

1 H.99

2 Introduced by Representatives McCullough of Williston, Brumsted of
3 Shelburne, Webb of Shelburne, Anthony of Barre City, Austin
4 of Colchester, Bates of Bennington, Briglin of Thetford, Carroll
5 of Bennington, Chase of Colchester, Cina of Burlington,
6 Colston of Winooski, Conlon of Cornwall, Cordes of Lincoln,
7 Dolan of Waitsfield, Donovan of Burlington, Gardner of
8 Richmond, Killacky of South Burlington, Macaig of Williston,
9 Masland of Thetford, Mrowicki of Putney, Ode of Burlington,
10 O'Sullivan of Burlington, Page of Newport City, Patt of
11 Worcester, Rachelson of Burlington, Redmond of Essex, Scheu
12 of Middlebury, Squirrell of Underhill, Sullivan of Burlington,
13 Till of Jericho, Townsend of South Burlington, Troiano of
14 Stannard, Walz of Barre City, and Yantachka of Charlotte

15 Referred to Committee on

16 Date:

17 Subject: Conservation and development; wildlife; trade in wildlife parts and
18 products

19 Statement of purpose of bill as introduced: This bill proposes to prohibit the
20 purchase, sale, offer for sale, or possession with intent to sell of any item that a
21 person knows or should know is a covered animal part or product. A covered

1 animal product would be defined as an item that contains, or is wholly or
2 partially made from, a covered animal. A covered animal would be defined as
3 any species of: cheetah, elephant, giraffe, hippopotamus, jaguar, leopard, lion,
4 mammoth, mastodon, pangolin, ray, rhinoceros, sea turtle, shark, tiger, or
5 whale. The bill would include exceptions from the prohibition on the
6 purchase, sale, offer for sale, or possession of intent to sell a covered animal
7 product for fixed components of an antique or musical instrument and for
8 activities authorized by federal law or conducted by federal or State
9 employees.

10 An act relating to trade in covered animal parts or products

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

12 ~~Sec. 1. 10 V.S.A., chapter 124 is added to read:~~

13 CHAPTER 124. TRADE IN COVERED ANIMAL PARTS OR PRODUCTS

14 § 5501. DEFINITIONS

15 As used in this chapter:

16 (1) “Bona fide educational or scientific institution” means an institution
17 that establishes through documentation that it is a tax-exempt institution under
18 the Internal Revenue Service’s educational or scientific tax exemption.

19 ~~(2) “Covered animal” means any species of:~~

- 1 ~~(A) Cheetah (Acinonyx jubatus);~~
- 2 (B) Elephant (family Elephantidae);
- 3 (C) Giraffe (Giraffa camelopardalis) ;
- 4 (D) Hippopotamus (family Hippopotamidae);
- 5 (E) Jaguar (Panthera onca);
- 6 (F) Leopard (Panthera pardus);
- 7 (G) Lion (Panthera leo);
- 8 (H) Mammoth (genus Mammuthus);
- 9 (I) Mastodon (genus Mammut),
- 10 (J) Pangolin (family Manidae);
- 11 (K) Ray (families Dasyatidae, Cymnuridae, Myliobatidae,
- 12 Narcinidae, Rhinobatidae, Torpedinidae, Urolophidae);
- 13 (L) Rhinoceros (family Rhinocerotidae);
- 14 (M) Sea turtle (family Chelonioidea);
- 15 (N) Shark (orders Carcharhiniiformes, Echinorhiniiformes,
- 16 Heterodontiformes, Hexanchiformes, Lamniformes, Orectolobiiformes,
- 17 Prisiophoriformes, Squaliformes, and Squatiniformes);
- 18 (O) Tiger (Panthera tigris); or
- 19 (P) Whale (families Balaenidae, Balaenopteridae, Cetotheriidae,
- 20 ~~Eschrichtiidae, Monodontidae, Phocaenidae, Kogiidae, and Ziphiidae).~~

1 ~~(3) "Covered animal part or product" means any item that contains, or is~~
2 wholly or partially made from, a covered animal, including the meat or flesh
3 of a covered animal sold as food.

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

9 (5) "Secretary" means the Secretary of Natural Resources.

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

12 § 5502. PROHIBITION

13 Except as provided in this chapter, notwithstanding any other provision of
14 law to the contrary, a person shall not purchase, sell, offer for sale, or possess
15 with intent to sell any item that the person knows or should know is a covered
16 animal part or product.

17 § 5503. EXCEPTIONS

18 The prohibition on the purchase, sale, offer for sale, or possession with
19 intent to sell set forth in section 5502 of this title shall not apply.

1 ~~(1) to employees or agents of the federal or State government~~
2 ~~undertaking any law enforcement activities pursuant to federal or State law, or~~
3 ~~any mandatory duties required by federal or State law;~~

4 ~~(2) when the activity is expressly authorized by federal law;~~

5 ~~(3) when the covered animal part or product is a fixed component of an~~
6 ~~antique that is not made wholly or partially from the covered animal part or~~
7 ~~product, provided that:~~

8 ~~(A) the antique status is established by the owner or seller of the~~
9 ~~covered animal part or product with documentation providing evidence of the~~
10 ~~provenance of the covered animal part or product and showing the covered~~
11 ~~animal part or product to be not less than 100 years old; and~~

12 ~~(B) the total weight of the covered animal part or product is less than~~
13 ~~200 grams;~~

14 ~~(4) when the covered animal part or product is a fixed component of a~~
15 ~~musical instrument, including string instruments and bows, wind and~~
16 ~~percussion instruments, and pianos, provided that the covered animal part or~~
17 ~~product was legally acquired and provided that the total weight of the covered~~
18 ~~animal part or product is less than 200 grams; or~~

19 ~~(5) the activity is authorized under section 5504 of this title.~~

1 § 5504. EDUCATIONAL OR SCIENTIFIC USE

2 The Secretary may permit, under terms and conditions as the Secretary may
3 require, the purchase, sale, offer for sale, or possession with intent to sell of
4 any covered animal part or product for educational or scientific purposes by a
5 bona fide educational or scientific institution unless the activity is prohibited
6 by federal law, and provided that the covered animal part or product was
7 legally acquired.

8 § 5505. PRESUMPTION OF POSSESSION WITH INTENT TO SELL

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

15 § 5506. PENALTIES

16 The penalties for a violation of a provision of this chapter are as follows:

17 (1) For a first offense, where the total value of the covered animal part
18 or product does not exceed \$250.00, a person shall be fined not more than
19 \$1,000.00 nor less than \$400.00 or imprisoned for not more than 30 days, or
20 both.

1 ~~(2) For a first offense, where the total value of the covered animal part~~
2 ~~or product exceeds \$250.00, a person shall be fined not more than \$2,000.00~~
3 ~~nor less than \$1,000.00 or imprisoned for not more than 60 days, or both.~~

4 ~~(3) For a second offense, where the total value of the covered animal~~
5 ~~part or product does not exceed \$250.00, a person shall be fined not more than~~
6 ~~\$2,000.00 nor less than \$1,000.00 or imprisoned for not more than 60 days, or~~
7 ~~both.~~

8 ~~(4) For a second offense, where the total value of the covered animal~~
9 ~~part or product exceeds \$250.00, a person shall be fined not more than~~
10 ~~\$4,000.00 nor less than \$2,000.00 or imprisoned for not more than 90 days, or~~
11 ~~both.~~

12 § 5507. SEIZURE.

13 A person convicted of violating a provision of this chapter shall forfeit to
14 the Secretary the covered animal part or product that is the subject of the
15 violation. The Secretary may:

16 (1) authorize that the covered animal part or product be maintained for
17 educational or training purposes;

18 (2) authorize that the covered animal part or product be donated to a
19 bona fide educational or scientific institution; or

20 ~~(3) require that the covered animal part or product be destroyed.~~

1 ~~§ 5508. RULES~~

2 ~~The Secretary may adopt rules necessary to implement the requirements of~~
3 ~~this chapter.~~

4 Sec. 2. EFFECTIVE DATE

5 ~~This act shall take effect on January 1, 2020.~~

Sec. 1. 10 V.S.A. part 4, chapter 124 is added to read:

CHAPTER 124. TRADE IN COVERED ANIMAL PARTS OR PRODUCTS

§ 5501. DEFINITIONS

As used in this chapter:

(1) “Bona fide educational or scientific institution” means an institution that establishes through documentation that it is a tax-exempt institution under the Internal Revenue Service’s educational or scientific tax exemption.

(2) “Covered animal” means any species of:

(A) Cheetah (Acinonyx jubatus);

(B) Elephant (family Elephantidae);

(C) Giraffe (Giraffa camelopardalis) ;

(D) Hippopotamus (family Hippopotamidae);

(E) Jaguar (Panthera onca);

(F) Leopard (Panthera pardus);

(G) Lion (Panthera leo);

(H) Mammoth (genus Mammuthus);

(I) Mastodon (genus Mammut),

(J) Pangolin (family Manidae);

(K) Endangered ray, as listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

(L) Rhinoceros (family Rhinocerotidae);

(M) Sea turtle (family Chelonioidea);

(N) Endangered shark, as listed by the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

(O) Tiger (Panthera tigris);

(P) Whale (families Balaenidae, Balaenopteridae, Cetotheriidae, Eschrichtiidae, Monodontidae, Physeteridae, Kogiidae, and Ziphiidae); or

(Q) The following primates: gorillas, bonobos, orangutans, gibbons, or chimpanzees.

(3) “Commissioner” means the Commissioner of Fish and Wildlife.

(4) “Covered animal part or product” means any item that contains, or is wholly or partially made from, a covered animal, including the meat or flesh of a covered animal sold as food.

(5) “Firearm” has the same meaning as in 13 V.S.A. § 4016(a)(3).

(6) “Sale” or “sell” means any act of selling, trading, or bartering for monetary or nonmonetary consideration, and includes any transfer of ownership that occurs in the course of a commercial transaction. “Sale” or

“sell” shall not include a nonmonetary transfer of ownership by way of gift, donation, or bequest.

(7) “Secretary” means the Secretary of Natural Resources.

(8) “Total value” means either the fair market value or the actual price paid for a covered animal part or product, whichever is greater.

§ 5502. PROHIBITION

Except as provided in this chapter, notwithstanding any other provision of law to the contrary, a person shall not purchase, sell, offer for sale, or possess with intent to sell any item that the person knows or should know is a covered animal part or product.

§ 5503. EXCEPTIONS

(a) The prohibition on the purchase, sale, offer for sale, or possession with intent to sell set forth in section 5502 of this title shall not apply:

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

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

(3) when the covered animal part or product is a fixed component of an antique that is not made wholly or partially from the covered animal part or product, provided that:

(A) the antique status is established by the owner or seller of the covered animal part or product with documentation providing evidence of the provenance of the covered animal part or product and showing the covered animal part or product to be not less than 100 years old; and

(B) the total weight of the covered animal part or product is less than 200 grams;

(4) when the covered animal part or product is a fixed component of a firearm; knife; or musical instrument, including string instruments and bows, wind and percussion instruments, and pianos, provided that the covered animal part or product was legally acquired and provided that the total weight of the covered animal part or product is less than 200 grams; or

(5) the activity is authorized under section 5504 of this title.

(b) Documentation evidencing reasonable provenance or the age of a covered animal part or product that may be purchased, sold, offered for sale, or possessed under subsection (a) of this section may include receipts of purchase, invoices, bills of sale, prior appraisals, auction catalogues, museum or art gallery exhibit catalogues, and the signed certification of an antique appraiser to the age of the covered animal part. The issuance of a false or fraudulent certification of the age of a covered animal part or product shall be subject to penalty under section 5506 of this title.

§ 5504. EDUCATIONAL OR SCIENTIFIC USE

The Secretary may permit, under terms and conditions as the Secretary may require, the purchase, sale, offer for sale, or possession with intent to sell of any covered animal part or product for educational or scientific purposes by a bona fide educational or scientific institution unless the activity is prohibited by federal law, and provided that the covered animal part or product was legally acquired.

§ 5505. PRESUMPTION OF POSSESSION WITH INTENT TO SELL

There shall be a rebuttable presumption that a person possesses a covered animal part or product with intent to sell when the part or product is possessed by a retail or wholesale establishment or other forum engaged in the business of buying or selling similar items. This rebuttable presumption shall not preclude a court from finding intent to sell a covered animal part or product based on any other evidence that may serve to independently establish intent.

§ 5506. ADMINISTRATIVE PENALTIES; REFERRAL FOR CRIMINAL

ENFORCEMENT

(a) The Secretary may assess the following administrative penalties for a violation of a provision of this chapter:

(1) For a first offense, a person shall be assessed an administrative penalty of not more than \$1,000.00 nor less than \$400.00.

(2) For a second offense or subsequent offense, a person shall be assessed an administrative penalty of not more than \$4,000.00 nor less than \$2,000.00.

(b) Instead of bringing an environmental enforcement action for a violation of this chapter or rules adopted under this chapter, the Secretary may refer a violation of this chapter to the Commissioner of Fish and Wildlife for criminal enforcement under section 4518 of this title.

§ 5507. SEIZURE.

A person convicted of violating a provision of this chapter shall forfeit to the Secretary the covered animal part or product that is the subject of the violation. The Secretary may:

(1) authorize that the covered animal part or product be maintained for educational or training purposes;

(2) authorize that the covered animal part or product be donated to a bona fide educational or scientific institution; or

(3) require that the covered animal part or product be destroyed.

§ 5508. RULES

The Secretary may adopt rules necessary to implement the requirements of this chapter.

Sec. 2. 10 V.S.A. § 4518 is amended to read:

*§ 4518. BIG GAME VIOLATIONS; THREATENED AND ENDANGERED
SPECIES; SUSPENSION; VIOLATIONS*

Whoever violates a provision of this part or orders or rules of the Board relating to taking, possessing, transporting, buying, or selling of big game ~~or~~, relating to threatened or endangered species, or relating to the trade in covered animal parts or products shall be fined not more than \$1,000.00 nor less than \$400.00 or imprisoned for not more than 60 days, or both. Upon a second and all subsequent convictions or any conviction while under license suspension related to the requirements of part 4 of this title, the violator shall be fined not more than \$4,000.00 nor less than \$2,000.00 or imprisoned for not more than 60 days, or both.

Sec. 3. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

** * **

(27) 10 V.S.A. chapter 123, relating to threatened and endangered species;

* * *

(29) 10 V.S.A. § 1420, relating to abandoned vessels; ~~and~~

(30) 3 V.S.A. § 2810, relating to interim environmental media standards;

and

(31) 10 V.S.A. chapter 124, relating to the trade in covered animal parts or products.

Sec. 4. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

(a) This chapter shall govern all appeals of an act or decision of the Secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(V) chapter 124 (trade in covered animal parts or products).

* * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on January 1, 2022.