

ACT 125

S.B. NO. 2647

A Bill for an Act Relating to Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the trafficking of animals threatened with extinction continues to grow at an alarming pace, threatening an increasing variety of animal species. The threat of extinction is due in large part to the trafficking of animal parts and products. The National Strategy for Combating Wildlife Trafficking, released in February 2014, recognized the important role that states have in protecting species that are subject to illegal wildlife trade. Federal law regulates the transfer and importation of parts or products made from endangered and threatened animal species, but due to the increasing demand for these products around the world, it is important to align state authority with federal and international laws to appropriately regulate these markets on a local level.

The legislature further finds that the most effective way to discourage illegal trafficking is to eliminate markets and profits. It is in the public interest to protect animal species threatened with extinction by prohibiting within the State, with certain limited exceptions, the sale, offer for sale, purchase, trade, possession with intent to sell, or barter for any part or product of any species of elephant (Elephantidae), mammoth (Mammuthus), rhinoceros (Rhinocerotidae), tiger (Panthera tigris), great ape (Hominoidea), shark and ray (Elasmobranchii), sea turtle (Chelonioidae), walrus (Odobenus rosmarus), narwhal (Monodon monoceros), whale (Cetacea), hippopotamus (Hippopotamus amphibius), monk seal (Neomonachus), lion (Panthera leo), pangolin (Manis), cheetah (Acinonyx jubatus), jaguar (Panthera onca), and leopard (Panthera pardus) identified as threatened with extinction by the Convention on International Trade in Endangered Species and the Endangered Species Act. These animals represent some of the most trafficked species threatened with extinction according to illegal wildlife product seizure data gathered by the World Wildlife Fund-TRAFFIC, International Union for the Conservation of Nature, and other international conservation organizations.

The legislature further finds that in September 2015, the United States and China announced a cooperative effort to take comprehensive action to curb wildlife trafficking, including significant restrictions on the import of ivory as hunting trophies and halting the domestic commercial trade of ivory. As the host of the upcoming International Union for the Conservation of Nature World Conservation Congress with the United States in September 2016, it is important to demonstrate Hawaii's continuing leadership in global conservation challenges such as international wildlife trafficking and endangered species protection.

The purpose of this Act is to improve coordination between state and other government authorities as encouraged in section 183D-8, Hawaii Revised Statutes, and to remove any potential conflicts of law that unintentionally make Hawaii an attractive market for illegal wildlife trafficking as other countries and states pass legislation to protect global populations of endangered species.

SECTION 2. Chapter 183D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§183D- Wildlife trafficking; prohibited. (a) No person shall sell, offer to sell, purchase, trade, possess with intent to sell, or barter for any part or product from the following animal family, genus, or species: elephant (Elephantidae),

rhinoceros (*Rhinocerotidae*), tiger (*Panthera tigris*), great ape (*Hominoidea*), hippopotamus (*Hippopotamus amphibius*), lion (*Panthera leo*), pangolin (*Manis*), cheetah (*Acinonyx jubatus*), jaguar (*Panthera onca*), or leopard (*Panthera pardus*).

(b) Unless otherwise authorized by federal law including the Marine Mammal Protection Act, 16 United States Code, chapter 31, no person shall sell, offer to sell, purchase, trade, possess with intent to sell, or barter for any part or product from the following marine family, genus, or species: sea turtle (*Chelonioidae*), monk seal (*Neomonachus*), narwhal (*Monodon monoceros*), whale (*Cetacea*), or walrus (*Odobenus rosmarus*) insofar as the species, subspecies, or distinct population segment is listed:

(1) On appendix I or II of the Convention on International Trade in Endangered Species; or

(2) As endangered or threatened under the Endangered Species Act.

(c) Unless otherwise authorized by federal law including the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. section 1851 et seq.) as amended, no person shall sell, offer to sell, purchase, trade, possess with intent to sell, or barter for any part or product from rays and sharks (*Elasmobranchii*) insofar as the species is listed:

(1) On appendix I of the Convention on International Trade in Endangered Species; or

(2) As endangered or threatened under the Endangered Species Act.

(d) No person shall sell, offer to sell, purchase, trade, possess with intent to sell, or barter for any part or product from mammoth (*Mammuthus*), although the species is extinct.

(e) To the extent permitted under federal law, none of the prohibitions set forth in this section shall apply if:

(1) The covered animal species part or product is part of a bona fide antique; provided that:

(A) The antique status of such a part or product is established by the owner or seller thereof with historical documentation showing the antique to be not less than one hundred years old;

(B) The covered animal species part or product is less than twenty per cent by volume of such an antique; and

(C) The covered animal species part or product is a fixed component or components of a larger manufactured item and is not, in its current form, the primary source of value of the item;

(2) The distribution of the covered animal species part or product is:

(A) For a bona fide educational or scientific purpose; or

(B) To or from a museum;

(3) The distribution of the covered animal species part or product is to a legal beneficiary of an estate, trust, or other inheritance;

(4) The covered animal species part or product is less than twenty per cent by volume of a gun, knife, or musical instrument, including without limitation string instruments and bows, wind and percussion instruments, and pianos, if the owner or seller provides historical documentation showing the item was manufactured no later than 1975 and the covered animal species part or product is a fixed component or components of a larger manufactured item and is not, in its current form, the primary source of value of the item;

(5) The sale, offer for sale, purchase, trade, possess with intent to sell or barter of the covered animal species part or product is expressly authorized by federal law or permit; or

(6) The activity is authorized under section 183D-6.

(f) There is established a rebuttable presumption of possession with intent to sell a covered animal species part or product when the part or product is possessed by a retail or wholesale establishment or other forum engaged in the business of buying or selling similar items. This rebuttable presumption shall not preclude a finding of intent to sell based on any other evidence that may serve to independently establish such intent.

(g) None of the prohibitions set forth in this section shall apply to traditional cultural practices expressly protected under article XII, section 7, of the state constitution.

(h) For the purposes of this section, “covered animal species part or product” means any item that contains, or is wholly or partially made from, any covered animal species.

(i) The department of land and natural resources may adopt rules pursuant to chapter 91, as needed, to further implement or enforce this section.”

SECTION 3. Section 183D-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person violating section 183D-, 183D-25.5, 183D-26, 183D-27, 183D-32, 183D-62, or 183D-64 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction by a mandatory fine of not less than \$200, or by imprisonment of not more than one year, or both;
- (2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than \$1,000, or by imprisonment of not more than one year, or both, and all firearms, animal parts, products, or items containing prohibited animal parts or products used in the commission of the violations shall be considered contraband to be forfeited to and disposed of by the State; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than \$2,000, or by imprisonment of not more than one year, or both, and all firearms, animal parts, products, or items containing prohibited animal parts or products used in the commission of the violations shall be considered contraband to be forfeited to and disposed of by the State.”

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

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

SECTION 6. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval; provided that there shall be no enforcement actions pursuant to this Act prior to June 30, 2017.

(Approved June 23, 2016.)

Note

1. Edited pursuant to HRS §23G-16.5.