

JAN 22 2016

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# 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, eighty-nine per cent of  
12 ivory sold in Hawaii is likely illegal or of unknown origin.  
13 Since the Convention on International Trade in Endangered  
14 Species has banned the international sale of ivory from an  
15 African elephant imported after 1990, fraudulent documents are  
16 used to circumvent existing laws and regulations or documents  
17 make false claims 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.  
21 New York and New Jersey enacted legislation in August 2014 to



1 prohibit the sale of ivory and rhinoceros horn. California and  
2 Washington enacted similar legislation in October and November  
3 2015, respectively.

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

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

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

18 "CHAPTER

19 UNLAWFUL SALE OR TRADE OF IVORY OR RHINOCEROS HORN

20 § -1 Findings and purpose. The legislature finds that  
21 African elephants are nearing extinction due to poachers who



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

12 The legislature notes that ownership of private personal  
13 collections of existing ivory is not prohibited by this chapter,  
14 and owners may give privately owned ivory to family as  
15 heirlooms, provided that owners do not sell privately owned  
16 existing ivory. Additionally, this chapter is not intended to  
17 and shall not be construed to preclude or diminish the rights,  
18 customarily and traditionally exercised for subsistence,  
19 cultural, and religious purposes, exercised by native Hawaiians  
20 pursuant to article XII, section 7, of the state constitution,



1 including but not limited to the carving of whale and walrus  
2 bones.

3 The purpose of this chapter is to take positive actions to  
4 enhance prospects for the continued existence of African  
5 elephants and other animal species with ivory teeth or tusks,  
6 and rhinoceroses by establishing the offense of unlawful sale or  
7 trade of ivory products or rhinoceros horn to prohibit any  
8 person from selling or importing with the intent to sell any  
9 ivory or rhinoceros horn, regardless of its age.

10 § -2 **Definitions.** As used in this chapter unless the  
11 context otherwise requires:

12 "Bona fide educational or scientific institution" means an  
13 institution that establishes through documentation:

- 14 (1) An educational or scientific tax exemption from the  
15 Internal Revenue Service or the institution's  
16 national, state, or local tax authority; or  
17 (2) An accreditation as an educational or scientific  
18 institution from a qualified national, regional,  
19 state, or local authority, as applicable.

20 "Department" means the department of land and natural  
21 resources.



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1 "Distribution" means a transfer or change in possession  
2 with an accompanying change in legal ownership.

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

- 5 (1) All species of elephant;
- 6 (2) Hippopotamus;
- 7 (3) Mammoth;
- 8 (4) Walrus;
- 9 (5) Whale; or
- 10 (6) Narwhal;

11 or any piece thereof, whether raw or worked ivory. "Ivory"  
12 includes any product containing or advertised as containing  
13 ivory.

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

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

19 "Sale" or "sell" means all acts of selling, trading, or  
20 bartering for monetary or nonmonetary consideration or



1 distribution in the consumer marketplace, including internet  
2 sales.

3 "Value of the ivory or rhinoceros horn" means the fair  
4 market value of or actual price paid for the ivory or rhinoceros  
5 horn, whichever is greater.

6 § -3 Unlawful sale or trade of ivory or rhinoceros horn.

7 (a) A person commits the offense of unlawful sale or trade of  
8 ivory or rhinoceros horn if the person sells or trades, offers  
9 to sell or trade, possesses with the intent to sell or trade, or  
10 imports with the intent to sell or trade any ivory or rhinoceros  
11 horn.

12 (b) It shall be presumptive evidence of possession with  
13 the intent to sell or trade when the ivory or rhinoceros horn is  
14 possessed in a retail or wholesale outlet commonly used for the  
15 buying or selling of ivory or rhinoceros horn. This presumption  
16 shall not preclude a finding of intent to sell or trade based on  
17 any other evidence that may serve to independently to establish  
18 the intent to sell or trade.

19 (c) A person convicted of committing the offense of  
20 unlawful sale or trade of ivory or rhinoceros horn shall be  
21 sentenced as follows:



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

7           (2) For any subsequent offense, the person shall be guilty  
8           of a class C felony and shall be fined not less than  
9           \$5,000 or an amount equal to two times the total value  
10          of the ivory or rhinoceros horn involved in the  
11          offense, whichever is greater, or the person may be  
12          sentenced to a term of imprisonment, or both.

13          § -4 **Exemptions.** This chapter shall not apply to:

14          (1) Employees or agents of the federal or state government  
15          undertaking any law enforcement activities pursuant to  
16          federal or state law, or any mandatory duties required  
17          by federal or state law;

18          (2) Persons importing ivory or rhinoceros horn, or any  
19          activity, that is expressly authorized by federal law;  
20          and





1           (3) Persons possessing a permit authorized by the  
2           department to sell or trade, offer to sell or trade,  
3           possess with the intent to sell or trade, or import  
4           with the intent to sell or trade any ivory or  
5           rhinoceros horn for educational or scientific purposes  
6           by a bona fide educational or scientific institution,  
7           unless the sale, trade, or importation of ivory or  
8           rhinoceros horn is prohibited by federal law or  
9           regulation; provided that the ivory or rhinoceros horn  
10          was legally acquired no later than July 1, 1990, and  
11          was not subsequently transferred from one person to  
12          another for financial gain or profit on or after  
13          July 1, 2018.

14          §   -5   Disposition of seized ivory and rhinoceros horn.  
15   For a violation of this chapter, any seized ivory or rhinoceros  
16   horn shall be subject to forfeiture pursuant to chapter 712A.  
17   Ivory and rhinoceros horn seized and forfeited shall be  
18   destroyed or offered to an institution possessing a permit from  
19   the department for educational or scientific purposes pursuant  
20   to section     -4.



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1           §   -6 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           §   -7 Rules. The department shall adopt rules pursuant  
 5 to chapter 91 to effectuate the purposes of this chapter."

6           SECTION 3. This Act does not affect rights and duties that  
 7 matured, penalties that were incurred, and proceedings that were  
 8 begun before its effective date.

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

15           SECTION 5. This Act shall take effect on July 1, 2018.

16

INTRODUCED BY: Will Eyero

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# S.B. NO. 2189

**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 or trades, offers to sell or trade, possesses with the intent to sell or trade, or imports with the intent to sell or trade any ivory or rhinoceros horn. Creates certain exemptions for the sale or trade of ivory or rhinoceros horn. Effective 07/01/18.

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