
A BILL FOR AN ACT

RELATING TO THE PENAL CODE.

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

1 SECTION 1. The legislature finds that African elephants
2 are nearing extinction due to the high price of ivory, driven by
3 growing consumer demand. Since 1978, the African elephant has
4 been listed as threatened under the Endangered Species Act of
5 1973, title 16 U.S.C.A section 1531 et seq., and trade in
6 elephant ivory continues to jeopardize their existence.

7 In March 2013, one hundred seventy-eight nations attended
8 the sixteenth meeting of the Convention on International Trade
9 in Endangered Species of Wild Fauna and Flora, where it was
10 documented that elephant slaughter has reached crisis
11 proportions. Wildlife scientists state that the black market
12 trade of ivory through internet sales is skyrocketing throughout
13 the world, including in the United States. In 2012,
14 approximately thirty-five thousand African elephants were
15 slaughtered by poachers, criminal syndicates, and terrorist
16 groups, who were intent on selling their ivory.

17 Ivory trafficking is at the highest recorded rate ever. It
18 is estimated that over forty-one tons of illegal ivory have been



1 confiscated worldwide this year. Scientists believe the
2 population of elephants cannot withstand this slaughter and the
3 species may become extinct in less than twenty years.

4 The legislature further finds that the Convention on
5 International Trade in Endangered Species of Wild Fauna and
6 Flora, adopted by the United States, banned the international
7 trade of African elephant ivory in 1990. Under current law,
8 African elephant ivory may be sold legally in Hawaii if it was
9 imported before 1990 or is at least one hundred years old at the
10 time of import and has not been altered since. An investigation
11 supported by The Humane Society of the United States and Humane
12 Society International found that Hawaii is the third highest
13 retailer of elephant ivory in the United States, behind only
14 California and New York. Despite federal laws, eighty-nine per
15 cent of ivory sold in Hawaii is likely illegal or of unknown
16 origin. Often, fraudulent documents are used to take advantage
17 of existing law and falsely claim the ivory predates 1990.

18 The legislature additionally finds that wildlife and animal
19 welfare experts agree that the only way to save the critically
20 endangered elephants is to prohibit the sale of ivory. The
21 legislature unanimously adopted Senate Concurrent Resolution No.
22 149, S.D. 1, regular session of 2013, urging Hawaii residents



1 and businesses to comply with the Convention on International
2 Trade in Endangered Species of Wild Fauna and Flora and not to
3 buy or sell ivory of unknown origin. Despite this notice, ivory
4 of unknown origin and age continues to be sold in Hawaii.
5 Furthermore, it is usually impossible to determine the age of
6 ivory or to distinguish elephant ivory from ivory of another
7 species, except by laboratory examination by scientific experts.

8 The purpose of this Act is to establish the offense of
9 unlawful sale or trade of ivory products to prohibit any person,
10 trust or estate, or business, firm, partnership, or other legal
11 entity from importing, selling, offering to sell, or possessing
12 with intent to sell, any ivory product, regardless of age, from
13 elephants, hippopotamuses, walruses, whales, and narwhals.

14 SECTION 2. The Hawaii Revised Statutes is amended by
15 adding a new chapter to title 37 to be appropriately designated
16 and to read as follows:

17 "CHAPTER

18 UNLAWFUL SALE OR TRADE OF IVORY PRODUCTS

19 § -1 Findings and purpose. The legislature finds that
20 African elephants are nearing extinction due to the high price
21 of ivory and consumer demand. Since 1978, the African elephant
22 has been listed as threatened under the Endangered Species Act



1 of 1973, title 16 U.S.C.A section 1531 et seq. Nevertheless,
2 trade in elephant ivory continues to jeopardize their existence
3 and elephants are slaughtered by poachers intent on supplying
4 their ivory for commercial sale.

5 Despite current law 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, and often
8 fraudulent documents are used to falsely claim the ivory
9 predates 1990. As it is nearly impossible, without laboratory
10 examination by scientific experts, to determine the age of ivory
11 or to distinguish elephant ivory from ivory of another species,
12 the legislature finds it necessary to ban the sale of ivory
13 products from a range of animals having ivory teeth and tusks.

14 The purpose of this chapter is to ensure the continued
15 existence of African elephants and other animals that have ivory
16 teeth or tusks by taking positive actions to enhance prospects
17 for their survival by establishing the offense of unlawful sale
18 or trade of ivory products to prohibit any person, trust or
19 estate, or business, firm, partnership, or other legal entity
20 from importing, selling, offering to sell, or possessing with
21 intent to sell any ivory product, regardless of the age of the



1 ivory, from elephants, hippopotamuses, walruses, whales, or
2 narwhals.

3 **§ -2 Definitions.** As used in this chapter:

4 "Ivory product" means any product, regardless of age,
5 containing or advertised as containing raw or worked ivory teeth
6 or tusks from any of the following species of wildlife:

- 7 (1) Elephants;
- 8 (2) Hippopotamuses;
- 9 (3) Walruses;
- 10 (4) Whales; and
- 11 (5) Narwhals.

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

13 "Sale" or "sell" means all acts of selling, trading, or
14 bartering for monetary or nonmonetary consideration, including
15 online and internet sales.

16 **§ -3 Unlawful sale or trade of ivory products.** (1) A
17 person commits the offense of unlawful sale or trade of ivory
18 products if the person imports, sells, offers to sell, or
19 possesses with intent to sell any ivory product.

20 The act of obtaining an appraisal of the ivory product
21 alone shall not constitute possession with intent to sell.



1 (2) A person convicted of committing the offense of
2 unlawful sale or trade of ivory products shall be sentenced as
3 follows for each offense:

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

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

16 (3) This section shall not apply to:

17 (a) Employees or agents of the federal government
18 undertaking any law enforcement activities pursuant to
19 federal law or any mandatory duties required by
20 federal law; or



1 (b) The import of ivory products expressly authorized by
2 federal license or permit.

3 (4) For the purposes of this section, "total value of the
4 ivory products" means the fair market value of the ivory
5 products or the actual price paid for the ivory products,
6 whichever is greater.

7 § -4 **Disposition of seized ivory products.** Upon
8 conviction or other entry of judgment for a violation of this
9 chapter, any seized ivory products shall be subject to
10 forfeiture pursuant to chapter 712A. Ivory products seized and
11 forfeited may be destroyed or offered to an entity possessing a
12 permit for educational or scientific activities.

13 § -5 **Remedies.** Nothing in this chapter shall be
14 construed to prohibit or impair any civil or administrative
15 action or penalty available in law or equity."

16 SECTION 3. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



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

4 SECTION 5. This Act shall take effect on January 1, 2015.



Report Title:

Animal Welfare; Import and Sale of Ivory; Elephants

Description:

Establishes the offense of unlawful sale or trade of ivory products to prohibit any person, trust or estate, or business, firm, partnership, or other legal entity from importing, selling, offering to sell, or possessing with intent to sell any ivory product. Establishes a first violation as a misdemeanor and a second or subsequent violation as a class C felony. Effective January 1, 2015. (HB2183 HD1)

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