

No. 172. An act relating to the protection of migratory birds.

(H.683)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds:

(1) On December 22, 2017, the U.S. Department of the Interior released a memorandum stating that the agency would no longer interpret the Migratory Bird Treaty Act as prohibiting incidental take of migratory birds. This changes the way the Act has been interpreted for the past 40 years.

(2) Vermont is an important stop for birds that migrate along the Atlantic Flyway.

(3) The Department of Fish and Wildlife reports that Vermont has approximately 260 species of birds. Of those, Vermont hosts 125 forest species, making it one of the most forest-species-rich states in the nation.

(4) According to a 2015 report by the Gund Institute, at 39 percent, Vermont leads the nation in number of residents who participate in bird watching, which is nearly double the national average of 20 percent. Vermont is second only to Alaska in the number of residents who participate in hunting, fishing, and wildlife viewing.

(5) According to a 2011 report by the U.S. Fish and Wildlife Service, bird watching attracts many people to Vermont. In 2011, wildlife watchers spent \$289 million on wildlife-watching activities in Vermont. The report

found that 292,000 people participated in bird watching and 56 percent of them took trips away from home to participate in bird watching.

(6) Migratory birds are important to Vermont's citizens and economy and should be protected from incidental take in Vermont law.

Sec. 2. 10 V.S.A. § 4902 is amended to read:

§ 4902. WILD BIRDS GENERALLY; NO OPEN SEASON; EXCEPTION

(a) Wild birds, other than pigeons, shall not be taken, possessed, bought, or sold, at any time, except as provided by this part, rules of the Board or orders of the Commissioner. ~~Birds coming from without the State belonging to the same family as those protected by this subchapter shall not be bought or sold.~~

(b) Harm or death of a migratory bird listed as protected in the Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712 as of July 1, 2020, that results from human activity where the intent was not to harm or kill the bird, but where bird harm or death was a direct and foreseeable result of the activity, is prohibited. Nothing in this section shall require the Department to implement a new permitting program.

Sec. 3. 10 V.S.A. § 4910 is added to read:

§ 4910. ENFORCEMENT DISCRETION

For purposes of migratory bird protection in this title, the Commissioner has authority to exercise enforcement discretion, including refraining from taking any enforcement action for the incidental take of migratory birds.

Enforcement, if any, shall focus on activities that have at least local population level impacts on migratory birds.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: October 8, 2020