

2016 -- S 2796

LC005502

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO CRIMINAL OFFENSES - SALE OF IVORY OR RHINOCEROS HORNS

Introduced By: Senator Joshua Miller

Date Introduced: March 23, 2016

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 11 of the General Laws entitled "CRIMINAL OFFENSES" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 69

4 SALE OF IVORY OR RHINOCEROS HORNS

5 **11-69-1. Legislative findings.** – The general assembly finds and declares as follows:

6 (1) Ivory trafficking is at the highest rate ever recorded, with an estimated confiscation of
7 more than forty-one (41) tons of illegal ivory worldwide in 2013;

8 (2) Despite laws to protect elephants, between 2010 and 2012 approximately one hundred
9 thousand (100,000) African elephants were slaughtered, and scientists expect the current
10 poaching level will bring elephants to extinction in the wild within a few decades;

11 (3) Currently the population of all five (5) extant species of rhinoceros living in the wild
12 worldwide has dwindled to twenty-nine thousand (29,000) with over thirteen thousand (13,000)
13 slaughtered across Africa in 2015.

14 (4) The general assembly therefore determines that it is an important public purpose and
15 policy to protect all species of rhinoceros and elephants, by prohibiting the import, sale, purchase,
16 barter, or possession with intent to sell any ivory, ivory product, rhinoceros horn, or rhinoceros
17 horn product.

18 **11-69-2. Definitions.** – As used in this chapter:

19 (1) "Bona fide educational or scientific institution" means an institution that establishes

1 through documentation:

2 (i) Educational or scientific tax-exemption, from the federal Internal Revenue Service, or
3 the institution's national, state tax authority; or

4 (ii) Accreditation as an educational or scientific institution, from a qualified national,
5 regional, state authority for the institution's location.

6 (2) "Ivory" means any tooth or tusk from a species of elephant or mammoth or any piece
7 thereof, and includes a product containing, or advertised as containing ivory.

8 (3) "Rhinoceros horn" means the horn or a piece thereof, or a derivative such as powder,
9 of a species of rhinoceros, and includes a product containing, or advertised as containing
10 rhinoceros horn.

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

15 **11-69-3. Unlawful possession or sale of ivory or rhinoceros horns.** – (a) In addition to
16 the prohibitions established pursuant to, and the penalties imposed for violations of chapter 37 of
17 title 20, and any other applicable law, it shall be unlawful for any person to import, sell, offer for
18 sale, purchase, barter, or possess with intent to sell, any ivory, ivory product, rhinoceros horn, or
19 rhinoceros horn product except as provided pursuant to this section.

20 (b) It shall be considered presumptive evidence of possession with intent to sell whenever
21 any ivory, ivory product, rhinoceros horn, or rhinoceros horn product is possessed in a retail or
22 wholesale outlet commonly used for the buying or selling of similar products; provided, however,
23 that nothing in this chapter shall preclude a finding of intent to sell based on any other evidence
24 which may serve to independently establish such intent. The act of obtaining an appraisal of
25 ivory, and ivory product, rhinoceros horn, or a rhinoceros horn product, alone shall not constitute
26 possession with intent to sell.

27 (c) None of the prohibitions set forth in this section shall apply to any of the following:

28 (1) Employees or agents of the federal or state government undertaking any law
29 enforcement activities pursuant to federal or state law or any mandatory duties required by federal
30 or state law.

31 (2) Where an activity is expressly authorized by federal law.

32 (3) Conveyance of ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product
33 to the legal beneficiary of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product
34 which is part of an estate or other items being conveyed to lawful beneficiaries upon the death of

1 the owner of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product or in
2 anticipation of that death.

3 (4) A bona fide educational or scientific institution unless such activity is prohibited by
4 any federal law or regulation; provided, that the ivory or rhinoceros horn was legally imported
5 and acquired before January 1, 1991, and has not subsequently been transferred from one person
6 to another person for financial gain or profit since the effective date of this chapter.

7 **11-69-4. Penalty for violation.** -- (a) Upon conviction of a violation of this chapter:

8 (1) For a first offense, where the total value of the ivory or rhinoceros horn is two
9 hundred fifty dollars (\$250) or less, the offense shall be a petty misdemeanor punishable by a fine
10 of not more than five hundred dollars (\$500), or an amount equal to two (2) times the total value
11 of the article(s) involved, whichever is greater;

12 (2) For a first offense, where the total value of the ivory or rhinoceros horn is greater than
13 two hundred fifty dollars (\$250), the offense shall be a felony punishable by a fine of not less
14 than three thousand dollars (\$3,000), or an amount equal to two (2) times of the total value of the
15 article(s) involved, whichever is greater;

16 (3) For a second and subsequent offense, the offense shall be a felony punishable by a
17 fine of not less than five thousand dollars (\$5,000), or an amount equal to two (2) times the total
18 value of the article(s) involved, whichever is greater, or up to one year in prison, or both.

19 (4) In addition to, and apart from any criminal penalty provided for under this section, a
20 civil or administrative fine of up to twenty thousand dollars (\$20,000) may be imposed for a
21 violation of any provision of this section, or any rule, regulation, or order adopted pursuant to this
22 section.

23 (b) Upon a conviction for violating the provisions of this chapter, the court shall order the
24 seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the
25 violation and determine the penalty for the violation based on the assessed value of the seized
26 products pursuant to subsection (a) of this section. After sentencing the defendant, the court shall
27 order that the seized ivory, ivory products, rhinoceros horn, rhinoceros horn products be
28 transferred to the department of environmental management for proper disposition. The
29 department, at its discretion, may destroy the ivory, ivory products, rhinoceros horn, and
30 rhinoceros horn products or donate them to an educational or scientific institution or organization,
31 including, but not necessarily limited to, a museum, university, or research group.

32 **11-69-5. Enjoining unlawful conduct.** – (a) If the attorney general has probable cause to
33 believe that a person is violating or has violated §11-69-3, the attorney general may bring suit in
34 the name of Rhode Island in the appropriate court to restrain that person from further violations of

1 that section.

2 (b) Before filing a suit under subsection (a) of this section, the attorney general shall, in
3 writing, notify the person charged with the alleged violation and the alleged unlawful conduct and
4 the relief to be sought. No suit shall be brought by the attorney general until thirty (30) days after
5 that notice.

6 (c) The court may award reasonable attorney fees at trial and on appeal to a prevailing
7 party in a suit brought under this section.

8 **11-69-6. Rules and regulations. --** The department of environmental management shall
9 adopt, pursuant to chapter 35 of title 42 (administrative procedure act), such rules and regulations
10 necessary for the implementation and administration of this chapter.

11 SECTION 2. This act shall take effect on January 1, 2017.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO CRIMINAL OFFENSES - SALE OF IVORY OR RHINOCEROS HORNS

1 This act would prohibit any person from importing, selling, offering for sale, purchasing,
2 bartering, or possessing with intent to sell, any ivory, ivory product, rhinoceros horn, or
3 rhinoceros horn product, with limited exceptions. Monetary fines have been established to be paid
4 by violators.

5 This act would take effect on January 1, 2017.

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