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I N   A S S E M B L Y

February 19, 2014

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Introduced by M. of A. SWEENEY, WEISENBERG, LIFTON, O'DONNELL, STEC, GUNTHER, JAFFEE, KAVANAGH, SCHIMEL, TITONE, FAHY, ROZIC, OTIS, GOTTFRIED, COOK, ENGLEBRIGHT, DINOWITZ, MILLMAN, CAHILL, ROBINSON, ROSENTHAL, BROOK-KRASNY, BRAUNSTEIN, CORWIN -- Multi-Sponsored by -- M. of A. BRENNAN, GLICK, HENNESSEY, LUPARDO, SCARBOROUGH, SKARTADOS -- read once and referred 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.

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

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1 S 2. Section 71-0924 of the environmental conservation law, as added  
2 by chapter 69 of the laws of 1988, subdivision 4 as amended by chapter  
3 417 of the laws of 1996, is amended to read as follows:

4 S 71-0924. Illegal commercialization of fish, shellfish, crustaceans,  
5 and wildlife.

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

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

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

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

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

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

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

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

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

1 fish, shellfish, crustacea, wildlife or part thereof involved in the  
2 violation.

3 16. IF THE VIOLATION WAS A SECOND OR SUBSEQUENT VIOLATION OF SECTION  
4 11-0535, 11-0535-A OR 11-0536 OF THIS CHAPTER, THE GREATER OF (A) A FINE  
5 OF FOUR THOUSAND DOLLARS PER ARTICLE FOR EACH VIOLATION, OR (B) AN  
6 AMOUNT EQUAL TO THREE TIMES THE VALUE OF THE ARTICLE INVOLVED.

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

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

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

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