A BILL FOR AN ACT

CONCERNING PROTECTING ANIMAL SPECIES THREATENED WITH EXTINCTION BY PROHIBITING TRAFFICKING.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

The bill prohibits the sale, purchase, trade, or distribution (sale) of any covered animal species part or product, with limited exceptions, including exceptions for certain antiques, guns and knives, and musical instruments. The bill establishes an unclassified misdemeanor for a first offense and an unclassified felony for second and subsequent offenses,
both punishable with monetary penalties.

Colorado wildlife officers and other commissioned officers of the division of wildlife are responsible for enforcing the provisions of the bill.

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Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add part 3 to article 6 of title 33 as follows:

PART 3
PREVENTION OF THE POACHING AND TRAFFICKING
OF ANIMAL SPECIES THREATENED WITH EXTINCTION ACT

33-6-301. Short title. The short title of this part 3 is the "Prevention of the Poaching and Trafficking of Animal Species Threatened with Extinction Act".

33-6-302. Legislative declaration. The General Assembly declares that, to serve the important public interest in preventing the extinction of elephants, rhinoceroses, tigers, lions, leopards, cheetahs, pangolins, marine turtles, sharks, and rays in the wild, it is necessary to discourage the substantial illegal trade in the covered animal species part or product by eliminating potential markets for these items and thereby removing the financial incentives that encourage the poaching of these species.

33-6-303. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Covered animal species" means an animal from the family Elephantidae, the family Rhinocerotidae, the genus Panthera, the genus Acinonyx, the family Manidae, the
SUPERFAMILY Chelonioida, AND THE SUBCLASS Elasmobranchii.

(2) "Covered animal species part or product" means any item that contains, is advertised as containing, or is wholly or partially made from a part that comes from a covered animal species.

(3) "Educational or scientific institution" means an institution that has an educational or scientific tax exemption from the federal internal revenue service or the institution's national or state tax authority.

(4) "Person or entity" means an individual, association, partnership, public or private corporation, or any other public or private organization of any character.

(5) "Sale" or "sell" includes bartering for, exchanging, trading, or possessing with the intent to sell and each such transaction made by any person or entity, with or without remuneration, including any intrastate sale through the internet.

(6) "Total value of the covered animal species part or product" means the fair market value of such items, the price at which the covered animal species part or product was offered for sale or the actual price paid for such item, whichever is greater.

33-6-304. Prohibited acts - applicability. (1) Except as authorized in section 33-6-305, it is unlawful for a person or entity to sell or purchase any covered animal species part or product.

(2) (a) It is prima facie evidence that a covered animal
SPECIES PART OR PRODUCT IS BEING OFFERED FOR SALE IF IT IS PRESENT AT
A RETAIL OR WHOLESALE ESTABLISHMENT IN ANY LOCATION WHERE ITEMS
ARE SOLD, OR ON AN INTERNET SALES SITE WHERE GOODS ARE OFFERED
FOR SALE.

(b) IT IS PRIMA FACIE EVIDENCE OF POSSESSION WITH INTENT TO
SELL A COVERED ANIMAL SPECIES PART OR PRODUCT IF SUCH PART OR
PRODUCT IS IN A LOCATION WHERE A RETAIL, WHOLESALE, OR INTERNET
ESTABLISHMENT STORES GOODS AWAITING SALE.

(c) NOTHING IN THIS SUBSECTION (2) PRECLUDES A FINDING THAT
A COVERED ANIMAL SPECIES PART OR PRODUCT IS FOR SALE OR POSSESSED
WITH AN INTENT TO SELL BASED ON ANY OTHER EVIDENCE THAT MAY
SERVE TO INDEPENDENTLY ESTABLISH THAT THE COVERED ANIMAL
SPECIES PART OR PRODUCT IS OR WILL BE FOR SALE.

(d) THE ACT OF OBTAINING AN APPRAISAL OF ANY COVERED
ANIMAL SPECIES PART OR PRODUCT ALONE DOES NOT CONSTITUTE
POSSESSION WITH INTENT TO SELL.

(3) THIS PART 3 DOES NOT APPLY TO GUNS, KNIVES, OR MUSICAL
INSTRUMENTS, INCLUDING STRINGED INSTRUMENTS AND BOWS, WIND AND
PERCUSSION INSTRUMENTS, AND PIANOS.

33-6-305. Exceptions. (1) IT IS AN AFFIRMATIVE DEFENSE TO
SECTION 33-6-304 IF ANY OF THE FOLLOWING CONDITIONS ARE SATISFIED:

(a) THE COVERED ANIMAL SPECIES PART OR PRODUCT IS A FIXED
COMPONENT OF AN ANTIQUE PRODUCT THAT IS NOT MADE WHOLLY OR
PRIMARILY OF COVERED ANIMAL SPECIES PARTS OR PRODUCTS, PROVIDED
THAT THE ANTIQUE STATUS IS ESTABLISHED BY THE OWNER OR SELLER
WITH EVIDENCE PROVING ORIGIN AND SHOWING THAT:

(I) THE COVERED ANIMAL SPECIES PART OR PRODUCT IS MORE
 THAN ONE HUNDRED YEARS OLD;
(II) THE TOTAL WEIGHT OF THE COVERED ANIMAL SPECIES PART OR
PRODUCT IS LESS THAN TWO HUNDRED GRAMS; AND
(III) THE PRIMARY VALUE OF THE ANTIQUE DOES NOT STEM FROM
THE COVERED ANIMAL SPECIES PART OR PRODUCT;
(b) THE DEFENDANT DISTRIBUTED THE COVERED ANIMAL SPECIES
PART OR PRODUCT TO AN EDUCATIONAL OR SCIENTIFIC INSTITUTION AND
SUCH INSTITUTION ESTABLISHES, THROUGH EVIDENCE, THAT IT IS IN
COMPLIANCE WITH ALL FEDERAL LAWS REGULATING THE COVERED
ANIMAL SPECIES PART OR PRODUCT;
(c) THE NONCOMMERCIAL TRANSFER OF OWNERSHIP OF THE
COVERED ANIMAL SPECIES PART OR PRODUCT IS TO A LEGAL BENEFICIARY
OF AN ESTATE, TRUST, OR OTHER INHERITANCE UPON THE DEATH OF THE
OWNER OF THE COVERED ANIMAL SPECIES PART OR PRODUCT;
(d) THE SALE OR PURCHASE OF THE COVERED ANIMAL SPECIES
PART OR PRODUCT IS EXPRESSLY AUTHORIZED BY FEDERAL LAW OR
PERMIT; OR
(e) THE ALLEGED VIOLATION OF ANY PROVISION OF SECTION
33-6-304 IS BY AN EMPLOYEE OR AGENT OF THE FEDERAL, STATE, OR
LOCAL LAW ENFORCEMENT AGENCY OPERATING IN HIS OR HER OFFICIAL
CAPACITY AS A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OFFICER.

33-6-306. Penalties. (1) IN ADDITION TO ANY PENALTIES
ESTABLISHED BY ANY OTHER APPLICABLE LAW, A PERSON OR ENTITY WHO
VIOLATES SECTION 33-6-304:
(a) FOR A FIRST CONVICTION, IS GUILTY OF AN UNCLASSIFIED
MISDEMEANOR, PUNISHABLE BY A FINE OF NOT LESS THAN THREE
THOUSAND DOLLARS BUT NOT TO EXCEED FIVE THOUSAND DOLLARS, OR
AN AMOUNT EQUAL TO TWO TIMES THE TOTAL VALUE OF THE COVERED
ANIMAL SPECIES PART OR PRODUCT INVOLVED IN THE OFFENSE,
WHICHER IS GREATER; AND

(b) For a second or subsequent conviction, is guilty of an
UNCLASSIFIED FELONY PUNISHABLE BY A FINE OF NOT LESS THAN FIVE
THOUSAND DOLLARS BUT NOT TO EXCEED TWENTY-FIVE THOUSAND
DOLLARS, OR AN AMOUNT EQUAL TO THREE TIMES THE TOTAL VALUE OF
THE COVERED ANIMAL SPECIES PART OR PRODUCT INVOLVED IN THE
OFFENSE, WHICHER IS GREATER.

(2) EACH COVERED ANIMAL SPECIES PART OR PRODUCT SOLD OR
PURCHASED IN VIOLATION OF SECTION 33-6-304 IS A SEPARATE OFFENSE.
TWO OR MORE OFFENSES MAY BE CHARGED IN THE SAME COMPLAINT,
INFORMATION, OR INDICTMENT AND PUNISHED AS SEPARATE OFFENSES FOR
EACH COVERED ANIMAL SPECIES PART OR PRODUCT INVOLVED.

(3) UPON CONVICTION FOR A VIOLATION OF SECTION 33-6-304, THE
COURT SHALL ORDER THE FORFEITURE OF THE COVERED ANIMAL SPECIES
PART OR PRODUCT THAT WAS THE SUBJECT OF THE VIOLATION AND
DETERMINE THE PENALTY FOR THE VIOLATION BASED ON THE ASSESSED
TOTAL VALUE OF THE COVERED ANIMAL SPECIES PART OR PRODUCT. AFTER
SENTENCING THE DEFENDANT, THE COURT SHALL ORDER THAT THE
FORFEITED COVERED ANIMAL SPECIES PART OR PRODUCT BE EITHER
DESTROYED OR DONATED TO AN EDUCATIONAL OR SCIENTIFIC
INSTITUTION.

(4) IF A PERSON OR ENTITY IS CONVICTED OF A VIOLATION OF
SECTION 33-6-304, THE COURT SHALL GIVE JUDGMENT IN FAVOR OF THE
STATE OF COLORADO, THE APPROPRIATE PROSECUTING ATTORNEY, OR THE
APPROPRIATE LAW ENFORCEMENT AGENCY AND AGAINST THE OFFENDER FOR THE AMOUNT OF THE COSTS OF PROSECUTION AND ANY FINES IMPOSED. SUCH JUDGMENTS ARE ENFORCEABLE IN THE SAME MANNER AS CIVIL JUDGMENTS.


SECTION 2. Effective date. This act takes effect November 1, 2016, and applies to offenses committed on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.