

1 S.117

2 Introduced by Senators Pearson and Lyons

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; endangered species; ivory and
6 rhinoceros horn

7 Statement of purpose of bill as introduced: This bill proposes to prohibit the
8 importation, sale, offer for sale, purchase, barter, or possession with intent to
9 sell of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product in
10 Vermont.

11 An act relating to the sale of ivory or rhinoceros horn

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 10 V.S.A. § 5411 is added to read:

14 § 5411. SALE OF IVORY OR RHINOCEROS HORN

15 (a) Definitions. As used in this section:

16 (1) "Ivory" means a tooth or tusk or any piece of a tooth or tusk
17 composed of ivory from any animal including elephant, hippopotamus,
18 mammoth, narwhal, walrus, or whale, whether raw, worked, made into, or part
19 of an ivory product.

1 (2) “Ivory product” means any item that contains ivory or that is wholly
2 or partially made from ivory.

3 (3) “Raw ivory” means any ivory the surface of which, polished or
4 unpolished, is unaltered or minimally changed by carving.

5 (4) “Rhinoceros horn” means the horn or any piece of the horn of any
6 species of rhinoceros.

7 (5) “Rhinoceros horn product” means any item that contains or is wholly
8 or partially made from any rhinoceros horn.

9 (6) “Total value of the ivory, ivory products, rhinoceros horn, and
10 rhinoceros horn products” means the fair market value of the ivory, ivory
11 products, rhinoceros horn, and rhinoceros horn products, or the actual price
12 paid for the ivory, ivory products, rhinoceros horn, and rhinoceros products,
13 whichever is greater.

14 (7) “Worked ivory” means ivory that has been embellished, carved,
15 marked, or otherwise altered so that it can no longer be considered raw ivory.

16 (b) Prohibition. In addition to the prohibitions and penalties established by
17 federal law or any other applicable law, it shall be unlawful for a person to
18 import, sell, offer for sale, purchase, barter, or possess with intent to sell any
19 ivory, ivory product, rhinoceros horn, or rhinoceros horn product in this State,
20 except as authorized under subsections (d), (e), and (f) of this section.

1 (c) Presumption of intent to sell. The possession of any ivory, ivory
2 product, rhinoceros horn, or rhinoceros horn product in a retail or wholesale
3 outlet commonly used for the buying or selling of similar products shall
4 constitute presumptive evidence of possession with intent to sell under this
5 section. Nothing in this subsection shall preclude a finding of intent to sell
6 based on any evidence that may serve independently to establish intent to sell.
7 The act of obtaining an appraisal of ivory, an ivory product, rhinoceros horn,
8 or a rhinoceros horn product shall not constitute possession with intent to sell.

9 (d) Authorized conveyance to beneficiaries. A person may convey ivory,
10 an ivory product, rhinoceros horn, or a rhinoceros horn product to the legal
11 beneficiary of the ivory, ivory product, rhinoceros horn, or rhinoceros horn
12 product that is part of an estate or other items being conveyed to lawful
13 beneficiaries upon the death or in anticipation of the death of the owner of the
14 ivory, ivory product, rhinoceros horn, or rhinoceros horn product.

15 (e) Exceptions. The prohibitions set forth in this section shall not apply to:

16 (1) employees or agents of the federal or State government undertaking
17 any law enforcement activities pursuant to federal or State law or any
18 mandatory duties required by federal or State law;

19 (2) an import that is expressly authorized by federal law, license, or
20 permit; or

1 (3) the sale, offer for sale, purchase, barter, or possession with intent to
2 sell that is authorized by federal law or that occurs within the State, and
3 involves a firearm, as defined in 13 V.S.A. § 4016, or a musical instrument.

4 (f) Permit for educational or scientific purposes. The Secretary of Natural
5 Resources may issue a permit for the import, sale, offer for sale, purchase,
6 barter, or possession with intent to sell of any ivory, ivory product, rhinoceros
7 horn, or rhinoceros horn product for bona fide educational or scientific
8 purposes, unless the proposed activity is prohibited by federal law. A permit
9 issued under this subsection may contain any terms or conditions required by
10 the Secretary.

11 (g) Penalties. In addition to any penalty that may be imposed under federal
12 law or any other applicable law, a violation of the requirements of this section
13 or any rule adopted under this section is punishable as follows:

14 (1) For the first offense, the violation is punishable by a term of
15 imprisonment of not more than six months and a fine of not less than
16 \$1,000.00 or an amount equal to two times the total value of the ivory, ivory
17 products, rhinoceros horn, and rhinoceros horn products involved in the
18 offense, whichever is greater.

19 (2) For the second or subsequent offense, the violation is punishable by
20 a term of imprisonment of not more than 18 months and a fine of not less than
21 \$5,000.00 or an amount equal to two times the total value of the ivory, ivory

1 products, rhinoceros horn, and rhinoceros horn products involved in the
2 offense, whichever is greater.

3 (h) Seizure. Upon a conviction for violation of this section or the rules
4 adopted under this section, the court shall order the seizure of all ivory, ivory
5 products, rhinoceros horn, and rhinoceros horn products involved in the
6 violation and determine the penalty for the violation based on the assessed
7 value of the seized products. After sentencing the defendant, the court shall
8 order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros
9 horn products be transferred to the Secretary of Natural Resources for proper
10 disposition. The Secretary, in his or her discretion, may destroy the ivory,
11 ivory products, rhinoceros horn, and rhinoceros horn products, or donate them
12 to an educational or scientific institution or organization.

13 (i) Rulemaking. The Secretary of Natural Resources may adopt rules
14 necessary to carry out the provisions of this section.

15 Sec. 2. EFFECTIVE DATE

16 This act shall take effect on July 1, 2017.