

FURTHER RESOLVED: That the City of Oakland will continue to work on efforts to disrupt the practice of illegal poaching.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND
PRESIDENT GIBSON MCELHANEY

NOES -
ABSENT -
ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

ASSEMBLY BILL

No. 96

Introduced by Assembly Member Atkins
(Principal coauthor: Senator Lara)
(Coauthors: Assembly Members Bloom, Bonta, Levine,
Maienschein, McCarty, Rendon, and Williams)
(Coauthor: Senator Pavley)

January 7, 2015

An act to add Section 2022 to the Fish and Game Code, and to repeal Section 5 of Chapter 692 of the Statutes of 1976, relating to animal parts and products.

LEGISLATIVE COUNSEL'S DIGEST

AB 96, as introduced, Atkins. Animal parts and products: importation or sale of ivory and rhinoceros horn.

Existing law makes it a crime to import into the state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of an elephant. Existing law exempts the possession with intent to sell, or sale of the dead body, or any part or product thereof, of any elephant before June 1, 1977, or the possession with intent to sell or the sale of any such item on or after June 1, 1977, if the item was imported before January 1, 1977.

This bill would delete this exemption. By changing the definition of a crime, this bill would impose a state-mandated local program.

This bill would prohibit a person from purchasing, selling, offering for sale, possessing with intent to sell, or importing with intent to sell ivory or rhinoceros horn, except as specified, and would make this prohibition enforceable by the Department of Fish and Wildlife. The bill would make a violation of this provision or any rule, regulation, or

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order adopted pursuant to this provision a misdemeanor subject to specified criminal penalties. By creating a new crime, the bill would impose a state-mandated local program. In addition to the specified criminal penalties, the bill would authorize the department to impose a civil penalty of up to \$10,000 for a violation of this provision or any rule, regulation, or order adopted pursuant to this provision. The bill would authorize the department to permit the purchase, sale, offer for sale, possession with intent to sell, or importation with intent to sell ivory or rhinoceros horn for educational or scientific purposes by a bona fide educational or scientific institution if certain criteria are satisfied.

This bill would provide that the provisions of this bill are severable.

This bill would make these provisions operative on July 1, 2016.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) There is worldwide concern regarding the plight of elephants
4 and rhinoceroses, who are being poached at alarming rates — an
5 average of 96 elephants per day are killed in Africa.

6 (b) Illegal poaching and wildlife trafficking is the fourth largest
7 transnational crime and ivory helps fund the military operations
8 of notorious terrorist groups. Smuggling gangs move tons of tusks
9 to markets thousands of miles away.

10 (c) International, federal, and state laws are all being
11 strengthened to protect these iconic species from cruelty and
12 extinction. The states of New York and New Jersey recently
13 enacted strong prohibitions on intra-state ivory and rhinoceros
14 horn commerce and the federal government has proposed
15 strengthened ivory trade and import regulations.

16 (d) California has prohibited the ivory trade since 1977, but a
17 loophole has rendered the law unenforceable — allowing illegal
18 sales to flourish. San Francisco and Los Angeles have consistently

1 ranked among the top trading markets for illegal ivory in the United
2 States.

3 SEC. 2. Section 2022 is added to the Fish and Game Code, to
4 read:

5 2022. (a) For the purposes of this section, the following terms
6 have the following meanings:

7 (1) "Bona fide educational or scientific institution" means an
8 institution that establishes through documentation either of the
9 following:

10 (A) Educational or scientific tax exemption, from the federal
11 Internal Revenue Service or the institution's national, state, or
12 local tax authority.

13 (B) Accreditation as an educational or scientific institution,
14 from a qualified national, regional, state, or local authority for the
15 institution's location.

16 (2) "Ivory" means a tooth or tusk from a species of elephant,
17 hippopotamus, mammoth, walrus, whale, or narwhal, or a piece
18 thereof, whether raw ivory or worked ivory, and includes a product
19 containing, or advertised as containing, ivory.

20 (3) "Rhinoceros horn" means the horn, or a piece thereof, or a
21 derivative such as powder, of a species of rhinoceros, and includes
22 a product containing, or advertised as containing, a rhinoceros
23 horn.

24 (4) "Sale" or "sell" means selling, trading, bartering for
25 monetary or nonmonetary consideration, giving away in
26 conjunction with a commercial transaction, or giving away at a
27 location where a commercial transaction occurred at least once
28 during the same or the previous calendar year.

29 (5) "Total value" means either the fair market value or the actual
30 price paid for ivory or rhinoceros horn, whichever is greater.

31 (b) Except as provided in subdivisions (c) and (d), a person shall
32 not purchase, sell, offer for sale, possess with intent to sell, or
33 import with intent to sell ivory or rhinoceros horn.

34 (c) The prohibitions set forth in subdivision (b) shall not apply
35 to any of the following:

36 (1) An employee or agent of the federal or state government
37 undertaking a law enforcement activity pursuant to federal or state
38 law, or a mandatory duty required by federal law.

1 (2) An activity that is authorized by an exemption or permit
2 under federal law or that is otherwise expressly authorized under
3 federal law.

4 (3) Ivory or rhinoceros horn that is part of a musical instrument,
5 including, but not limited to, a string or wind instrument or piano,
6 and that is less than 20 percent by volume of the instrument, if the
7 owner or seller provides historical documentation demonstrating
8 provenance and showing the item was manufactured no later than
9 1975.

10 (4) Ivory or rhinoceros horn that is part of a bona fide antique
11 and that is less than five percent by volume of the antique, if the
12 antique status is established by the owner or seller of the antique
13 with historical documentation demonstrating provenance and
14 showing the antique to be not less than 100 years old.

15 (d) The department may permit the purchase, sale, offer for sale,
16 possession with intent to sell, or importation with intent to sell
17 ivory or rhinoceros horn for educational or scientific purposes by
18 a bona fide educational or scientific institution if both of the
19 following criteria are satisfied:

20 (1) The purchase, sale, offer for sale, possession with intent to
21 sell, or import with intent to sell the ivory or rhinoceros horn is
22 not prohibited by federal law.

23 (2) The ivory or rhinoceros horn was legally acquired before
24 January 1, 1991, and was not subsequently transferred from one
25 person to another for financial gain or profit after July 1, 2016.

26 (e) It shall be presumptive evidence of possession with intent
27 to sell ivory or rhinoceros horn if the ivory or rhinoceros horn is
28 possessed in a retail or wholesale outlet commonly used for the
29 buying or selling of similar items. This presumption shall not
30 preclude a finding of intent to sell based on any other evidence
31 that may serve to independently establish that intent.

32 (f) For a violation of any provision of this section, or any rule,
33 regulation, or order adopted pursuant to this section, the following
34 criminal penalties shall be imposed:

35 (1) For a first conviction, where the total value of the ivory or
36 rhinoceros horn is two hundred fifty dollars (\$250) or less, the
37 offense shall be a misdemeanor punishable by a fine of not less
38 than one thousand dollars (\$1,000), or more than ten thousand
39 dollars (\$10,000), imprisonment in the county jail for not more
40 than 30 days, or by both the fine and imprisonment.

1 (2) For a first conviction, where the total value of the ivory or
2 rhinoceros horn is more than two hundred fifty dollars (\$250), the
3 offense shall be a misdemeanor punishable by a fine of not less
4 than five thousand dollars (\$5,000), or more than forty thousand
5 dollars (\$40,000), imprisonment in the county jail for not more
6 than one year, or by both the fine and imprisonment.

7 (3) For a second or subsequent conviction, where the total value
8 of the ivory or rhinoceros horn is two hundred fifty dollars (\$250)
9 or less, the offense shall be a misdemeanor punishable by a fine
10 of not less than five thousand dollars (\$5,000), or more than forty
11 thousand dollars (\$40,000), imprisonment in county jail for not
12 more than one year, or by both the fine and imprisonment.

13 (4) For a second or subsequent conviction, where the total value
14 of the ivory or rhinoceros horn is more than two hundred fifty
15 dollars (\$250), the offense shall be a misdemeanor punishable by
16 a fine of not less than ten thousand dollars (\$10,000), or more than
17 fifty thousand dollars (\$50,000) or the amount equal to two times
18 the total value of the ivory or rhinoceros horn involved in the
19 violation, whichever is greater, imprisonment in county jail for
20 not more than one year, or by both the fine and imprisonment.

21 (g) In addition to, and separate from, any criminal penalty
22 provided for under subdivision (f), a civil or administrative fine
23 of up to ten thousand dollars (\$10,000) may be imposed for a
24 violation of any provision of this section, or any rule, regulation,
25 or order adopted pursuant to this section. Civil penalties authorized
26 pursuant to this subdivision may be imposed administratively by
27 the department consistent with all of the following:

28 (1) The chief of enforcement issues a complaint to any person
29 or entity on which an administrative civil penalty may be imposed
30 pursuant to this section. The complaint shall allege the act or failure
31 to act that constitutes a violation, relevant facts, the provision of
32 law authorizing the civil penalty to be imposed, and the proposed
33 penalty amount.

34 (2) The complaint and order is served by personal notice or
35 certified mail and informs the party served that the party may
36 request a hearing no later than 20 days from the date of service. If
37 a hearing is requested, it shall be scheduled before the director or
38 his or her designee, which designee shall not be the chief of
39 enforcement issuing the complaint and order. A request for hearing
40 shall contain a brief statement of the material facts the party claims

1 support his or her contention that no administrative penalty should
2 be imposed or that an administrative penalty of a lesser amount is
3 warranted. A party served with a complaint pursuant to this
4 subdivision waives the right to a hearing if no hearing is requested
5 within 20 days of service of the complaint, in which case the order
6 imposing the administrative penalty shall become final.

7 (3) The director, or his or her designee, shall control the nature
8 and order of the hearing proceedings. Hearings shall be informal
9 in nature, and need not be conducted according to the technical
10 rules relating to evidence. The director or his or her designee shall
11 issue a final order within 45 days of the close of the hearing. A
12 final copy of the order shall be served by certified mail upon the
13 party served with the complaint.

14 (4) A party may obtain review of the final order by filing a
15 petition for a writ of mandate with the superior court within 30
16 days of the date of service of the final order. The administrative
17 penalty shall be due and payable to the department within 60 days
18 after the time to seek judicial review has expired or, where the
19 party has not requested a hearing of the order, within 20 days after
20 the order imposing an administrative penalty becomes final.

21 (h) For any conviction or other entry of judgment for a violation
22 of this section resulting in a fine, the department may, upon
23 appropriation by the Legislature, pay one-half of the fine, but not
24 to exceed five hundred dollars (\$500), to any person giving
25 information that led to the conviction or other entry of judgment.
26 This reward shall not apply if the informant is a regular salaried
27 law enforcement officer, or officer or agent of the department.

28 (i) Upon conviction or other entry of judgment for a violation
29 of this section, any seized ivory or rhinoceros horn shall be
30 forfeited and, upon forfeiture, either maintained by the department
31 for educational or training purposes, donated by the department
32 to a bona fide educational or scientific institution, or destroyed.

33 (j) This section does not preclude enforcement under Section
34 6530 of the Penal Code.

35 SEC. 3. Section 5 of Chapter 692 of the Statutes of 1976 is
36 repealed.

37 ~~SEC. 5. Section 1 of this act shall become operative June 1,~~
38 ~~1977. No provision of law shall prohibit the possession with intent~~
39 ~~to sell, or sale of the dead body, or any part of product thereof, of~~
40 ~~any elephant prior to June 1, 1977, or the possession with intent~~

1 ~~to sell or the sale of any such item on or after such date which was~~
2 ~~imported prior to the effective date of this act.~~

3 ~~The burden of proof to demonstrate that such item or items were~~
4 ~~imported prior to the effective date of this act shall be placed upon~~
5 ~~the defendant.~~

6 SEC. 4. The provisions of this act are severable. If any
7 provision of this act or its application is held invalid, that invalidity
8 shall not affect other provisions or applications that can be given
9 effect without the invalid provision or application.

10 SEC. 5. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.

19 SEC. 6. This act shall become operative on July 1, 2016.