

Senate Bill No. 1487

Passed the Senate August 31, 2018

Secretary of the Senate

Passed the Assembly August 31, 2018

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2018, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 2351 to the Fish and Game Code, relating to African species.

LEGISLATIVE COUNSEL'S DIGEST

SB 1487, Stern. Iconic African Species Protection Act.

Existing law prohibits the importation or possession of birds, mammals, fish, reptiles, or amphibians unless specified conditions are met, including, among other things, the animals were legally taken and legally possessed outside of this state and the Fish and Game Code and regulations adopted pursuant to that code do not expressly prohibit their possession in this state. Existing law provides that a violation of this code or any regulation adopted under this code is a crime.

Existing law makes it a misdemeanor to import into the state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body or other part or product of specified animals, including leopards, tigers, and elephants. A violation of this provision is punishable by a fine of not less than \$1,000, not to exceed \$5,000, or imprisonment in a county jail not to exceed 6 months, or by both that fine and imprisonment, for each violation.

This bill would enact the Iconic African Species Protection Act and would prohibit the possession of specified African species and any part, product, or the dead body or parts thereof, including, but not limited to, the African elephant or the black rhinoceros, by any individual, firm, corporation, association, or partnership within the State of California, except as specified for, among other things, use for educational or scientific purposes by a bona fide educational or scientific institution, as defined.

The bill would provide that any person who violates the provisions of the act is subject to a civil penalty of not less than \$5,000 or more than \$40,000 for each violation. The bill would require that the civil penalties imposed pursuant to the act be deposited in the Fish and Game Preservation Fund. By creating new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 2351 is added to the Fish and Game Code, to read:

2351. (a) This section may be known, and may be cited, as the Iconic African Species Protection Act.

(b) For the purposes of this section, the following terms have the following meanings:

(1) “Iconic African species” means any species or subspecies of the following members of the animal kingdom: African elephant (*Loxodonta africana* and *Loxodonta cyclotis*), African lion (*Panthera leo*), leopard (*Panthera pardus*), black rhinoceros (*Diceros bicornis*), white rhinoceros (*Ceratotherium simum*), giraffe (*Giraffa camelopardalis*), Jentink’s duiker (*Cephalophus jentinki*), plains zebra (*Equus quagga*), mountain zebra (*Equus zebra*), hippopotamus (*Hippopotamus amphibius*), and striped hyena (*Hyaena hyaena*), this includes any part, product, or the dead body or parts thereof, excluding fossils, whether or not included in a manufactured product or in a food product of any species protected by this part.

(2) “Article” is synonymous with the term “iconic African species.”

(3) “Bona fide educational or scientific institution” means an institution that establishes through documentation either of the following:

(A) Educational or scientific tax exemption, from the federal Internal Revenue Service or the institution’s national, state, or local tax authority.

(B) Accreditation as an educational or scientific institution, from a qualified national, regional, state, or local authority for the institution’s location.

(c) Except as provided in subdivision (d), iconic African species shall not be possessed by any individual, firm, corporation, association, or partnership within the State of California.

(d) Unless such activity is otherwise prohibited by law, one or more of the following exceptions and defenses apply to the prohibition set forth in subdivision (c):

(1) The prohibition of subdivision (c) does not apply to an employee or agent of the federal, state, or local government undertaking a law enforcement activity pursuant to federal or state law, or a mandatory duty required by federal law.

(2) The article is possessed for wholly noncommercial purposes and the owner can demonstrate the article was in the person's possession within this state before January 1, 2019. An owner may demonstrate his or her possession of the article before January 1, 2019, by furnishing documentation that includes, but is not limited to, any of the following:

(A) A valid permit for the importation of sport-hunted trophies issued by the United States Fish and Wildlife Service before January 1, 2019.

(B) A bill of lading or other valid document regarding the transportation of the article issued before January 1, 2019.

(C) A valid appraisal of the article issued before January 1, 2019.

(D) Photographic or video evidence showing the article in the owner's possession that possesses a date stamp indicating a date before January 1, 2019.

(3) The article was lawfully imported pursuant to a permit or exemption under the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.). Within 180 days of importation, any such article shall be removed from within the state and may not be subsequently possessed within the state unless possession of the article is expressly authorized by the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) or its implementing regulations.

(4) The article is for use for educational or scientific purposes by a bona fide educational or scientific institution.

(5) In the case of ivory or rhinoceros horn, is possessed in conformance with the requirements of Section 2022.

(6) The article is distributed directly to a legal beneficiary of a trust or to a legal heir provided the article was possessed by the decedent before the enactment of this section.

(e) In addition to any other penalty provided by law, any person who violates this section is subject to a civil penalty of not less

than five thousand dollars (\$5,000) or more than forty thousand dollars (\$40,000) for each violation.

(f) The Attorney General, or the city attorney of the city or county counsel of the county in which a violation of this section occurs, may bring a civil action to recover the civil penalty described in subdivision (e). The civil action shall be brought in the county in which the violation occurs and any penalty imposed shall be transferred to the Controller for deposit in the Fish and Game Preservation Fund in accordance with Section 13003.

(g) For any judgment imposed by a court for a violation of this section resulting in a fine, the department may provide a reward of up to five hundred dollars (\$500) to any person giving information that led to the judgment. This reward shall be paid from the Fish and Game Preservation Fund, upon appropriation by the Legislature. This reward shall not apply if the informant is a regular salaried law enforcement officer or an officer or agent of the department.

(h) Upon judgment for a violation of this section, any seized article shall be forfeited and, upon forfeiture, either maintained by the department for educational or training purposes, donated by the department to a bona fide educational or scientific institution, or destroyed.

(i) This section does not preclude enforcement under Section 2022 of this code or Sections 653o, 653p, and 653r of the Penal Code.

(j) The prohibition against possession of the species listed in paragraph (1) of subdivision (b) is severable. A finding of the invalidity of the prohibition against a species shall not affect the validity of the prohibition against other species.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2018

Governor