S T A T E O F N E W Y O R K

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:

Section 1. The environmental conservation law is amended by adding a new section 11-0535-a to read as follows:

S 11-0535-A. ILLEGAL IVORY ARTICLES.

1. AS USED IN THIS SECTION:

A. "DISTRIBUTE" MEANS A TRANSFER OR CHANGE IN POSSESSION WITH AN ACCOMPANYING CHANGE IN LEGAL OWNERSHIP.

B. "IVORY ARTICLE" MEANS ANY ITEM CONTAINING:

(I) WORKED OR RAW IVORY FROM ANY SPECIES OF ELEPHANT OR MAMMOTH; OR

(II) ANY ANIMAL PART CONTAINING IVORY INCLUDED BY THE COMMISSIONER PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

C. "RAW IVORY" MEANS ANY ELEPHANT OR MAMMOTH TUSK, AND ANY PIECE THEREOF, THE SURFACE OF WHICH, POLISHED, OR UNPOLISHED, IS UNALTERED OR MINIMALLY CARVED.

D. "WORKED IVORY" MEANS ANY ELEPHANT OR MAMMOTH TUSK, AND ANY PIECE THEREOF, WHICH IS NOT RAW IVORY.

2. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION THREE OF THIS SECTION AND NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF SECTION 11-0535 OF THIS TITLE, WHICH AUTHORIZES THE DEPARTMENT TO ISSUE CERTAIN LICENSES OR PERMITS, NO PERSON SHALL SELL, OFFER FOR SALE, PURCHASE, TRADE, BARTER OR DISTRIBUTE AN IVORY ARTICLE.

3. UNLESS SUCH ACTIVITY IS PROHIBITED BY FEDERAL LAW, RULE OR REGULATION, THE COMMISSIONER MAY AUTHORIZE, UNDER SUCH ADDITIONAL TERMS AND CONDITIONS AS HE OR SHE MAY PRESCRIBE, THE SALE, OFFERING FOR SALE, PURCHASE, TRADING, BARTERING OR DISTRIBUTION OF IVORY ARTICLES, PROVIDED THAT:

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

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

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

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

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

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

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

Notwithstanding any other provision of this chapter, when a violation involves the sale, trade or barter of fish, shellfish, crustaceans, wildlife, or parts thereof, the sale, trade or barter of which is prohibited by the fish and wildlife law, the following additional penalties shall be imposed:

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

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

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

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

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

For the purposes of this section the value of fish, shellfish, crustaceans and wildlife shall be the fair market value of or actual price paid for such resource, whichever is greater. For purposes of this section, "sale" shall include the acts of selling, trading or bartering and all related acts, such as the act of offering for sale, trade or barter, and shall also include the illegal possession of fish, shellfish, wildlife or crustacea with intent to sell. It shall be presumptive evidence of possession with intent to sell when such fish, shellfish, wildlife or crustacea is possessed in quantities exceeding the allowable recreational quantities, or is possessed in a retail or wholesale outlet commonly used for the buying or selling of such fish, shellfish, wildlife or crustacea, provided, however, that nothing in this subdivision

shall preclude the admission of other evidence which may serve to independently prove a defendant's intent to sell.

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

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

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

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

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

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

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