

Public Comment

Council File Number 15-0002-S10

Title: AB 96 / Prohibiting Sale of Ivory
and Rhinoceros Horn in California

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Ivory Fight Moves to the States

With the implementation of the federal law banning the sale of ivory still unclear, the fight has moved to the state legislatures. New legislation has been introduced in at least 14 states; New York and New Jersey already have ivory bans in place.

In many instances, the language of the bills is exactly alike, suggesting that ivory ban lobbyists have had a hand in crafting the legislation or that legislators are copying and pasting other states' bills. Major differences do exist among the states. The definition of "ivory" varies: many states include narwhals, walrus, and whales, but others limit it to elephants and mammoths. Some states exempt for antiques, and others do not, and at least one state would require registering ivory objects with the state before selling or buying them.

Here's what we know as of press time.

Nevada

Nevada Senate Bill No. 398 was introduced on March 17 and prohibits the sale or transfer of ivory and ivory products. Ivory is defined as "a hard white substance that is a variety of dentin which composes the main part of the teeth or tusks of certain animals, including, without limitation, elephants, hippopotamuses, mammoths, narwhals, walrus, and whales."

There is a limited exemption for antiques. "A person may sell or offer for sale, lease, purchase, trade, barter, place in the stream of commerce" ivory if, the bill reads, the ivory "is an antique and (1) The ivory or ivory product within the antique makes up less than 20 percent by volume of the antique; and (2) The antique status of the ivory or ivory product is established by the owner or seller thereof with historical documentation evidencing provenance and demonstrating that the antique is at least 100 years old at the time of the sale or transfer of possession."

Musical instruments manufactured before December 31, 1975, would be exempt from the ban.

The bill is headed to the Committee on Commerce, Labor and Energy.

Washington

Substitute House Bill 1131 and a companion senate bill were introduced in January in the state of Washington. The bill will make it illegal to sell, offer to sell, purchase, trade, barter for, or distribute any ivory article or rhinoceros horn product. Ivory is defined as "any tooth or tusk composed of ivory from an elephant, whether raw ivory or worked ivory, or made into, or part of, an ivory article."

There are exceptions. If the ivory article or rhinoceros horn product "is constructed so that the ivory or horn comprises less than five percent by volume of the overall article or product; and is a bona fide antique that is at least one hundred years," it may be bought or sold.

If the ivory is "part of a firearm, sword, knife, trinket, or musical instrument, including string and wind instruments and pianos, and the ivory or rhinoceros horn was not acquired in violation of federal law," it will be legal to buy or sell. A "trinket" means a "small ornament, piece of jewelry, small container or other collectible."

Whales are not part of the bill. Ivory is defined as "any tooth or tusk composed of ivory from an elephant."

The most recent action on the bill was a public hearing in the House Committee on General Government & Information Technology on February 10.

Vermont

Vermont bill H.297, introduced on February 24, is among the most restrictive. The bill would "prohibit the import, sale, offer for sale, purchase, barter, or possession with intent to sell of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product." There is no exemption for antiques or musical instruments.

Ivory is defined as "any tooth or tusk composed of ivory from any animal, including an elephant, hippopotamus, mammoth, narwhal, walrus, or whale, or any piece thereof, whether raw ivory or

worked ivory, or made into, or part of, an ivory product."

The bill is currently with the Fish, Wildlife & Water Resources Committee.

Maryland

Maryland House Bill 713 would prohibit a person from purchasing, selling, offering for sale, possessing with the intent to sell, or importing with the intent to sell any ivory or rhinoceros horn. Ivory is defined as "any tooth or tusk, or any piece of a tooth or tusk, from any species of wildlife, including all species of elephant, hippopotamus, walrus, whale, or narwhal." There are a few exceptions—mostly for governmental and scientific use—but none for antiques.

The bill is doomed. On March 16, the Judiciary Committee gave it an "unfavorable report."

Hawaii

Ivory could be sold under HB 837 in Hawaii—as long as the government approves. The bill would establish a state-wide registry of ivory and rhinoceros horn items. Registered items could be sold, offered for sale, purchased, caused to be purchased, or possessed with the intent to sell. Ivory is defined as "any tooth or tusk composed of ivory, or any piece thereof, whether raw or worked, from any species of elephant, hippopotamus, mammoth, narwhal, and walrus."

Any person selling any ivory and rhinoceros horn objects would first have to notify the Department of Land and Natural Resources. Sellers would need to provide information about the species and age of each item, documentation demonstrating that the specific item satisfies the requirements of the federal Endangered Species Act of 1973, African Elephant Conservation Act, Marine Mammal Protection Act, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Sellers would need a receipt issued by the department indicating that the specific ivory or rhinoceros horn was registered. The receipt and any related documentation would travel with the object. Any object without a receipt would be considered unlawful to sell.

There are exceptions, including guns, knives, and musical instruments with a composition of ivory or rhinoceros horn that is less than 20% by volume; ivory or rhinoceros horn jewelry that can be identified as Ming's jewelry, provided that such jewelry must contain a legible marking identifying it as Ming's jewelry (Ming's, a company founded in 1940, sold jewelry that is highly collectible; the last Ming's store to close was in Honolulu in 1999); and personal use and possession of ivory or rhinoceros horn.

The legislation has been referred to several senate committees.

Rhode Island

Rhode Island bill H 5660 seeks to prohibit the import, sale, purchase, barter, or possession with intent to sell of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product. Ivory includes "any tooth or tusk composed of ivory from any animal, including, but not limited to, an elephant, hippopotamus, mammoth, narwhal, walrus, or whale, or any piece thereof, whether raw ivory or worked ivory, or made into, or part of, an ivory product." There is no exemption for antiques.

The bill was due to be heard by the House Committee of Judiciary on March 17 but was postponed at the request of the sponsor.

Massachusetts

House Bill 1275, introduced in the Massachusetts legislature on January 15, would prohibit the import, sale, purchase, barter, or possession with intent to sell of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product. Ivory is defined as "a tooth or tusk composed of ivory from an animal, including but not limited to, an elephant, hippopotamus, mammoth, narwhal, walrus, or whale or a piece thereof, whether raw ivory or worked ivory, or made into or part of an ivory product." There is no exemption for antiques.

The bill would also create the Endangered Elephant and Rhino Conservation and Education Fund, which would be used "to increase or expand enforcement efforts related to the provisions of this chapter, to develop or increase education and outreach programs enhancing rhinoceros and African and Asian elephant conservation or to provide financial rewards offered to persons providing information leading to the arrest and conviction of persons found to be in violation" of the law. Fines paid for violations would be allocated to the new fund.

Illinois

Illinois bill SB1858 was introduced on February 20. It creates the Ivory Ban Act, making it unlawful for any person to import, sell, offer for sale, purchase, barter, or possess with intent to sell any ivory, ivory product, rhinoceros horn, or rhinoceros horn product. Ivory is defined as "any tooth or tusk composed of ivory from any animal, including, but not limited to, an elephant, hippopotamus, mammoth, narwhal, walrus, or whale, or any piece thereof, whether raw ivory or worked ivory, or made into, or part of, an ivory product."

There's no exemption for antiques, but an amendment to the bill would exempt the ivory or rhinoceros horn if it "is part of a bona fide antique gun or knife and is less than 20% by volume of the antique, and the seller establishes by documentation that the antique is not less than 100 years old. When the ivory or rhinoceros horn is part of a musical instrument...that is less than 20% by volume of the instrument, and the owner or seller provides historical documentation demonstrating provenance and showing the item was manufactured no later than 1975."

A hearing of the bill was scheduled for March 26 but has been postponed.

New York

New York already has an ivory ban, but a bill introduced in the assembly on March 11 would exempt musical instruments containing ivory or rhinoceros horn. The ivory volume of the instrument must be less than 20% and the owner or seller must provide "historical documentation as the department may require, demonstrating provenance and showing the item was manufactured no later than 1975 or June 30, 2014, if the instrument contains only mammoth ivory."

New York allows ivory and rhinoceros horn sales if the object is "part of a bona fide antique" and the object has "less than twenty percent by volume of such antique, and the antique status of such antique is established by the owner or seller thereof with historical documentation evidencing provenance and showing the antique to be not less than one hundred years old."

Oregon

Oregon Senate Bill 913 provides that "knowing purchase, sale, offering for sale, possession with intent to sell or importation for purchase or sale in this state of ivory, rhinoceros horn, ivory products or rhinoceros horn products" is illegal.

Ivory is defined as "all or part of a tusk or tooth, in raw form or worked form," from an elephant, hippopotamus, mammoth, narwhal, walrus, or a whale.

A proposed amendment to the original bill now includes some exemptions for guns and knives with less than 20% ivory or "not less than 100 years old"; for musical instruments "manufactured no later than January 18, 1990"; certain zoos; and museums. There is no specific exemption for other antiques. A public hearing was held on March 23, and the bill is still with the Senate Committee on Judiciary.

Connecticut

Connecticut Raised Bill No. 6955 would make it illegal for any person to "import, sell, offer for sale, purchase, barter or possess with the intent to sell, any ivory, ivory product, rhinoceros horn or rhinoceros horn product." Ivory is defined as "any tooth or tusk, or any part thereof, that is composed of ivory from any animal, including, but not limited to, any elephant, hippopotamus, mammoth, narwhal, walrus or whale or any piece thereof, regardless of whether such tooth or tusk is raw ivory, worked ivory

or made into or part of an ivory product."

Originally there was no exemption for antiques, but public testimony convinced lawmakers to add an exemption. Dealers and museum professionals testifying included Susan L. Talbot, director and CEO of the Wadsworth Atheneum Museum of Art; Spencer Gordon of Spencer Marks, Ltd.; Peter Curran; Elle Shushan; Jody Blankenship, executive director of the Connecticut Historical Society; Kevin Tulimieri; and Arthur Liverant.

Liverant's testimony read: "...I suggest that changes be made to the proposed legislation to accommodate the sale and trade of ivory art objects created over one hundred years ago, before many of these precious items are lost forever. The free market trade in these objects will allow for the appreciation and care of these items that reflect our history and the legacy of Connecticut and America."

...I have brought two objects that will help illustrate my point. The first...is a miniature portrait painted on ivory of a gentleman from my hometown of Colchester. I purchased this item only weeks ago on eBay from a seller in Tennessee. Miniature portraits on ivory were painted by accomplished artists using a single hair brush to honor and record the subject for future generations, as photography records today. This particular miniature portrait is of Captain Benjamin Day, who was born in Colchester in 1704, a mere six years after the founding of our town. In 1729, he married Margaret Foot, the daughter of the founder of Colchester. In May 1747, Benjamin Day was appointed Lieutenant by Governor Jonathan Law and this same Connecticut General Assembly. The Day family continued to be leaders in Colchester well into the 20th century. This portrait was painted in 1766, and gives historians a little insight into the life and accomplishments of Captain Day. If a ban on the trade of ivory objects were in effect, this portrait may never have found its way back to Colchester, and this bit of Connecticut history may have been lost forever.

...The second object illustrating my point is a jewelry box that was originally owned by Marie Gansevoort Melville. This box was made in 1814 in Boston, by one of the finest cabinetmakers of the time. Marie Gansevoort married Thomas Melville. Together they had a son; we all know [him] to be Herman Melville, one of the great authors of American literature. Consider the romance and history of this box. To think that it was very probable that young Herman may have played with his mother's valuable treasures is unmistakable and exciting. The issue here is the small turned knobs in the interior compartments which are made of ivory. If a ban on all ivory was in effect, this treasure may someday be lost forever."

A substitute bill now with the Environmental Committee would allow the sale if the ivory is "one hundred years old or older."

Florida

Florida Senate Bill 1120 would prohibit "the manufacture, sale, purchase, and distribution of ivory articles and rhinoceros horns." Ivory is defined as "any item containing worked or raw ivory from any species of elephant or mammoth." Marine mammals are not defined as ivory.

There is an exemption for antiques. The Fish and Wildlife Conservation Commission may issue a certificate allowing the sale as long as the "ivory article or rhinoceros horn is part of a bona fide antique and is less than 20 percent by volume of the antique, and the owner or seller provides historical documentation that demonstrates provenance of the item and that the item is at least 100 years old." Musical instruments would not fall under the new law if the ivory or rhinoceros horn is part of a "musical instrument, including, but not limited to, a string or wind instrument or piano, and the owner or seller provides historical documentation that demonstrates provenance of the item and that the item was manufactured no later than 1975."

The bill is with the Florida Committee on Environmental Preservation and

Conservation and the Appropriations Subcommittee on General Government.

Oklahoma

Oklahoma HB 1787 would "prohibit the importation, sale, purchase, barter, or intention to sell ivory or rhinoceros horn."

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

There is an exemption for antiques. The Department of Wildlife Conservation may issue a permit authorizing the import, sale, offer for sale, or purchase "when the ivory, ivory product, rhinoceros horn or rhinoceros horn product is part of a bona fide antique and is less than twenty percent (20%) by volume of the antique and the antique status of the antique is established by the owner or seller with historical documentation evidencing and showing the antique to be not less than one hundred (100) years old." Musical instruments and firearms would not be affected by the law "when the ivory...is part of a musical instrument, including but not limited to string and wind instruments and pianos, or a part of a firearm, and the owner or seller provides historical documentation as the Department may require, demonstrating and showing the item was manufactured no later than the year 1975."

The bill is now with the Wildlife Committee.

Iowa

Iowa Senate Bill 30 would prohibit "the sale of ivory and rhinoceros horns with certain permitted exceptions." Ivory is defined as "any item containing worked or raw ivory from any species of elephant or mammoth."

There is an exemption for antiques. The Department of Natural Resources may issue a permit for the sale, offering for sale, purchase, trade, barter, or distribution of an ivory article or rhinoceros horn "if the ivory article or rhinoceros horn is part of an antique and is less than twenty percent by volume of such antique and the antique status is established by the owner or seller with historical documentation and showing the antique to be at least one hundred years old." The Department of Natural Resources may also issue a permit allowing the sale of musical instruments as long as the "owner or seller provides historical documentation demonstrating the item was manufactured no later than 1975."

The bill is with a subcommittee of the Natural Resources and Environment Committee.



Neon Sign Brings \$143,750

More than 400 vintage collectible signs from the Vernon Walker collection were offered for sale by Mecum Auctions on March 28 and 29 in West Memphis, Arkansas. The collection, mostly dealer-size porcelain neon signs, brought a hammer total of about \$4.65 million.

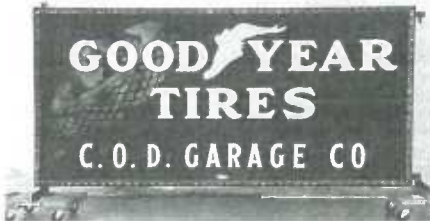
The top lot at \$143,750 (includes buyer's premium) was an 11½' tall Weakley Equipment Co. animated intricate porcelain neon sign from 1948 in original and working condition. The legs appear to walk, mower blades spin, and grass clippings fly. Bill Piper of Neogram Sign Company designed the sign in 1948 for the company's founder, J. E. Weakley. In 1948, it cost \$8000.

According to the catalog, the Weakley sign "marked the beginning of Walker's collection." When Walker had found out that the sign was for sale, he jumped at the

opportunity. The Weakley Equipment Co. was in downtown Memphis, Tennessee. The catalog quoted Walker: "I've been around here since I was able to walk. I hated to see something like that go to scrap.... I didn't realize it was as big as it was. I thought it was about 8 feet. We got the crane up there and found out it's 11½ feet tall. And the guy on the sign stands 7 feet tall." Official measurements are 96" x 138" x 36".

A Chevrolet / W.F. Chase original double-sided porcelain neon sign in working condition brought \$74,750. An 8' Ford sign also sold for \$74,750. A 6' Siesta Motel sign reached \$63,250. A rare New Idea Farm Equipment sign sold for \$43,700 to a buyer who, according to Mecum Auctions, was quoted as saying, "I hadn't seen one in seventy years, and I couldn't wait another seventy to find another one, so I just had to have it."

For more information, check the website (www.mecum.com) or call (262) 275-5050.



A 1920s-era Goodyear Tires / C.O.D. Garage Co. sign with vintage milk-glass lettering sold for \$115,000. The pre-neon bakelit double-sided tin sign is known to be fragile and is difficult to find in good condition. Photo courtesy Mecum Auctions.

An original porcelain neon factory-rotating Mobil Pegasus in working condition brought \$83,375. Photo courtesy Mecum Auctions.



Sold for \$143,750. Photo courtesy Mecum Auctions.

New Sales Tax Affecting Galleries in Arizona

by Ethan McSweeney, Arizona Sonora News Service

A group of Scottsdale, Arizona, art gallery owners say they are being crippled by a sales tax that kicked in at the beginning of this year. The new regulation adds the transaction privilege tax (TPT), Arizona's sales tax, to fine art sales to out-of-state buyers who purchase the art in Arizona and have the seller ship it out of state. This raises the sales tax on these out-of-state sales from the 1.65% Scottsdale city sales tax to 7.95%.

Scottsdale art gallery owners say they are already losing business now that word has gotten out in the art connoisseur community, and they fear it could drive buyers to Western art hub rivals, such as Santa Fe, New Mexico, and Jackson, Wyoming. "It really puts us in an uncompetitive position now that this is taxed," said Brad Richardson, owner of Legacy Gallery in Scottsdale (and two other locations out of state) and a dealer at Scottsdale Art Auction. He added that more than half of his customers come from out of state.

Richardson and other gallery owners are pinning their hopes on SB 1120, sponsored by Republican Senator Debbie Lesko of Peoria, Arizona, which would exempt those kinds of sales from the tax.

Not everyone is buying into the plight of the multimillion-dollar Scottsdale art galleries. "I just can't help thinking you're overreacting to this," Senator Steve Farley, D-Tucson, told Richardson during a senate hearing. Farley, who is an artist himself, pointed out that people purchasing these pieces of art (and who would likely be able to afford the extra tax) could get around paying it if they really wanted.

As with many tax-related matters, the details get messy. The issue stems from sales tax reform legislation passed through the legislature and signed into law in 2013. Among the provisions of that TPT reform was ending the sales tax exemption for works of fine art purchased in Arizona and shipped out of state, which had been in effect for more than 30 years. That 2013 legislation was crafted by Lesko.

"At the time, people thought, 'Why are we doing that?'" Lesko said. "So, we put a provision in the bill to eliminate that [exemption], and nobody talked about it until January 1, 2015, came around and my bill went into effect."

For Bob Pejman, owner of Pejman Gallery in Scottsdale, that came on February 10

when he received a letter from the Arizona Department of Revenue informing him of the new sales tax. "The entire month of January we didn't know that we should be collecting this tax," he said. Pejman then had to pay out of pocket the sales tax dollars not collected for the month. The prices for pieces of art in these galleries range from hundreds to hundreds of thousands of dollars. At Scottsdale Art Auction, some pieces go for more than \$1 million.

Now Lesko is seeking to rectify her tax increase on the art galleries. She said the art gallery owners contacted her, but at first she was reluctant to pursue the exemption. "After much analysis with my staff members and talking with different gallery owners, I felt that it indeed was a worthy thing to exempt these businesses, especially the auctions that do bring in tourists from all over the nation," Lesko said.

On February 16, Lesko filed the legislation as a "strike everything" amendment to a bill. The exemption would apply retroactively to the beginning of the year. SB 1120 cleared the senate on a 19-9 vote and received approval from one house committee. Supporters of the legislation are working against more than one deadline. The Scottsdale Art Auction begins April 11, and other auctions that occur during the spring also bring in a great deal of business. The bill also needs approval from one more committee before it can be heard by the whole house, and the cutoff for committee hearings is fast approaching.

A main issue guiding Lesko's reasoning behind pushing the legislation is that no other state has this tax—something gallery owners are quick to point out. Ken Strobeck, executive director of the Arizona League of Cities and Towns, however, said it's simply not true that no other state taxes this activity. When someone buys a piece of art in any state, that person would have to pay the use tax in the state the art gets shipped to, if the state has that tax. For example, if someone were to purchase art in New Mexico and have it shipped to Colorado, that person would pay Colorado use tax.

"Any of those people who are out of state and buying art and come from a sales tax state are legally obligated to pay use tax on their purchase when they get back home," Strobeck said. The problem is that not everyone follows that to the letter of the law. "About ninety-nine percent of them never [pay] that," he said. Arizona's TPT on these sales isn't as loose. The League of Cities and Towns is against the exemption, be-

cause it would compromise the uniform tax base it is trying to achieve, Strobeck said.

As Farley noted, art consumers can get around the sales tax through federal interstate commerce law by placing a hold on the piece in Scottsdale and leaving to buy it from out of state. "They already have the break if they really want it," Farley said. "So, why should we give them a special exemption just to make it slightly more convenient for their customers who can already afford to buy a \$100,000 sculpture or painting?"

The art gallery owners insist this isn't the way they want to do business. Richardson said that when people are in the room, it drives up the prices for art being sold at the auctions, and having people come to Scottsdale and other cities in Arizona helps drive tourism and spending. "We want an active room," Richardson said. "We want people to be here and see the art, and they will have a tendency to spend more."

John Marzolf, owner of the Biltmore Art Gallery in Scottsdale, said having people buy from elsewhere would make it more difficult to actually make the sale. "If they say, 'I want to go home and think about it,' or 'I'm going to come back and look at it,' you're lucky if you get twenty percent that come back," Marzolf said. "You want to be able to sell it while they're there."

During a senate finance committee hearing on the bill, Senator Lynne Pancrazi, D-Yuma, raised concerns that this could open the door for other groups to come out to the legislature and ask for their out-of-state sales to be tax-exempt, and, "There goes the TPT reform right out the door."

Farley also said the excess of sales tax exemptions cost the state billions in potential revenue. "I think it's time to look at all these exemptions very carefully as they come forward, and I think we should look at the ones already in place as well," Farley said.

Legislation introduced this session would also see sales tax exemptions for crop dusters, billboard rentals, and aircraft equipment. The only out-of-state sales currently exempt under the TPT reform law crafted two years ago are sales of motor vehicles, which is meant for car auctions.

Richardson is threatening to take his business out of the state if the sales tax exemption doesn't get passed. He said he's already explored Las Vegas as an option for moving his Scottsdale gallery. "If collectible cars get an exemption, then we think fine art should too," he said.