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I N S E N A T E

June 16, 2014

Introduced by Sens. LANZA, AVELLA -- (at request of the Governor) --
read twice and ordered printed, and when printed to be committed to
the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to
prohibiting the purchase and sale of ivory articles and rhinoceros
horns and increasing the penalties for the illegal sale of such arti-
cles

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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 AND RHINOCEROS HORNS.
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 WORKED OR RAW IVORY FROM
8 ANY SPECIES OF ELEPHANT OR MAMMOTH.
9 C. "RAW IVORY" MEANS ANY ELEPHANT OR MAMMOTH TUSK, AND ANY PIECE
10 THEREOF, THE SURFACE OF WHICH, POLISHED, OR UNPOLISHED, IS UNALTERED OR
11 MINIMALLY CARVED.
12 D. "WORKED IVORY" MEANS ANY ELEPHANT OR MAMMOTH TUSK, AND ANY PIECE
13 THEREOF, WHICH IS NOT RAW IVORY.
14 2. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION THREE OF THIS SECTION,
15 NO PERSON SHALL SELL, OFFER FOR SALE, PURCHASE, TRADE, BARTER OR
16 DISTRIBUTE AN IVORY ARTICLE OR RHINOCEROS HORN.
17 3. UNLESS SUCH ACTIVITY IS PROHIBITED BY FEDERAL LAW, RULE OR REGU-
18 LATION, THE COMMISSIONER MAY ISSUE LICENSES OR PERMITS FOR THE SALE,
19 OFFERING FOR SALE, PURCHASE, TRADING, BARTERING OR DISTRIBUTION OF IVORY
20 ARTICLES OR RHINOCEROS HORNS, PROVIDED THAT:
21 A. THE IVORY ARTICLE OR RHINOCEROS HORN IS PART OF A BONA FIDE ANTIQUE
22 AND IS LESS THAN TWENTY PERCENT BY VOLUME OF SUCH ANTIQUE, AND THE
23 ANTIQUE STATUS OF SUCH ANTIQUE IS ESTABLISHED BY THE OWNER OR SELLER
24 THEREOF WITH HISTORICAL DOCUMENTATION EVIDENCING PROVENANCE AND SHOWING
25 THE ANTIQUE TO BE NOT LESS THEN ONE HUNDRED YEARS OLD;

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

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1 B. THE DISTRIBUTION OR CHANGE OF POSSESSION OF THE IVORY ARTICLE OR
2 RHINOCEROS HORN IS FOR BONA FIDE EDUCATIONAL OR SCIENTIFIC PURPOSES, OR
3 TO A MUSEUM CHARTERED BY THE BOARD OF REGENTS PURSUANT TO THE EDUCATION
4 LAW; OR

5 C. THE DISTRIBUTION OF THE IVORY ARTICLE OR RHINOCEROS HORN IS TO A
6 LEGAL BENEFICIARY OF A TRUST OR TO AN HEIR OR DISTRIBUTE OF AN ESTATE;
7 OR

8 D. THE IVORY ARTICLE OR RHINOCEROS HORN IS PART OF A MUSICAL INSTRU-
9 MENT, INCLUDING, WITHOUT LIMITATION, STRING AND WIND INSTRUMENTS AND
10 PIANOS, AND THE OWNER OR SELLER PROVIDES HISTORICAL DOCUMENTATION AS THE
11 DEPARTMENT MAY REQUIRE, DEMONSTRATING PROVENANCE AND SHOWING THE ITEM
12 WAS MANUFACTURED NO LATER THAN NINETEEN HUNDRED SEVENTY-FIVE.

13 S 2. Section 71-0924 of the environmental conservation law, as added
14 by chapter 69 of the laws of 1988, and subdivision 4 as amended by chap-
15 ter 417 of the laws of 1996, is amended to read as follows:

16 S 71-0924. Illegal commercialization of fish, shellfish, crustaceans,
17 and wildlife.

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

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

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

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

36 4. WHERE THE VALUE OF IVORY ARTICLES, AS DEFINED IN SECTION 11-0535-A
37 OF THIS CHAPTER, EXCEEDS TWENTY-FIVE THOUSAND DOLLARS, THE OFFENSE SHALL
38 CONSTITUTE A CLASS D FELONY UNDER THE PROVISIONS OF THE PENAL LAW.

39 [4.] 5. For the purposes of this section the value of fish, shellfish,
40 crustaceans and wildlife shall be the fair market value of or actual
41 price paid for such resource, whichever is greater. For purposes of
42 this section, "sale" shall include the acts of selling, trading or
43 bartering and all related acts, such as the act of offering for sale,
44 trade or barter, and shall also include the illegal possession of fish,
45 shellfish, wildlife or crustacea with intent to sell. It shall be
46 presumptive evidence of possession with intent to sell when such fish,
47 shellfish, wildlife or crustacea is possessed in quantities exceeding
48 the allowable recreational quantities, or is possessed in a retail or
49 wholesale outlet commonly used for the buying or selling of such fish,
50 shellfish, wildlife or crustacea, provided, however, that nothing in
51 this subdivision shall preclude the admission of other evidence which
52 may serve to independently prove a defendant's intent to sell.

53 S 3. Section 71-0925 of the environmental conservation law is amended
54 by adding a new subdivision 16 to read as follows:

55 16. IF THE VIOLATION WAS AN ACT PROHIBITED BY SECTION 11-0535-A OF
56 THIS CHAPTER, NOT MORE THAN THREE THOUSAND DOLLARS OR NOT MORE THAN TWO

1 TIMES THE VALUE OF THE ARTICLE INVOLVED, WHICHEVER IS GREATER. IF THE
2 VIOLATION IS A SECOND OR SUBSEQUENT VIOLATION OF SUCH SECTION 11-0535-A,
3 NOT MORE THAN SIX THOUSAND DOLLARS OR NOT MORE THAN THREE TIMES THE
4 VALUE OF THE ARTICLE INVOLVED, WHICHEVER IS GREATER.

5 S 4. Within 30 days of the effective date of this act, the department
6 of environmental conservation shall maintain on its website information
7 regarding the prohibition on the sale and purchase of ivory articles and
8 rhinoceros horns in the state.

9 S 5. Severability. If any clause, sentence, paragraph, section or part
10 of this act shall be adjudged by any court of competent jurisdiction to
11 be invalid and after exhaustion of all further judicial review, the
12 judgment shall not affect, impair or invalidate the remainder thereof,
13 but shall be confined in its operation to the clause, sentence, para-
14 graph, section or part of this act directly involved in the controversy
15 in which the judgment shall have been rendered.

16 S 6. No later than January 1, 2020, the department of environmental
17 conservation shall prepare a report outlining enforcement activities and
18 recommendations regarding any necessary changes, including but not
19 limited to the extension or repeal of this act.

20 S 7. This act shall take effect immediately; provided, however, any
21 person who has been issued a license or permit allowing the sale of
22 elephant ivory articles or rhinoceros horns prior to the effective date
23 of this act may sell such articles listed on such license or permit
24 until such license or permit has expired.