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

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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 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 AND RHINOCEROS HORNS.

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 WORKED OR RAW IVORY FROM ANY SPECIES OF ELEPHANT OR MAMMOTH.

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, NO PERSON SHALL SELL, OFFER FOR SALE, PURCHASE, TRADE, BARTER OR DISTRIBUTE AN IVORY ARTICLE OR RHINOCEROS HORN.

3. UNLESS SUCH ACTIVITY IS PROHIBITED BY FEDERAL LAW, RULE OR REGULATION, THE COMMISSIONER MAY ISSUE LICENSES OR PERMITS FOR THE SALE, OFFERING FOR SALE, PURCHASE, TRADING, BARTERING OR DISTRIBUTION OF IVORY ARTICLES OR RHINOCEROS HORNS, PROVIDED THAT:

A. THE IVORY ARTICLE OR RHINOCEROS HORN IS PART OF A BONA FIDE ANTIQUE AND IS LESS THAN TWENTY 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;

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

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

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

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

S 2. Section 71-0924 of the environmental conservation law, as added by chapter 69 of the laws of 1988, and 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[.]; AND

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

[4.] 5. 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. Section 71-0925 of the environmental conservation law is amended by adding a new subdivision 16 to read as follows:

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

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

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