

2018 -- H 7184

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO CRIMINAL OFFENSES - SALE OF IVORY OR RHINOCEROS HORNS

Introduced By: Representatives Vella-Wilkinson, McNamara, Nardolillo, Edwards, and
Ajello

Date Introduced: January 17, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 11 of the General Laws entitled "CRIMINAL OFFENSES" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 70

4 SALE OF IVORY OR RHINOCEROS HORNS

5 **11-70-1. Legislative findings.**

6 The general assembly finds and declares as follows:

7 (1) Ivory trafficking is at the highest rate ever recorded, with an estimated confiscation of
8 more than forty-one (41) tons of illegal ivory worldwide in 2013;

9 (2) Despite laws to protect elephants, between 2010 and 2012 approximately one hundred
10 thousand (100,000) African elephants were slaughtered, and scientists expect the current
11 poaching level will bring elephants to extinction in the wild within a few decades;

12 (3) Currently the population of all five (5) extant species of rhinoceros living in the wild
13 worldwide has dwindled to twenty-nine thousand (29,000) with over thirteen thousand (13,000)
14 slaughtered across Africa in 2015.

15 (4) The general assembly therefore determines that it is an important public purpose and
16 policy to protect all species of rhinoceros and elephants, by prohibiting the import, sale, purchase,
17 barter, or possession with intent to sell any ivory, ivory product, rhinoceros horn, or rhinoceros
18 horn product.

19 **11-70-2. Definitions.**

1 As used in this chapter:

2 (1) "Bona fide educational or scientific institution" means an institution that establishes
3 through documentation:

4 (i) Educational or scientific tax-exemption, from the federal Internal Revenue Service, or
5 the institution's national, state tax authority; or

6 (ii) Accreditation as an educational or scientific institution, from a qualified national,
7 regional, state authority for the institution's location.

8 (2) "Ivory" means any tooth or tusk from a species of elephant or mammoth or any piece
9 thereof, and includes a product containing, or advertised as containing ivory.

10 (3) "Rhinoceros horn" means the horn or a piece thereof, or a derivative such as powder,
11 of a species of rhinoceros, and includes a product containing, or advertised as containing
12 rhinoceros horn.

13 (4) "Total value of the ivory, ivory product, rhinoceros horn, and rhinoceros horn
14 products" means the fair market value of the ivory, ivory products, rhinoceros horn, and
15 rhinoceros horn products, or the actual price paid for the ivory, ivory products, rhinoceros horn,
16 and rhinoceros horn products, whichever is greater.

17 **11-70-3. Unlawful possession or sale of ivory or rhinoceros horns.**

18 (a) In addition to the prohibitions established pursuant to, and the penalties imposed for
19 violations of chapter 37 of title 20, and any other applicable law, it shall be unlawful for any
20 person to import, sell, offer for sale, purchase, barter, or possess with intent to sell, any ivory,
21 ivory product, rhinoceros horn, or rhinoceros horn product except as provided pursuant to this
22 section.

23 (b) It shall be considered presumptive evidence of possession with intent to sell whenever
24 any ivory, ivory product, rhinoceros horn, or rhinoceros horn product is possessed in a retail or
25 wholesale outlet commonly used for the buying or selling of similar products; provided, however,
26 that nothing in this chapter shall preclude a finding of intent to sell based on any other evidence
27 which may serve to independently establish such intent. The act of obtaining an appraisal of
28 ivory, and ivory product, rhinoceros horn, or a rhinoceros horn product, alone shall not constitute
29 possession with intent to sell.

30 (c) None of the prohibitions set forth in this section shall apply to any of the following:

31 (1) Employees or agents of the federal or state government undertaking any law
32 enforcement activities pursuant to federal or state law or any mandatory duties required by federal
33 or state law.

34 (2) Where an activity is expressly authorized by federal law.

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

6 (4) A bona fide educational or scientific institution unless such activity is prohibited by
7 any federal law or regulation; provided, that the ivory or rhinoceros horn was legally imported
8 and acquired before January 1, 1991, and has not subsequently been transferred from one person
9 to another person for financial gain or profit since the effective date of this chapter.

10 **11-70-4. Penalty for violation.-**

11 (a) Upon conviction of a violation of this chapter:

12 (1) For a first offense, where the total value of the ivory or rhinoceros horn is two
13 hundred fifty dollars (\$250) or less, the offense shall be a petty misdemeanor punishable by a fine
14 of not more than five hundred dollars (\$500), or an amount equal to two (2) times the total value
15 of the article(s) involved, whichever is greater;

16 (2) For a first offense, where the total value of the ivory or rhinoceros horn is greater than
17 two hundred fifty dollars (\$250), the offense shall be a felony punishable by a fine of not less
18 than three thousand dollars (\$3,000), or an amount equal to two (2) times of the total value of the
19 article(s) involved, whichever is greater;

20 (3) For a second and subsequent offense, the offense shall be a felony punishable by a
21 fine of not less than five thousand dollars (\$5,000), or an amount equal to two (2) times the total
22 value of the article(s) involved, whichever is greater, or up to one year in prison, or both.

23 (4) In addition to, and apart from any criminal penalty provided for under this section, a
24 civil or administrative fine of up to twenty thousand dollars (\$20,000) may be imposed for a
25 violation of any provision of this section, or any rule, regulation, or order adopted pursuant to this
26 section.

27 (b) Upon a conviction for violating the provisions of this chapter, the court shall order the
28 seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the
29 violation and determine the penalty for the violation based on the assessed value of the seized
30 products pursuant to subsection (a) of this section. After sentencing the defendant, the court shall
31 order that the seized ivory, ivory products, rhinoceros horn, rhinoceros horn products be
32 transferred to the department of environmental management for proper disposition. The
33 department, at its discretion, may destroy the ivory, ivory products, rhinoceros horn, and
34 rhinoceros horn products or donate them to an educational or scientific institution or organization,

1 including, but not necessarily limited to, a museum, university, or research group.

2 **11-70-5. Enjoining unlawful conduct.**

3 (a) If the attorney general has probable cause to believe that a person is violating or has
4 violated § 11-70-3, the attorney general may bring suit in the name of the state of Rhode Island in
5 the appropriate court to restrain that person from further violations of that section.

6 (b) Before filing a suit under subsection (a) of this section, the attorney general shall, in
7 writing, notify the person charged with the alleged violation and the alleged unlawful conduct and
8 the relief to be sought. No suit shall be brought by the attorney general until thirty (30) days after
9 that notice.

10 (c) The court may award reasonable attorney fees at trial and on appeal to a prevailing
11 party in a suit brought under this section.

12 **11-70-6. Rules and regulations.**

13 The department of environmental management shall adopt, pursuant to chapter 35 of title
14 42 (administrative procedure act), such rules and regulations necessary for the implementation
15 and administration of this chapter.

16 SECTION 2. This act shall take effect on January 1, 2019.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO CRIMINAL OFFENSES - SALE OF IVORY OR RHINOCEROS HORNS

1 This act would prohibit any person from importing, selling, offering for sale, purchasing,
2 bartering, or possessing with intent to sell, any ivory, ivory product, rhinoceros horn, or
3 rhinoceros horn product, with limited exceptions. Monetary fines have been established to be paid
4 by violators.

5 This act would take effect on January 1, 2019.

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