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# A BILL FOR AN ACT

RELATING TO ANIMAL CRUELTY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that African elephants  
2 are nearing extinction due to the high price of ivory that is  
3 driven by an increase in consumer demand. Since 1978, the  
4 African elephant has been listed as threatened under the  
5 Endangered Species Act of 1973, title 16 U.S.C. section 1531 et  
6 seq., and trade in elephant ivory continues to jeopardize their  
7 existence.

8           In March 2013, one hundred seventy-eight nations attended  
9 the sixteenth meeting of the Convention on International Trade  
10 in Endangered Species of Wild Fauna and Flora, where it was  
11 documented that elephant slaughter has reached crisis  
12 proportions. Wildlife scientists state that the black market  
13 trade of ivory through internet sales is skyrocketing throughout  
14 the world, including in the United States. In 2012,  
15 approximately thirty-five thousand African elephants were  
16 slaughtered by poachers, criminal syndicates, and terrorist  
17 groups who were intent on selling their ivory.



1 Ivory trafficking is at the highest recorded rate ever. It  
2 is estimated that over forty-one tons of illegal ivory have been  
3 confiscated worldwide this year. Scientists believe the  
4 population of elephants cannot withstand this slaughter and the  
5 species may become extinct in less than twenty years.

6 The legislature further finds that the Convention on  
7 International Trade in Endangered Species of Wild Fauna and  
8 Flora, adopted by the United States, banned the international  
9 trade of African elephant ivory in 1990. Under existing law,  
10 African elephant ivory may be sold legally in Hawaii if it was  
11 imported before 1990 or is at least one hundred years old at the  
12 time of import and has not been altered since. An investigation  
13 supported by The Humane Society of the United States and Humane  
14 Society International found that Hawaii is the third highest  
15 retailer of elephant ivory in the United States, behind  
16 California and New York. Despite federal laws, eighty-nine per  
17 cent of ivory sold in Hawaii is likely illegal or of unknown  
18 origin. Often, fraudulent documents are used to take advantage  
19 of existing law and falsely claim that the ivory predates 1990.

20 The legislature additionally finds that wildlife and animal  
21 welfare experts agree that the only way to save the critically  
22 endangered elephants is to prohibit the sale of ivory. The



1 legislature adopted S.C.R. No. 149, S.D. 1, regular session of  
2 2013, urging Hawaii residents and businesses to comply with the  
3 Convention on International Trade in Endangered Species of Wild  
4 Fauna and Flora and not buy or sell ivory of unknown origin.  
5 Despite this notice, ivory of unknown origin and age continues  
6 to be sold in Hawaii. Furthermore, it is usually impossible to  
7 determine the age of ivory or to distinguish elephant ivory from  
8 ivory of another species, except by laboratory examination by  
9 scientific experts.

10 The legislature further finds that if the prohibition of  
11 the sale of ivory applies to only elephants, it may result in an  
12 increase in the poaching of other species as the demand for  
13 ivory will skyrocket. Thus, these already endangered species  
14 would be placed at the same risk of extinction as the African  
15 elephant.

16 The purpose of this Act is to establish a new chapter in  
17 the Hawaii Revised Statutes to:

18 (1) Establish the offense of the unlawful sale or trade of  
19 ivory products for any person who imports, sells,  
20 offers to sell, or possesses with the intent to sell  
21 any ivory product;



- 1 (2) Define "ivory products" to include ivory from  
2 elephants, hippopotamuses, walruses, whales, and  
3 narwhals;
- 4 (3) Create exemptions for the sale or trade of ivory  
5 products, including antique ivory or ivory legally  
6 imported prior to 1975 if from an Asian elephant or  
7 prior to 1990 if from an African elephant; provided  
8 that the seller can demonstrate that the ivory product  
9 meets the requirements per Director's Order No. 210  
10 dated February 25, 2014, from the United States Fish  
11 and Wildlife Service, "Administrative Actions to  
12 Strengthen U.S. Trade Controls for Elephant Ivory,  
13 Rhinoceros Horn, and Parts and Products of Other  
14 Species Listed Under the Endangered Species Act  
15 (ESA)"; and
- 16 (4) Authorize the forfeiture of seized ivory products and  
17 provide penalties.

18 SECTION 2. The Hawaii Revised Statutes is amended by  
19 adding a new chapter to be appropriately designated and to read  
20 as follows:

21 "CHAPTER  
22 UNLAWFUL SALE OR TRADE OF IVORY PRODUCTS



1           §   -1 **Findings and purpose.** The legislature finds that  
2 African elephants are nearing extinction due to the high price  
3 of ivory and consumer demand. Since 1978, the African elephant  
4 has been listed as threatened under the Endangered Species Act  
5 of 1973, title 16 U.S.C. section 1531 et seq. Nevertheless,  
6 trade in elephant ivory continues to jeopardize the existence of  
7 elephants, which often are slaughtered by poachers intent on  
8 supplying elephant ivory for commercial sale.

9           Despite current law prohibiting the sale of African  
10 elephant ivory imported after 1990, much of the ivory sold in  
11 Hawaii is likely illegal or of unknown origin, and fraudulent  
12 documents often are used to falsely claim that the ivory  
13 predates 1990. As it is nearly impossible, without laboratory  
14 examination by scientific experts, to determine the age of ivory  
15 or to distinguish elephant ivory from ivory of another species,  
16 the legislature finds it necessary to ban the sale of ivory  
17 products from a range of animals having ivory teeth and tusks.

18           The purpose of this chapter is to ensure the continued  
19 existence of African elephants and other animals that have ivory  
20 teeth or tusks by taking positive actions to enhance prospects  
21 for their survival by establishing the offense of unlawful sale  
22 or trade of ivory products to prohibit any person, trust or



1 estate, or business, firm, partnership, or other legal entity  
2 from importing, selling, offering to sell, or possessing with  
3 intent to sell any ivory product, regardless of the age of the  
4 ivory, from elephants, hippopotamuses, walruses, whales, or  
5 narwhals and create exemptions for the sale or trade of ivory  
6 products, including antique ivory or ivory legally imported  
7 prior to 1975 if from an Asian elephant or prior to 1990 if from  
8 an African elephant; provided that the seller can demonstrate  
9 that the ivory product meets the requirements of Director's  
10 Order No. 210 dated February 25, 2014, from the United States  
11 Fish and Wildlife Service, "Administrative Action to Strengthen  
12 U.S. Trade Controls for Elephant Ivory, Rhinoceros Horn, and  
13 Parts and Products of Other Species Listed Under the Endangered  
14 Species Act (ESA)".

15 § -2 **Definitions.** As used in this chapter unless the  
16 context otherwise requires:

17 "Department" means the department of land and natural  
18 resources.

19 "Ivory product" means any product, regardless of age,  
20 containing or advertised as containing raw or worked ivory teeth  
21 or tusks from any of the following species of wildlife:

22 (1) Elephants;



1 (2) Hippopotamuses;

2 (3) Walruses;

3 (4) Whales; and

4 (5) Narwhals.

5 "Person" has the same meaning as in section 711-1108.5.

6 "Sale" or "sell" means all acts of selling, trading, or  
7 bartering for monetary or nonmonetary consideration, including  
8 online and internet sales.

9 § -3 **Unlawful sale or trade of ivory products.** (a) A  
10 person commits the offense of unlawful sale or trade of ivory  
11 products if the person imports, sells, offers to sell, or  
12 possesses with intent to sell any ivory product. The act of  
13 obtaining an appraisal of the ivory product shall not alone  
14 constitute possession with intent to sell.

15 (b) A person convicted of committing the offense of  
16 unlawful sale or trade of ivory products shall be sentenced as  
17 follows for each offense:

18 (1) For the first offense, the person shall be guilty of a  
19 misdemeanor and shall be fined not less than \$1,000,  
20 or an amount equal to two times the total value of the  
21 ivory products involved in the offense, whichever is



1 greater, or the person may be sentenced to a term of  
2 imprisonment, or both; and

3 (2) For any second or subsequent offense, the person shall  
4 be guilty of a class C felony and shall be fined not  
5 less than \$5,000, or an amount equal to two times the  
6 total value of the ivory products involved in the  
7 offense, whichever is greater, or the person may be  
8 sentenced to a term of imprisonment, or both.

9 (c) This section shall not apply to:

10 (1) Employees or agents of the federal government  
11 undertaking any law enforcement activities pursuant to  
12 federal law or any mandatory duties required by  
13 federal law;

14 (2) Persons importing ivory products that are expressly  
15 authorized by federal license or permit; or

16 (3) Persons selling, offering for sale, or possessing with  
17 intent to sell any ivory product or product containing  
18 ivory when the person possesses documentation, and  
19 provides the documentation to the person purchasing  
20 the ivory product and to the department upon request,  
21 that:



- 1 (A) Clearly matches the description of the ivory
- 2 product;
- 3 (B) Demonstrates that the specific ivory product was:
- 4 (i) Legally imported to the United States prior
- 5 to 1975 if the ivory product is Asian
- 6 elephant ivory;
- 7 (ii) Legally imported to the United States prior
- 8 to 1990 if the ivory product is African
- 9 elephant ivory; or
- 10 (iii) For walrus and whale species, legally
- 11 possessed or imported to the United States
- 12 prior to 1972;
- 13 (C) Provides definitive proof of the identity of the
- 14 species of which the ivory product is composed in
- 15 whole or in part; provided that proof shall be
- 16 demonstrated in the following forms:
- 17 (i) A bona fide DNA analysis;
- 18 (ii) A qualified appraisal as that term is
- 19 defined in Director's Order No. 210 dated
- 20 February 25, 2014, from the United States
- 21 Fish and Wildlife Service, "Administrative
- 22 Actions to Strengthen U.S. Trade Controls



1 for Elephant Ivory, Rhinoceros Horn, and  
2 Parts and Products of Other Species Listed  
3 Under the Endangered Species Act (ESA)", and  
4 Director's Order No. 210, Appendix 1; or  
5 (iii) Other documentation that definitively  
6 demonstrates the identification of the  
7 species through a detailed chain of  
8 ownership analysis of the ivory product; and

9 (D) Demonstrates that the ivory product meets the  
10 federal definition of antique, as provided by  
11 title 16 U.S.C. section 1539(h).

12 (d) For the purposes of this section, "total value of the  
13 ivory products" means the fair market value of the ivory  
14 products or the actual price paid for the ivory products,  
15 whichever is greater.

16 § -4 **Disposition of seized ivory products.** Upon  
17 conviction or other entry of judgment for a violation of this  
18 chapter, any seized ivory products shall be subject to  
19 forfeiture pursuant to chapter 712A. Ivory products seized and  
20 forfeited may be destroyed or offered to an entity possessing a  
21 permit for educational or scientific activities.



1           §   -5 **Remedies.** Nothing in this chapter shall be  
2 construed to prohibit or impair any civil or administrative  
3 action or penalty available in law or equity.

4           §   -6 **Rules.** The department shall adopt rules in  
5 accordance with chapter 91 to effectuate the purposes of this  
6 chapter."

7           SECTION 3. If any provision of this Act, or the  
8 application thereof to any person or circumstance, is held  
9 invalid, the invalidity does not affect other provisions or  
10 applications of the Act that can be given effect without the  
11 invalid provision or application, and to this end the provisions  
12 of this Act are severable.

13           SECTION 4. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

16           SECTION 5. This Act shall take effect on July 1, 2050.



**Report Title:**

Animal Cruelty; Import and Sale of Ivory Products; Prohibitions;  
Penalties

**Description:**

Establishes the offense of the unlawful sale or trade of ivory products for any person who imports, sells, offers to sell, or possesses with the intent to sell any ivory product and creates exemptions for the sale or trade of ivory products. Effective 7/1/2050. (SD2)

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