that," said Governor Florio. They should not be traded on the open market until they're extinct. We can't always allow nature to be controlled by market forces."

A-649, sponsored by Senate President John Lynch and Assemblymen Bennett Mazur and David C. Kronick, prohibits the importation, shipment, sale and purchase of wild birds in New Jersey except with a permit issued by the Department of Environmental Protection for scientific, zoological or educational purposes or to licensed wild bird breeders for the purpose of obtaining new stock.

"One only needs to see what's happening to the world's rain forests or some of the world's most magnificent animals to understand that certain steps must be taken to preserve what's left," said the Governor.

The prohibition against sale and trade of the birds does not apply to wild birds hatched and raised in captivity; common canaries or budgies; or any wild bird legally possessed before the 120th day after the bill's enactment. The law establishes penalties and violations consisting of a fine of between \$200 and \$1,000 for each offense; a fine of \$500 for each bird that is the subject of a violation; and forfeiture of any bird that is the subject of a violation. It authorizes DEP to sell or donate forfeited birds. The monies from the sales and the fines and other fees collected pursuant to the provisions of this bill must be used by the DEP to administer and enforce the provisions of this bill and the "Endangered and Nongame Species Conservation Act.

While the State of New York has prohibited the sale of wild birds since 1986, it has not prohibited their importation thus making the New Jersey statute the strongest in the nation.

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