



Exotic Skins Bans in California

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April 18, 2012



EXOTIC SKINS BANS IN CALIFORNIA

I. WHAT SKINS ARE BANNED?

- a. **Current Prohibitions.** "It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (*Canis lupus*), zebra, whale, cobra, **python**, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (*Delphinidae*), Spanish lynx, or elephant," Cal. Penal Code § 653o(a), **or seal**, Cal. Penal Code § 653q.
 - i. **Kangaroo.** There is presently a limited exception affecting certain species of kangaroos. Cal. Penal Code § 653o(c).
- b. **Future Prohibitions.**
 - i. **Crocodile and Alligator.** Commencing January 1, 2015, it shall be unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any crocodile or alligator. This subdivision shall not be construed to authorize the importation or sale of any alligator or crocodilian species, or any products thereof, that are listed as endangered under the federal Endangered Species Act, or to allow the importation or sale of any alligator or crocodilian species, or any products thereof, in violation of any federal law or any international treaty to which the United States is a party. § 653o(b)
 - ii. **Kangaroo.** A new version of § 6530 of the California Penal Code will go into effect on January 1, 2016. It will eliminate the present limited exception for kangaroos under § 653o(c) unless that exception is extended by statute prior to that date.

II. WHAT ARE THE PENALTIES FOR VIOLATION?

- a. **Fine or imprisonment or both.** "Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars (\$1,000) and not to exceed five thousand dollars (\$5,000) or imprisonment in the county jail not to exceed six months, or both that fine and imprisonment, for each violation." § 653o(d).

III. HOW DOES THIS AFFECT RETAILERS?

- a. **Items already on the shelf.** Because the statute prohibits a sale, the fact that a skin was imported into California prior to when the ban came into effect will not prevent liability under the terms of the statute.
- b. **Internet purchases.** When is an Internet sale made within the State of California? There are no reported cases discussing this. Possible factors: purchaser's state of residence, seller's state of residence, location of server, billing address, delivery address.



- c. **Preemption.** There have been a number of cases in California discussing preemption.
- i. *Viva! International Voice for Animals v. Adidas Promotional Retail Operations, Inc.*, 41 Cal. 4th 929 (Cal. Sup. Ct. 2007).
 1. Background. Viva brought suit against Adidas for engaging in the unlawful business practice of importing and selling athletic shoes made from three species of kangaroo leather. Adidas asserted preemption. It argued that while the Federal Endangered Species Act of 1973 did not explicitly regulate these three species anymore, it had done so in the past and the present federal deregulation preempted Cal. Pen. Code § 6530. The trial court found that the California statute was preempted; the Court of Appeal affirmed.
 2. Held: reversed. Under Sec. 6(f), the preemption section of the Federal Endangered Species Act, the termination of federal regulation because the federal goals under the federal act had been met, does not preempt further state efforts; it leaves the field open for states to act as they individually see fit. There is a difference between not making an activity unlawful and making that activity lawful.
 - ii. *Man Hing Ivory and Imports, Inc v. Deukmejian*, 702 F.2d 760 (9th Cir. 1983).
 1. Background. Man Hing Ivory was a California importer of African elephant ivory products. Cal. Penal Code § 6530 prohibits the importing of elephant products into the state of California. In May 1978, pursuant to the Endangered Species Act, the Secretary of the Interior added the African elephant to the list of threatened and endangered species and adopted regulations permitting limited trade in elephant products. 50 C.F.R. § 17.40(e). Man Hing Ivory, a permit holder, argued it was authorized to trade in elephant products pursuant to those regulations.
 2. Held: Section 6(f) of the Endangered Species Act preempted California's statutory prohibition on trade in African elephant products as to a trader who had secured all necessary federal permits.
 - iii. *H. J. Justin & Sons, Inc. v. Deukmejian*, 702 F.2d 758 (9th Cir. 1983).
 1. Background. H. J. Justin & Sons was a boot manufacturer that wished to engaged in trade within California in boots made from African elephants, Indonesian pythons and the Wallaby kangaroo, all prohibited by Cal. Pen. Code § 6530. H. J. Justin & Sons argued that federal law preempted the state statute.
 2. Held: Cal. Pen. Code § 6530's prohibition on trade in pythons and kangaroos was not preempted by the Endangered Species Act since the Secretary had not listed either the Indonesian python or the Wallaby kangaroo as



"endangered" or "threatened." Thus, the states were free to regulate them under Sec. 6(f). However, § 653o is preempted as to a holder of a federal permit for import and export trade in African elephant products.

d. **Police Power.**

i. *People v. K. Sakai Co.*, 56 Cal. App. 3d 531 (Cal. Ct. of App., 1st App. Dist. 1976).

1. Background. The defendant was found guilty of selling and possessing with intent to sell whale meat, banned under Cal. Pen. Code § 653o. The products defendant was selling had been imported into California prior to the ban. Defendant claimed that § 653o, insofar as it proscribes the sale of products *lawfully* imported, constitutes an unreasonable exercise of the police power.
2. Held: the statute does not constitute an unreasonable exercise of the police power because there is a reasonable basis from which the Legislature could determine that the ban was necessary or desirable for its intended purpose, which in this case is to prevent the extinction of endangered species. "The ban on the sale of all whale products, including those imported prior to the effective date of the legislation, at least decreases the market therefore." 56 Cal. App. 3d at 537.

We gratefully acknowledge the assistance of our associate Mary Jane Yoon in the preparation of this outline.

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PENAL CODE
Part 1. Of Crimes and Punishments
Title 15. Miscellaneous Crimes
Chapter 2. Of Other and Miscellaneous Offenses

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 653o (2012)

First of 2 versions of this section

§ 653o. (First of two; Repealed January 1, 2016) Endangered species; Importation or possession for sale

(a) It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (*Canis lupus*), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (*Delphinidae*), Spanish lynx, or elephant.

(b)

(1) Commencing January 1, 2015, it shall be unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any crocodile or alligator.

(2) This subdivision shall not be construed to authorize the importation or sale of any alligator or crocodilian species, or any products thereof, that are listed as endangered under the federal Endangered Species Act, or to allow the importation or sale of any alligator or crocodilian species, or any products thereof, in violation of any federal law or any international treaty to which the United States is a party.

(c)

(1) This section shall not apply to kangaroos that may be harvested lawfully under Australian national and state law, the federal Endangered Species Act of 1971 (*16 U.S.C. Sec. 1531 et seq.*), and applicable international conventions, provided that the Department of Fish and Game is annually informed in writing, by May 1, by the Australian government that the commercial harvest of kangaroos in any future year will not exceed the official quota for that year, consistent with Australian national and state law, and of the sustainability principles on which that quota is based.

(2) If the department fails to receive the report described in paragraph (1), the department shall inform the Australian national government that future importation of kangaroos that otherwise may be harvested lawfully under Australian national and state law, the federal Endangered Species Act of 1971 (*16 U.S.C. Sec. 1531 et seq.*), and applicable international conventions shall be halted and their importation into this state for commercial purposes, possession with intent to sell, or sale within the state will be subject to the provisions of this section.



(d) Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars (\$1,000) and not to exceed five thousand dollars (\$5,000) or imprisonment in the county jail not to exceed six months, or both that fine and imprisonment, for each violation.



(e) The prohibitions against importation for commercial purposes, possession with intent to sell, and sale of the species listed in this section are severable. A finding of the invalidity of any one or more prohibitions shall not affect the validity of any remaining prohibitions.

(f) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

HISTORY:

Added Stats 1970 ch 1557 § 1, operative December 1, 1970. Amended Stats 1971 ch 1283 § 1; Stats 1972 ch 119 § 2; Stats 1976 ch 692 § 1, operative Rine 1, 1977; Stats 1980 ch 494 § 1; Stats 1981 ch 714 § 326; Stats 2006 ch 660 § 1 (SB 1485), effective January 1, 2007; Stats 2007 ch 576 § 1 (SB 880), effective January 1, 2008; Stats 2009 ch 15 § 1 (SB 609), effective January 1, 2010; Stats 2010 ch 412 § 1 (SB 1345), effective January 1, 2011, repealed January 1, 2016.

NOTES:

Amendments:

1971 Amendment:

(1) Added "sable antelope,"; (2) deleted "red" before "wolf"; (3) substituted "(Canus lupus)" for ", timber wolf" after "wolf"; (4) added "zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo,"; and (5) added the second sentence.

1972 Amendment:

(1) Added "dolphin or porpoise (Delphinidae),"; (2) deleted the former second sentence which read: "Violation of this section constitutes a misdemeanor."; and (3) added the second paragraph.

1976 Amendment:

Substituted "Spanish lynx, or elephant" for "or Spanish lynx" at the end of the first paragraph.

1980 Amendment:

(1) Designated the former first and second paragraphs to be subd (a); and (2) added subd (b).

1981 Amendment:

Routine code maintenance.



2006 Amendment:

(1) Amended subd (a) by (a) deleting "alligator, crocodile," after "of any" in the first sentence; and (b) deleting the former second paragraph which read: "Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars (\$1,000) and not to exceed five thousand dollars (\$5,000) or imprisonment in the county jail for not to exceed six months, or both such fine and imprisonment, for each violation."; (2) added subds (b) and (c); and (3) redesignated former subd (b) to be subd (d).

2007 Amendment:

(1) Added subd (c); (2) redesignated former subds (c) and (d) to be subds (d) and (e); (3) amended subd (d) by deleting (a) "for" after "in the county jail"; and (b) "such" after "six months, or both"; and (4) added subd (f).

2009 Amendment:

(1) Designated former subd (b) to be subd (b)(1); (2) substituted "January 1, 2015" for "January 1, 2010" in subd (b)(1); and (3) added subd (b)(2).

2010 Amendment:

(1) Amended subd (c)(1) by (a) adding "in writing, by May 1,"; and (b) substituting "for that year, consistent with Australian national and state law, and of the sustainability principles on which that quota is based" for "established for 2007 or the lawful take of kangaroos in each subsequent year, whichever is the lesser"; (2) added "that" after "or both" in subd (d); and (3) substituted "January 1, 2016" for "January 1, 2011" both times it appears in subd (f).

Note

Stats 1970 ch 1557, operative December 1, 1970, provides:

SEC. 3. This act shall not prohibit the sale or the possession with the intent to sell of any part or product of any fish, bird, amphibian, reptile or mammal specified in this act when the seller can demonstrate that such part or product was imported into this state before the effective date of this act, and shall not prohibit the sale of such part or product thereof by an individual not normally engaged in such sale, if it was originally possessed by the seller for his own use and so used by him. This act also shall not prohibit the importation of such animals or any part or product thereof for zoological, educational, or scientific purposes.

SEC. 4. This act shall not prohibit the sale or the possession with the intent to sell of any part or product of a sea otter, if it can be demonstrated by the seller or possessor that such sea otter was obtained lawfully under a permit or license issued by a governmental agency having authority to issue such permit or license.

Stats 1972 ch 119 provides:

SEC. 3. This act shall not prohibit the sale or the possession with the intent to sell of any part or product of any dolphin or porpoise (Delphinidae) when the seller can demonstrate that such part of product was imported into this state prior to the effective date of this act.

Section 3 as added to Chapter 1283 of the Statutes of 1971 by Stats 1973 ch 925, effective September 30, 1973 provides: Nothing in this act or any other provision of law shall prohibit the sale, or the possession with the intent to sell, of any product made from the oil of sea turtles for commercial purposes if such sale or possession occurs prior to April 1, 1974.

Stats 1976 ch 692 provides:



SEC. 5. Section 1 of this act shall become operative June 1, 1977. No provision of law shall prohibit the possession with intent to sell, or sale of the dead body, or any part or product thereof, of any elephant prior to June 1, 1977, or the possession with intent to sell or the sale of any such item on or after such date which was imported prior to the effective date of this act.

The burden of proof to demonstrate that such item or items were imported prior to the effective date of this act shall be placed upon the defendant.

Stats 2006 ch 660 provides:

SEC. 2. It is the intent of the Legislature that the amendments to *Section 653o of the Penal Code* made by this act shall not be construed to authorize the importation or sale of any alligator or crocodilian species, or any products thereof, that are listed as endangered under the federal Endangered Species Act, or to allow the importation or sale of any alligator or crocodilian species, or any products thereof, in violation of any federal law or any international treaty to which the United States is a party.



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GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code ,§ 653o (2012)

Second of 2 versions of this section

§ 653o. (Second of two; Operative January 1, 2016) Endangered species; Importation or possession for sale

(a) It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (*Canis lupus*), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (*Delphinidae*), Spanish lynx, or elephant.

(b)

(1) Commencing January 1, 2015, it shall be unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any crocodile or alligator.

(2) This subdivision shall not be construed to authorize the importation or sale of any alligator or crocodilian species, or any products thereof, that are listed as endangered under the federal Endangered Species Act, or to allow the importation or sale of any alligator or crocodilian species, or any products thereof, in violation of any federal law or any international treaty to which the United States is a party.

(c) Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars (\$1,000) and not to exceed five thousand dollars (\$5,000) or imprisonment in the county jail not to exceed six months, or both that fine and imprisonment, for each violation.

(d) The prohibitions against importation for commercial purposes, possession with intent to sell, and sale of the species listed in this section are severable. A finding of the invalidity of any one or more prohibitions shall not affect the validity of any remaining prohibitions.

(e) This section shall become operative on January 1, 2016.



HISTORY:

Added Stats 2007 ch 576 § 2 (SB 880), effective January 1, 2008, operative January 1, 2011. Amended Stats 2009 ch 15 § 2 (SB 609), effective January 1, 2010; Stats 2010 ch 412 § 1 (SB 1345), effective January 1, 2011, repealed January 1, 2016.

NOTES:

Amendments:

2009 Amendment:

(1) Designated former subd (b) to be subd (b)(1); (2) substituted "January 1, 2015" for "January 1, 2010" in subd (b)(1); and (3) added subd (b)(2).

2010 Amendment:

Substituted (1) "that" for "the" after "or both" in subd (c); and (2) "January 1, 2016" for "January 1, 2011" in subd (e).



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GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Pen Code § 6.53p (2012)

§ 653p. Endangered species; Possession with intent to sell; Violation of federal laws

It is unlawful to possess with the intent to sell, or to sell, within the state, the dead body, or any part or product thereof, of any species or subspecies of any fish, bird, mammal, amphibian, reptile, mollusk, invertebrate, or plant, the importation of which is illegal under the Federal Endangered Species Act of 1973 (Title 16, United States Code Sec. 1531 et seq.) and subsequent amendments, or under the Marine Mammal Protection Act of 1972 (Title 16, United States Code Sec. 1361 et seq.), or which is listed in the Federal Register by the Secretary of the Interior pursuant to the above acts. The violation of any federal regulations adopted pursuant to the above acts shall also be deemed a violation of this section and shall be prosecuted by the appropriate state or local officials.

HISTORY:

Added Stats 1970 ch 1557 § 2, operative December 1, 1970. Amended Stats 1976 ch 692 § 2.

NOTES:

Amendments:

1976 Amendment:

(1) Amended the first sentence by substituting (a) "reptile, mollusk, invertebrate, or plant" for "or reptile" after "amphibian,"; (b) "the Federal Endangered Species Act of 1973 (Title 16, United States Code Sec. 1531 et seq.) and subsequent amendments, or under the Marine Mammal Protection Act of 1972 (Title 16, United States Code Sec. 1361 et seq.), or" for ", and"; and (c) "the above acts" for ", the Endangered Species Conservation Act of 1969 (Public Law 135, 91st Congress)" after "pursuant to"; and (2) added the second sentence.

Editor's Notes

See the Notes following § 653o. The provisions contained in some of these notes may affect certain provisions contained in this statute.



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Cal Pen Code § 653q (2012)

§ 653q. Possession or sale of dead seal

It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any seal.

Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars (\$1,000) and not to exceed five thousand dollars (\$5,000) or imprisonment in the county jail for not to exceed six months, or both such fine and imprisonment, for each violation.

HISTORY:

Added Stats 1971 ch 1200 § 4.

NOTES:

Note

Stats 1971 ch 1200 provided:

SEC. 5. This act shall not prohibit the sale or the possession with the intent to sell of any part or product of any seal when the seller can demonstrate that such part or product was imported into this state before the effective date of this act, and shall not prohibit the sale of such part or product thereof by an individual not normally engaged in such sale, if it was originally possessed by the seller for his own use and so used by him. This act also shall not prohibit the importation of such animals or any part or product thereof for zoological, educational, or scientific purposes.

SEC. 6. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act or other state statutes enforcing federal wildlife laws or protecting endangered species, and to this end the provisions of this act are severable and independent from other Fish and Game Code and Penal Code sections. [Added Stats 1976 ch 692 § 3.]



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Cal Pen Code § 653r (2012)

§ 653r. Possession or sale of particular endangered species

Notwithstanding the provisions of Section 3 of Chapter 1557 of the Statutes of 1970, it shall be unlawful to possess with intent to sell, or to sell, within this state, after June 1, 1972, the dead body, or any part or product thereof, of any fish, bird, amphibian, reptile, or mammal specified in Section 653o or 653p.

Violation of this section constitutes a misdemeanor.

HISTORY:

Added Stats 1971 ch 1283 § 2.

NOTES:

Editor's Notes

Section 3 of Chapter 1557 of the Statutes of 1970, which is mentioned in this section, appears in a note following *Pen C § 653o*.