

AMENDED IN SENATE JUNE 17, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 96

Introduced by Assembly Member Atkins

(Principal coauthor: Senator Lara)

(Coauthors: Assembly Members Bloom, Bonta, Chiu, Dababneh, Gatto, Levine, Low, Maienschein, McCarty, Rendon, Ting, Thurmond, Waldron, and Williams)

~~(Coauthor: Senator~~ **Coauthors: Senators Allen, Hancock, Pan, and Pavley)**

January 7, 2015

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 amended, 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~~ *make it unlawful*

to purchase, sell, offer for sale, possess with intent to sell, or import 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 an administrative 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 intrastate ivory and rhinoceros horn

1 commerce and the federal government has proposed strengthened
2 ivory trade and import regulations.

3 (d) California has prohibited the ivory trade since 1977, but a
4 loophole has rendered the law unenforceable — allowing illegal
5 sales to flourish. San Francisco and Los Angeles have consistently
6 ranked among the top trading markets for illegal ivory in the United
7 States.

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

10 2022. (a) For the purposes of this section, the following terms
11 have the following meanings:

12 (1) “Bona fide educational or scientific institution” means an
13 institution that establishes through documentation either of the
14 following:

15 (A) Educational or scientific tax exemption, from the federal
16 Internal Revenue Service or the institution’s national, state, or
17 local tax authority.

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

21 (2) “Ivory” means a tooth or tusk from a species of elephant,
22 hippopotamus, mammoth, *mastodon*, walrus, *warthog*, whale, or
23 narwhal, or a piece thereof, whether raw ivory or worked ivory,
24 and includes a product containing, or advertised as containing,
25 ivory.

26 (3) “Rhinoceros horn” means the horn, or a piece thereof, or a
27 derivative such as powder, of a species of rhinoceros, and includes
28 a product containing, or advertised as containing, a rhinoceros
29 horn.

30 (4) “Sale” or “sell” means selling, trading, bartering for
31 monetary or nonmonetary consideration, giving away in
32 conjunction with a commercial transaction, or giving away at a
33 location where a commercial transaction occurred at least once
34 during the same or the previous calendar year.

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

37 (b) Except as provided in ~~subdivisions (c) and (d), a person shall~~
38 ~~not subdivision (c), it is unlawful to~~ purchase, sell, offer for sale,
39 possess with intent to sell, or import with intent to sell ivory or
40 rhinoceros horn.

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

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

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

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

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

~~(d)~~

(5) The department may 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 both of the following criteria are satisfied:

~~(1)~~

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

~~(2)~~

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

~~(e) It shall be presumptive evidence of possession with intent to sell ivory or rhinoceros horn if the ivory or rhinoceros horn is possessed in a retail or wholesale outlet commonly used for the buying or selling of similar items. This presumption~~

(d) Possession of ivory or rhinoceros horn in a retail or wholesale outlet commonly used for the buying or selling of similar items is prima facie evidence of possession with intent to sell. This

1 *evidence* shall not preclude a finding of intent to sell based on any
2 other evidence that may serve to ~~independently~~ establish that ~~intent~~.
3 ~~intent independently or in conjunction with this evidence.~~

4 ~~(f)~~

5 (e) For a violation of any provision of this section, or any rule,
6 regulation, or order adopted pursuant to this section, the following
7 criminal penalties shall be imposed:

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

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

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

26 (4) For a second or subsequent conviction, where the total value
27 of the ivory or rhinoceros horn is more than two hundred fifty
28 dollars (\$250), the offense shall be a misdemeanor punishable by
29 a fine of not less than ten thousand dollars (\$10,000), or more than
30 fifty thousand dollars (\$50,000) or the amount equal to two times
31 the total value of the ivory or rhinoceros horn involved in the
32 violation, whichever is greater, imprisonment in county jail for
33 not more than one year, or by both the fine and imprisonment.

34 ~~(g)~~

35 (f) In addition to, and separate from, any criminal penalty
36 provided for under subdivision ~~(f)~~, ~~a civil or~~ (e), an administrative
37 ~~fine~~ penalty of up to ten thousand dollars (\$10,000) may be
38 imposed for a violation of any provision of this section, or any
39 rule, regulation, or order adopted pursuant to this section. ~~Civil~~
40 ~~penalties~~ Penalties authorized pursuant to this subdivision may be

1 imposed ~~administratively~~ by the department consistent with all of
2 the following:

3 (1) The chief of enforcement issues a complaint to any person
4 or entity on which an administrative civil penalty may be imposed
5 pursuant to this section. The complaint shall allege the act or failure
6 to act that constitutes a violation, relevant facts, the provision of
7 law authorizing the ~~civil~~ *administrative* penalty to be imposed,
8 and the proposed penalty amount.

9 (2) The complaint and order is served by personal notice or
10 certified mail and informs the party served that the party may
11 request a hearing no later than 20 days from the date of service. If
12 a hearing is requested, it shall be scheduled before the director or
13 his or her designee, which designee shall not be the chief of
14 enforcement issuing the complaint and order. A request for hearing
15 shall contain a brief statement of the material facts the party claims
16 support his or her contention that no administrative penalty should
17 be imposed or that an administrative penalty of a lesser amount is
18 warranted. A party served with a complaint pursuant to this
19 subdivision waives the right to a hearing if no hearing is requested
20 within 20 days of service of the complaint, in which case the order
21 imposing the administrative penalty shall become final.

22 (3) The director, or his or her designee, shall control the nature
23 and order of the hearing proceedings. Hearings shall be informal
24 in nature, and need not be conducted according to the technical
25 rules relating to evidence. ~~The director~~ *director*, or his or her
26 ~~designee~~ *designee*, shall issue a final order within 45 days of the
27 close of the hearing. A final copy of the order shall be served by
28 certified mail upon the party served with the complaint.

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

36 ~~(h)~~

37 (g) For any conviction or other entry of judgment *imposed by*
38 *a court* for a violation of this section resulting in a fine, the
39 ~~department may, upon appropriation by the Legislature, court may~~
40 pay one-half of the fine, but not to exceed five hundred dollars

1 (\$500), to any person giving information that led to the conviction
2 or other entry of judgment. This reward shall not apply if the
3 informant is a regular salaried law enforcement officer, or officer
4 or agent of the department.

5 (i)

6 (h) Upon conviction or other entry of judgment for a violation
7 of this section, any seized ivory or rhinoceros horn shall be
8 forfeited and, upon forfeiture, either maintained by the department
9 for educational or training purposes, donated by the department
10 to a bona fide educational or scientific institution, or destroyed.

11 (i) *Administrative penalties collected pursuant to this section*
12 *shall be deposited in the Fish and Game Preservation Fund and*
13 *used for law enforcement purposes upon appropriation by the*
14 *Legislature.*

15 (j) This section does not preclude enforcement under Section
16 6530 of the Penal Code.

17 SEC. 3. Section 5 of Chapter 692 of the Statutes of 1976 is
18 repealed.

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

23 SEC. 5. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.

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