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## A BILL FOR AN ACT

RELATING TO THE CONSERVATION OF ANIMALS.

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

1           SECTION 1. The legislature finds that African elephants  
2 are near extinction and Asian elephants are severely threatened  
3 due to ivory trafficking at unprecedented levels, which has been  
4 driven by an increase in consumer demand. According to the  
5 United States Department of the Interior, illegal ivory trade  
6 activity, including that involving newly-harvested ivory, has  
7 more than doubled since 2007. More than 35,000 African  
8 elephants and numerous Asian elephants were slaughtered in 2012  
9 and it is estimated that over forty-one tons of illegal ivory  
10 was confiscated worldwide in 2013. Scientists believe that  
11 elephants cannot withstand this rate of slaughter and they may  
12 become extinct in less than twenty years.

13           The legislature finds that federal and international  
14 measures have sought to protect elephants. Asian and African  
15 elephants have been listed as threatened under the federal  
16 Endangered Species Act of 1973 since 1978 and 1976,  
17 respectively. The African Elephant Conservation Act, passed by



1 Congress in 1988, established a moratorium on the import of  
2 African elephant ivory into the United States beginning in 1989.  
3 Internationally, trade in Asian and African elephant ivory has  
4 been banned since 1975 and 1990, respectively, under the  
5 Convention on International Trade in Endangered Species of Wild  
6 Fauna and Flora, or CITES, which the United States has adopted.

7 Due to the escalating volume of wildlife trafficking,  
8 President Obama signed an Executive Order in 2013 to enhance  
9 coordination of the United States' efforts to combat trafficking  
10 of wildlife and in early 2014 approved a new National Strategy  
11 on Combating Wildlife Trafficking. In approving the strategy,  
12 the President noted that "[r]ecord high demand for wildlife  
13 products, coupled with inadequate preventative measures and weak  
14 institutions has resulted in an explosion of illicit trade  
15 [that] is decimating iconic animal populations." The national  
16 strategy was followed by the issuance of United States Fish and  
17 Wildlife Service Director's Order No. 210 to more strictly  
18 enforce existing restrictions on the commercial trade of  
19 elephant ivory. As aptly stated by the United States Fish and  
20 Wildlife Service Director, the United States market "is  
21 contributing to the crisis now threatening the African elephant.



1 The largely unregulated domestic trade in elephant ivory has  
2 served as a loophole that gives cover for illegal trade."

3 The legislature finds that these laws and policies that  
4 address ivory trade on an international and national level are  
5 insufficient to address the interstate and intrastate trade of  
6 ivory after the ivory has been brought into the United States.  
7 For example, African elephant ivory can be bought and sold  
8 within the United States if it is "pre-Act," meaning that it was  
9 legally imported into the country prior to the 1990 ban.  
10 Intrastate trade of African elephant ivory in Hawaii is  
11 completely unregulated. Even when it is believed that the ivory  
12 was illegally brought into the country or State, the federal  
13 government has very limited authority to investigate and  
14 prosecute ivory traffickers. Banned elephant ivory is also  
15 often purposefully mis-identified as mammoth ivory in order to  
16 avoid regulation since the mammoth, an extinct prehistoric  
17 elephant, is not covered by the import ban. Further  
18 complicating enforcement efforts, it is extremely difficult to  
19 distinguish between new and pre-Act ivory and between African  
20 and Asian elephant ivory.



1           The legislature finds that wildlife and animal welfare  
2 experts agree that the only way to save the critically  
3 endangered and threatened elephants is to prohibit the sale of  
4 ivory and products containing ivory. Additionally, persistent  
5 trade in elephant ivory threatens other species with ivory teeth  
6 and tusks, such as hippopotamuses, the narwhal, the walrus, and  
7 whales. As well, the rhinoceros is being targeted for its  
8 prized horn; the worldwide population of rhinoceros living in  
9 the wild has decreased to 29,000. Ironically, piecemeal  
10 protection of single species may redirect and accelerate  
11 slaughter and trade of other species.

12           The legislature finds that ivory without proper  
13 documentation and of unknown origin and age continues to be  
14 brought into and sold throughout Hawaii. In 2013, the  
15 legislature adopted Senate Concurrent Resolution No. 149, S.D. 1  
16 urging Hawaii residents and businesses to comply with CITES and  
17 not buy or sell ivory of unknown origin. However, as a  
18 resolution, this measure does not include any enforcement  
19 mechanisms. More explicit action is needed.

20           The legislature commends the states of New York and New  
21 Jersey for enacting comprehensive bans in 2014 that protect



1 vulnerable species by prohibiting the sale of ivory, ivory  
2 products, rhinoceros horn, and rhinoceros horn products. Other  
3 states, including California and Washington, are considering  
4 enacting a ban on ivory and rhinoceros horn sales. Hawaii, as  
5 the third highest retailer of elephant ivory in the United  
6 States behind California and New York, is well-situated to  
7 protect elephants and other species by enacting a similar ban.

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

14       SECTION 2. The Hawaii Revised Statutes is amended by  
15 adding a new chapter to title 12 to be appropriately designated  
16 and to read as follows:

17                               "CHAPTER

18       CONSERVATION OF ELEPHANTS AND OTHER ANIMALS WITH IVORY TEETH AND

19                               TUSKS AND THE RHINOCEROS

20       § -1 Findings and purpose. The legislature finds that  
21 African elephants are near extinction and Asian elephants are



1 severely threatened due to ivory trafficking at unprecedented  
2 levels, which has been driven by an increase in consumer demand.  
3 Since 1978, the African elephant has been listed as threatened  
4 under the federal Endangered Species Act of 1973, title 16  
5 U.S.C. section 1531 et seq. The Asian elephant has been listed  
6 as an endangered species since 1975. Nevertheless, trade in  
7 ivory continues to jeopardize the existence of elephants, which  
8 often are slaughtered by poachers intent on supplying elephant  
9 ivory for commercial sale. Furthermore, the worldwide  
10 population of all species of rhinoceros living in the wild has  
11 decreased due to poachers killing the animals for their horns.

12 Despite current federal law prohibiting the sale of African  
13 elephant ivory imported after 1990 and Asian elephant ivory  
14 imported after 1975, much of the ivory sold in Hawaii is likely  
15 illegal or of unknown origin. Fraudulent documents of  
16 provenance are often used to falsely claim that the ivory  
17 predates and is therefore exempt from the applicable ban. As it  
18 is nearly impossible to determine the age of ivory and difficult  
19 to distinguish among the various types of ivory without  
20 laboratory examination by scientific experts, the legislature  
21 finds it necessary to ban the trade and sale within the State of



1 ivory from a range of animals having ivory teeth or tusks and  
2 rhinoceros horn.

3       The purpose of this chapter is to take positive actions to  
4 enhance prospects for the continued existence of elephants and  
5 other wildlife species that have ivory teeth or tusks as well as  
6 rhinoceros by prohibiting the trade and sale of ivory and  
7 rhinoceros horn within the State. Personal possession and  
8 transfer by bequest of lawfully acquired ivory and rhinoceros  
9 horn will continue to be permitted.

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

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

14       "Ivory" means any tooth or tusk from the following species  
15 of wildlife:

- 16       (1) Elephant;
- 17       (2) Hippopotamus;
- 18       (3) Mammoth;
- 19       (4) Narwhal;
- 20       (5) Walrus; and
- 21       (6) Whale;



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

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

4 "Rhinoceros horn" means the horn, any piece thereof, or any  
5 derivative of the horn, such as powder, of any species of  
6 rhinoceros. "Rhinoceros horn" includes any product containing  
7 or advertised as containing any rhinoceros horn.

8 "Sale" or "sell" means all acts of selling, trading, or  
9 bartering for monetary or nonmonetary consideration, or  
10 distributing in the consumer marketplace, including online and  
11 internet sales.

12 "Total value of the ivory or rhinoceros horn" means the  
13 greater of the fair market value or the actual price paid for  
14 the ivory or rhinoceros horn.

15 § -3 Ivory and rhinoceros horn; prohibitions. It shall  
16 be unlawful for any person to import with intent to sell, cause  
17 to be imported with intent to sell, sell, offer for sale,  
18 purchase, cause to be purchased, barter, or possess with intent  
19 to sell any ivory or rhinoceros horn, except as otherwise  
20 authorized by this chapter.





1           §   -4   **Applicability.** (a) This chapter shall apply to  
2 all ivory and rhinoceros horn in the State.

3           (b) This chapter shall not apply to employees or agents of  
4 the federal or state government undertaking any law enforcement  
5 activities pursuant to federal or state law or any mandatory  
6 duties required by federal or state law, to persons importing  
7 ivory or rhinoceros horn that is expressly authorized by federal  
8 license or permit, or to other activity expressly authorized by  
9 federal law.

10          §   -5   **Possession of ivory or rhinoceros horn in a retail  
11 or wholesale outlet; presumption.** (a) Except as provided in  
12 subsection (b), possession of any ivory or rhinoceros horn in a  
13 retail or wholesale outlet, including an auction or swap meet,  
14 shall be presumptive evidence of possession with intent to sell.  
15 This presumption shall not preclude a finding of possession with  
16 intent to sell based upon any other evidence that may serve to  
17 establish that intent.

18          (b) The act of obtaining an appraisal of ivory or  
19 rhinoceros horn shall not, by itself, constitute possession with  
20 intent to sell.



1           §   -6 Personal possession and bequests. It shall not be  
2 a violation of this chapter for a person to possess for personal  
3 use or to transfer by bequest any lawfully imported and acquired  
4 ivory or rhinoceros horn.

5           §   -7 Penalties. (a) A person convicted of violating  
6 this chapter shall be sentenced as follows for each offense:

7           (1) For the first offense, the person shall be guilty of a  
8                misdemeanor and shall be fined the greater of \$1,000  
9                or two times the total value of the ivory or  
10               rhinoceros horn involved in the offense, sentenced to  
11               a term of imprisonment, or both; and

12           (2) For any second or subsequent offense, the person shall  
13               be guilty of a class C felony and shall be fined the  
14               greater of \$5,000 or two times the total value of the  
15               ivory or rhinoceros horn involved in the offense,  
16               sentenced to a term of imprisonment, or both.

17           (b) The penalties provided in this chapter are in addition  
18 to any other penalties imposed under other law.

19           §   -8 Search and seizure. Any officer or agent  
20 authorized pursuant to this chapter shall have the authority to  
21 conduct searches as provided by law and to seize any ivory or



1 rhinoceros horn and any related equipment or business records  
2 found in violation of this chapter or other applicable law. Any  
3 of the foregoing items so seized shall be held by the department  
4 pending disposition of court proceedings. Upon conviction of  
5 the person or persons from whom the seizure was made, the court  
6 shall declare the items seized forfeited to the State. Such  
7 items shall be destroyed or offered to an entity permitted by  
8 law to possess the items for education or scientific activities.

9       § -9 Remedies. Nothing in this chapter shall be  
10 construed to prohibit or impair any civil or administrative  
11 action or penalty available in law or equity.

12       § -10 Rules. The department may adopt rules in  
13 accordance with chapter 91 to effectuate the requirements and  
14 purposes of this chapter."

15       SECTION 3. If any provision of this Act, or the  
16 application thereof to any person or circumstance, is held  
17 invalid, the invalidity does not affect other provisions or  
18 applications of the Act that can be given effect without the  
19 invalid provision or application, and to this end the provisions  
20 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, 2016.

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JAN 26 2015



# H.B. NO. 837

**Report Title:**

Ivory; Rhinoceros Horn; Conservation

**Description:**

Prohibits ivory and rhinoceros horn sales and trade within the State, to be enforced by the department of land and natural resources. Establishes penalties.

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

