

SENATE No. 2382

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Thursday, March 29, 2018

The committee on Environment, Natural Resources and Agriculture, to whom was referred the petitions (accompanied by bill, Senate, No. 450) of Jason M. Lewis, Jack Lewis, Carmine L. Gentile, Chris Walsh and other members of the General Court for legislation relative to ivory and rhino horn trafficking; and (accompanied by bill, House, No. 419) of Lori A. Ehrlich, Jason M. Lewis and others relative to ivory and rhino horn trafficking,- reports the accompanying bill (Senate, No. 2382).

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, as appearing in the 2016 Official Edition, are hereby
2 amended by inserting after chapter 131A the following chapter:-

3 Chapter 131B. IVORY AND RHINO HORN TRAFFICKING

4 Section 1. (a) "Ivory" means a tooth or tusk composed of ivory from any species of
5 elephant, mammoth, or mastodon, or any piece thereof, and includes any item or product
6 containing ivory.

7 (b) "Rhinceros horn" means the horn, or a piece thereof, or derivative such as powder,
8 of any species of rhinceros, and includes any item or product containing rhinceros horn.

9 (c) "Total value of the ivory or rhinceros horn" means the fair market value of the ivory
10 or rhinceros horn, or the actual price paid for the ivory or rhinceros horn, whichever is greater.

11 (d) "Bona fide educational or scientific institution" means an institution that establishes
12 through documentation educational or scientific tax exemption, from the federal Internal
13 Revenue Service or the institution's national or state tax authority.

14 (e) "Sale" or "sell" means selling, trading, bartering for monetary or nonmonetary
15 consideration, and includes any transfer of ownership that occurs in the course of a commercial
16 transaction.

17 Section 2. (a) In addition to the prohibitions and penalties established under M.G.L.
18 ch.131A, §1- 7, and any other applicable law, and notwithstanding the exemptions in Chapter
19 131A, §2 or any other provision of law, no person shall sell, offer for sale, purchase, or possess
20 with intent to sell, any ivory or rhinoceros horn, except as provided in this section.

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

25 (c) The prohibitions set forth in subsection (a) shall not apply to any of the following:

26 (1) An employee or agent of the federal or state government undertaking a law
27 enforcement activity pursuant to federal or state law, or a mandatory duty required by federal
28 law.

29 (2) An activity that is authorized by an exemption or permit under federal law or that is
30 otherwise expressly authorized under federal law.

31 (3) Ivory or rhinoceros horn that is a fixed component of a musical instrument, including,
32 but not limited to, a string or wind instrument or piano, provided that the ivory or rhinoceros
33 horn was legally acquired, and provided that the total weight of the ivory or rhinoceros horn is
34 less than 200 grams.

35 (4) Ivory or rhinoceros horn for which the seller can provide historical documentation
36 that the item meets the criteria for the antiques exemption under the federal endangered species
37 act of 1973 (ESA) (16 U.S.C. 1539 (h)) as further clarified by USFWS Director's Order 210
38 Appendix 1.

39 (5) Manufactured or handcrafted items that contain a de minimis amount of ivory,
40 provided that the seller can demonstrate compliance with all of the following criteria:

41 (i) The ivory was imported into the United States prior to January 18, 1990, or was
42 imported into the United States under a Convention on International Trade in Endangered
43 Species of Wild Fauna and Flora (CITES) pre-Convention certificate with no limitation on its
44 commercial use;

45 (ii) The ivory is a fixed or integral component or components of a larger manufactured or
46 handcrafted item and is not in its current form the primary source of the value of the item, that is,
47 the ivory does not account for more than 50 percent of the value of the item;

48 (iii) The ivory is not raw;

49 (iv) The manufactured or handcrafted item is not made wholly or primarily of ivory, that
50 is, the ivory component or components do not account for more than 50 percent of the item
51 volume;

52 (v) The total weight of the ivory component or components is less than 200 grams; and

53 (vi) The item was manufactured or handcrafted before July 6, 2016.

54 (6) The import, purchase, sale, offer for sale, barter, or possession with intent to sell,
55 ivory, ivory product, rhinoceros horn or rhinoceros horn product to a bona fide educational or

56 scientific institution for educational or scientific purposes, if both of the following criteria are
57 satisfied:

58 (i) The import, purchase, sale, offer for sale, barter, or possession with intent to sell, the
59 ivory, ivory product, rhinoceros horn or rhinoceros horn product is not prohibited by federal law.

60 (ii) The ivory, ivory product, rhinoceros horn or rhinoceros horn product was legally
61 acquired before January 1, 1991, and was not subsequently transferred from one person to
62 another for financial gain or profit after July 1, 2017.

63 (7) A person may convey ivory, an ivory product, rhinoceros horn or rhinoceros horn
64 product which is part of an estate or other items being conveyed to lawful beneficiaries upon the
65 death of an owner, to a legal beneficiary.

66 (8) A person may donate ivory, ivory product, rhinoceros horn or rhinoceros horn product
67 to a bona fide educational or scientific institution for educational or scientific purposes without
68 meeting the requirements set forth in subsection 5 of section 2 of this act.

69 (9) The provisions of this act are severable. If any provision of this act or its application
70 is held invalid, that invalidity shall not affect other provisions or applications that can be given
71 effect without the invalid provision or application.

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

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

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

81 (3) for subsequent offenses or for any offense where the value the trafficked ivory and/or
82 rhino horn and other trafficked items combined equals \$25,000, may be imprisoned for up to two
83 and a half years in a house of correction and fined no less than an amount equal to \$40,000 or an
84 amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and
85 rhinoceros horn products involved in the offense, whichever is greater.

86 (b) Upon a conviction for violating the provisions of section 2, the court shall order the
87 seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in
88 the violation and determine the penalty for the violation based on the assessed value of the seized
89 products according to subsection (a) of this section. After sentencing the defendant, the court
90 shall order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros horn products
91 be transferred to the department of fish and game for proper disposition. The department, at its
92 discretion, may destroy the ivory, ivory products, rhinoceros horn, and rhinoceros horn products
93 or donate them to an educational or scientific institution or organization, including, but not
94 necessarily limited to, a museum or university.

95 Section 4. (a) There shall be established and set up on the books of the commonwealth a
96 separate fund, to be known as the Elephant Ivory and Rhino Horn Trafficking Enforcement
97 Fund. The fund shall be used by the office of law enforcement within the executive office of
98 energy and environmental affairs in consultation with the environmental crimes strike force, to

99 increase or expand enforcement and educational efforts related to the provisions of this chapter,
100 or to provide financial rewards offered to persons providing information leading to the arrest and
101 conviction of persons found to be in violation of section 2. The office of law enforcement may
102 use the fund for necessary and reasonable administrative and personnel costs related to the
103 specific purposes of the fund. The office of law enforcement shall not use the fund for existing
104 personnel or overhead costs. The secretary of the executive office of energy and environmental
105 affairs in consultation with the director of the office of law enforcement and the environmental
106 crimes strike force shall establish rules and regulations relating to the fund.

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

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

SECTION 2. This act shall take effect 1 year from the date of passage.