

1 SENATE BILL 75

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Mimi Stewart

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10 AN ACT

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

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

21 A. "covered animal part or product" means any  
22 portion of a covered animal species; any item that contains, is  
23 advertised as containing or is wholly or partially made from a  
24 part that comes from a covered animal species; or shark fins;

25 B. "covered animal species" means any extant

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1 species of elephant, lion, rhinoceros or other species covered  
2 by Appendix 1 of the Convention on International Trade in  
3 Endangered Species of Wild Fauna and Flora;

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

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

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

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

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

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

24 B. The act of obtaining an appraisal of any covered  
25 animal species or covered animal part or product alone does not

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1 constitute possession with intent to sell.

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

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

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

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

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

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

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

25 D. the owner distributed the covered animal species

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

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

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

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

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

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

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

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

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

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

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

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

12 SECTION 7. EFFECTIVE DATE.--The effective date of the  
13 provisions of this act is July 1, 2020.