

ASSEMBLY, No. 3128
STATE OF NEW JERSEY
216th LEGISLATURE
INTRODUCED MAY 8, 2014

Sponsored by:

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District 33 (Hudson)

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SYNOPSIS

Prohibits import, sale, purchase, barter, or possession of ivory or rhinoceros horn and items containing ivory or rhinoceros horn, with limited exceptions.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the import, sale, purchase, barter, or possession of ivory or rhinoceros horn and supplementing Title 23 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The Legislature finds and declares that ivory trafficking is at the highest rate ever recorded, with an estimated confiscation of more than 41 tons of illegal ivory worldwide in 2013; that despite laws to protect elephants, more than 35,000 African elephants were slaughtered in 2012 and scientists expect the current levels of illegal trade in ivory will bring elephants to extinction within 20 years; that other species with ivory teeth and tusks – such as hippopotamuses, narwhals, walruses, and whales – are equally threatened and the protection of one species may inadvertently draw poachers' efforts to another species; that precious artifacts from prehistoric mammoths are also not safe and need protection from illegal ivory traffickers; that currently the population of all species of rhinoceros living in the wild worldwide has dwindled to 29,000 and, in February 2014, a federal ban on commercial trade of rhinoceros horn and elephant ivory has focused the need to protect rhinoceros populations from poachers as well; and that the most effective way to discourage the illegal trafficking is to eliminate markets and profits for the traffickers.

The Legislature therefore determines that it is an important public purpose to protect all species of rhinoceros and all species of animals with ivory teeth and tusks by prohibiting the import, sale,

purchase, barter, or possession with intent to sell, of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product.

2. As used in this act:

“Ivory” means any tooth or tusk composed of ivory from any animal, including, but not limited to, an elephant, hippopotamus, mammoth, narwhal, walrus, or whale, or any piece thereof, whether raw ivory or worked ivory, or made into, or part of, an ivory product.

“Ivory product” means any item that contains, or that is wholly or partially made from, any ivory.

“Raw ivory” means any ivory the surface of which, polished or unpolished, is unaltered or minimally changed by carving.

“Rhinoceros horn” means the horn, or any piece thereof, of any species of rhinoceros.

“Rhinoceros horn product” means any item that contains, or is wholly or partially made from, any rhinoceros horn.

“Total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products” means the fair market value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products, or the actual price paid for the ivory, ivory products, rhinoceros horn, and rhinoceros products, whichever is greater.

“Worked ivory” means ivory that has been embellished, carved, marked, or otherwise altered so that it can no longer be considered raw ivory.

3. a. In addition to the prohibitions established pursuant to, and the penalties imposed for violations of, R.S.23:4-27, “The Endangered and Nongame Species Conservation Act,” P.L.1973, c.309 (C.23:2A-1 et seq.), and any other applicable law, it shall be unlawful for any person to import, sell, offer for sale, purchase, barter, or possess with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product, except as provided pursuant to this section.

b. It shall be presumptive evidence of possession with intent to sell when any ivory, ivory product, rhinoceros horn, or rhinoceros horn product is possessed in a retail or wholesale outlet commonly used for the buying or selling of similar products, provided, however, that nothing in this subsection shall preclude a finding of intent to sell based on any other evidence which may serve to independently establish such intent. The act of obtaining an appraisal of ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product, alone shall not constitute possession with intent to sell.

c. A person may convey ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product to the legal beneficiary of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product which is part of an estate or other items being conveyed to lawful beneficiaries upon the death of the owner of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product or in anticipation of that death.

d. None of the prohibitions set forth in this section shall apply to employees or agents of the federal or State government undertaking any law enforcement activities pursuant to federal or State law or any mandatory duties required by federal or State law.

e. The prohibition on import set forth in subsection a. of this section shall not apply where the import is expressly authorized by federal license or permit.

f. The Department of Environmental Protection may permit, under terms and conditions as the department may prescribe, the import, sale, offer for sale, purchase, barter, or possession with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product for bona fide educational or scientific purposes, unless this activity is prohibited by federal law.

4. a. In addition to any applicable penalties which may be imposed pursuant to R.S.23:4-27, "The Endangered and Nongame Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.), or any other applicable law, a person violating any provision of section 3 of this act, or any rule or regulation adopted pursuant to section 5 of this act, shall be guilty of:

(1) for a first offense, a disorderly persons offense and, notwithstanding the provisions of N.J.S.2C:43-3, shall be fined not less than \$1,000 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater; and

(2) for a second or subsequent offense, a crime of the fourth degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be fined not less than \$5,000 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.

b. Upon a conviction for violating the provisions of section 3 of this act, the court shall order the seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the violation and determine the penalty for the violation based on the assessed value of the seized products pursuant to subsection a. of this section. After sentencing the defendant, the court shall order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros horn products be transferred to the Department of Environmental Protection for proper disposition. The department, at its discretion, may destroy the ivory, ivory products, rhinoceros horn, and rhinoceros horn products or donate them to an educational or scientific institution or organization, including, but not necessarily limited to, a museum, university, or research group.

5. The Department of Environmental Protection may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation and administration of this act.

6. This act shall take effect immediately, except that sections 3 and 4 of this act shall remain inoperative for six months following the date of enactment.

STATEMENT

This bill prohibits any person from importing, selling, offering for sale, purchasing, bartering, or possessing with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product, with limited exceptions. The bill:

- 1) permits a person to convey ivory, ivory products, rhinoceros horn, or rhinoceros horn products to legal beneficiaries;
- 2) specifies that none of the prohibitions set forth in the bill applies to employees or agents of the federal or State government undertaking any law enforcement activities pursuant to federal or State law or any mandatory duties required by federal or State law;
- 3) specifies that the import prohibition does not apply where the import is expressly authorized by federal license or permit;
- 4) specifies that the Department of Environmental Protection may permit the import, sale, offering for sale, purchasing, bartering, or possessing with intent to sell ivory, ivory products, rhinoceros horn, or rhinoceros horn products for bona fide educational or scientific purposes; and
- 5) specifies that the act of obtaining an appraisal of ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product alone does not constitute possession with intent to sell.

The bill establishes, in addition to any applicable penalties which may be imposed pursuant to law, the following:

- 1) for a first offense, the person would be guilty of a disorderly persons offense and fined not less than \$1,000 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater; and
- (2) for a second or subsequent offense, the person would be guilty of a crime of the fourth degree and fined not less than \$5,000 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.