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SENATE BILL 81

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Mimi Stewart and Gail Chasey

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] PURPOSE OF ACT.--The purpose of
the Wildlife Trafficking Act is to:

A. cooperate in the United States' national
strategy for combating wildlife trafficking by filling in
enforcement gaps in New Mexico to hinder the operations of
traffickers; and

B. serve the public interest by preventing the

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1 extinction of animals in the wild through assistance to the
2 federal government in discouraging the substantial illegal
3 trade in parts or products of animal species threatened with
4 extinction by eliminating potential markets for these items,
5 thereby eliminating financial incentives that encourage the
6 poaching and trafficking of wildlife.

7 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
8 Wildlife Trafficking Act:

9 A. "covered animal species" means any extant
10 species of elephant, rhinoceros, tiger, lion, leopard, cheetah,
11 jaguar, pangolin, great ape, marine turtle, shark, caiman, ray
12 or other species covered by the Convention on International
13 Trade in Endangered Species of Wild Fauna and Flora, to which
14 the United States is a treaty partner;

15 B. "covered animal species part or product" means
16 any portion of a covered animal species or any item that
17 contains, is advertised as containing or is wholly or partially
18 made from a part that comes from a covered animal species;

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

21 D. "educational or scientific institution" means an
22 institution that has an educational or scientific tax exemption
23 from the federal internal revenue service or the institution's
24 national or state tax authority;

25 E. "sell" includes bartering for, exchanging,

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1 trading or possessing with the intent to sell and each such
2 transaction made by any person, with or without remuneration,
3 including any intrastate sale through the internet; and

4 F. "total value of the covered animal species part
5 or product" means the fair market value of such part or
6 product, the price at which the part or product was offered for
7 sale or the actual price paid for the part or product,
8 whichever is greater.

9 SECTION 4. [NEW MATERIAL] PROHIBITED ACTS.--

10 A. Except as provided in Section 5 of the Wildlife
11 Trafficking Act, it is unlawful for a person to sell or
12 purchase any covered animal species part or product.

13 B. It is prima facie evidence that a covered animal
14 species part or product is being offered for sale if it is
15 present at a retail or wholesale establishment in any location
16 where items are sold or on an internet sales site where goods
17 are offered for sale.

18 C. It is prima facie evidence of possession with
19 intent to sell a covered animal species part or product if such
20 part or product is in a location where a retail, wholesale or
21 internet establishment stores goods awaiting sale.

22 D. Nothing in this section precludes a finding that
23 a covered animal species part or product is for sale or
24 possessed with an intent to sell based on any other evidence
25 that may serve to independently establish that the covered

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1 animal species part or product is or will be for sale.

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

5 F. This section does not apply to guns, knives or
6 musical instruments, including stringed instruments and bows,
7 wind and percussion instruments and pianos.

8 SECTION 5. [NEW MATERIAL] EXCEPTIONS.--It is an
9 affirmative defense to Section 4 of the Wildlife Trafficking
10 Act if any of the following conditions are satisfied:

11 A. the covered animal species part or product is a
12 fixed component of an antique product that is not made wholly
13 or primarily of covered animal species parts or products,
14 provided that the antique status is established by the owner or
15 seller with evidence proving origin and showing that:

16 (1) the covered animal species part or product
17 is more than one hundred years old;

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

20 (3) the primary value of the antique does not
21 stem from the covered animal species part or product;

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

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

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

11 E. the sale or purchase of the covered animal
12 species part or product is expressly authorized by federal law
13 or permit; or

14 F. the alleged violation of any provision of
15 Section 4 of the Wildlife Trafficking Act is by an employee or
16 agent of a federal, state or local law enforcement agency and
17 who is operating in the employee's or agent's official capacity
18 as a federal, state or local law enforcement officer.

19 SECTION 6. [NEW MATERIAL] PENALTIES.--

20 A. A person who violates Section 4 of the Wildlife
21 Trafficking Act:

22 (1) for a first conviction, is guilty of a
23 misdemeanor and upon conviction shall be punished by a fine of
24 up to five thousand dollars (\$5,000) or two times the total
25 value of the covered animal species part or product, whichever

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1 is greater; and

2 (2) for a second or subsequent conviction, is
3 guilty of a fourth degree felony and upon conviction shall be
4 punished by a fine of up to twenty-five thousand dollars
5 (\$25,000) or three times the total value of the covered animal
6 species part or product, whichever is greater.

7 B. Each covered animal species part or product sold
8 or purchased in violation of Section 4 of the Wildlife
9 Trafficking Act is a separate offense. Two or more offenses
10 may be charged in the same complaint, information or indictment
11 and punished as separate offenses for each covered animal
12 species part or product involved.

13 C. Upon conviction for a violation of Section 4 of
14 the Wildlife Trafficking Act, the court shall order the
15 forfeiture of the covered animal species part or product and
16 shall order the covered animal species part or product:

17 (1) given to the United States fish and
18 wildlife service, if requested by that agency;

19 (2) destroyed; or

20 (3) donated to an educational or scientific
21 institution.

22 SECTION 7. [NEW MATERIAL] ENFORCEMENT AUTHORITY.--

23 Commissioned law enforcement officers employed by the
24 department of game and fish, the state parks division of the
25 energy, minerals and natural resources department, the

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1 department of public safety, the New Mexico livestock board,
2 sheriff's departments and municipal police departments shall
3 enforce the provisions of the Wildlife Trafficking Act. The
4 law enforcement agencies may enter into mutual aid agreements
5 with the federal government and with Indian nations, tribes and
6 pueblos to enforce the provisions of that act.

7 SECTION 8. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2017.

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