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
.206854.3
the United States is a treaty partner;

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

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

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

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

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

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

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

   B. The act of obtaining an appraisal of any covered...
animal species part or product alone does not constitute
possession with intent to sell.

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

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

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

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

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

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

C. the covered animal species part or product is
lawfully possessed by an enrolled member of a federally
recognized Indian nation, tribe or pueblo for traditional,
cultural or religious purposes;
D. the defendant distributed the covered animal species part or product to an educational or scientific institution and such institution establishes, through evidence, that it is in compliance with all federal laws regulating the covered animal species part or product;

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

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

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

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

A. A person who violates Section 3 of the Wildlife Trafficking Act is guilty of a misdemeanor and upon conviction shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978.
B. Each covered animal species part or product sold
or purchased in violation of Section 3 of the Wildlife
Trafficking Act is a separate offense. Two or more offenses
may be charged in the same complaint, information or indictment
and punished as separate offenses for each covered animal
species part or product involved.

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

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

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

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

A. The criminal enforcement provisions of the
Wildlife Trafficking Act may be enforced by any commissioned law enforcement officer, including an officer employed by the department of game and fish and the state parks division of the energy, minerals and natural resources department.

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

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