

1 SENATE BILL 38

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

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 species" means any extant  
22 species of elephant, rhinoceros, tiger, lion, leopard, cheetah,  
23 jaguar, pangolin, great ape, marine turtle, shark, caiman, ray  
24 or other species covered by Appendix 1 of the Convention on  
25 International Trade in Endangered Species of Wild Fauna and

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1 Flora, to which the United States is a treaty party;

2 B. "covered animal part or product" means any  
3 portion of a covered animal species or any item that contains,  
4 is advertised as containing or is wholly or partially made from  
5 a part that comes from a covered animal species;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 SECTION 5. [NEW MATERIAL] CRIMINAL PENALTIES--CIVIL  
23 FINES.--

24 A. A person who violates Section 3 of the Wildlife  
25 Trafficking Act is guilty of a misdemeanor and upon conviction

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1 shall be punished pursuant to the provisions of Section 31-19-1  
2 NMSA 1978.

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

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

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

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

25 (2) destroyed; or

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1 (3) donated to an educational or scientific  
2 institution.

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

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

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

14 SECTION 7. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2019.