

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 16-0550.01 Jane Ritter x4342

HOUSE BILL 16-1341

HOUSE SPONSORSHIP

Ginal and McCann, Pettersen, Lebsock

SENATE SPONSORSHIP

Ulibarri,

House Committees

Health, Insurance, & Environment

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROTECTING ANIMAL SPECIES THREATENED WITH**
102 **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,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Amended 2nd Reading
April 21, 2016

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.

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

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

4 **PART 3**

5 **PREVENTION OF THE POACHING AND TRAFFICKING**
6 **OF ANIMAL SPECIES THREATENED WITH EXTINCTION ACT**

7 **33-6-301. Short title.** THE SHORT TITLE OF THIS PART 3 IS THE
8 "PREVENTION OF THE POACHING AND TRAFFICKING OF ANIMAL SPECIES
9 THREATENED WITH EXTINCTION ACT".

10 **33-6-302. Legislative declaration.** THE GENERAL ASSEMBLY
11 DECLARES THAT, TO SERVE THE IMPORTANT PUBLIC INTEREST IN
12 PREVENTING THE EXTINCTION OF ELEPHANTS, RHINOCEROSES, TIGERS,
13 LIONS, LEOPARDS, CHEETAHS, PANGOLINS, MARINE TURTLES, SHARKS, AND
14 RAYS IN THE WILD, IT IS NECESSARY TO DISCOURAGE THE SUBSTANTIAL
15 ILLEGAL TRADE IN THE COVERED ANIMAL SPECIES PART OR PRODUCT BY
16 ELIMINATING POTENTIAL MARKETS FOR THESE ITEMS AND THEREBY
17 REMOVING THE FINANCIAL INCENTIVES THAT ENCOURAGE THE POACHING
18 OF THESE SPECIES.

19 **33-6-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE
20 CONTEXT OTHERWISE REQUIRES:

21 (1) "COVERED ANIMAL SPECIES" MEANS AN ANIMAL FROM THE
22 FAMILY *ELEPHANTIDAE*, THE FAMILY *RHINOCEROTIDAE*, THE GENUS
23 *PANTHERA*, THE GENUS *ACINONYX*, THE FAMILY *MANIDAE*, THE

1 SUPERFAMILY *CHELONIOIDEA*, AND THE SUBCLASS *ELASMOBRANCHII*.

2 (2) "COVERED ANIMAL SPECIES PART OR PRODUCT" MEANS ANY
3 ITEM THAT CONTAINS, IS ADVERTISED AS CONTAINING, OR IS WHOLLY OR
4 PARTIALLY MADE FROM A PART THAT COMES FROM A COVERED ANIMAL
5 SPECIES.

6 (3) "EDUCATIONAL OR SCIENTIFIC INSTITUTION" MEANS AN
7 INSTITUTION THAT HAS AN EDUCATIONAL OR SCIENTIFIC TAX EXEMPTION
8 FROM THE FEDERAL INTERNAL REVENUE SERVICE OR THE INSTITUTION'S
9 NATIONAL OR STATE TAX AUTHORITY.

10 (4) "PERSON OR ENTITY" MEANS AN INDIVIDUAL, ASSOCIATION,
11 PARTNERSHIP, PUBLIC OR PRIVATE CORPORATION, OR ANY OTHER PUBLIC
12 OR PRIVATE ORGANIZATION OF ANY CHARACTER.

13 (5) "SALE" OR "SELL" INCLUDES BARTERING FOR, EXCHANGING,
14 TRADING, OR POSSESSING WITH THE INTENT TO SELL AND EACH SUCH
15 TRANSACTION MADE BY ANY PERSON OR ENTITY, WITH OR WITHOUT
16 REMUNERATION, INCLUDING ANY INTRASTATE SALE THROUGH THE
17 INTERNET.

18 (6) "TOTAL VALUE OF THE COVERED ANIMAL SPECIES PART OR
19 PRODUCT" MEANS THE FAIR MARKET VALUE OF SUCH ITEMS, THE PRICE AT
20 WHICH THE COVERED ANIMAL SPECIES PART OR PRODUCT WAS OFFERED
21 FOR SALE OR THE ACTUAL PRICE PAID FOR SUCH ITEM, WHICHEVER IS
22 GREATER.

23 **33-6-304. Prohibited acts - applicability.** (1) EXCEPT AS
24 AUTHORIZED IN SECTION 33-6-305, IT IS UNLAWFUL FOR A PERSON OR
25 ENTITY TO SELL OR PURCHASE ANY COVERED ANIMAL SPECIES PART OR
26 PRODUCT.

27 (2) (a) IT IS PRIMA FACIE EVIDENCE THAT A COVERED ANIMAL

1 SPECIES PART OR PRODUCT IS BEING OFFERED FOR SALE IF IT IS PRESENT AT
2 A RETAIL OR WHOLESALE ESTABLISHMENT IN ANY LOCATION WHERE ITEMS
3 ARE SOLD, OR ON AN INTERNET SALES SITE WHERE GOODS ARE OFFERED
4 FOR SALE.

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

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

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

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

20 **33-6-305. Exceptions.** (1) IT IS AN AFFIRMATIVE DEFENSE TO
21 SECTION 33-6-304 IF ANY OF THE FOLLOWING CONDITIONS ARE SATISFIED:

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

27 (I) THE COVERED ANIMAL SPECIES PART OR PRODUCT IS MORE

1 THAN ONE HUNDRED YEARS OLD;

2 (II) THE TOTAL WEIGHT OF THE COVERED ANIMAL SPECIES PART OR
3 PRODUCT IS LESS THAN TWO HUNDRED GRAMS; AND

4 (III) THE PRIMARY VALUE OF THE ANTIQUE DOES NOT STEM FROM
5 THE COVERED ANIMAL SPECIES PART OR PRODUCT;

6 (b) THE DEFENDANT DISTRIBUTED THE COVERED ANIMAL SPECIES
7 PART OR PRODUCT TO AN EDUCATIONAL OR SCIENTIFIC INSTITUTION AND
8 SUCH INSTITUTION ESTABLISHES, THROUGH [REDACTED] EVIDENCE, THAT IT IS IN
9 COMPLIANCE WITH ALL FEDERAL LAWS REGULATING THE COVERED
10 ANIMAL SPECIES PART OR PRODUCT;

11 (c) THE NONCOMMERCIAL TRANSFER OF OWNERSHIP OF THE
12 COVERED ANIMAL SPECIES PART OR PRODUCT IS TO A LEGAL BENEFICIARY
13 OF AN ESTATE, TRUST, OR OTHER INHERITANCE UPON THE DEATH OF THE
14 OWNER OF THE COVERED ANIMAL SPECIES PART OR PRODUCT;

15 [REDACTED] [REDACTED]

16 (d) THE SALE OR PURCHASE OF THE COVERED ANIMAL SPECIES
17 PART OR PRODUCT IS EXPRESSLY AUTHORIZED BY FEDERAL LAW OR
18 PERMIT; OR

19 (e) THE ALLEGED VIOLATION OF ANY PROVISION OF SECTION
20 33-6-304 IS BY AN EMPLOYEE OR AGENT OF THE FEDERAL, STATE, OR
21 LOCAL LAW ENFORCEMENT AGENCY OPERATING IN HIS OR HER OFFICIAL
22 CAPACITY AS A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OFFICER.

23 **33-6-306. Penalties.** (1) IN ADDITION TO ANY PENALTIES
24 ESTABLISHED BY ANY OTHER APPLICABLE LAW, A PERSON OR ENTITY WHO
25 VIOLATES SECTION 33-6-304:

26 (a) FOR A FIRST CONVICTION, IS GUILTY OF AN UNCLASSIFIED
27 MISDEMEANOR, PUNISHABLE BY A FINE OF NOT LESS THAN THREE

1 THOUSAND DOLLARS BUT NOT TO EXCEED FIVE THOUSAND DOLLARS, OR
2 AN AMOUNT EQUAL TO TWO TIMES THE TOTAL VALUE OF THE COVERED
3 ANIMAL SPECIES PART OR PRODUCT INVOLVED IN THE OFFENSE,
4 WHICHEVER IS GREATER; AND

5 (b) FOR A SECOND OR SUBSEQUENT CONVICTION, IS GUILTY OF AN
6 UNCLASSIFIED FELONY PUNISHABLE BY A FINE OF NOT LESS THAN FIVE
7 THOUSAND DOLLARS BUT NOT TO EXCEED TWENTY-FIVE THOUSAND
8 DOLLARS, OR AN AMOUNT EQUAL TO THREE TIMES THE TOTAL VALUE OF
9 THE COVERED ANIMAL SPECIES PART OR PRODUCT INVOLVED IN THE
10 OFFENSE, WHICHEVER IS GREATER.

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

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

25 (4) IF A PERSON OR ENTITY IS CONVICTED OF A VIOLATION OF
26 SECTION 33-6-304, THE COURT SHALL GIVE JUDGMENT IN FAVOR OF THE
27 STATE OF COLORADO, THE APPROPRIATE PROSECUTING ATTORNEY, OR THE

1 APPROPRIATE LAW ENFORCEMENT AGENCY AND AGAINST THE OFFENDER
2 FOR THE AMOUNT OF THE COSTS OF PROSECUTION AND ANY FINES
3 IMPOSED. SUCH JUDGMENTS ARE ENFORCEABLE IN THE SAME MANNER AS
4 CIVIL JUDGMENTS.

5 **33-6-307. Enforcement authority.** EACH COLORADO WILDLIFE
6 OFFICER OR OTHER COMMISSIONED OFFICER OF THE DIVISION MAY
7 ENFORCE THE PROVISIONS OF THIS PART 3. OTHER PEACE OFFICERS, AS
8 DEFINED IN SECTION 33-1-102, MAY ASSIST THE COLORADO WILDLIFE
9 OFFICERS IN THE ENFORCEMENT OF THIS PART 3.

10 **SECTION 2. Effective date.** This act takes effect November 1,
11 2016, and applies to offenses committed on or after said date.

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