

JAN 23 2015

A BILL FOR AN ACT

RELATING TO WILDLIFE PROTECTION.

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

1 SECTION 1. The legislature finds that the trafficking of
2 elephant ivory and rhinoceros horn has increased during recent
3 decades. In 2013, approximately forty-one tons of illegal ivory
4 was confiscated worldwide. Despite laws enacted to protect
5 endangered elephants, an average of thirty-five thousand African
6 elephants are slaughtered every year. If this poaching rate
7 continues, scientists expect elephants will become extinct
8 within the next few decades.

9 Furthermore, the ivory from other animal species, such as
10 hippopotamus, narwhal, walrus, and whale, is difficult to
11 distinguish visually from elephant ivory without a DNA analysis.
12 Thus, the protection of elephants may inadvertently draw
13 poachers to these animal species for their ivory teeth or tusks.
14 Ivory artifacts from prehistoric mammoths are also targets in
15 the ivory trade. Like the ivory products from hippopotamus,
16 narwhal, walrus, and whale, enforcement officials have
17 difficulty in visually distinguishing mammoth ivory from



1 elephant ivory. Lastly, the current worldwide population of
2 rhinoceroses living in the wild has decreased to twenty-nine
3 thousand. More than one thousand rhinoceroses in South Africa
4 were killed in 2013 for their horns. Therefore, the legislature
5 finds that the most effective way to prevent the illegal
6 trafficking of animal ivory and rhinoceros horn is to eliminate
7 the markets for and profits of wildlife traffickers.

8 An investigation sponsored by The Humane Society of the
9 United States and Humane Society International found that Hawaii
10 is the third highest retailer of elephant ivory in the United
11 States. Despite laws and regulations, 89 per cent of ivory sold
12 in Hawaii is likely illegal or of unknown origin. Since the
13 Convention on International Trade in Endangered Species has
14 banned the international sale of ivory from an African elephant
15 imported after 1990, fraudulent documents are used to circumvent
16 existing laws and regulations or documents make false claims
17 that the ivory predates 1990.

18 Wildlife and animal welfare experts agree that an effective
19 method to save the critically endangered elephant and rhinoceros
20 is to prohibit the intrastate sale of ivory or rhinoceros horn.



1 New York and New Jersey enacted legislation in August 2014 to
2 prohibit the sale of ivory and rhinoceros horn.

3 Furthermore, the legislature adopted S.C.R. No. 149, S.D. 1
4 (Regular Session of 2013), urging Hawaii residents and
5 businesses to comply with the Convention on International Trade
6 in Endangered Species of Wild Fauna and Flora and to not buy or
7 sell ivory of unknown origin. However, ivory of unknown origin
8 and age continues to be sold in Hawaii.

9 The purpose of this Act is to protect all species of
10 animals with ivory teeth and tusks and all rhinoceroses by
11 prohibiting the importation, sale, barter, or possession with
12 the intent to sell of any ivory, ivory product, rhinoceros horn,
13 or rhinoceros horn product.

14 SECTION 2. The Hawaii Revised Statutes is amended by
15 adding a new chapter to be appropriately designated and to read
16 as follows:

17 "CHAPTER

18 UNLAWFUL SALE OR TRADE OF IVORY OR RHINOCEROS HORN

19 § -1 Findings and purpose. The legislature finds that
20 African elephants are nearing extinction due to poachers who
21 supply elephant ivory for commercial sale, the high price of



1 ivory, and high consumer demand. Furthermore, the worldwide
2 population of all species of rhinoceros living in the wild has
3 decreased due to poachers killing rhinoceroses for their horns.
4 Despite laws and regulations prohibiting the sale of African
5 elephant ivory imported after 1990, much of the ivory sold in
6 Hawaii is likely illegal or of unknown origin. The legislature
7 finds it necessary to prohibit the sale of ivory products from a
8 range of animals having ivory teeth or tusks because it is
9 difficult to distinguish elephant ivory from ivory of another
10 animal species, and prohibit the sale of rhinoceros horn.

11 The purpose of this chapter is to take positive actions to
12 enhance prospects for the continued existence of African
13 elephants and other animal species with ivory teeth or tusks,
14 and rhinoceroses by establishing the offense of unlawful sale or
15 trade of ivory products or rhinoceros horn to prohibit any
16 person from selling or importing with the intent to sell any
17 ivory or rhinoceros horn, regardless of its age.

18 § -2 Definitions. As used in this chapter unless the
19 context otherwise requires:

20 "Bona fide educational or scientific institution" means an
21 institution that establishes through documentation:



1 (1) An educational or scientific tax exemption from the
2 Internal Revenue Service or the institution's
3 national, state, or local tax authority; or

4 (2) An accreditation as an educational or scientific
5 institution from a qualified national, regional,
6 state, or local authority, as applicable.

7 "Department" means the department of land and natural
8 resources.

9 "Distribution" means a transfer or change in possession
10 with an accompanying change in legal ownership.

11 "Ivory" means any tooth or tusk from any species of
12 wildlife, including but not limited to:

13 (1) All species of elephant;

14 (2) Hippopotamus;

15 (3) Mammoth;

16 (4) Walrus;

17 (5) Whale; or

18 (6) Narwhal;

19 or any piece thereof, whether raw or worked ivory. "Ivory"
20 includes any product containing or advertised as containing
21 ivory.



1 "Person" means the same as in section 711-1108.5.

2 "Rhinoceros horn" means the horn, any piece of the horn, or
3 any derivative of the horn, such as powder, of any species of
4 rhinoceros. "Rhinoceros horn" includes any product containing
5 or advertised as containing any rhinoceros horn.

6 "Sale" or "sell" means all acts of selling, trading, or
7 bartering for monetary or nonmonetary consideration or
8 distribution in the consumer marketplace, including internet
9 sales.

10 "Value of the ivory or rhinoceros horn" means the fair
11 market value of or actual price paid for the ivory or rhinoceros
12 horn, whichever is greater.

13 **§ -3 Unlawful sale or trade of ivory or rhinoceros horn.**

14 (a) A person commits the offense of unlawful sale or trade of
15 ivory or rhinoceros horn if the person sells, offers to sell,
16 possesses with the intent to sell, or imports with the intent to
17 sell any ivory or rhinoceros horn.

18 (b) It shall be presumptive evidence of possession with
19 the intent to sell when the ivory or rhinoceros horn is
20 possessed in a retail or wholesale outlet commonly used for the
21 buying or selling of ivory or rhinoceros horn. This presumption



1 shall not preclude a finding of intent to sell based on any
2 other evidence that may serve to independently to establish the
3 intent to sell.

4 (c) A person convicted of committing the offense of
5 unlawful sale or trade of ivory or rhinoceros horn shall be
6 sentenced as follows:

7 (1) For the first offense, the person shall be guilty of a
8 misdemeanor and shall be fined not less than \$1,000 or
9 an amount equal to two times the total value of the
10 ivory or rhinoceros horn involved in the offense,
11 whichever is greater, or the person may be sentenced
12 to a term of imprisonment, or both; and

13 (2) For any subsequent offense, the person shall be guilty
14 of a class C felony and shall be fined not less than
15 \$5,000 or an amount equal to two times the total value
16 of the ivory or rhinoceros horn involved in the
17 offense, whichever is greater, or the person may be
18 sentenced to a term of imprisonment, or both.

19 § -4 Exemptions. This chapter shall not apply to:

20 (1) Employees or agents of the federal or state government
21 undertaking any law enforcement activities pursuant to



1 federal or state law, or any mandatory duties required
2 by federal or state law;

3 (2) Persons importing ivory or rhinoceros horn, or any
4 activity, that is expressly authorized by federal law;
5 and

6 (3) Persons possessing a permit authorized by the
7 department to sell, offer to sell, possess with the
8 intent to sell, or import with the intent to sell any
9 ivory or rhinoceros horn for educational or scientific
10 purposes by a bona fide educational or scientific
11 institution, unless the sale or importation of ivory
12 or rhinoceros horn is prohibited by federal law or
13 regulation; provided that the ivory or rhinoceros horn
14 was legally acquired no later than July 1, 1990, and
15 was not subsequently transferred from one person to
16 another for financial gain or profit on or after
17 July 1, 2015.

18 § -5 Disposition of seized ivory and rhinoceros horn.

19 For a violation of this chapter, any seized ivory or rhinoceros
20 horn shall be subject to forfeiture pursuant to chapter 712A.
21 Ivory and rhinoceros horn seized and forfeited shall be



1 destroyed or offered to an institution possessing a permit from
2 the department for educational or scientific purposes pursuant
3 to section -4.

4 § -6 Remedies. Nothing in this chapter shall be
5 construed to prohibit or impair any civil or administrative
6 action or penalty available in law or equity.

7 § -7 Rules. The department shall adopt rules pursuant
8 to chapter 91 to effectuate the purposes of this chapter."

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 4. If any provision of this Act, or the
13 application thereof to any person or circumstance, is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act that can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

18 SECTION 5. This Act shall take effect on January 1, 2016.

19

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S.B. NO. 674

Report Title:

Animal Cruelty; Import and Sale of Ivory and Rhinoceros Horn;
Prohibitions; Penalties

Description:

Establishes the offense of the unlawful sale or trade of ivory or rhinoceros horn for any person who sells, offers to sell, possesses with the intent to sell, or imports with the intent to sell any ivory or rhinoceros horn. Creates exemptions for the sale or trade of ivory or rhinoceros horn. Effective 01/01/16.

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