

SENATE No. 2241

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

SENATE, Monday, April 25, 2016

The committee on Environment, Natural Resources and Agriculture, to whom was referred the petition (accompanied by bill, Senate, No 440) of Jason M. Lewis, Chris Walsh, Josh S. Cutler, Lori A. Ehrlich and other members of the General Court for legislation relative to ivory and rhino horn trafficking, - reports the accompanying bill (Senate, No. 2241).

For the committee,
Anne M. Gobi

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An Act relative to ivory and rhino horn trafficking.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws, are hereby amended by inserting after chapter 131A the
2 following new chapter:-

CHAPTER 131B.

IVORY AND RHINO HORN TRAFFICKING

5 Section 1. For the purposes of this chapter, the following words shall have the following
6 meanings:-

7 "Bona fide educational or scientific institution", an institution that establishes through
8 documentation either of the following: (1) educational or scientific tax exemption, from the
9 federal Internal Revenue Service or the institution's national, state, or local tax authority; or (2)
10 accreditation as an educational or scientific institution, from a national, regional, state, or local
11 authority for the institution's location.

12 "Ivory", any tooth or tusk composed of ivory from a species of elephant or hippopotamus,
13 or a piece thereof, whether raw ivory or worked ivory, or made into or part of an ivory product.

14 "Ivory product", any item that contains ivory, that is wholly or partially made from
15 ivory, or that is advertised as containing ivory.

16 "Raw ivory", polished or unpolished ivory that is unaltered or minimally changed by
17 carving.

18 "Rhinoceros horn", the horn, or a piece thereof, of a species of rhinoceros.

19 "Rhinoceros horn product", any item that contains rhinoceros horn, is wholly or partially
20 made from any rhinoceros horn, or is advertised as containing rhinoceros horn.

21 "Sale" or "sell", selling, trading, bartering for monetary or nonmonetary consideration,
22 or giving away in conjunction with a commercial transaction.

23 "Total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products",
24 the fair market value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products,
25 or the actual price paid for the ivory, ivory products, rhinoceros horn, and rhinoceros products,
26 whichever is greater.

27 "Worked ivory" means embellished, carved, marked, or otherwise altered ivory that can
28 no longer be considered raw ivory.

29 Section 2. (a) In addition to the prohibitions and penalties established under sections 1 to
30 7, inclusive, of chapter 131A, and any other applicable law, and notwithstanding section 2 of
31 chapter 131A, no person shall import, sell, offer for sale, purchase, barter or possess with intent
32 to sell, any ivory, ivory product, rhinoceros horn or rhinoceros horn product, except as otherwise
33 provided in this section.

34 (b) It shall be prima facia evidence of possession with intent to sell when ivory, an ivory
35 product, rhinoceros horn or rhinoceros horn product is possessed in a retail or wholesale outlet
36 commonly used for buying or selling of similar products, provided, however, that nothing in this
37 subsection shall preclude a finding of intent to sell based on any other evidence which may
38 independently establish such intent.

39 (c) Notwithstanding section 2, unless such activity is prohibited by federal law, rule or
40 regulation, the following activities shall be permitted:

41 (1) a conveyance of ivory, an ivory product, rhinoceros horn or rhinoceros horn
42 product which is part of an estate or other items being conveyed to lawful beneficiaries upon the
43 death of an owner, to a legal beneficiary;

44 (2) Employees or agents of the federal or state government undertaking law
45 enforcement activities pursuant to federal or state law or any mandatory duties required by
46 federal or state law;

47 (3) an import expressly authorized by federal license or permit or a lawful permit
48 issued under the Convention on International Trade in Endangered Species of Wild Fauna and
49 Flora (CITES);

50 (4) the import, sale, offer for sale, purchase, barter, or possession with intent to
51 sell, ivory, ivory product, rhinoceros horn or rhinoceros horn product to a bona fide educational
52 or scientific institution for bona fide educational purposes or for conducting noncommercial
53 scientific purposes or to a museum, if both of the following criteria are satisfied:

54 (i) this activity is not prohibited by federal law; and

55 (ii) the ivory or rhinoceros horn was legally acquired before January 1,
56 1991, and was not subsequently transferred from one person to another for financial gain or
57 profit after passage of this act;

58 (5) the sale of a manufactured or handmade item containing ivory, provided that:

59 (i) the item is a bona fide antique and is established by the owner or seller,
60 through either historical documentation demonstrating provenance or through authentication
61 consistent with federal standards, to satisfy the criteria under 16 U.S.C. 1539(10)(h);

62 (ii) the item is a musical instrument, provided that the ivory component is
63 less than 20 per cent by volume of the instrument and the owner or seller provides historical
64 documentation demonstrating provenance and showing the item was manufactured no later than
65 1975; or,

66 (iii) the item contains de minimis quantities of ivory meets all the
67 following criteria:

68 (A) the ivory is a fixed component or components of a larger
69 manufactured or handmade item and is not in its current form the primary source of the value of
70 the item;

71 (B) the ivory is not raw;

72 (C) the manufactured item is not made wholly or primarily of
73 ivory;

74 (D) the total weight of the ivory component or components is less
75 than 200 grams;

76 (E) the item was manufactured before passage of this act; and,

77 (F) the ivory was imported into the United States prior to January
78 18, 1990, or was imported to the United States under a CITES pre-convention certificate with no
79 limitation on its commercial use.

80 Section 3. (a) Whoever violates this section or any rule or regulation adopted under this
81 chapter shall be punished by:

82 (1) for a first offense, may be fined not more than \$4,000 or an amount equal to
83 two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn
84 products involved in the offense, and may be imprisoned up to 6 months in a house of correction.

85 (2) for a second or subsequent offense, shall be fined not less than \$8,000 or an
86 amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and
87 rhinoceros horn products involved in the offense, whichever is greater, and may be imprisoned
88 for up to 18 months in a house of correction

89 (3) for subsequent offenses or for any offense where the total value of the ivory,
90 ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense are equal
91 to \$25,000 or more, shall be fined not less than \$40,000 or an amount equal to two times such
92 total value, whichever is greater, may be imprisoned for up to 2 1/2 years in a house of correction

93 (b) Upon a conviction for violating the provisions of section 2, the court shall order the
94 seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in
95 the violation and determine the penalty for the violation based on the assessed value of the seized
96 products according to subsection (a) of this section. After sentencing the defendant, the court

97 shall order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros horn products
98 be transferred to the department of fish and game for proper disposition. The department, at its
99 discretion, may destroy the ivory, ivory products, rhinoceros horn, and rhinoceros horn products
100 or donate them to an educational or scientific institution or organization, including, but not
101 necessarily limited to, a museum or university.

102 Section 4. (a) There shall be established and set up on the books of the commonwealth a
103 separate fund, to be known as the Elephant Ivory and Rhino Horn Trafficking Enforcement
104 Fund. The fund shall be used by the office of law enforcement within the executive office of
105 energy and environmental affairs, in consultation with the environmental crimes strike force, to
106 increase or expand enforcement and educational efforts related to the provisions of this chapter,
107 or to provide financial rewards offered to persons providing information leading to the arrest and
108 conviction of persons found to be in violation of section 2. The office of law enforcement may
109 use the fund for necessary and reasonable administrative and personnel costs related to the
110 specific purposes of the fund. The office of law enforcement shall not use the fund for existing
111 personnel or overhead costs. The secretary of the executive office of energy and environmental
112 affairs in consultation with the director of the office of law enforcement and the environmental
113 crimes strike force shall establish rules and regulations relating to the fund.

114 (b) The fund shall consist of all revenues received by the commonwealth under section 3.
115 There shall be credited to the fund any revenue from appropriations or other monies authorized
116 by the general court and specifically designated to be credited to the fund, any appropriation or
117 grant explicitly made to the fund and from public and private sources as gifts, grants and
118 donations to further enhance elephant ivory and rhino horn trafficking and enforcement of this
119 Chapter.

120 (c) The state treasurer shall deposit amounts in the fund in accordance with section 34 of
121 chapter 29 in a manner that will secure the highest interest rate available consistent with the
122 safety of the fund and with the requirement that all amounts on deposit shall be available for
123 immediate withdrawal at any time. The fund may be expended by the director of the office of
124 law enforcement without further appropriation for the purposes stated in this section and any
125 funds remaining at the end of any fiscal year shall not revert to the General Fund and shall be
126 available for use in subsequent fiscal years. Funds deposited and expended from the Elephant
127 Ivory and Rhino Horn Trafficking Enforcement Fund shall not be assessed any indirect costs.

128 SECTION 2. This act shall take effect six months from the date of passage.