

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1787

By: Shelton

AS INTRODUCED

An Act relating to game and fish; providing for definitions; prohibiting the sale, purchase, barter or possession with intent to sell of ivory or rhinoceros horn; providing for the presumptive evidence of possession with intent to sell; specifying that the act of obtaining an appraisal does not constitute possession with intent to sell; allowing for the conveying of ivory and rhinoceros horn to legal beneficiaries; exempting application to certain federal and state employees or agents; limiting application to imports authorized by federal license or permit; authorizing the Department of Wildlife Conservation to issue permits; listing activities allowed under a permit; providing penalties for violations; requiring the court to seize certain items and determine the penalty; requiring the court to transfer seized items to the Department; authorizing the Department to destroy or donate seized items; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-505 of Title 29, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1 1. "Ivory" means any tooth or tusk composed of ivory from any
2 animal, including, but not limited to, an elephant, hippopotamus,
3 mammoth, narwhal, walrus, or whale, or any piece thereof, whether
4 raw ivory or worked ivory, or made into, or part of, an ivory
5 product;

6 2. "Ivory product" means any item that contains, or that is
7 wholly or partially made from, any ivory;

8 3. "Raw ivory" means any ivory the surface of which, polished
9 or unpolished, is unaltered or minimally changed by carving;

10 4. "Rhinoceros horn" means the horn, or any piece thereof, of
11 any species of rhinoceros;

12 5. "Rhinoceros horn product" means any item that contains, or
13 is wholly or partially made from, any rhinoceros horn;

14 6. "Total value of the ivory, ivory products, rhinoceros horn,
15 and rhinoceros horn products" means the fair market value of the
16 ivory, ivory products, rhinoceros horn, and rhinoceros horn
17 products, or the actual price paid for the ivory, ivory products,
18 rhinoceros horn, and rhinoceros products, whichever is greater; and

19 7. "Worked ivory" means ivory that has been embellished,
20 carved, marked, or otherwise altered so that it can no longer be
21 considered raw ivory.

22 B. In addition to the prohibitions established pursuant to, and
23 the penalties imposed for violations of, Sections 7-502 and 7-503 of
24 Title 29 of the Oklahoma Statutes, and any other applicable law, it

1 shall be unlawful for any person to import, sell, offer for sale,
2 purchase, barter, or possess with intent to sell any ivory, ivory
3 product, rhinoceros horn, or rhinoceros horn product except as
4 otherwise provided for pursuant to this section.

5 C. It shall be presumptive evidence of possession with intent
6 to sell when any ivory, ivory product, rhinoceros horn, or
7 rhinoceros horn product is possessed in a retail or wholesale outlet
8 commonly used for the buying or selling of similar products.
9 Nothing in this subsection shall preclude a finding of intent to
10 sell based on any other evidence which may serve to independently
11 establish such intent. The act of obtaining an appraisal of ivory,
12 an ivory product, rhinoceros horn, or a rhinoceros horn product
13 alone shall not constitute possession with intent to sell.

14 D. A person may convey ivory, an ivory product, rhinoceros
15 horn, or a rhinoceros horn product to the legal beneficiary of the
16 ivory, ivory product, rhinoceros horn, or rhinoceros horn product
17 which is part of an estate or other items being conveyed to lawful
18 beneficiaries upon the death of the owner of the ivory, ivory
19 product, rhinoceros horn, or rhinoceros horn product or in
20 anticipation of that death.

21 E. None of the prohibitions set forth in this section shall
22 apply to employees or agents of the federal or state government
23 undertaking any law enforcement activities pursuant to federal or
24 state law or any mandatory duties required by federal or state law.

1 F. The prohibition on import set forth in subsection B of this
2 section shall not apply where the import is expressly authorized by
3 federal license or permit.

4 G. Unless the activity is prohibited by federal law, the
5 Department of Wildlife Conservation may issue a permit, under terms
6 and conditions as the Department may prescribe, authorizing the
7 import, sale, offer for sale, purchase, barter, or possession with
8 intent to sell of any ivory, ivory product, rhinoceros horn or
9 rhinoceros horn product:

10 1. For bona fide educational or scientific purposes;

11 2. When the ivory, ivory product, rhinoceros horn or rhinoceros
12 horn product is part of a bona fide antique and is less than twenty
13 percent (20%) by volume of the antique and the antique status of the
14 antique is established by the owner or seller with historical
15 documentation evidencing and showing the antique to be not less than
16 one hundred (100) years old; or

17 3. When the ivory, ivory product, rhinoceros horn or rhinoceros
18 horn product is part of a musical instrument, including but not
19 limited to string and wind instruments and pianos, or a part of a
20 firearm, and the owner or seller provides historical documentation
21 as the Department may require, demonstrating and showing the item
22 was manufactured no later than the year 1975.

23 H. 1. In addition to any applicable penalties which may be
24 imposed pursuant to Sections 7-502 and 7-503 of Title 29 of the

1 Oklahoma Statutes, and any other applicable law, a person violating
2 any provision of this section shall be guilty of:

3 a. for a first offense, a misdemeanor and upon conviction
4 thereof shall be punished by a fine of not less than
5 One Thousand Dollars (\$1,000.00) or an amount equal to
6 two (2) times the total value of the ivory, ivory
7 products, rhinoceros horn, and rhinoceros horn
8 products involved in the offense, whichever is
9 greater, and

10 b. for a second or subsequent offense, a misdemeanor and
11 upon conviction thereof shall be punished by a fine of
12 not less than Five Thousand Dollars (\$5,000.00) or an
13 amount equal to two (2) times the total value of the
14 ivory, ivory products, rhinoceros horn, and rhinoceros
15 horn products involved in the offense, whichever is
16 greater.

17 2. Upon a conviction for violating the provisions of this
18 section, the court shall order the seizure of all ivory, ivory
19 products, rhinoceros horn, and rhinoceros horn products involved in
20 the violation and determine the penalty for the violation based on
21 the assessed value of the seized products pursuant to paragraph 1 of
22 this subsection. After sentencing the defendant, the court shall
23 order that the seized ivory, ivory products, rhinoceros horn, and
24 rhinoceros horn products be transferred to the Department of

1 Wildlife Conservation for proper disposition. The Department, at
2 its discretion, may destroy the ivory, ivory products, rhinoceros
3 horn, and rhinoceros horn products or donate them to an educational
4 or scientific institution or organization, including but not limited
5 to a zoo, museum, university, or research group.

6 SECTION 2. This act shall become effective November 1, 2015.

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