

JAN 15 2014

S.B. NO. 2024

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. In March 2013, one hundred seventy-
4 eight nations attended the Convention on International Trade in
5 Endangered Species, where it was documented that elephant
6 slaughter has reached crisis proportions unheard of in two
7 decades. Wildlife scientists state that the black market trade
8 of ivory through internet sales is skyrocketing throughout the
9 world, including in the United States. In 2012, approximately
10 thirty-five thousand African elephants were slaughtered by
11 poachers, criminal syndicates, and terrorist groups, who were
12 intent on selling their ivory, and ivory trafficking is at the
13 highest recorded rate ever. It is estimated that over forty-one
14 tons of illegal ivory have been confiscated worldwide this year.
15 Scientists believe the population of elephants cannot withstand
16 this slaughter and these species may become extinct in less than
17 twenty years.



1 The legislature further finds that the Convention on
2 International Trade in Endangered Species of Wild Fauna and
3 Flora, adopted by the United States, banned the international
4 trade of African ivory in 1989. African ivory is legally sold
5 in Hawaii if it was imported before 1989 or is at least one
6 hundred years old at the time of import and has not been altered
7 since. An investigation supported by The Humane Society of the
8 United States and Humane Society International found that Hawaii
9 is the third highest retailer of elephant ivory in the United
10 States, behind only California and New York. Despite federal
11 laws, eighty-nine per cent of ivory sold in Hawaii is likely
12 illegal or of unknown origin.

13 The legislature additionally finds that wildlife and animal
14 welfare experts agree that the only way to save the critically
15 endangered elephants is to prohibit the sale of ivory. The
16 legislature unanimously adopted S.C.R. No. 149, S.D. 1, regular
17 session of 2013, urging Hawaii residents and businesses to
18 comply with the Convention on International Trade in Endangered
19 Species of Wild Fauna and Flora and not to buy or sell ivory of
20 unknown origin. Despite this notice, ivory of unknown origin
21 continues to be sold in Hawaii. Furthermore, it is impossible



1 to distinguish elephant ivory from ivory of another species,
2 except by laboratory exam by scientific experts.

3 The purpose of this Act is to prohibit any person, firm,
4 partnership, or corporation from importing, selling, offering to
5 sell, or possessing with intent to sell, any ivory product.

6 SECTION 2. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated and to read
8 as follows:

9 **"CHAPTER**

10 **IVORY PRODUCTS**

11 **§ -1 Findings and purpose.** The legislature finds that
12 African elephants are nearing extinction due to the high price
13 of ivory and consumer demand. Elephants are slaughtered by
14 poachers intent on selling their ivory.

15 The purpose of this chapter is to ensure the continued
16 perpetuation of African elephants as members of ecosystems by
17 taking positive actions to enhance prospects for the survival of
18 African elephants.

19 **§ -2 Definitions.** As used in this chapter:

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



1 "Ivory product" means any product containing or advertised
2 as containing raw or worked ivory teeth or tusks from any
3 species of wildlife, including but not limited to all species of
4 elephants, hippopotamuses, walruses, whales, and narwhals.

5 "Sale" or "sell" means all acts of selling, trading, or
6 bartering for monetary or nonmonetary consideration, including
7 online and internet sales.

8 **§ -3 Prohibitions relating to the sale of ivory;**

9 **exceptions.** (1) Except as provided in this section, it shall
10 be unlawful for any person to import, sell, offer to sell, or
11 possess with intent to sell any ivory product.

12 (2) It shall be presumptive evidence of possession with
13 intent to sell when ivory products are possessed in a retail or
14 wholesale outlet, including auctions or swap meets. This
15 presumption shall not preclude a finding of intent to sell based
16 on any other evidence that may serve to independently establish
17 such intent.

18 (3) The prohibitions set forth in subsection (1) shall not
19 apply to employees or agents of the federal government
20 undertaking any law enforcement activities pursuant to federal
21 law or any mandatory duties required by federal law.



1 (4) The prohibition on import set forth in subsection (1)
2 shall not apply where the import is expressly authorized by
3 federal license or permit.

4 (5) The department may permit, under such terms and
5 conditions as it may prescribe, the import, sale, offer for
6 sale, or possession with intent to sell, any ivory product for
7 educational or scientific purposes, unless such activity is
8 prohibited by federal law or regulation.

9 **§ -4 Penalties.** (1) Any person who violates this
10 chapter or any rule or order adopted pursuant to this chapter
11 shall be penalized as follows:

12 (a) Any person who violates this chapter is guilty of a
13 misdemeanor and shall be subject to a fine of not less
14 than \$1,000 or an amount equal to two times the total
15 value of the ivory products involved in the violation,
16 whichever is higher, or by both imprisonment and fine,
17 for each violation.

18 (b) For a second offense, the violation shall be a class C
19 felony and shall be subject to a fine of not less than
20 \$5,000 or an amount equal to two times the total value
21 of the ivory products involved in the violation,



1 whichever is higher, or by both imprisonment and fine,
2 for each violation.

3 (2) In addition to any criminal penalty provided for under
4 subsection (1), a civil or administrative fine in an amount not
5 to exceed two times the total value of the ivory products
6 involved in the violation may be imposed for a violation of this
7 section or any rule or order adopted pursuant to this section.

8 (3) For the purposes of this section, "total value of the
9 ivory products" means the fair market value of the ivory
10 products or the actual price paid for the ivory products,
11 whichever is greater.

12 **§ -5 Disposition of seized ivory products.** Upon
13 conviction or other entry of judgment for a violation of this
14 chapter, any seized ivory products shall be forfeited and either
15 destroyed or offered to an entity possessing a permit for
16 educational or scientific activities."

17 SECTION 3. The department of land and natural resources
18 may adopt rules pursuant to chapter 91, Hawaii Revised Statutes,
19 necessary to implement and administer this Act.

20 SECTION 4. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

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

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INTRODUCED BY:

Chris Hee



S.B. NO. 2024

Report Title:

Animal Welfare; Import and Sale of Ivory; Elephants

Description:

Prohibits any person, firm, partnership, or corporation 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 violation as a class C felony.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

