

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 81

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO WILDLIFE; ENACTING THE WILDLIFE TRAFFICKING ACT;
PROVIDING POWERS AND DUTIES; PROHIBITING CERTAIN ACTIONS;
MAKING TRAFFICKING OF ANIMAL SPECIES THREATENED WITH EXTINCTION
A CRIME; PROVIDING EXCEPTIONS; PRESCRIBING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Wildlife Trafficking Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Wildlife Trafficking Act:

A. "covered animal species" means any extant
species of elephant, rhinoceros, tiger, lion, leopard, cheetah,
jaguar, pangolin, great ape, marine turtle, shark, caiman, ray
or other species covered by the Convention on International
Trade in Endangered Species of Wild Fauna and Flora, to which

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1 the United States is a treaty partner;

2 B. "covered animal species part or product" means
3 any portion of a covered animal species or any item that
4 contains, is advertised as containing or is wholly or partially
5 made from a part that comes from a covered animal species;

6 C. "distribute" means either a change in possession
7 for consideration or a change in legal ownership;

8 D. "educational or scientific institution" means an
9 institution that has an educational or scientific tax exemption
10 from the federal internal revenue service or the institution's
11 national or state tax authority;

12 E. "sell" includes bartering for, exchanging,
13 trading or possessing with the intent to sell and each such
14 transaction made by any person, with or without remuneration,
15 including any intrastate sale through the internet; and

16 F. "total value of the covered animal species part
17 or product" means the fair market value of such part or
18 product, the price at which the part or product was offered for
19 sale or the actual price paid for the part or product,
20 whichever is greater.

21 SECTION 3. [NEW MATERIAL] PROHIBITED ACTS.--

22 A. Except as provided in Section 4 of the Wildlife
23 Trafficking Act, it is unlawful for a person to knowingly sell
24 or purchase any covered animal species part or product.

25 B. The act of obtaining an appraisal of any covered

1 animal species part or product alone does not constitute
2 possession with intent to sell.

3 SECTION 4. [NEW MATERIAL] EXCEPTIONS.--It is an
4 affirmative defense to Section 3 of the Wildlife Trafficking
5 Act if any of the following conditions are satisfied:

6 A. the covered animal species part or product is a
7 fixed component of an antique product that is not made wholly
8 or primarily of covered animal species parts or products,
9 provided that the antique status is established by the owner or
10 seller with evidence proving origin and showing that:

11 (1) the covered animal species part or product
12 is more than one hundred years old;

13 (2) the total weight of the covered animal
14 species part or product is less than two hundred grams; and

15 (3) at least fifty percent of the value of the
16 antique does not stem from the covered animal species part or
17 product;

18 B. the covered animal species part or product is a
19 component of a gun or musical instrument, including stringed
20 instruments and bows, wind and percussion instruments and
21 pianos;

22 C. the covered animal species part or product is
23 lawfully possessed by an enrolled member of a federally
24 recognized Indian nation, tribe or pueblo for traditional,
25 cultural or religious purposes;

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1 D. the defendant distributed the covered animal
2 species part or product to an educational or scientific
3 institution and such institution establishes, through evidence,
4 that it is in compliance with all federal laws regulating the
5 covered animal species part or product;

6 E. the noncommercial transfer of ownership of the
7 covered animal species part or product is to a legal
8 beneficiary of an estate, trust or other inheritance upon the
9 death of the owner of the covered animal species part or
10 product or is a gift;

11 F. the sale, trade or purchase of the covered
12 animal species part or product is expressly authorized by the
13 Convention on International Trade in Endangered Species of Wild
14 Fauna and Flora or by federal or state law or permit; or

15 G. the alleged violation of a provision of Section
16 3 of the Wildlife Trafficking Act is by an employee or agent of
17 a federal, state or local law enforcement agency and who is
18 operating in the employee's or agent's official capacity as a
19 federal, state or local law enforcement officer.

20 SECTION 5. [NEW MATERIAL] CRIMINAL PENALTIES--CIVIL
21 FINES.--

22 A. A person who violates Section 3 of the Wildlife
23 Trafficking Act is guilty of a misdemeanor and upon conviction
24 shall be punished pursuant to the provisions of Section 31-19-1
25 NMSA 1978.

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1 B. Each covered animal species part or product sold
 2 or purchased in violation of Section 3 of the Wildlife
 3 Trafficking Act is a separate offense. Two or more offenses
 4 may be charged in the same complaint, information or indictment
 5 and punished as separate offenses for each covered animal
 6 species part or product involved.

7 C. With or without a criminal conviction, a person
 8 who violates Section 3 of the Wildlife Trafficking Act and
 9 anyone who benefited or would have benefited from the violation
 10 may be sued in district court and is subject to a fine of up to
 11 twenty-five thousand dollars (\$25,000) or three times the total
 12 value of the covered animal species part or product, whichever
 13 is greater.

14 D. Upon conviction in a criminal court or a finding
 15 in a civil court for a violation of Section 3 of the Wildlife
 16 Trafficking Act, the court shall order the forfeiture of the
 17 covered animal species part or product and shall order that the
 18 covered animal species part or product be:

- 19 (1) given to the United States fish and
 20 wildlife service, if requested by that agency;
 21 (2) destroyed; or
 22 (3) donated to an educational or scientific
 23 institution.

24 SECTION 6. [NEW MATERIAL] ENFORCEMENT AUTHORITY.--

25 A. The criminal enforcement provisions of the

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1 Wildlife Trafficking Act may be enforced by any commissioned
2 law enforcement officer, including an officer employed by the
3 department of game and fish and the state parks division of the
4 energy, minerals and natural resources department.

5 B. The civil enforcement provision of the Wildlife
6 Trafficking Act may be enforced by any agency or political
7 subdivision of the state that employs commissioned law
8 enforcement officers or by any person authorized by the
9 attorney general.

10 SECTION 7. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2017.