
A BILL FOR AN ACT

RELATING TO THE CONSERVATION OF ANIMALS.

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

1 SECTION 1. The legislature finds that African elephants
2 are near extinction and Asian elephants are severely threatened
3 due to ivory trafficking at unprecedented levels, which has been
4 driven by an increase in consumer demand. According to the
5 United States Department of the Interior, illegal ivory trade
6 activity, including that involving newly-harvested ivory, has
7 more than doubled since 2007. More than 35,000 African
8 elephants and numerous Asian elephants were slaughtered in 2012
9 and it is estimated that over forty-one tons of illegal ivory
10 was confiscated worldwide in 2013. Scientists believe that
11 elephants cannot withstand this rate of slaughter and they may
12 become extinct in less than twenty years.

13 The legislature finds that federal and international
14 measures have sought to protect elephants. Asian and African
15 elephants have been listed as threatened under the federal
16 Endangered Species Act of 1973 since 1978 and 1976,
17 respectively. The African Elephant Conservation Act, passed by



1 Congress in 1988, established a moratorium on the import of
2 African elephant ivory into the United States beginning in 1989.
3 Internationally, trade in Asian and African elephant ivory has
4 been banned since 1975 and 1990, respectively, under the
5 Convention on International Trade in Endangered Species of Wild
6 Fauna and Flora, or CITES, which the United States has adopted.

7 The legislature finds that ivory without proper
8 documentation and of unknown origin and age continues to be
9 brought into and sold throughout Hawaii. In 2013, the
10 legislature adopted Senate Concurrent Resolution No. 149, S.D. 1
11 urging Hawaii residents and businesses to comply with CITES and
12 not buy or sell ivory of unknown origin. However, as a
13 resolution, this measure does not include any enforcement
14 mechanisms. More explicit action is needed.

15 The legislature finds that the protection of animals with
16 ivory teeth and tusks and rhinoceros is an important public
17 policy necessitating the prohibition of the sale and trade of
18 their derivative products in Hawaii. Personal possession and
19 transfer by bequest of lawfully acquired ivory and rhinoceros
20 horn will continue to be permitted.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 12 to be appropriately designated
3 and to read as follows:

4 "CHAPTER
5 CONSERVATION OF ELEPHANTS AND OTHER ANIMALS WITH IVORY TEETH AND
6 TUSKS AND THE RHINOCEROS

7 § -1 Purpose. The purpose of this chapter is to take
8 positive actions to enhance prospects for the continued
9 existence of elephants and other wildlife species that have
10 ivory teeth or tusks as well as rhinoceros by prohibiting the
11 trade and sale of ivory and rhinoceros horn within the State.
12 Personal possession and transfer by bequest of lawfully acquired
13 ivory and rhinoceros horn will continue to be permitted.

14 § -2 Definitions. As used in this chapter unless the
15 context otherwise requires:

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

18 "Ivory" means any tooth or tusk from the following species
19 of wildlife:

- 20 (1) Elephant;
21 (2) Hippopotamus;



1 (3) Mammoth;

2 (4) Narwhal; and

3 (5) Walrus;

4 or any piece thereof, whether raw or worked. "Ivory" includes
5 any product containing or advertised as containing ivory.

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

7 "Rhinoceros horn" means the horn, any piece thereof, or any
8 derivative of the horn, such as powder, of any species of
9 rhinoceros. "Rhinoceros horn" includes any product containing
10 or advertised as containing any rhinoceros horn.

11 "Sale" or "sell" means all acts of selling, trading, or
12 bartering for monetary or nonmonetary consideration, or
13 distributing in the consumer marketplace, including online and
14 internet sales.

15 "Total value of the ivory or rhinoceros horn" means the
16 greater of the fair market value or the actual price paid for
17 the ivory or rhinoceros horn.

18 § -3 Ivory and rhinoceros horn; prohibitions. It shall
19 be unlawful for any person to import with intent to sell, cause
20 to be imported with intent to sell, sell, offer for sale,
21 purchase, cause to be purchased, barter, or possess with intent



1 to sell any ivory or rhinoceros horn, except as otherwise
2 authorized by this chapter.

3 § -4 Applicability. (a) Except as provided in
4 subsection (c), this chapter shall apply to all ivory and
5 rhinoceros horn in the State.

6 (b) This chapter shall not apply to employees or agents of
7 the federal or state government undertaking any law enforcement
8 activities pursuant to federal or state law or any mandatory
9 duties required by federal or state law, to persons importing
10 ivory or rhinoceros horn that is expressly authorized by federal
11 license or permit, or to other activity expressly authorized by
12 federal law.

13 (c) The following items shall be exempted from this
14 chapter:

15 (1) Guns, knives, and musical instruments whose
16 composition contains less than twenty per cent ivory
17 or rhinoceros horn; and

18 (2) Ivory or rhinoceros horn jewelry that can be
19 identified as Ming's jewelry; provided that such
20 jewelry must contain a legible marking identifying it
21 as Ming's jewelry.



1 § -5 Possession of ivory or rhinoceros horn in a retail
2 or wholesale outlet; presumption. (a) Except as provided in
3 subsection (b), possession of any ivory or rhinoceros horn in a
4 retail or wholesale outlet, including an auction or swap meet,
5 shall be presumptive evidence of possession with intent to sell.
6 This presumption shall not preclude a finding of possession with
7 intent to sell based upon any other evidence that may serve to
8 establish that intent.

9 (b) The act of obtaining an appraisal of ivory or
10 rhinoceros horn shall not, by itself, constitute possession with
11 intent to sell.

12 § -6 Personal possession and bequests. It shall not be
13 a violation of this chapter for a person to possess for personal
14 use or to transfer by bequest any lawfully imported and acquired
15 ivory or rhinoceros horn.

16 § -7 Penalties. (a) A person convicted of violating
17 this chapter shall be sentenced as follows for each offense:

18 (1) For the first offense, the person shall be guilty of a
19 misdemeanor and shall be fined the greater of \$1,000
20 or two times the total value of the ivory or



1 rhinoceros horn involved in the offense, sentenced to
2 a term of 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 the
5 greater of \$5,000 or two times the total value of the
6 ivory or rhinoceros horn involved in the offense,
7 sentenced to a term of imprisonment, or both.

8 (b) The penalties provided in this chapter are in addition
9 to any other penalties imposed under other law.

10 § -8 Search and seizure. Any officer or agent
11 authorized pursuant to this chapter shall have the authority to
12 conduct searches as provided by law and to seize any ivory or
13 rhinoceros horn and any related equipment or business records
14 found in violation of this chapter or other applicable law. Any
15 of the foregoing items so seized shall be held by the department
16 pending disposition of court proceedings. Upon conviction of
17 the person or persons from whom the seizure was made, the court
18 shall declare the items seized forfeited to the State. Such
19 items shall be destroyed or offered to an entity permitted by
20 law to possess the items for education or scientific activities.



1 § -9 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 § -10 Rules. The department may adopt rules in
5 accordance with chapter 91 to effectuate the requirements and
6 purposes of this 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;
17 provided that no enforcement actions shall be taken under this
18 Act until July 1, 2052.



Report Title:

Ivory; Rhinoceros Horn; Conservation

Description:

Prohibits ivory and rhinoceros horn sales and trade within the State, to be enforced by the Department of Land and Natural Resources. Establishes penalties. (HB837 HD1)

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