

7194

I N S E N A T E

May 5, 2014

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to prohibiting the purchase and sale of ivory articles and increasing the penalties for the illegal commercialization of wildlife, including ivory articles

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The environmental conservation law is amended by adding a
2 new section 11-0535-a to read as follows:
3 S 11-0535-A. ILLEGAL IVORY ARTICLES.
4 1. AS USED IN THIS SECTION:
5 A. "DISTRIBUTE" MEANS A TRANSFER OR CHANGE IN POSSESSION WITH AN
6 ACCOMPANYING CHANGE IN LEGAL OWNERSHIP.
7 B. "IVORY ARTICLE" MEANS ANY ITEM CONTAINING:
8 (I) WORKED OR RAW IVORY FROM ANY SPECIES OF ELEPHANT OR MAMMOTH; OR
9 (II) ANY ANIMAL PART CONTAINING IVORY INCLUDED BY THE COMMISSIONER
10 PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.
11 C. "RAW IVORY" MEANS ANY ELEPHANT OR MAMMOTH TUSK, AND ANY PIECE
12 THEREOF, THE SURFACE OF WHICH, POLISHED, OR UNPOLISHED, IS UNALTERED OR
13 MINIMALLY CARVED.
14 D. "WORKED IVORY" MEANS ANY ELEPHANT OR MAMMOTH TUSK, AND ANY PIECE
15 THEREOF, WHICH IS NOT RAW IVORY.
16 2. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION THREE OF THIS SECTION
17 AND NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF SECTION 11-0535
18 OF THIS TITLE, WHICH AUTHORIZES THE DEPARTMENT TO ISSUE CERTAIN LICENSES
19 OR PERMITS, NO PERSON SHALL SELL, OFFER FOR SALE, PURCHASE, TRADE,
20 BARTER OR DISTRIBUTE AN IVORY ARTICLE.
21 3. UNLESS SUCH ACTIVITY IS PROHIBITED BY FEDERAL LAW, RULE OR REGU-
22 LATION, THE COMMISSIONER MAY AUTHORIZE, UNDER SUCH ADDITIONAL TERMS AND
23 CONDITIONS AS HE OR SHE MAY PRESCRIBE, THE SALE, OFFERING FOR SALE,
24 PURCHASE, TRADING, BARTERING OR DISTRIBUTION OF IVORY ARTICLES, PROVIDED
25 THAT:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 A. THE IVORY ARTICLE IS PART OF A BONA FIDE ANTIQUE AND IS LESS THAN
2 FIVE PERCENT BY VOLUME OF SUCH ANTIQUE, AND THE ANTIQUE STATUS OF SUCH
3 ANTIQUE IS ESTABLISHED BY THE OWNER OR SELLER THEREOF WITH HISTORICAL
4 DOCUMENTATION EVIDENCING PROVENANCE AND SHOWING THE ANTIQUE TO BE NOT
5 LESS THEN ONE HUNDRED YEARS OLD;

6 B. THE DISTRIBUTION OR CHANGE OF POSSESSION OF THE IVORY ARTICLE IS
7 FOR EDUCATIONAL OR SCIENTIFIC PURPOSES; OR

8 C. THE DISTRIBUTION OF THE IVORY ARTICLE IS TO A LEGAL BENEFICIARY OF
9 A TRUST OR TO AN HEIR OR DISTRIBUTE OF AN ESTATE.

10 4. THE COMMISSIONER MAY PROMULGATE RULES AND REGULATIONS EXPANDING
11 THE DEFINITION OF "IVORY ARTICLE" TO INCLUDE ANY OTHER ANIMAL PARTS
12 CONTAINING IVORY PROVIDED THAT SUCH PARTS ARE FROM ANIMALS CLASSIFIED AS
13 ENDANGERED OR THREATENED, AND PROVIDED, FURTHER THAT THE COMMISSIONER
14 HAS HELD AT LEAST ONE PUBLIC HEARING PRIOR TO THE ADOPTION OF SUCH RULES
15 AND REGULATIONS.

16 S 2. Section 71-0924 of the environmental conservation law, as added
17 by chapter 69 of the laws of 1988, subdivision 4 as amended by chapter
18 417 of the laws of 1996, is amended to read as follows:

19 S 71-0924. Illegal commercialization of fish, shellfish, crustaceans,
20 and wildlife.

21 Notwithstanding any other provision of this chapter, when a violation
22 involves the sale, trade or barter of fish, shellfish, crustaceans,
23 wildlife, or parts thereof, the sale, trade or barter of which is
24 prohibited by the fish and wildlife law, the following additional penal-
25 ties shall be imposed:

26 1. where the value of fish, shellfish, crustaceans, wildlife, or parts
27 thereof, is two hundred fifty dollars or less, the offense shall be a
28 violation punishable by a fine of five hundred dollars and/or not more
29 than fifteen days of imprisonment;

30 2. where the value of fish, shellfish, crustaceans, wildlife, or parts
31 thereof, is more than two hundred fifty dollars but does not exceed one
32 thousand five hundred dollars, the offense shall be a misdemeanor
33 punishable by a fine of five thousand dollars and/or not more than one
34 year of imprisonment; [and]

35 3. where the value of fish, shellfish, crustaceans, wildlife, or parts
36 thereof, exceeds one thousand five hundred dollars, the offense shall
37 constitute a class E felony under the provisions of the penal law[.];

38 4. WHERE THE VALUE OF FISH, SHELLFISH, CRUSTACEANS, WILDLIFE, OR PARTS
39 THEREOF, EXCEEDS TWENTY-FIVE THOUSAND DOLLARS, THE OFFENSE SHALL CONSTI-
40 TUTE A CLASS D FELONY UNDER THE PROVISIONS OF THE PENAL LAW; OR

41 5. WHERE THE VALUE OF FISH, SHELLFISH, CRUSTACEANS, WILDLIFE, OR PARTS
42 THEREOF, EXCEEDS TWO HUNDRED FIFTY THOUSAND DOLLARS, THE OFFENSE SHALL
43 CONSTITUTE A CLASS C FELONY UNDER THE PROVISIONS OF THE PENAL LAW.

44 For the purposes of this section the value of fish, shellfish, crusta-
45 ceans and wildlife shall be the fair market value of or actual price
46 paid for such resource, whichever is greater. For purposes of this
47 section, "sale" shall include the acts of selling, trading or bartering
48 and all related acts, such as the act of offering for sale, trade or
49 barter, and shall also include the illegal possession of fish, shellf-
50 ish, wildlife or crustacea with intent to sell. It shall be presumptive
51 evidence of possession with intent to sell when such fish, shellfish,
52 wildlife or crustacea is possessed in quantities exceeding the allowable
53 recreational quantities, or is possessed in a retail or wholesale outlet
54 commonly used for the buying or selling of such fish, shellfish, wild-
55 life or crustacea, provided, however, that nothing in this subdivision

1 shall preclude the admission of other evidence which may serve to inde-
2 pendently prove a defendant's intent to sell.

3 S 3. Subdivision 13 of section 71-0925 of the environmental conserva-
4 tion law, as amended by chapter 706 of the laws of 2005, is amended and
5 a new subdivision 16 is added to read as follows:

6 13. If the violation was an act prohibited by subdivision two of
7 section 11-0535, 11-0535-A or by section 11-0536 of this chapter, or by
8 any lawful rule or regulation of the department promulgated pursuant
9 thereto, not more than two thousand dollars, and an additional penalty
10 of not more than three hundred fifty dollars for each fish, shellfish,
11 crustacea, wildlife or part thereof involved in the violation. If the
12 violation was an act prohibited by any regulation of the department
13 promulgated pursuant to subdivision three of section 11-0535 of this
14 chapter, then such penalty shall be not more than one thousand dollars,
15 and an additional penalty of not more than two hundred dollars for each
16 fish, shellfish, crustacea, wildlife or part thereof involved in the
17 violation.

18 16. IF THE VIOLATION WAS A SECOND OR SUBSEQUENT VIOLATION OF SECTION
19 11-0535, 11-0535-A OR 11-0536 OF THIS CHAPTER, THE GREATER OF (A) A FINE
20 OF FOUR THOUSAND DOLLARS PER ARTICLE FOR EACH VIOLATION, OR (B) AN
21 AMOUNT EQUAL TO THREE TIMES THE VALUE OF THE ARTICLE INVOLVED.

22 S 4. Within 30 days of the effective date of this act, the department
23 shall maintain on its website information regarding the prohibition on
24 the sale and purchase of ivory articles in the state.

25 S 5. Severability. If any clause, sentence, paragraph, section or part
26 of this act shall be adjudged by any court of competent jurisdiction to
27 be invalid and after exhaustion of all further judicial review, the
28 judgment shall not affect, impair or invalidate the remainder thereof,
29 but shall be confined in its operation to the clause, sentence, para-
30 graph, section or part of this act directly involved in the controversy
31 in which the judgment shall have been rendered.

32 S 6. No later than January 1, 2020, the department shall prepare a
33 report outlining enforcement activities and recommendations regarding
34 any necessary changes, including but not limited to the extension or
35 repeal of this act.

36 S 7. This act shall take effect immediately; provided, however, any
37 person who has been issued a license or permit allowing the sale of
38 elephant ivory articles prior to the effective date of this act may sell
39 such articles listed on such license or permit until such license or
40 permit has expired.