

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. Despite laws enacted to protect endangered elephants,  
4 an average of thirty-five thousand African elephants are  
5 slaughtered every year and are near extinction. Asian elephants  
6 are also severely threatened by ivory trafficking. If poaching  
7 rates continue, scientists expect that elephants will become  
8 extinct within the next few decades.

9       The legislature further finds that ivory from other animal  
10 species, such as hippopotamus, narwhal, walrus, and whale, may  
11 be difficult to distinguish visually from elephant ivory without  
12 further analysis. Ivory artifacts from prehistoric mammoths and  
13 mastodons are used in the ivory trade and enforcement officials  
14 have difficulty in visually distinguishing mammoth and mastodon  
15 ivory from other types of ivory. Additionally, the current  
16 worldwide population of rhinoceroses living in the wild has  
17 decreased to twenty-nine thousand. More than one thousand



1 rhinoceroses in South Africa were killed in 2013 for their  
2 horns. Therefore, the legislature finds that the most effective  
3 way to prevent the illegal trafficking of animal ivory and  
4 rhinoceros horn is to eliminate the markets for and profits of  
5 wildlife traffickers.

6 An investigation conducted by Save the Elephants and Care  
7 for the Wild International found that Hawaii is the third  
8 leading retailer of elephant ivory in the United States behind  
9 New York and California. Despite federal laws and regulations,  
10 this investigation found that eighty-nine per cent of ivory sold  
11 in Hawaii is of unknown or likely illegal origin. Since the  
12 Convention on International Trade in Endangered Species banned  
13 the international sale of ivory from an African elephant  
14 imported after 1990, fraudulent documents are used in an attempt  
15 to circumvent existing laws and regulations.

16 Wildlife and animal welfare experts agree that an effective  
17 method to save the critically endangered elephant and rhinoceros  
18 is to prohibit the intrastate sale of ivory or rhinoceros horn.  
19 In 2014 and 2015, New York, New Jersey, California, and  
20 Washington enacted laws to prohibit the sale of most ivory and  
21 rhinoceros horn.



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

7           The legislature concludes that the protection of animals  
8   with ivory teeth and tusks and rhinoceros is an important public  
9   policy necessitating the prohibition of the sale and trade of  
10   their derivative products in Hawaii. Personal possession and  
11   transfer by bequest of lawfully acquired ivory and rhinoceros  
12   horn will continue to be permitted.

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

18          SECTION 2. The Hawaii Revised Statutes is amended by  
19   adding a new chapter to be appropriately designated and to read  
20   as follows:



## 1 "CHAPTER

## 2 UNLAWFUL SALE OR TRADE OF IVORY OR RHINOCEROS HORN

3 § -1 Findings and purpose. The legislature finds that  
4 African elephants are nearing extinction and Asian elephants are  
5 severely threatened because of poachers who supply elephant  
6 ivory for commercial sale, the high price of ivory, and high  
7 consumer demand. Furthermore, the worldwide population of all  
8 species of rhinoceros living in the wild has decreased because  
9 of poachers killing rhinoceroses for their horns. The  
10 legislature finds it necessary to prohibit the sale of ivory  
11 products from a range of animals having ivory teeth or tusks  
12 because it is difficult to distinguish elephant ivory from ivory  
13 of another animal species, and to prohibit the sale of  
14 rhinoceros horn and rhinoceros horn product.

15 The purpose of this chapter is to take positive actions to  
16 enhance prospects for the continued existence of elephants and  
17 other wildlife species with ivory teeth or tusks as well as  
18 rhinoceroses by establishing the offense of unlawful sale or  
19 trade of ivory products, rhinoceros horn, or rhinoceros horn  
20 product and to prohibit any person from selling or importing



1 with the intent to sell any ivory products, rhinoceros horn, or  
2 rhinoceros horn product, with certain exceptions.

3       **§ -2 Definitions.** As used in this chapter unless the  
4 context otherwise requires:

5       "Bona fide educational or scientific institution" means an  
6 institution that establishes through documentation:

- 7       (1) An educational or scientific tax exemption from the  
8           Internal Revenue Service or the institution's  
9           national, state, or local tax authority; or  
10       (2) An accreditation as an educational or scientific  
11           institution from a qualified national, regional,  
12           state, or local authority, as applicable.

13       "Department" means the department of land and natural  
14 resources.

15       "Distribution" means a transfer or change in possession  
16 with an accompanying change in legal ownership.

17       "Ivory" means any tooth or tusk or part of a tooth or tusk  
18 from:

- 19       (1) Any species of elephant;  
20       (2) A hippopotamus;  
21       (3) A mammoth or mastodon;



(4) A walrus;

(5) A whale; or

(6) A narwhal,

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

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

"Rhinoceros horn" means the horn, any piece of the horn, or any derivative of the horn, such as powder, of any species of rhinoceros, whether raw or worked. "Rhinoceros horn" includes any product containing or advertised as containing any rhinoceros horn.

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

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

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

(a) Except as provided in subsections (b) and (d), a person shall not import, purchase, sell, offer for sale, possess



1 with intent to sell, import with intent to sell, or export with  
2 intent to sell ivory or rhinoceros horn.

3 (b) The prohibitions set forth in subsection (a) shall not  
4 apply to:

5 (1) An employee or agent of the federal or state  
6 government undertaking a law enforcement activity  
7 pursuant to federal or state law, or a mandatory duty  
8 required by federal law;

9 (2) Any activity that is expressly authorized by federal  
10 law; and

11 (3) Ivory that is part of a bona fide antique if:

12 (A) The ivory is pre-Convention (removed from the  
13 wild prior to February 26, 1976 - the date the  
14 African elephant was first listed under the  
15 Convention on International Trade in Endangered  
16 Species) if it is elephant ivory;

17 (B) The ivory or rhinoceros horn is a fixed component  
18 or components of a larger manufactured item and  
19 is not, in its current form, the primary source  
20 of value of the item;



(C) The total weight of the ivory or rhinoceros horn component or components is less than 200 grams;

(D) The manufactured item is not made wholly or primarily of ivory or rhinoceros horn;

(E) The ivory is not raw; and

(F) The owner or seller provides historical documentation demonstrating provenance and showing that the item is not less than one hundred years old if it is an antique.

(c) It shall be presumptive evidence of possession with intent to sell ivory or rhinoceros horn if the ivory or rhinoceros horn is possessed in a retail or wholesale outlet commonly used for the buying or selling of similar items. This presumption shall not preclude a finding of intent to sell based on any other evidence that may serve to independently establish that intent. The act of obtaining an appraisal of ivory or rhinoceros horn shall not, by itself, constitute possession with intent to sell.

(d) Nothing contained in this section shall be construed to prohibit:





- (1) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution;
- (2) Private possession of ivory or rhinoceros horn not intended for sale;
- (3) Lawful conveyances of ivory or rhinoceros horn as part of a family inheritance, will, estate, or trust; and
- (4) The sale or trade of any teeth or tusk from species not specified in subsection (a), including *sus scrofa*.

**§ -4 Penalties.** A person convicted of committing the offense of unlawful sale or trade of ivory or rhinoceros horn shall be sentenced as follows:

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



1           \$5,000 or an amount equal to two times the total value  
2           of the ivory or rhinoceros horn involved in the  
3           offense, whichever is greater, or may be sentenced to  
4           a term of imprisonment, or both.

5           **§ -5 Search and seizure; disposition of seized ivory and**  
6 **rhinoceros horn.** Any officer or agent authorized pursuant to  
7 this chapter shall have the authority to conduct searches as  
8 provided by law and to seize any ivory or rhinoceros horn and  
9 any related equipment or business records found in violation of  
10 this chapter or other applicable law. Any of the foregoing  
11 items so seized shall be held by the department pending  
12 disposition of court proceedings. Upon conviction of the person  
13 or persons from whom the seizure was made, the court shall  
14 declare the seized items forfeited to the State. The items  
15 shall be destroyed or offered to a bona fide educational or  
16 scientific institution permitted by law to possess the items for  
17 education or scientific activities.

18           **§ -6 Remedies.** Nothing in this chapter shall be  
19 construed to prohibit or impair any civil or administrative  
20 action or penalty available in law or equity.



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

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

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

12        SECTION 5. This Act shall take effect on July 1, 2018;  
13 provided that upon its enactment, the department of land and  
14 natural resources may take steps necessary to prepare for  
15 implementation of this Act on July 1, 2018.

16        INTRODUCED BY:

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# S.B. NO. 2643

**Report Title:**

Wildlife protection; 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.

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