

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 768
Apr 11, 2017
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40426-MH-108 (03/23)

Short Title: Ban Endangered Species Product Trafficking. (Public)

Sponsors: Representatives Harrison, McGrady, and Saine (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO BAN TRAFFICKING IN IVORY AND RHINOCEROS HORN.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 113-331 through G.S. 113-337 of Article 25 of Chapter 113 of
5 the General Statutes are recodified as Part 1 of Article 25 of Chapter 113 of the General
6 Statutes, to be entitled "General Provisions."

7 **SECTION 2.** Article 25 of Chapter 113 of the General Statutes is amended by
8 adding a new Part to read:

9 "Part 2. Ivory and Rhinoceros Horn.

10 **"§ 113-338. Definitions.**

11 The following definitions apply in this Part:

- 12 (1) Covered animal product. – Any ivory, ivory product, rhinoceros horn, or
13 rhinoceros horn product.
14 (2) Ivory. – Any tusk composed of ivory from an elephant or mammoth, or any
15 piece thereof, whether raw ivory or worked ivory, or made into, or part of,
16 an ivory product.
17 (3) Ivory product. – Any item that contains, or is wholly or partially made from,
18 any ivory.
19 (4) Raw ivory. – Any ivory the surface of which, polished or unpolished, is
20 unaltered or minimally changed by carving.
21 (5) Rhinoceros horn. – The horn, or any piece thereof, of any species of
22 rhinoceros.
23 (6) Rhinoceros horn product. – Any item that contains, or is wholly or partially
24 made from, any rhinoceros horn.
25 (7) Total value of the covered animal products. – The fair market value of the
26 covered animal products, or the actual price paid for the covered animal
27 products, whichever is greater.
28 (8) Worked ivory. – Ivory that has been embellished, carved, marked, or
29 otherwise altered so that it can no longer be considered raw ivory.

30 **"§ 113-339. Prohibitions; exceptions; burden of proof.**

31 (a) Prohibition. – In addition to the prohibitions and penalties established by federal
32 law, a person in this State shall not import, sell, offer for sale, purchase, barter, or possess with
33 intent to sell any covered animal product, except as authorized under subsections (e) and (d) of
34 this section.

35 (b) Presumption of Intent to Sell. – The possession in this State of any covered animal
36 product in a retail or wholesale outlet commonly used for the buying or selling of similar



* D R H 4 0 4 2 6 - M H - 1 0 8 *

1 products shall constitute presumptive evidence of possession with intent to sell under this
2 section. Nothing in this subsection shall preclude a finding of intent to sell based on any
3 evidence that may serve independently to establish intent to sell. The act of obtaining an
4 appraisal of a covered animal product alone shall not constitute possession with intent to sell.

5 (c) Authorized Conveyance to Beneficiaries. – A person may convey a covered animal
6 product to the legal beneficiary of the covered animal product that is part of an estate of other
7 items being conveyed to lawful beneficiaries upon the death of the owner of the covered animal
8 product or in anticipation of that death.

9 (d) Exceptions. – The prohibitions of this section shall not apply to any of the
10 following:

11 (1) Employees or agents of the federal government or the State undertaking any
12 law enforcement activities pursuant to federal or State law or any mandatory
13 duties required by federal or State law.

14 (2) The import of legally acquired covered animal products:

15 a. Expressly authorized by federal law, license, or permit; or

16 b. As part of a personal or household move into the State.

17 (3) The sale of ivory or ivory products expressly authorized by federal law,
18 license, or permit, provided that the total weight of the ivory or ivory
19 components is less than 200 grams.

20 (4) The import, sale, offer for sale, purchase, barter, or possession with intent to
21 sell of any covered animal product for a bona fide educational or scientific
22 purpose or to a museum, unless the proposed activity is prohibited by federal
23 law.

24 (5) The covered animal product is part of a bona fide antique; provided that all
25 of the following apply:

26 a. The antique status of such a part or product is established by the
27 owner or seller thereof with historical documentation showing the
28 antique to be not less than 100 years old.

29 b. The covered animal product is less than twenty percent (20%) by
30 volume of such an antique.

31 c. The covered animal product is a fixed component or components of a
32 larger manufactured item and is not, in its current form, the primary
33 source of value of the item.

34 (6) The covered animal product is less than twenty percent (20%) by volume of
35 a gun, knife, or musical instrument, including, without limitation, string
36 instruments and bows, wind and percussion instruments, and pianos, if the
37 owner or seller provides historical documentation showing the item was
38 manufactured no later than 1975 and the covered animal product is a fixed
39 component or components of a larger manufactured item and is not, in its
40 current form, the primary source of value of the item;

41 (e) Burden of Proof. – In connection with any action alleging violation of this section,
42 any person claiming the benefit of any exception shall have the burden of proving that the
43 exception is applicable and was valid and in force at the time of the alleged violation.

44 **"§ 113-340. Enforcement; civil remedies.**

45 (a) A person who violates this section shall be fined:

46 (1) For a first offense, one thousand dollars (\$1,000) or an amount equal to two
47 times the total value of the covered animal product involved in the offense,
48 whichever is greater.

49 (2) For a second or subsequent offense, five thousand dollars (\$5,000) or an
50 amount equal to two times the covered animal product involved in the
51 offense, whichever is greater.

1 (3) The penalties provided in this subsection shall be in addition to any penalty
2 that may be imposed under federal law.

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

11 **"§ 113-341. Rule making.**

12 The Wildlife Resources Commission may adopt rules to implement the requirements of this
13 section.

14 **"§ 113-342. Educational information.**

15 The Wildlife Resources Commission shall maintain on its Web site information regarding
16 the prohibition of the sale and purchase of ivory and rhinoceros horns in this State.

17 **"§ 113-343. Report on ivory and rhinoceros horn prohibition.**

18 On or before January 15, 2022, the Wildlife Resources Commission, after consultation with
19 the U.S. Fish and Wildlife Service, shall submit to the Joint Legislative Oversight Committee
20 on Agriculture and Natural and Economic Resources and the Fiscal Research Division a report
21 regarding the implementation of this act including a summary of all of the following:

22 (1) Enforcement activities taken by the State, including the outcome of any
23 items seized.

24 (2) The financial impact of the prohibition of the sale of ivory and rhinoceros
25 horns on North Carolina businesses.

26 (3) Actions other states have taken with regard to the sale of ivory and
27 rhinoceros horns.

28 (4) Recommendations regarding necessary changes to North Carolina law,
29 including the extension or repeal of the prohibition."

30 **SECTION 3.** This act becomes effective January 1, 2018.