

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 39

Introduced by Harr, 8.

Read first time January 05, 2017

Committee:

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-101 and 29-820, Reissue Revised Statutes of Nebraska; to prohibit
3 the purchase, sale, offer for sale, trade, or barter of ivory as
4 prescribed; to define a term; to provide a penalty; to provide for
5 the disposition of ivory seized as contraband; to harmonize
6 provisions; and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-101 Sections 28-101 to 28-1357, 28-1418.01, 28-1429.03, and
4 28-1601 to 28-1603 and section 2 of this act shall be known and may be
5 cited as the Nebraska Criminal Code.

6 Sec. 2. (1) For purposes of this section, ivory means the tusk of
7 any species of elephant or mammoth or any piece thereof, and the horn of
8 any species of rhinoceros, or any piece thereof. The term ivory includes
9 both raw ivory and worked ivory and includes any item containing or
10 advertised as containing ivory.

11 (2) Except as provided in subsection (3) of this section, it is
12 unlawful to purchase, sell, offer for sale, trade, or barter ivory. Any
13 person who violates this section shall be guilty of a Class II
14 misdemeanor. Ivory used in violation of this section is contraband, shall
15 be subject to seizure, and shall be disposed of pursuant to section
16 29-820.

17 (3) The prohibitions set forth in subsection (2) of this section
18 shall not apply to:

19 (a) Any activity authorized by an exemption or permit under federal
20 law or that is otherwise expressly authorized under federal law;

21 (b) Firearms, knives, or musical instruments containing ivory if:

22 (i) The ivory in such item is less than twenty percent of the volume
23 of such item;

24 (ii) The ivory is a fixed or integral component or components of the
25 item as a whole and the ivory does not, in its current form, account for
26 more than fifty percent of the value of the item;

27 (iii) The item was manufactured or created before 1975; and

28 (iv) The owner or seller provides historical documentation
29 demonstrating provenance and showing the item was manufactured or created
30 before 1975;

31 (c) Manufactured or handcrafted items containing a minimal amount of

1 ivory if:

2 (i) The total weight of the ivory component or components is less
3 than two hundred grams;

4 (ii) The ivory component or components do not account for more than
5 fifty percent of the item by volume;

6 (iii) The ivory is a fixed or integral component or components of
7 the item as a whole and the ivory does not, in its current form, account
8 for more than fifty percent of the value of the item;

9 (iv) The ivory is not raw;

10 (v) The item was manufactured or created before 1975; and

11 (vi) The owner or seller provides historical documentation
12 demonstrating provenance and showing the item was manufactured or created
13 before 1975;

14 (d) A bona fide antique containing ivory if:

15 (i) The antique is at least one hundred years old at the time of the
16 transaction;

17 (ii) The owner or seller provides historical documentation
18 demonstrating provenance and showing the item was manufactured or created
19 at least one hundred years prior to such time;

20 (iii) The ivory component or components do not account for more than
21 twenty percent of the volume of the antique; and

22 (iv) The ivory is a fixed or integral component or components of the
23 antique as a whole and the ivory does not, in its current form, account
24 for more than fifty percent of the value of the antique;

25 (e) Acquisition or distribution for educational or scientific
26 purposes by a bona fide educational or scientific institution, including
27 a museum; and

28 (f) An employee or agent of federal, state, or local government
29 undertaking a law enforcement activity pursuant to federal or state law
30 or a mandatory duty required by law.

31 Sec. 3. Section 29-820, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 29-820 (1) Unless other disposition is specifically provided by law,
3 when property seized or held is no longer required as evidence, it shall
4 be disposed of by the law enforcement agency on such showing as the law
5 enforcement agency may deem adequate, as follows:

6 (a) Property stolen, embezzled, obtained by false pretenses, or
7 otherwise obtained unlawfully from the rightful owner thereof shall be
8 restored to the owner;

9 (b) Money shall be restored to the owner unless it was used in
10 unlawful gambling or lotteries or it was used or intended to be used to
11 facilitate a violation of Chapter 28, article 4, in which case the money
12 shall be forfeited and disposed of as required by Article VII, section 7,
13 of the Constitution of Nebraska;

14 (c) Property which is unclaimed or the ownership of which is unknown
15 shall be sold at a public auction held by the officer having custody
16 thereof and the net proceeds disposed of as provided in subdivision (b)
17 of this subsection, as shall any money which is unclaimed or the
18 ownership of which is unknown;

19 (d) Except as provided in subsections ~~subsection~~ (2) and (3) of this
20 section, articles of contraband shall be destroyed;

21 (e) Firearms, ammunition, explosives, bombs, and like devices which
22 have been used in the commission of crime shall be destroyed; and

23 (f) Firearms which have come into the law enforcement agency's
24 possession through a seizure or otherwise and (i) have not been used in
25 the commission of crime, (ii) have not been defaced or altered in any
26 manner that violates any state or federal law, (iii) may have a lawful
27 use and be lawfully possessed, and (iv) are not subject to section 29-440
28 shall be restored to the owner.

29 (2) When the following property is seized or held and is no longer
30 required as evidence, such property shall be disposed of on order of the
31 court as the court may deem adequate:

1 Goods which are declared to be contraband but may reasonably be
2 returned to a condition or state in which such goods may be lawfully
3 used, possessed, or distributed by the public.

4 (3) Ivory used in violation of section 2 of this act which is seized
5 or held and is no longer required as evidence may, by order of the court,
6 be donated to a bona fide educational or scientific institution,
7 including a museum, for educational or research purposes or to raise
8 awareness of the trafficking and threatened nature of endangered animals,
9 unless otherwise prohibited under state and federal law. The recipient of
10 such donation shall pay any costs associated with receiving such
11 donation. If such donation is not feasible, such ivory shall be destroyed
12 or placed in storage as the court may direct.

13 (4) {3} When any animal as defined by section 28-1008 is seized or
14 held and is no longer required as evidence, such animal may be disposed
15 of in such manner as the court may direct. The court may consider
16 adoption alternatives through humane societies or comparable institutions
17 and the protection of such animal's welfare. For a humane society or
18 comparable institution to be considered as an adoption alternative under
19 this subsection, it must first be licensed by the Department of
20 Agriculture as having passed the inspection requirements in the
21 Commercial Dog and Cat Operator Inspection Act and paid the fee for
22 inspection under the act. The court may prohibit an adopting or
23 purchasing party from selling such animal for a period not to exceed one
24 year.

25 (5) {4} Unless otherwise provided by law, all other property shall
26 be disposed of in such manner as the court in its sound discretion shall
27 direct.

28 Sec. 4. Original sections 28-101 and 29-820, Reissue Revised
29 Statutes of Nebraska, are repealed.