



SPONSOR: Rep. Lynn & Sen. Hansen & Sen. Townsend
Reps. Bentz, Keeley, Kowalko, M. Smith, K. Williams;
Sen. Marshall

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 95

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO IVORY AND RHINOCEROS HORN.

1 WHEREAS, there is worldwide concern regarding the plight of elephants and rhinoceroses, who are being
2 poached at alarming rates – an average of 96 elephants per day are killed in Africa; and

3 WHEREAS, illegal poaching and wildlife trafficking is the fourth largest transnational crime, and ivory helps fund
4 the military operations of notorious terrorist groups. Smuggling gangs move tons of tusks to market thousands of miles
5 away; and

6 WHEREAS, international, federal, and state laws are all being strengthened to protect these iconic species from
7 cruelty and extinction. The states of California, New York, and New Jersey recently enacted strong prohibitions on
8 intrastate ivory and rhinoceros horn commerce, and the federal government has proposed strengthened ivory trade and
9 import regulations.

10 NOW, THEREFORE:

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

12 Section 1. Amend Chapter 6, Title 7 of the Delaware Code by making deletions as shown by strikethrough and
13 insertions as shown by underline as follows:

14 Subchapter I. Prohibition on the Importation, Possession, and Sale of Certain Species.

15 Section 2. Amend Chapter 6, Title 7 of the Delaware Code by making deletions as shown by strike through and
16 insertions as shown by underline as follows:

17 Subchapter II. Ivory and Rhinoceros Horn Trafficking.

18 § 611. Definitions.

19 As used in this chapter:

20 (1) “Bona fide educational or scientific institution” means an institution that establishes through
21 documentation either of the following:

22 a. Educational or scientific tax exemption, from the federal Internal Revenue Service or the institution’s
23 national, state, or local tax authority.

b. Accreditation as an educational or scientific institution, from a qualified national, regional, state, or local authority for the institution's location.

(2) "Department" means the Department of Natural Resources and Environmental Control.

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

(4) "Rhinceros horn" means the horn, a piece thereof, or a derivative such as powder of a species of rhinceros, and includes a product containing or advertised as containing rhinceros horn.

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

(6) "Total value" means either the fair market value or the actual price paid for ivory or rhinceros horn, whichever is greater.

§ 612. Prohibited acts.

Except as otherwise provided in this subchapter, it is unlawful for any person to purchase, sell, offer for sale, possess with intent to sell, or import with intent to sell ivory or rhinceros horn.

§ 613. Exceptions.

(a) The prohibitions set forth in § 612 of this title do not apply to any of the following:

(1) An employee or agent of the federal or state government undertaking a law-enforcement activity under federal or state law, or a mandatory duty required by federal law.

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

(3) Ivory or rhinceros horn that is part of a gun, knife, or musical instrument, including a string or wind instrument or piano, and is less than 20% by volume of the instrument, if the owner or seller provides either of the following:

a. Historical documentation showing the item was manufactured no later than 1975.

b. An appraisal performed by a member of the National Antique and Art Dealers Association of America or the Antique Dealers' Association of America, Inc., showing the item was manufactured no later than 1975.

(4) Ivory or rhinceros horn that is part of a bona fide antique and is less than 20% by volume of the antique, if the antique status is established by the owner or seller of the antique by either of the following methods:

54 a. Historical documentation showing the antique to be not less than 100 years old as of [the effective date
55 of this Act].

56 b. An appraisal performed by a member of the National Antique and Art Dealers Association of America
57 or the Antique Dealers' Association of America, Inc., showing the antique to be not less than 100 years old as of
58 [the effective date of this Act].

59 (5) Ivory or rhinoceros horn that is conveyed to a legal beneficiary upon the death of the owner of the ivory or
60 rhinoceros horn or in anticipation of that death.

61 (b) Paragraphs (b)(3) or (4) of this section apply only if ivory or rhinoceros horn is a fixed component of a larger
62 manufactured item and is not, in its current form, the primary source of value of the gun, knife, musical instrument, or
63 antique.

64 § 614. Permit for bona fide educational or scientific institution.

65 The Department may issue a permit for the purchase of, sale of, offer for sale of, possession with intent to sell, or
66 importation with intent to sell ivory or rhinoceros horn for educational or scientific purposes by a bona fide educational or
67 scientific institution if the purchase of, sale of, offer for sale of, possession with intent to sell, or importation with intent to
68 sell the ivory or rhinoceros horn is not prohibited by federal law.

69 § 615. Regulatory authority.

70 The Department may promulgate regulations consistent with this subchapter.

71 § 616. Enforcement.

72 Any law-enforcement officer, as defined in § 222 of Title 11, may enforce a violation of any provision of this
73 subchapter or any rule, regulation, or order adopted under this subchapter.

74 § 617. Jurisdiction.

75 The Superior Court has exclusive original jurisdiction over all criminal violations of this subchapter.

76 § 618. Presumption of evidence.

77 (a) The possession of ivory or rhinoceros horn in a retail or wholesale outlet commonly used for the buying or
78 selling of similar items is presumptive evidence of possession with intent to sell ivory or rhinoceros horn.

79 (b) Subsection (a) of this section does not preclude a finding of possession with intent to sell based on any other
80 evidence that may serve to independently establish that intent.

81 § 619. Criminal penalties.

82 For a violation of any provision of this subchapter or any rule, regulation, or order adopted under this subchapter,
83 the following criminal penalties shall be imposed:

(1) For a first conviction, where the total value of the ivory or rhinoceros horn is \$250 or less, the offense is a misdemeanor punishable by a fine of not less than \$1,000, nor more than \$10,000, imprisonment for not more than 30 days, or both the fine and imprisonment.

(2) For a first conviction, where the total value of the ivory or rhinoceros horn is more than \$250, the offense is a misdemeanor punishable by a fine of not less than \$5,000, nor more than \$40,000, imprisonment for not more than one year, or both the fine and imprisonment.

(3) For a second or subsequent conviction, where the total value of the ivory or rhinoceros horn is \$250 or less, the offense is a misdemeanor punishable by a fine of not less than \$5,000, nor more than \$40,000, imprisonment for not more than one year, or both the fine and imprisonment.

(4) For a second or subsequent conviction, where the total value of the ivory or rhinoceros horn is more than \$250, the offense is a misdemeanor punishable by a fine of not less than \$10,000, nor more than \$50,000 or the amount equal to two times the total value of the ivory or rhinoceros horn involved in the violation, whichever is greater, imprisonment for not more than one year, or both the fine and imprisonment.

§ 620. Civil or administrative penalties.

(a) In addition to, and separate from, any criminal penalty provided for under § 619 of this title, the Department may impose a civil or administrative fine of up to \$10,000 for a violation of any provision of this subchapter or any rule, regulation, or order adopted under this subchapter.

(b) The Department may administratively impose civil penalties authorized under this section.

§ 621. Rewards.

(a) For any conviction or other entry of judgment for a violation of this subchapter resulting in a fine, the Department may, upon appropriation by the General Assembly, pay one-half of the fine, not to exceed \$500, to any person giving information that led to the conviction or other entry of judgment.

(b) Subsection (a) of this section does not apply if the informant is a regular salaried law-enforcement officer, as defined in § 222 of Title 11, or an officer or agent of the Department.

§ 622. Forfeiture.

(a) Upon forfeiture under subsection (a) of this section, the Department shall maintain for educational or training purposes, donate to a bona fide educational or scientific institution, or destroy the seized ivory or rhinoceros horn.

(b) Upon forfeiture under subsection (a) of this section, the Department shall maintain for educational or training purposes, donate to a bona fide educational or scientific institution, or destroy the seized ivory or rhinoceros horn.

Section 3. Amend § 1304, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1304. Environmental misdemeanors, environmental violations, sentences and fines.

(a) Violations of Chapters 1, 5, ~~6-7~~, 9, 18, 19, 21, 23, 24, 25, 26, 27, and 28 of this title, Subchapter I of Chapter 6 of this title, and of subchapter Subchapter I of Chapter 11 of this title, or Department orders, ~~rules~~ rules, or regulations promulgated to implement provisions of these chapters or subchapters are designated as environmental misdemeanors and violations.

(c) Any violation of Chapters 1, 5, ~~6 or 7 or of subchapter~~ of this title, Subchapter I of Chapter 6 or this title, or Subchapter I of Chapter 11 of this title for which there is no prescribed penalty shall be a class C environmental violation.

Section 4. This Act takes effect 6 months after its enactment into law.

SYNOPSIS

This Act prohibits 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. A violation of this Act or any rule, regulation, or order adopted under this Act is a misdemeanor subject to fines, imprisonment, or both, as specified in this Act. In addition to the specified criminal penalties, this Act authorizes the Department of Natural Resources and Environmental Control ("the Department") to impose a civil penalty of up to \$10,000 for a violation of this Act or any rule, regulation, or order adopted under this Act. This Act authorizes 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 not prohibited by federal law.

This Act does not apply to ivory or rhinoceros horn that is part of a gun, knife, musical instrument, or antique, as long as the ivory or rhinoceros horn component in the item is a fixed component of a larger manufactured item and is not, in its current form, the primary source of value of the item.

The requirement that a bona fide antique be at least 100 years old is not a rolling time frame, but is to be a 100 year look back from the effective date of this Act.

This Act takes effect 6 months after its enactment into law.