

SENATE BILL 38

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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:

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A. "covered animal species" means any extant  
SJC→species←SJC SCONC→of elephant, rhinoceros, tiger, lion,  
leopard, cheetah, jaguar, pangolin, great ape, marine turtle,  
shark, caiman, ray or other species←SCONC SJC→SJC→of elephant,  
rhinoceros, tiger, lion, leopard, cheetah, jaguar, pangolin,  
great ape, marine turtle, shark, caiman, ray or other species  
←SJC←SJC SJC→species of elephant, lion, shark←SJC SJC→or  
other species←SJC covered by Appendix 1 of the Convention on  
International Trade in Endangered Species of Wild Fauna and  
Flora, to which the United States is a treaty party;

B. "covered animal 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 or  
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covered animal 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 or covered animal part or product.

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

**SECTION 4. [NEW MATERIAL] EXCEPTIONS.--**It is not a violation of Section 3 of the Wildlife Trafficking Act if any of the following conditions are satisfied:

A. the covered animal part or product is a fixed component of an antique product that is not made wholly or primarily of covered animal 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 part or product is more than one hundred years old;

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

(3) at least fifty percent of the value of the

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antique does not stem from the covered animal part or product;

B. the covered animal 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 or covered animal 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 or covered animal 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 or covered animal part or product;

E. the noncommercial transfer of ownership of the covered animal species or covered animal 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 or covered animal part or product or is a gift;

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

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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 HJC→  
~~FINES~~←HJC HJC→PENALTIES←HJC.--

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 or covered animal 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 or covered animal 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 HJC→fine←HJC HJC→penalty←HJC of up to HJC→~~twenty-five thousand dollars~~ (\$25,000)←HJC HJC→one thousand dollars (\$1,000) each←HJC or three times the total value of the covered animal species or

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covered animal 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 HJC→~~the forfeiture of the covered animal species or covered animal part or product and shall order~~←HJC that the covered animal species or covered animal 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, 2019.

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