
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 threatened and Asian elephants are endangered due to ivory
3 trafficking at unprecedented levels, which has been driven by an
4 increase in consumer demand. According to the United States
5 Department of the Interior, illegal ivory trade activity,
6 including that involving newly-harvested ivory, has more than
7 doubled since 2007. More than 35,000 African elephants and
8 numerous Asian elephants were slaughtered in 2012 and it is
9 estimated that over forty-one tons of illegal ivory was
10 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. Additionally,
13 persistent trade in elephant ivory threatens other species with
14 ivory teeth and tusks and the rhinoceroses, which is targeted
15 for its prized horn. The piecemeal protection of one species
16 may redirect and accelerate slaughter and trade of other
17 species.



1 The legislature further finds that federal and
2 international measures have sought to protect elephants, other
3 ivory toothed and tusked animals, and the rhinoceros. These
4 include the federal Endangered Species Act of 1973, African
5 Elephant Conservation Act, Marine Mammal Protection Act, and the
6 Convention on International Trade in Endangered Species of Wild
7 Fauna and Flora, or CITES, which the United States adopted.

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

16 The legislature finds that the protection of animals with
17 ivory teeth and tusks and the rhinoceros is an important public
18 policy. Therefore, the purpose of this bill is to establish a
19 registry of ivory and rhinoceros horn items within the
20 department of land and natural resources. Registered items may
21 be sold, offered for sale, purchased, caused to be purchased, or



1 possessed with the intent to sell. Personal possession and
2 transfer by bequest of ivory and rhinoceros horn will not be
3 affected by the registry.

4 SECTION 2. Chapter 195D, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§195D- Registry of ivory and rhinoceros horn. (a) The
8 department shall establish a registry of ivory and rhinoceros
9 horn. Any person selling any ivory and rhinoceros horn items
10 shall first notify the department of the ivory and rhinoceros
11 horn item by providing information about the species and age of
12 each item. When notification to the department to register an
13 item is submitted more than three months after the registry
14 becomes effective, the person shall provide, in addition to
15 information about the species and age, documentation
16 demonstrating that the specific item satisfies, as applicable to
17 the species, the requirements of the federal Endangered Species
18 Act of 1973, African Elephant Conservation Act, Marine Mammal
19 Protection Act, and the Convention on International Trade in
20 Endangered Species of Wild Fauna and Flora, and any regulations
21 or guidance promulgated thereunder, for the intrastate sale and



1 purchase; provided that documentation establishing that the
2 article is a mammoth species shall be required for mammoth
3 ivory.

4 (b) Any person who sells or purchases, or causes to be
5 purchased, any ivory and rhinoceros horn shall possess a receipt
6 issued by the department indicating that the specific ivory or
7 rhinoceros horn was registered. The receipt and any related
8 documentation shall be transferred upon the sale or purchase of
9 the ivory or rhinoceros horn. The absence of a department-
10 issued receipt for the specific ivory or rhinoceros horn shall
11 give rise to a rebuttable presumption that the sale and the
12 purchase of the item is or was unlawful.

13 (c) If the registered ivory or rhinoceros horn is divided
14 into two or more pieces, then each piece shall be registered
15 with the department prior to be being sold. A copy of the
16 receipt for the initial registration shall accompany any later-
17 issued receipts for divided pieces.

18 (d) This section shall not apply to:

19 (1) Guns, knives, and musical instruments with a
20 composition of ivory or rhinoceros horn that is less
21 than twenty per cent by volume;



- 1 (2) Ivory or rhinoceros horn jewelry that can be
2 identified as Ming's jewelry; provided that such
3 jewelry must contain a legible marking identifying it
4 as Ming's jewelry;
- 5 (3) Personal use and possession of ivory or rhinoceros
6 horn;
- 7 (4) Bequests of ivory or rhinoceros horn; and
- 8 (5) Employees or agents of the federal or state government
9 undertaking any law enforcement activities pursuant to
10 federal or state law or any mandatory duties required
11 by federal or state law.
- 12 (e) Possession of any ivory or rhinoceros horn in a retail
13 or wholesale outlet, including an auction or swap meet, shall be
14 presumptive evidence of possession with intent to sell. This
15 presumption shall not preclude a finding of possession with
16 intent to sell based upon any other evidence that may serve to
17 establish that intent. The act of obtaining an appraisal of
18 ivory or rhinoceros horn shall not, by itself, constitute
19 possession with intent to sell.
- 20 (f) A person convicted of violating this section shall be
21 sentenced as follows for each offense:



1 (1) For the first offense, the person shall be guilty of a
2 misdemeanor and shall be fined the greater of \$1,000
3 or two times the total value of the ivory or
4 rhinoceros horn involved in the offense, sentenced to
5 a term of imprisonment, or both; and

6 (2) For any second or subsequent offense, the person shall
7 be guilty of a class C felony and shall be fined the
8 greater of \$5,000 or two times the total value of the
9 ivory or rhinoceros horn involved in the offense,
10 sentenced to a term of imprisonment, or both.

11 The penalties provided in this section are in addition to
12 any other penalties imposed under other law.

13 (g) Any officer or agent authorized pursuant to title 12
14 shall have the authority to conduct searches as provided by law
15 and to seize any ivory or rhinoceros horn and any related
16 equipment or business records found in violation of this chapter
17 or other applicable law. Any of the foregoing items so seized
18 shall be held by the department pending disposition of court
19 proceedings. Upon conviction of the person or persons from whom
20 the seizure was made, the court shall declare the items seized
21 forfeited to the State. Such items shall be destroyed or



1 offered to an entity permitted by law to possess the items for
2 education or scientific activities.

3 (h) Nothing in this chapter shall be construed to prohibit
4 or impair any civil or administrative action or penalty
5 available in law or equity.

6 (i) For purposes of this section, unless the context
7 otherwise requires:

8 "Ivory" means any tooth or tusk composed of ivory, or any
9 piece thereof, whether raw or worked, from any species of
10 elephant, hippopotamus, mammoth, narwhal, and walrus. "Ivory"
11 includes any product containing or advertised as containing
12 ivory.

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

14 "Rhinoceros horn" means the horn, any piece thereof, or any
15 derivative of the horn, such as powder, of any species of
16 rhinoceros. "Rhinoceros horn" includes any product containing
17 or advertised as containing any rhinoceros horn.

18 "Sale" or "sell" means all acts of selling, offering for
19 sale, possessing with intent to sell, trading, or bartering for
20 monetary or nonmonetary consideration, or distributing in the
21 consumer marketplace, including online and internet sales.



1 "Total value of the ivory or rhinoceros horn" means the
2 greater of the fair market value or the actual price paid for
3 the ivory or rhinoceros horn."

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

10 SECTION 4. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 5. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on March 15, 2038.



Report Title:

Ivory; Rhinoceros Horn; Conservation

Description:

Requires the Department of Land and Natural Resources to enforce and create a registry for ivory and rhinoceros horn items that are intended for sale or purchase within the State; provided the age and species of the items can be documented. Provides that only registered items can be sold or bought. Exempts personal possession, acquisition by inheritance, and certain items with an ivory content of less than twenty percent by volume from registration. (HB837 HD2)

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