

SENATE BILL NO. 221

INTRODUCED BY M. PHILLIPS

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE IMPORT, SALE, PURCHASE, BARTER, OR POSSESSION WITH INTENT TO SELL ANY IVORY, IVORY PRODUCT, RHINOCEROS HORN, OR RHINOCEROS HORN PRODUCT; DEFINING TERMS; AND PROVIDING PENALTIES AND EXEMPTIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Legislative findings and intent. (1) The legislature finds that:

(a) ivory trafficking is at the highest rate ever recorded, with an estimated confiscation of more than 41 tons of illegal ivory worldwide in 2013;

(b) despite laws to protect elephants, more than 35,000 African elephants were slaughtered in 2012, and scientists expect the current levels of illegal trade in ivory will bring elephants to extinction within 20 years;

(c) other species with ivory teeth and tusks, such as hippopotamuses, narwhals, walruses, and whales, are equally threatened, and the protection of one species may inadvertently draw poachers' efforts to another species;

(d) precious artifacts from prehistoric mammoths are also not safe and need protection from illegal ivory traffickers;

(e) currently the population of all species of rhinoceros living in the wild worldwide has dwindled to 29,000 and, in February 2014, a federal ban on commercial trade of rhinoceros horn and elephant ivory has focused the need to protect rhinoceros populations from poachers as well; and

(f) the most effective way to discourage the illegal trafficking is to eliminate markets and profits for the traffickers.

(2) It is the intent of the legislature to protect all species of rhinoceros and all species of animals with ivory teeth and tusks by prohibiting the import, sale, purchase, barter, or possession with intent to sell of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 3], unless the context otherwise requires, the following definitions apply:



1 (1) "Bona fide educational or scientific institution" means an institution that establishes through
2 documentation either of the following:

3 (a) an educational or scientific tax exemption, from the federal internal revenue service or the institution's
4 national, state, or local tax authority; or

5 (b) accreditation as an educational or scientific institution from a qualified national, regional, state, or
6 local authority for the institution's location.

7 (2) "Ivory" means any tooth or tusk composed of ivory from any animal, including but not limited to an
8 elephant, hippopotamus, or mammoth, whether raw ivory or worked ivory, or made into, or part of, an ivory
9 product.

10 (3) "Ivory product" means any item that contains or that is wholly or partially made from ivory.

11 (4) "Raw ivory" means any ivory the surface of which, polished or unpolished, is unaltered or minimally
12 changed by carving.

13 (5) "Rhinoceros horn" means the horn or any piece of horn of any species of rhinoceros.

14 (6) "Rhinoceros horn product" means any item that contains or is wholly or partially made from any
15 rhinoceros horn.

16 (7) "Total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products" means the
17 fair market value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products or the actual price
18 paid for the ivory, ivory products, rhinoceros horn, and rhinoceros products, whichever is greater.

19 (8) "Worked ivory" means ivory that has been embellished, carved, marked, or otherwise altered so that
20 it can no longer be considered raw ivory.

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22 **NEW SECTION. Section 3. Prohibitions -- penalties -- exemptions.** (1) A person may not import,
23 sell, offer for sale, purchase, barter, or possess with intent to sell any ivory, ivory product, rhinoceros horn, or
24 rhinoceros horn product, except as provided in this section.

25 (2) It is presumptive evidence of possession with intent to sell when any ivory, ivory product, rhinoceros
26 horn, or rhinoceros horn product is possessed in a retail or wholesale outlet commonly used for the buying or
27 selling of similar products. However, nothing in this subsection precludes a finding of intent to sell based on any
28 other evidence that may serve to independently establish intent. The act of obtaining an appraisal of ivory, an
29 ivory product, rhinoceros horn, or a rhinoceros horn product does not alone constitute possession with intent to
30 sell.

1 (3) A person may convey ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product to the
2 legal beneficiary of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product that is part of an estate
3 or other items being conveyed to lawful beneficiaries upon the death of the owner of the ivory, ivory product,
4 rhinoceros horn, or rhinoceros horn product or in anticipation of that death.

5 (4) None of the prohibitions set forth in this section apply to employees or agents of the federal or state
6 government undertaking any law enforcement activities pursuant to federal or state law or any mandatory duties
7 required by federal or state law.

8 (5) The prohibition on import does not apply when the import is expressly authorized by federal license
9 or permit.

10 (6) The prohibitions in this section do not apply to:

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

14 (b) ivory or rhinoceros horn that is part of a bona fide antique and that is less than 5% by volume of the
15 antique if the antique status is established by the owner or seller of the antique with historical documentation
16 demonstrating provenance and showing the antique to be not less than 100 years old;

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

20 (i) the purchase, sale, offer for sale, possession with intent to sell, or import with intent to sell the ivory
21 or rhinoceros horn is not prohibited by federal law; and

22 (ii) the ivory or rhinoceros horn was legally acquired before January 1, 1991, and was not subsequently
23 transferred from one person to another for financial gain or profit after July 1, 2018.

24 (7) A person convicted of violating any provision of [sections 1 through 3] shall be fined:

25 (a) for a first offense, not less than \$1,000 or an amount equal to two times the total value of the ivory,
26 ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater;

27 (b) for a second or subsequent offense, not less than \$5,000 or an amount equal to two times the total
28 value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense,
29 whichever is greater.

30 (8) (a) Upon a conviction for violating the provisions of [sections 1 through 3], the court shall order the

1 seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the violation and
2 determine the penalty for the violation based on the assessed value of the seized products.

3 (b) After sentencing, the court shall order that the seized ivory, ivory products, rhinoceros horn, and
4 rhinoceros horn products be destroyed or donated to an educational or scientific institution or organization,
5 including but not limited to a museum, university, or research group.

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7 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified
8 as an integral part of Title 45, and the provisions of Title 45 apply to [sections 1 through 3].

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