

7040

I N S E N A T E

April 21, 2014

Introduced by Sen. AVELLA -- 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 to increase the penalties for the illegal commercialization of fish, shellfish, crustacea and 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. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF SECTION
5 11-0535 OF THIS TITLE, WHICH AUTHORIZES THE DEPARTMENT TO ISSUE CERTAIN
6 LICENSES OR PERMITS, NO PERSON SHALL SELL, OFFER FOR SALE, PURCHASE,
7 TRADE, BARTER, OR DISTRIBUTE OTHER THAN TO A LEGAL BENEFICIARY, AN IVORY
8 ARTICLE.
9 A. "IVORY ARTICLE" MEANS ANY ITEM CONTAINING:
10 (I) WORKED OR RAW IVORY FROM ANY SPECIES OF ELEPHANT OR MAMMOTH; OR
11 (II) ANY ANIMAL PART CONTAINING IVORY INCLUDED BY THE COMMISSIONER
12 PURSUANT TO SUBDIVISION TWO OF THIS SECTION.
13 B. "WORKED IVORY" MEANS ANY ELEPHANT OR MAMMOTH TUSK, AND ANY PIECE
14 THEREOF, WHICH IS NOT RAW IVORY.
15 C. "RAW IVORY" MEANS ANY ELEPHANT OR MAMMOTH TUSK, AND ANY PIECE
16 THEREOF, THE SURFACE OF WHICH, POLISHED, OR UNPOLISHED, IS UNALTERED OR
17 MINIMALLY CARVED.
18 2. THE COMMISSIONER MAY ADOPT RULES AND REGULATIONS EXPANDING THE
19 DEFINITION OF "IVORY ARTICLE" TO INCLUDE ANY OTHER ANIMAL PARTS CONTAIN-
20 ING IVORY PROVIDED THAT SUCH PARTS ARE FROM ANIMALS CLASSIFIED AS ENDAN-
21 GERED OR THREATENED AND PROVIDED THAT THE COMMISSIONER HAS HELD AT LEAST
22 ONE PUBLIC HEARING PRIOR TO THE ADOPTION OF SUCH RULES AND REGULATIONS.
23 S 2. Section 71-0924 of the environmental conservation law, as added
24 by chapter 69 of the laws of 1988, subdivision 4 as amended by chapter
25 417 of the laws of 1996, is amended to read as follows:

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

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1 S 71-0924. Illegal commercialization of fish, shellfish, crustaceans,
2 and wildlife.

3 Notwithstanding any other provision of this chapter, when a violation
4 involves the sale, trade or barter of fish, shellfish, crustaceans,
5 wildlife, or parts thereof, the sale, trade or barter of which is
6 prohibited by the fish and wildlife law, the following additional penal-
7 ties shall be imposed:

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

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

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

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

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

26 For the purposes of this section the value of fish, shellfish, crusta-
27 ceans and wildlife shall be the fair market value of or actual price
28 paid for such resource, whichever is greater. For purposes of this
29 section, "sale" shall include the acts of selling, trading or bartering
30 and all related acts, such as the act of offering for sale, trade or
31 barter, and shall also include the illegal possession of fish, shellf-
32 ish, wildlife or crustacea with intent to sell. It shall be presumptive
33 evidence of possession with intent to sell when such fish, shellfish,
34 wildlife or crustacea is possessed in quantities exceeding the allowable
35 recreational quantities, or is possessed in a retail or wholesale outlet
36 commonly used for the buying or selling of such fish, shellfish, wild-
37 life or crustacea, provided, however, that nothing in this subdivision
38 shall preclude the admission of other evidence which may serve to inde-
39 pendently prove a defendant's intent to sell.

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

43 13. If the violation was an act prohibited by subdivision two of
44 section 11-0535, 11-0535-A or by section 11-0536 of this chapter, or by
45 any lawful rule or regulation of the department promulgated pursuant
46 thereto, not more than two thousand dollars, and an additional penalty
47 of not more than three hundred fifty dollars for each fish, shellfish,
48 crustacea, wildlife or part thereof involved in the violation. If the
49 violation was an act prohibited by any regulation of the department
50 promulgated pursuant to subdivision three of section 11-0535 of this
51 chapter, then such penalty shall be not more than one thousand dollars,
52 and an additional penalty of not more than two hundred dollars for each
53 fish, shellfish, crustacea, wildlife or part thereof involved in the
54 violation.

55 16. IF THE VIOLATION WAS A SECOND OR SUBSEQUENT VIOLATION OF SECTION
56 11-0535, 11-0535-A OR 11-0536 OF THIS CHAPTER, THE GREATER OF (A) A FINE

1 OF FOUR THOUSAND DOLLARS PER ARTICLE FOR EACH VIOLATION, OR (B) AN
2 AMOUNT EQUAL TO THREE TIMES THE VALUE OF THE ARTICLE INVOLVED.

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

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

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

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