

**ASSEMBLY BILL**

**No. 96**

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**Introduced by Assembly Member Atkins**  
(Principal coauthor: Senator Lara)  
**(Coauthors: Assembly Members Bloom, Bonta, Levine,  
Maienschein, McCarty, Rendon, and Williams)**  
(Coauthor: Senator Pavley)

January 7, 2015

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An act to add Section 2022 to the Fish and Game Code, and to repeal Section 5 of Chapter 692 of the Statutes of 1976, relating to animal parts and products.

LEGISLATIVE COUNSEL'S DIGEST

AB 96, as introduced, Atkins. Animal parts and products: importation or sale of ivory and rhinoceros horn.

Existing law makes it a crime to import into the state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of an elephant. Existing law exempts the possession with intent to sell, or sale of the dead body, or any part or product thereof, of any elephant before June 1, 1977, or the possession with intent to sell or the sale of any such item on or after June 1, 1977, if the item was imported before January 1, 1977.

This bill would delete this exemption. By changing the definition of a crime, this bill would impose a state-mandated local program.

This bill would prohibit a person from purchasing, selling, offering for sale, possessing with intent to sell, or importing with intent to sell ivory or rhinoceros horn, except as specified, and would make this prohibition enforceable by the Department of Fish and Wildlife. The bill would make a violation of this provision or any rule, regulation, or

order adopted pursuant to this provision a misdemeanor subject to specified criminal penalties. By creating a new crime, the bill would impose a state-mandated local program. In addition to the specified criminal penalties, the bill would authorize the department to impose a civil penalty of up to \$10,000 for a violation of this provision or any rule, regulation, or order adopted pursuant to this provision. The bill would authorize the department to permit the purchase, sale, offer for sale, possession with intent to sell, or importation with intent to sell ivory or rhinoceros horn for educational or scientific purposes by a bona fide educational or scientific institution if certain criteria are satisfied.

This bill would provide that the provisions of this bill are severable.

This bill would make these provisions operative on July 1, 2016.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) There is worldwide concern regarding the plight of elephants  
4 and rhinoceroses, who are being poached at alarming rates — an  
5 average of 96 elephants per day are killed in Africa.

6 (b) Illegal poaching and wildlife trafficking is the fourth largest  
7 transnational crime and ivory helps fund the military operations  
8 of notorious terrorist groups. Smuggling gangs move tons of tusks  
9 to markets thousands of miles away.

10 (c) International, federal, and state laws are all being  
11 strengthened to protect these iconic species from cruelty and  
12 extinction. The states of New York and New Jersey recently  
13 enacted strong prohibitions on intra-state ivory and rhinoceros  
14 horn commerce and the federal government has proposed  
15 strengthened ivory trade and import regulations.

16 (d) California has prohibited the ivory trade since 1977, but a  
17 loophole has rendered the law unenforceable — allowing illegal  
18 sales to flourish. San Francisco and Los Angeles have consistently

1 ranked among the top trading markets for illegal ivory in the United  
2 States.

3 SEC. 2. Section 2022 is added to the Fish and Game Code, to  
4 read:

5 2022. (a) For the purposes of this section, the following terms  
6 have the following meanings:

7 (1) “Bona fide educational or scientific institution” means an  
8 institution that establishes through documentation either of the  
9 following:

10 (A) Educational or scientific tax exemption, from the federal  
11 Internal Revenue Service or the institution’s national, state, or  
12 local tax authority.

13 (B) Accreditation as an educational or scientific institution,  
14 from a qualified national, regional, state, or local authority for the  
15 institution’s location.

16 (2) “Ivory” means a tooth or tusk from a species of elephant,  
17 hippopotamus, mammoth, walrus, whale, or narwhal, or a piece  
18 thereof, whether raw ivory or worked ivory, and includes a product  
19 containing, or advertised as containing, ivory.

20 (3) “Rhinoceros horn” means the horn, or a piece thereof, or a  
21 derivative such as powder, of a species of rhinoceros, and includes  
22 a product containing, or advertised as containing, a rhinoceros  
23 horn.

24 (4) “Sale” or “sell” means selling, trading, bartering for  
25 monetary or nonmonetary consideration, giving away in  
26 conjunction with a commercial transaction, or giving away at a  
27 location where a commercial transaction occurred at least once  
28 during the same or the previous calendar year.

29 (5) “Total value” means either the fair market value or the actual  
30 price paid for ivory or rhinoceros horn, whichever is greater.

31 (b) Except as provided in subdivisions (c) and (d), a person shall  
32 not purchase, sell, offer for sale, possess with intent to sell, or  
33 import with intent to sell ivory or rhinoceros horn.

34 (c) The prohibitions set forth in subdivision (b) shall not apply  
35 to any of the following:

36 (1) An employee or agent of the federal or state government  
37 undertaking a law enforcement activity pursuant to federal or state  
38 law, or a mandatory duty required by federal law.

1 (2) An activity that is authorized by an exemption or permit  
2 under federal law or that is otherwise expressly authorized under  
3 federal law.

4 (3) Ivory or rhinoceros horn that is part of a musical instrument,  
5 including, but not limited to, a string or wind instrument or piano,  
6 and that is less than 20 percent by volume of the instrument, if the  
7 owner or seller provides historical documentation demonstrating  
8 provenance and showing the item was manufactured no later than  
9 1975.

10 (4) Ivory or rhinoceros horn that is part of a bona fide antique  
11 and that is less than five percent by volume of the antique, if the  
12 antique status is established by the owner or seller of the antique  
13 with historical documentation demonstrating provenance and  
14 showing the antique to be not less than 100 years old.

15 (d) The department may permit the purchase, sale, offer for sale,  
16 possession with intent to sell, or importation with intent to sell  
17 ivory or rhinoceros horn for educational or scientific purposes by  
18 a bona fide educational or scientific institution if both of the  
19 following criteria are satisfied:

20 (1) The purchase, sale, offer for sale, possession with intent to  
21 sell, or import with intent to sell the ivory or rhinoceros horn is  
22 not prohibited by federal law.

23 (2) The ivory or rhinoceros horn was legally acquired before  
24 January 1, 1991, and was not subsequently transferred from one  
25 person to another for financial gain or profit after July 1, 2016.

26 (e) It shall be presumptive evidence of possession with intent  
27 to sell ivory or rhinoceros horn if the ivory or rhinoceros horn is  
28 possessed in a retail or wholesale outlet commonly used for the  
29 buying or selling of similar items. This presumption shall not  
30 preclude a finding of intent to sell based on any other evidence  
31 that may serve to independently establish that intent.

32 (f) For a violation of any provision of this section, or any rule,  
33 regulation, or order adopted pursuant to this section, the following  
34 criminal penalties shall be imposed:

35 (1) For a first conviction, where the total value of the ivory or  
36 rhinoceros horn is two hundred fifty dollars (\$250) or less, the  
37 offense shall be a misdemeanor punishable by a fine of not less  
38 than one thousand dollars (\$1,000), or more than ten thousand  
39 dollars (\$10,000), imprisonment in the county jail for not more  
40 than 30 days, or by both the fine and imprisonment.

1 (2) For a first conviction, where the total value of the ivory or  
2 rhinoceros horn is more than two hundred fifty dollars (\$250), the  
3 offense shall be a misdemeanor punishable by a fine of not less  
4 than five thousand dollars (\$5,000), or more than forty thousand  
5 dollars (\$40,000), imprisonment in the county jail for not more  
6 than one year, or by both the fine and imprisonment.

7 (3) For a second or subsequent conviction, where the total value  
8 of the ivory or rhinoceros horn is two hundred fifty dollars (\$250)  
9 or less, the offense shall be a misdemeanor punishable by a fine  
10 of not less than five thousand dollars (\$5,000), or more than forty  
11 thousand dollars (\$40,000), imprisonment in county jail for not  
12 more than one year, or by both the fine and imprisonment.

13 (4) For a second or subsequent conviction, where the total value  
14 of the ivory or rhinoceros horn is more than two hundred fifty  
15 dollars (\$250), the offense shall be a misdemeanor punishable by  
16 a fine of not less than ten thousand dollars (\$10,000), or more than  
17 fifty thousand dollars (\$50,000) or the amount equal to two times  
18 the total value of the ivory or rhinoceros horn involved in the  
19 violation, whichever is greater, imprisonment in county jail for  
20 not more than one year, or by both the fine and imprisonment.

21 (g) In addition to, and separate from, any criminal penalty  
22 provided for under subdivision (f), a civil or administrative fine  
23 of up to ten thousand dollars (\$10,000) may be imposed for a  
24 violation of any provision of this section, or any rule, regulation,  
25 or order adopted pursuant to this section. Civil penalties authorized  
26 pursuant to this subdivision may be imposed administratively by  
27 the department consistent with all of the following:

28 (1) The chief of enforcement issues a complaint to any person  
29 or entity on which an administrative civil penalty may be imposed  
30 pursuant to this section. The complaint shall allege the act or failure  
31 to act that constitutes a violation, relevant facts, the provision of  
32 law authorizing the civil penalty to be imposed, and the proposed  
33 penalty amount.

34 (2) The complaint and order is served by personal notice or  
35 certified mail and informs the party served that the party may  
36 request a hearing no later than 20 days from the date of service. If  
37 a hearing is requested, it shall be scheduled before the director or  
38 his or her designee, which designee shall not be the chief of  
39 enforcement issuing the complaint and order. A request for hearing  
40 shall contain a brief statement of the material facts the party claims

1 support his or her contention that no administrative penalty should  
 2 be imposed or that an administrative penalty of a lesser amount is  
 3 warranted. A party served with a complaint pursuant to this  
 4 subdivision waives the right to a hearing if no hearing is requested  
 5 within 20 days of service of the complaint, in which case the order  
 6 imposing the administrative penalty shall become final.

7 (3) The director, or his or her designee, shall control the nature  
 8 and order of the hearing proceedings. Hearings shall be informal  
 9 in nature, and need not be conducted according to the technical  
 10 rules relating to evidence. The director or his or her designee shall  
 11 issue a final order within 45 days of the close of the hearing. A  
 12 final copy of the order shall be served by certified mail upon the  
 13 party served with the complaint.

14 (4) A party may obtain review of the final order by filing a  
 15 petition for a writ of mandate with the superior court within 30  
 16 days of the date of service of the final order. The administrative  
 17 penalty shall be due and payable to the department within 60 days  
 18 after the time to seek judicial review has expired or, where the  
 19 party has not requested a hearing of the order, within 20 days after  
 20 the order imposing an administrative penalty becomes final.

21 (h) For any conviction or other entry of judgment for a violation  
 22 of this section resulting in a fine, the department may, upon  
 23 appropriation by the Legislature, pay one-half of the fine, but not  
 24 to exceed five hundred dollars (\$500), to any person giving  
 25 information that led to the conviction or other entry of judgment.  
 26 This reward shall not apply if the informant is a regular salaried  
 27 law enforcement officer, or officer or agent of the department.

28 (i) Upon conviction or other entry of judgment for a violation  
 29 of this section, any seized ivory or rhinoceros horn shall be  
 30 forfeited and, upon forfeiture, either maintained by the department  
 31 for educational or training purposes, donated by the department  
 32 to a bona fide educational or scientific institution, or destroyed.

33 (j) This section does not preclude enforcement under Section  
 34 6530 of the Penal Code.

35 SEC. 3. Section 5 of Chapter 692 of the Statutes of 1976 is  
 36 repealed.

37 ~~SEC. 5. Section 1 of this act shall become operative June 1,~~  
 38 ~~1977. No provision of law shall prohibit the possession with intent~~  
 39 ~~to sell, or sale of the dead body, or any part of product thereof, of~~  
 40 ~~any elephant prior to June 1, 1977, or the possession with intent~~

1 ~~to sell or the sale of any such item on or after such date which was~~  
2 ~~imported prior to the effective date of this act.~~

3 ~~The burden of proof to demonstrate that such item or items were~~  
4 ~~imported prior to the effective date of this act shall be placed upon~~  
5 ~~the defendant.~~

6 SEC. 4. The provisions of this act are severable. If any  
7 provision of this act or its application is held invalid, that invalidity  
8 shall not affect other provisions or applications that can be given  
9 effect without the invalid provision or application.

10 SEC. 5. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.

19 SEC. 6. This act shall become operative on July 1, 2016.