

JAN 22 2016

A BILL FOR AN ACT

RELATING TO NATURAL RESOURCES.

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

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

14 The legislature finds that the most effective way to
15 discourage illegal trafficking is to eliminate markets and
16 profits. It is in the public interest to protect animal species
17 threatened with extinction by prohibiting within the State, with



1 certain limited exceptions, the sale, offer for sale, purchase,
2 trade, or barter for any part or product of any species of
3 elephant (Elephantidea), mammoth (Mammuthus), rhinoceros
4 (Rhinocerotidea), tiger (Panthera tigris), great apes
5 (Hominoidea), sharks and rays (Elasmobranchii), sea turtles
6 (Chelonioidea), walrus (Odobenus rosmarus), narwhal (Monodon
7 monoceros), whales (Cetacea), hippopotamus (Hippopotamus
8 amphibious), monk seals (Neomonachus), lions (Panthera leo),
9 pangolins (Manis), cheetah (Acinonyx jubatus), jaguar (Panthera
10 onca) and leopard (Panthera pardus) identified as threatened
11 with extinction by specified international conservation
12 organizations. These animals represent some of the most
13 trafficked species threatened with extinction according to
14 illegal wildlife product seizure data gathered by the World
15 Wildlife Fund-TRAFFIC, International Union for the Conservation
16 of Nature, and other international conservation organizations.

17 The legislature further finds that in September 2015, the
18 United States and China announced a cooperative effort to take
19 comprehensive action to curb wildlife trafficking, including
20 significant restrictions on the import of ivory as hunting
21 trophies and halting the domestic commercial trade of ivory. As



1 the host of the upcoming International Union for the
2 Conservation of Nature World Conservation Congress with the
3 United States in September 2016, it is important to demonstrate
4 Hawaii's continuing leadership in global conservation challenges
5 such as international wildlife trafficking and endangered
6 species protection.

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

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

17 "§183D- Wildlife trafficking; prohibited. (a) Except
18 as authorized under section 183D-6, no person shall sell, offer
19 to sell, purchase, trade, or barter for any part or product from
20 the following animal species: elephant (Elephantidea),
21 rhinoceros (Rhinocerotidea), tiger (Panthera tigris), great apes



1 (Hominoidea), hippopotamus (Hippopotamus amphibious), lions
2 (Panthera leo), pangolins (Manis), cheetah (Acinonyx jubatus),
3 jaguar (Panthera onca) or leopard (Panthera pardus).

4 (b) Except as authorized under section 183D-6, no person
5 shall sell, offer to sell, purchase, trade, or barter for any
6 part or product from the follow marine species: sea turtles
7 (Chelonioidea), monk seals (Neomonachus), narwhal (Monodon
8 monoceros), whales (Cetacea), or walrus (Odobenus rosmarus)
9 insofar as the species, subspecies, or distinct population
10 segment is listed:

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

13 (2) As endangered or critically endangered on the
14 International Union for the Conservation of Nature red
15 list; or

16 (3) As endangered under the Endangered Species Act.

17 (c) Except as authorized under section 183D-6, no person
18 shall sell, offer to sell, purchase, trade, or barter for any
19 part or product from rays and sharks (Elasmobranchii) insofar as
20 the species is listed:



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

3 (2) As endangered under the Endangered Species Act.

4 (d) Except as authorized under section 183D-6, no person
5 shall sell, offer to sell, purchase, trade, or barter for any
6 part or product from mammoth (Mammuthus), although the species
7 is extinct.

8 (e) None of the prohibitions set forth in this section
9 shall apply if:

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

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

17 (B) The covered animal species part or product is
18 less than ten per cent by volume of such an
19 antique;

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



- 1 (A) For a bona fide educational or scientific
- 2 purpose; or
- 3 (B) To or from a museum;
- 4 (3) The distribution of the covered animal species part or
- 5 product is to a legal beneficiary of an estate, trust,
- 6 or other inheritance, upon the death of the owner of
- 7 the covered animal species part or product;
- 8 (4) The covered animal species part or product is less
- 9 than ten per cent by volume of a musical instrument,
- 10 including without limitation string instruments and
- 11 bows, wind and percussion instruments, and pianos, if
- 12 the owner or seller provides historical documentation
- 13 demonstrating provenance and showing the item was
- 14 manufactured no later than 1975; or
- 15 (5) The intrastate sale, offer for sale, purchase, trade,
- 16 or barter of the covered animal species part or
- 17 product is expressly authorized by federal law or
- 18 permit.
- 19 (f) There is established a rebuttable presumption of
- 20 possession with intent to sell a covered animal species part or
- 21 product when the part or product is possessed by a retail or



1 wholesale establishment or other forum engaged in the business
2 of buying or selling similar items. This rebuttable presumption
3 shall not preclude a finding of intent to sell based on any
4 other evidence that may serve to independently establish such
5 intent.

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

10 (h) For the purposes of this section, "covered animal
11 species part or product" means any part or product of an animal
12 species prohibited from being sold, offered for sale, purchased,
13 traded, or bartered for pursuant to this section."

14 SECTION 3. Section 183D-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§183D-5 Penalties. (a) Any person violating section
17 183D-21, 183D-25, 183D-33, or 183D-63 or any rule adopted under
18 this chapter shall be guilty of a petty misdemeanor, and upon
19 conviction thereof, shall be punished as follows:



- 1 (1) For a first conviction, by a mandatory fine of not
2 less than \$100, or imprisonment of not more than
3 thirty days, or both;
- 4 (2) For a second conviction within five years of a
5 previous conviction, by a mandatory fine of not less
6 than \$500, or by imprisonment of not more than thirty
7 days, or both, and all firearms used in the commission
8 of the violations shall be considered contraband to be
9 forfeited to and disposed of by the State; and
- 10 (3) For a third or subsequent conviction within five years
11 of the first two or more convictions, by a mandatory
12 fine of not less than \$1,000, or by imprisonment of
13 not more than thirty days, or both, and all firearms
14 used in the commission of the violations shall be
15 considered contraband to be forfeited to and disposed
16 of by the State.
- 17 (b) Any person violating section 183D- , 183D-25.5,
18 183D-26, 183D-27, 183D-32, 183D-62, or 183D-64 shall be guilty
19 of a misdemeanor, and upon conviction thereof, shall be punished
20 as follows:



1 (1) For a first conviction by a mandatory fine of not less
2 than \$200, or by imprisonment of not more than one
3 year, or both;

4 (2) For a second conviction within five years of a
5 previous conviction, by a mandatory fine of not less
6 than \$1,000, or by imprisonment of not more than one
7 year, or both, and all firearms, animal parts,
8 products, or items containing prohibited animal parts
9 or products used in the commission of the violations
10 shall be considered contraband to be forfeited to and
11 disposed of by the State; and

12 (3) For a third or subsequent conviction within five years
13 of the first two or more convictions, by a mandatory
14 fine of not less than \$2,000, or by imprisonment of
15 not more than one year, or both, and all firearms,
16 animal parts, products, or items containing prohibited
17 animal parts or products used in the commission of the
18 violations shall be considered contraband to be
19 forfeited to and disposed of by the State.



1 (c) Any person who violates section 183D-52 shall be
2 guilty of a misdemeanor, and upon conviction thereof, shall be
3 punished as follows:

4 (1) For a first conviction, by a mandatory fine of not
5 less than \$10,000 and payment of any costs incurred in
6 the eradication of any deer and the deer's progeny
7 that has been possessed, transferred, transported, or
8 released after transport, or by imprisonment of not
9 more than one year, or both;

10 (2) For a second conviction within five years of a
11 previous conviction, by a mandatory fine of not less
12 than \$15,000 and payment of any costs incurred in the
13 eradication of any deer and the deer's progeny that
14 has been possessed, transferred, transported, or
15 released after transport, or by imprisonment of not
16 more than one year, or both; and

17 (3) For a third or subsequent conviction within five years
18 of the first two or more convictions, by a mandatory
19 fine of not less than \$25,000 and payment of any costs
20 incurred in the eradication of any deer and the deer's
21 progeny that has been possessed, transferred,



1 transported, or released after transport, or by
2 imprisonment of not more than one year, or both.

3 (d) Any person who violates section 183D-35, 183D-36,
4 183D-37, 183D-38, 183D-39, 183D-40, or 183D-42 shall be guilty
5 of a petty misdemeanor, and upon conviction thereof, shall be
6 fined not less than \$100 or imprisoned not more than thirty
7 days, or both.

8 (e) In addition to any other penalty imposed under this
9 section, a mandatory fine of \$100 shall be levied for each bird
10 illegally taken under this chapter and a mandatory fine of \$500
11 shall be levied for each mammal illegally taken under this
12 chapter.

13 (f) Any person who is convicted of violating any of the
14 game laws of the State shall immediately have the person's
15 hunting license forfeited and any person convicted for a second
16 offense shall not be granted a license to hunt for a period of
17 three years after the date of the second conviction.

18 (g) The environmental court, in lieu of the actual cash
19 payment of any mandatory fine, may allow the defendant to
20 perform the community service as directed by the department of



1 land and natural resources at the rate of one hour of service
2 for every \$10 of mandatory fine imposed.

3 (h) Any criminal action against a person for any violation
4 of this chapter shall not be deemed to preclude the State from
5 pursuing civil legal action to recover administrative fines and
6 costs against that person. Any civil legal action against a
7 person to recover administrative fines and costs for any
8 violation of subtitle 4 of title 12 or any rule adopted
9 thereunder shall not be deemed to preclude the State from
10 pursuing any criminal action against that person.

11 (i) Except as otherwise provided by law, and in addition
12 to, and separate from, any other penalty provided by law, the
13 board or its authorized representative may set, charge, and
14 collect the following administrative fines:

- 15 (1) For a first violation, a fine of not more than \$2,500;
16 (2) For a second violation within five years of a previous
17 violation, a fine of not more than \$5,000; and
18 (3) For a third or subsequent violation within five years
19 of the first violation, a fine of not more than
20 \$10,000;



1 or bring legal action to recover administrative fines, fees, and
2 costs as documented by receipts or affidavit; payment for
3 damages; or costs to correct damages resulting from a violation
4 of this chapter."



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

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

14 SECTION 6. New statutory material is underscored.

15 SECTION 7. This Act shall take effect on January 1, 2017.

16

INTRODUCED BY: 


S.B. NO. 2647

Report Title:

Wildlife; Species; Trafficking; Fines

Description:

Prohibits the sale, offer to sell, purchase, trade, or barter of any part or product from various animal and marine species. Provides exceptions to this prohibition, including for traditional cultural practices protected under the state constitution. Imposes penalties for violations of the prohibition on trafficking animal parts and products, including specific administrative fines. Effective January 1, 2017.

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