

2019 -- H 5768

LC001462

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO FISH AND WILDLIFE - TRADE IN COVERED ANIMAL PARTS OR PRODUCTS

Introduced By: Representatives Lima, Serpa, Ackerman, Marshall, and Bennett

Date Introduced: February 27, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 20 of the General Laws entitled "FISH AND WILDLIFE" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 40

4 TRADE IN COVERED ANIMAL PARTS OR PRODUCTS

5 **20-40-1. Definitions.**

6 As used in this chapter:

7 (1) "Bona fide educational or scientific institution" means an institution that establishes  
8 through documentation educational or scientific tax-exemption from the Federal Internal Revenue  
9 Service.

10 (2) "Covered animal" means any species of:

11 (i) Cheetah;

12 (ii) Elephant;

13 (iii) Giraffe;

14 (iv) Hippopotamus;

15 (v) Jaguar;

16 (vi) Leopard;

17 (vii) Lion;

18 (viii) Mammoth;

1 (ix) Mastodon;

2 (x) Pangolin;

3 (xi) Ray;

4 (xii) Rhinoceros;

5 (xiii) Sea turtle;

6 (xiv) Shark; or

7 (xv) Tiger.

8 (3) "Covered animal part or product" means any item that contains, or is wholly or  
9 partially made from, any covered animal.

10 (4) "Department" means the department of environmental management.

11 (5) "Sale" or "sell" means any act of selling, trading, or bartering for monetary or  
12 nonmonetary consideration, and includes any transfer of ownership that occurs in the course of a  
13 commercial transaction, but does not include a nonmonetary transfer of ownership by way of a  
14 gift, donation, or bequest.

15 (6) "Total value" means either the fair market value or the actual price paid for a covered  
16 animal part or product, whichever is greater.

17 **20-40-2. Unlawful trade in covered animal parts or products.**

18 Except as provided in this chapter, a person shall not purchase, sell, offer for sale, or  
19 possess with intent to sell, any item that the person knows or should know is a covered animal  
20 part or product.

21 **20-40-3. Exceptions.**

22 Unless otherwise prohibited by chapter 37 of this title, § 20-40-2 shall not apply:

23 (1) To employees or agents of the federal or state government undertaking any law  
24 enforcement activities pursuant to federal or state law, or any mandatory duties required by  
25 federal or state law;

26 (2) When the activity is expressly authorized by federal law;

27 (3) When the covered animal part or product is a fixed component of an antique that is  
28 not made wholly or partially from the covered animal part or product; provided, that, the antique  
29 status is established by the owner or seller thereof with documentation evidencing provenance  
30 and showing the covered animal part or product to be not less than one hundred (100) years old;  
31 and provided, that, the total weight of the covered animal part or product is less than two hundred  
32 grams (200 g).

33 (4) When the covered animal part or product is a fixed component of a musical  
34 instrument, including, but not limited to, string instruments and bows, wind, and percussion

1 instruments and pianos; provided that, the covered animal part or product was legally acquired  
2 and provided that the total weight of the covered animal part or product is less than two hundred  
3 grams (200 g).

4 **20-40-4. Educational or scientific use.**

5 The department may permit the purchase, sale, offer for sale, or possession with intent to  
6 sell, of any covered animal part or product for educational or scientific purposes by a bona fide  
7 educational or scientific institution unless such activity is prohibited by any federal law or  
8 regulation; and provided that, the covered animal part or product was legally acquired.

9 **20-40-5. Presumption of possession with intent to sell.**

10 There is a presumption of possession with intent to sell a covered animal part or product  
11 when the part or product is possessed by a retail or wholesale establishment or other forum  
12 engaged in the business of buying or selling similar items. This rebuttable presumption shall not  
13 preclude a finding of intent to sell on any other evidence which may serve to independently  
14 establish such intent.

15 **20-40-6. Penalty for violation.**

16 (a) Upon conviction of a violation of this chapter:

17 (1) For a first offense, where the total value of the covered animal part or product does  
18 not exceed two hundred fifty dollars (\$250), the offense shall be a petty misdemeanor punishable  
19 by a fine of not more than five hundred dollars (\$500), or imprisonment up to six (6) months, or  
20 both.

21 (2) For a first offense, where the total value of the covered animal part or product exceeds  
22 two hundred fifty dollars (\$250), the offense shall be a misdemeanor punishable by a fine of up to  
23 one thousand dollars (\$1,000), or imprisonment up to one year, or both.

24 (3) For a second offense, where the total value of the covered animal part or product  
25 does not exceed two hundred fifty dollars (\$250), the offense shall be a misdemeanor punishable  
26 by a fine of up to one thousand dollars (\$1,000), or imprisonment up to one year, or both.

27 (4) For a second offense, where the total value of the covered animal part or product  
28 exceeds two hundred fifty dollars (\$250), the offense shall be a felony punishable by a fine of up  
29 to five thousand dollars (\$5,000), or imprisonment up to three (3) years, or both.

30 (b) In addition to, and apart from any criminal penalty provided for under this section, a  
31 civil or administrative fine of up to twenty thousand dollars (\$20,000) may be imposed for a  
32 violation of any provision of this section, or any rule, regulation, or order adopted pursuant to this  
33 section.

34 (c) Upon a conviction for violating the provisions of this chapter, the court shall order the

1 seizure of all covered animal parts or products involved in the violation. Any seized covered  
2 animal part or product shall be forfeited and may be:

- 3 (1) Maintained by the department for educational or training purposes;
- 4 (2) Donated by the department to a bona fide educational or scientific institution; or
- 5 (3) Destroyed.

6 **20-40-7. Enjoining unlawful conduct.**

7 (a) If the attorney general has probable cause to believe that a person is violating or has  
8 violated this chapter, the attorney general may bring suit in the name of the state of Rhode Island  
9 in the appropriate court to restrain that person from further violations of this chapter.

10 (b) Before filing a suit under subsection (a) of this section, the attorney general shall, in  
11 writing, notify the person charged with the alleged violation and the alleged unlawful conduct and  
12 the relief to be sought. No suit shall be brought by the attorney general until thirty (30) days after  
13 that notice.

14 **20-40-8. Rules and regulations.**

15 The department shall adopt, pursuant to chapter 35 of title 42 (administrative procedures  
16 act), such rules and regulations necessary for the implementation and administration of this  
17 chapter.

18 **20-40-9. Severability.**

19 If any provision or clause of this chapter or application thereof to any person or  
20 circumstance is held invalid, such invalidity shall not affect other provisions or applications of  
21 this chapter which can be given effect without the invalid provision or application, and to this end  
22 the provisions of this chapter are severable.

23 SECTION 2. This act shall take effect six (6) months after passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO FISH AND WILDLIFE - TRADE IN COVERED ANIMAL PARTS OR  
PRODUCTS

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- 1           This act would prohibit the purchase, sale, offer for sale, or possession with intent to sell,
- 2 covered animal parts or products and provide for penalties for violation ranging from
- 3 misdemeanor to felony upon conviction.
- 4           This act would take effect six (6) months after passage.

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