

**GOVERNOR'S PROGRAM BILL**

**2014**

**MEMORANDUM**

AN ACT to amend the environmental conservation law, in relation to prohibiting the purchase and sale of ivory articles and rhinoceros horns and increasing the penalties for the illegal sale of such articles

**Purpose:**

This bill would prohibit the purchase and sale of ivory articles and rhinoceros horns, with limited exceptions, and increase the criminal and civil penalties for the illegal sale of these articles.

**Summary of Provisions:**

Section 1 of the bill would add section 11-0535-a to the Environmental Conservation Law (ECL). Subdivision 1 of ECL § 11-0535-a would define terms for purposes of the section. Subdivision 2 would prohibit the sale, offer for sale, purchase, trade, barter, or distribution of ivory articles and rhinoceros horns except as otherwise provided in Subdivision 3. Subdivision 3 would authorize the Department of Environmental Conservation (DEC) to issue licenses or permits for the sale, offering for sale, purchase, trading, bartering, or distribution of ivory articles or rhinoceros horns in limited situations.

Section 2 of the bill would amend ECL § 71-0924 to establish a Class D felony penalty for the illegal sale, trade, or barter of ivory articles with a value exceeding \$25,000.

Section 3 of the bill would add subdivision 16 to ECL § 71-0925 to increase the civil penalties for violations of ECL § 11-0535-a.

Section 4 of the bill would require that within 30 days DEC maintain information on its website regarding the prohibition on the sale and distribution of ivory articles and rhinoceros horns.

Section 5 of the bill contains a severability clause.

Section 6 of the bill would require DEC, no later than January 1, 2020, to prepare a report outlining enforcement activities and recommendations regarding any necessary statutory changes.

Section 7 of the bill sets forth the effective date.

**Existing law:**

The State's endangered and threatened species law, ECL § 11-0535, prohibits the taking, importation, transportation, possession, or sale of any endangered or threatened species of fish, shellfish, crustacea or wildlife, except under license or permit from DEC. ECL § 11-0536(1) prohibits the sale and offer for sale of Black Rhinoceros and Sumatran Rhinoceros, or any part thereof, whether raw or manufactured.

Pursuant to ECL § 71-0923, a violation of ECL § 11-0535 or § 11-0536 is a violation level offense, punishable by fine of not more than \$250, imprisonment for not more than 15 days, or both such fine and imprisonment. ECL § 71-0924 sets forth the fines and penalties applicable to the illegal commercialization of fish, shellfish, crustaceans, and wildlife. Subdivision (3) of ECL § 71-0924 establishes a Class E felony for the illegal commercialization of fish, shellfish, crustaceans or wildlife, or parts thereof, valued above \$1,500. ECL § 71-0925(13) sets forth the civil penalties for violations of ECL §§ 11-0535 and 11-0536.

**Statement in Support:**

The demand for illegal wildlife and wildlife products in the United States, including New York, is driving many species towards extinction. Despite being listed as threatened or endangered since the 1970's, elephant and rhinoceros populations across Africa and Asia are moving towards extinction. These animals are being slaughtered at an alarming rate to meet the needs of the ivory and horn trade, much of which is unlicensed and illegal. The Wildlife Conservation Society estimates that in Africa alone 96 elephants are slaughtered each day. This dire situation is exemplified by the recent death of Satao, an iconic 45 year old Kenyan elephant believed to be one of the world's largest living elephants and well-known for having long tusks that nearly reached the ground. Satao was so severely mutilated by the poachers that it took several days for investigators to identify him. In South Africa, the record slaughter of 1,004 rhinos in 2013 is more than twice the number killed in 2011, according to government-released figures.

The high consumer demand for ivory and horn products in New York is especially troubling. A joint investigation in 2012 by DEC and the U.S. Fish and Wildlife Service resulted in the seizure of over \$2 million worth of elephant ivory from jewelers in New York City. The core problem is the economic opportunity created by the demand for ivory and horn. The existing penalties are not high enough to deter violations. Under the existing statutory framework, a violation of ECL § 11-0535 or § 11-0536 is only a violation level offense. This is the lowest offense specified under New York law. The penalty for a violation includes a fine structure of between \$0 and \$250 and a maximum of 15 days in jail. In reality, few defendants convicted of a violation ever serve jail time.

ECL § 71-0924, which sets penalties for illegal commercialization of fish, shellfish,

crustaceans, or wildlife, serves as one of the primary tools available to law enforcement against the illegal trade in ivory. This law, however, is out-of-date and no longer provides meaningful deterrence. Currently, those involved in the illegal sale of wildlife parts, such as ivory, can only be charged with a maximum offense of an E felony, the lowest felony under State law. An individual selling \$150,000 worth of illegal ivory can only be charged with the same level of offense as an individual selling \$15,000, or even just \$1,501 worth of illegal ivory.

Given the potential profits and volume of ivory and horn sales in New York, the current law is not sufficient to have any detrimental effect on the present market. This bill, by expressly prohibiting the trade of ivory and rhinoceros horns with very limited exceptions and increasing fines and penalties, would help deter the illegal trade in these articles in New York.

**Budget implications:**

None.

**Effective Date:**

The bill would take effect immediately; provided, however, any person who has been issued a license or permit allowing the sale of ivory articles or rhinoceros horns before the bill's effective date may sell such articles listed on such license or permit until such license or permit has expired.