

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Fish, Wildlife and Water Resources to which was referred
3 House Bill No. 297 entitled “An act relating to the sale of ivory or rhinoceros
4 horn” respectfully reports that it has considered the same and recommends that
5 the bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

8 § 5411. SALE OF IVORY OR RHINOCEROS HORN

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

10 (1) “Ivory” means any tusk composed of ivory from an elephant or
11 mammoth, or any piece thereof, whether raw ivory or worked ivory, or made
12 into, or part of, an ivory product.

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

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

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

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

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

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

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

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

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

7 (e)(1) Exceptions. The prohibitions of this section shall not apply to:

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

11 (B) import expressly authorized by federal law, license, or permit;

12 (C) the import of legally acquired ivory as part of a personal or
13 household move into the State;

14 (D) Asian elephant ivory or an Asian elephant ivory product that was
15 legally obtained prior to 1975;

16 (E) African elephant ivory or an African elephant ivory product that
17 was legally obtained prior to 1990; or

18 (F) ivory or rhinoceros horn as part of a bona fide antique,
19 provided that:

20 (i) the antique is not less than 100 years of age;

1 (ii) the ivory or rhinoceros horn is less than 20 percent by volume
2 of such antique; and

3 (iii) the antique has not been repaired or modified with any part of
4 ivory or rhinoceros horn on or after December 28, 1973.

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

9 (B) Proof that an article is a bona fide antique may be provided by a
10 qualified antique appraiser provided that he or she does not benefit from the
11 results of the appraisal, except that he or she may charge a reasonable fee for
12 appraisal services.

13 (f) Permit for education or scientific purposes. The Secretary of Natural
14 Resources may issue a permit for the import, sale, offer for sale, purchase,
15 barter, or possession with intent to sell of any ivory, ivory product, rhinoceros
16 horn, or rhinoceros horn product for bona fide educational or scientific
17 purposes, unless the proposed activity is prohibited by federal law. A permit
18 issued under this subsection may contain any terms or conditions required by
19 the Secretary.

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

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

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

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

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

3 Sec. 2. EFFECTIVE DATE

4 This act shall take effect on January 1, 2016.

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11 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE