

1 H.297

2 Introduced by Representatives Wright of Burlington, Lenes of Shelburne,  
3 Bartholomew of Hartland, Batchelor of Derby, Beck of  
4 St. Johnsbury, Browning of Arlington, Fields of Bennington,  
5 Long of Newfane, Macaig of Williston, Manwaring of  
6 Wilmington, Myers of Essex, Shaw of Pittsford, and Toleno of  
7 Brattleboro

8 Referred to Committee on

9 Date:

10 Subject: Fish and wildlife; endangered species; ivory; rhinoceros horn

11 Statement of purpose of bill as introduced: This bill proposes to prohibit the  
12 import, sale, offer for sale, purchase, barter, or possession with intent to sell of  
13 any ivory, ivory product, rhinoceros horn, or rhinoceros horn product.

14 An act relating to the sale of ivory or rhinoceros horn

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 ~~Sec. 1. 10 V.S.A. § 5411 is added to read:~~

17 ~~§ 5411. SALE OF IVORY OR RHINOCEROS HORN~~

18 ~~(a) Definitions. As used in this act:~~

19 ~~(1) "Ivory" means any tooth or tusk composed of ivory from any animal,~~  
20 ~~including an elephant, hippopotamus, mammoth, narwhal, walrus, or whale, or~~

1 ~~any piece thereof, whether raw ivory or worked ivory, or made into, or part of,~~  
2 an ivory product.

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

5 (3) "Raw ivory" means any ivory the surface of which, polished or  
6 unpolished, is unaltered or minimally changed by carving.

7 (4) "Rhinoceros horn" means the horn, or any piece thereof, of any  
8 species of rhinoceros.

9 (5) "Rhinoceros horn product" means any item that contains, or is  
10 wholly or partially made from, any rhinoceros horn.

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

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

18 (b) Prohibition. In addition to the prohibitions and penalties established by  
19 federal law or any other applicable law, a person shall not import, sell, offer for  
20 sale, purchase, barter, or possess with intent to sell, any ivory, ivory product,

1 ~~rhinoceros horn, or rhinoceros horn product, except as authorized under~~  
2 ~~subsections (d) and (e) of this section.~~

3 ~~(c) Presumption of intent to sell. The possession of any ivory, ivory~~  
4 ~~product, rhinoceros horn, or rhinoceros horn product in a retail or wholesale~~  
5 ~~outlet commonly used for the buying or selling of similar products shall~~  
6 ~~constitute presumptive evidence of possession with intent to sell under this~~  
7 ~~section. Nothing in this subsection shall preclude a finding of intent to sell~~  
8 ~~based on any evidence that may serve independently to establish intent to sell.~~  
9 ~~The act of obtaining an appraisal of ivory, an ivory product, rhinoceros horn,~~  
10 ~~or a rhinoceros horn product alone shall not constitute possession with intent~~  
11 ~~to sell.~~

12 ~~(d) Authorized conveyance to beneficiaries. A person may convey ivory,~~  
13 ~~an ivory product, rhinoceros horn, or a rhinoceros horn product to the legal~~  
14 ~~beneficiary of the ivory, ivory product, rhinoceros horn, or rhinoceros horn~~  
15 ~~product that is part of an estate or other items being conveyed to lawful~~  
16 ~~beneficiaries upon the death of the owner of the ivory, ivory product,~~  
17 ~~rhinoceros horn, or rhinoceros horn product or in anticipation of that death.~~

18 ~~(e) Exceptions. The prohibitions of this section shall not apply:~~

19 ~~(1) to employees or agents of the federal government or the State~~  
20 ~~undertaking any law enforcement activities pursuant to federal or State law~~  
21 ~~or any mandatory duties required by federal or State law; or~~

1 ~~(2) where the import is expressly authorized by federal law, license,~~  
2 ~~or permit.~~

3 ~~(f) Permit for education or scientific purposes. The Secretary of Natural~~  
4 ~~Resources may issue a permit for the import, sale, offer for sale, purchase,~~  
5 ~~barter, or possession with intent to sell of any ivory, ivory product, rhinoceros~~  
6 ~~horn, or rhinoceros horn product for bona fide educational or scientific~~  
7 ~~purposes, unless the proposed activity is prohibited by federal law. A permit~~  
8 ~~issued under this subsection may contain any terms or conditions required by~~  
9 ~~the Secretary.~~

10 ~~(g) Penalties. In addition to any penalty that may be imposed under federal~~  
11 ~~law or any other applicable law, a violation of the requirements of this section~~  
12 ~~or any rule adopted under this section is punishable as follows:~~

13 ~~(1) for a first offense, the violation is punishable by a fine of not less~~  
14 ~~than \$1,000.00 or an amount equal to two times the total value of the ivory,~~  
15 ~~ivory products, rhinoceros horn, and rhinoceros horn products involved in the~~  
16 ~~offense, whichever is greater; and~~

17 ~~(2) for a second or subsequent offense, the violation is punishable by a~~  
18 ~~fine of not less than \$5,000.00 or an amount equal to two times the total value~~  
19 ~~of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products~~  
20 ~~involved in the offense, whichever is greater.~~

1 ~~(h) Seizure. Upon a conviction for a violation of this section or the rules~~  
2 ~~adopted under this section, a court shall order the seizure of all ivory, ivory~~  
3 ~~products, rhinoceros horn, and rhinoceros horn products involved in the~~  
4 ~~violation and determine the penalty for the violation based on the assessed~~  
5 ~~value of the seized products. After sentencing the defendant, the court shall~~  
6 ~~order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros~~  
7 ~~horn products be transferred to the Secretary of Natural Resources for proper~~  
8 ~~disposition. The Secretary, in his or her discretion, may destroy the ivory,~~  
9 ~~ivory products, rhinoceros horn, and rhinoceros horn products or donate them~~  
10 ~~to an educational or scientific institution or organization.~~

11 (i) Rulemaking. The Secretary of Natural Resources may adopt rules to  
12 implement the requirements of this section.

13 Sec. 2. EFFECTIVE DATE

14 ~~This act shall take effect on January 1, 2016.~~

*Sec. 1. 10 V.S.A. chapter 175 is added to read:*

*CHAPTER 175. IVORY AND RHINOCEROS HORN*

*§ 7701. SALE OF IVORY OR RHINOCEROS HORN*

*(a) Definitions. As used in this act:*

*(1) "Ivory" means any tusk composed of ivory from an elephant or mammoth, or any piece thereof, whether raw ivory or worked ivory, or made into, or part of, an ivory product.*

(2) “Ivory product” means any item that contains, or is wholly or partially made from, any ivory.

(3) “Raw ivory” means any ivory the surface of which, polished or unpolished, is unaltered or minimally changed by carving.

(4) “Rhinoceros horn” means the horn, or any piece thereof, of any species of rhinoceros.

(5) “Rhinoceros horn product” means any item that contains, or is wholly or partially made from, any rhinoceros horn.

(6) “Total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products” means the fair market value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products, or the actual price paid for the ivory, ivory products, rhinoceros horn, and rhinoceros products, whichever is greater.

(7) “Worked ivory” means ivory that has been embellished, carved, marked, or otherwise altered so that it can no longer be considered raw ivory.

(b) Prohibition. In addition to the prohibitions and penalties established by federal law, a person in this State shall not import, sell, offer for sale, purchase, barter, or possess with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product, except as authorized under subsections (d) and (e) of this section.

(c) Presumption of intent to sell. The possession in this State of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product in a retail or wholesale outlet commonly used for the buying or selling of similar products shall constitute presumptive evidence of possession with intent to sell under this section. Nothing in this subsection shall preclude a finding of intent to sell based on any evidence that may serve independently to establish intent to sell. The act of obtaining an appraisal of ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product alone shall not constitute possession with intent to sell.

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

(e) Exceptions.

(1) The prohibitions of this section shall not apply to:

(A) employees or agents of the federal government or the State undertaking any law enforcement activities pursuant to federal or State law or any mandatory duties required by federal or State law;

(B) the import of legally acquired ivory, ivory products, rhinoceros horn, or rhinoceros horn products:

(i) expressly authorized by federal law, license, or permit; or

(ii) as part of a personal or household move into the State;

(C) the sale of ivory or ivory products expressly authorized by federal law, license, or permit, provided that the total weight of the ivory or ivory components is less than 200 grams; or

(D) the import, sale, offer for sale, purchase, barter, or possession with intent to sell of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product for a bona fide educational or scientific purpose or to a museum, unless the proposed activity is prohibited by federal law.

(2) In connection with any action alleging violation of this section, any person claiming the benefit of any exception under this section shall have the burden of proving that the exception is applicable and was valid and in force at the time of the alleged violation.

~~(f) Enforcement and penalties.~~

~~(1) This section may be enforced by a law enforcement officer as defined in 20 V.S.A. § 2358.~~

~~(2) A person who violates this section or a rule adopted pursuant to this section commits a misdemeanor and shall be fined:~~

~~(A) For a first offense, \$1,000.00 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.~~

~~(B) For a second or subsequent offense, \$5,000.00 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.~~

~~(3) The penalties provided in this section shall be in addition to any penalty that may be imposed under federal law.~~

(f) Enforcement; civil penalties.

(1) A person who violates this section shall be fined:

(A) For a first offense, \$1,000.00 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.

(B) For a second or subsequent offense, \$5,000.00 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.

(2) The penalties provided in this section shall be in addition to any penalty that may be imposed under federal law.

(3) The penalties collected under this subsection shall be deposited in the Fish and Wildlife Trust Fund under section 4049 of this title and used for the purpose of donations to nonprofit organizations or government agencies

that implement programs in Africa against the poaching of elephants and rhinoceros.

(g) Seizure. Upon a conviction for a violation of this section or the rules adopted under this section, a court shall order the seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the violation and determine the penalty for the violation based on the assessed value of the seized products. After sentencing the defendant, the court shall order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros horn products be transferred to the Secretary of Natural Resources for proper disposition. The Secretary, in his or her discretion, may destroy the ivory, ivory products, rhinoceros horn, and rhinoceros horn products or donate them to an educational or scientific institution or organization.

(h) Rulemaking. The Secretary of Natural Resources may adopt rules to implement the requirements of this section.

(i) Educational information. The Secretary of Natural Resources shall maintain on its website information regarding the prohibition of the sale and purchase of ivory and rhinoceros horns in this State.

## **Sec. 2. REPORT ON IVORY AND RHINOCEROS HORN PROHIBITION**

On or before January 15, 2022, the Secretary of Natural Resources, after consultation with the U.S. Fish and Wildlife Service, shall submit to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee

on Natural Resources and Energy a report regarding the implementation of 10 V.S.A. § 7701, including a summary of:

(1) enforcement activities taken by the State, including the outcome of any items seized;

(2) the financial impact of the prohibition of the sale of ivory and rhinoceros horns on Vermont businesses;

(3) what actions other states have taken with regard to the sale of ivory and rhinoceros horns; and

(4) recommendations regarding necessary changes to Vermont law, including the extension or repeal of the prohibition.

Sec. 2a. 10 V.S.A. § 4049 is amended to read:

§ 4049. FISH AND WILDLIFE TRUST FUND

(a) The General Assembly recognizes the importance to the people of Vermont of conserving Vermont's fish and wildlife resources. Therefore, in order to provide the opportunity for Vermonters to invest in the future of its fish and wildlife resources, there is hereby created a Fish and Wildlife Trust Fund within the Fish and Wildlife Fund which shall consist of:

(1) receipts from sales of any lifetime licenses created pursuant to subsection 4279(f) of this title;

(2) any gifts, grants, or contributions made to the Trust Fund;

(3) funds that may be appropriated by the General Assembly; and

(4) penalties for violations of chapter 175 of this title.

(b) *The Commissioner, after consultation with the Secretary of Natural Resources, the Secretary of Administration, and the State Treasurer, may determine whether the Trust Fund is to be managed by the State Treasurer, or by a private firm contracted by the State Treasurer at the direction of the Commissioner.*

(c) *When the balance of the Trust Fund reaches \$250,000.00, the Commissioner may withdraw interest as needed for operation of departmental programs. The principal shall remain in the ~~trust fund~~ Trust Fund in perpetuity, even should provisions of law regarding lifetime licenses be repealed.*

(d) The Commissioner shall donate receipts deposited in the Fund for violation of chapter 175 of this title to nonprofit organizations or government agencies that implement programs in Africa against the poaching of elephants and rhinoceros.

*Sec. 2b. 10 V.S.A. § 8003 is amended to read:*

**§ 8003. APPLICABILITY**

(a) *The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:*

\* \* \*

(26) *10 V.S.A. chapter 168, relating to the collection and disposal of primary batteries; ~~and~~*

(27) *10 V.S.A. chapter 123, relating to threatened and endangered species; and*

(28) 10 V.S.A. chapter 175, relating to sale of ivory and rhinoceros horn.

\* \* \*

*Sec. 2c. 10 V.S.A. § 8503(a) is amended to read:*

*(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:*

*(1) The following provisions of this title:*

\* \* \*

*(U) chapter 168 (product stewardship for primary batteries and rechargeable batteries);*

*(V) chapter 175 (sale of ivory and rhinoceros horn).*

\* \* \*

*Sec. 3. EFFECTIVE DATE*

*This act shall take effect on January 1, 2018.*