

SENATE No. 2553

The Commonwealth of Massachusetts

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

SENATE, Thursday, June 14, 2018

The committee on Ways and Means to whom was referred the Senate Bill relative to ivory and rhino horn trafficking (Senate, No. 2382),-- reports, recommending that the same ought to pass with an amendment substituting a new draft entitled "An Act relative to ivory and rhinoceros horn trafficking" (Senate, No. 2553).

For the committee,
Karen E. Spilka

13 "Total value", the fair market value of the ivory or rhinoceros horn, or the actual price
14 paid for the ivory or rhinoceros horn, whichever is greater.

15 "Bona fide educational or scientific institution", an institution that establishes through
16 documentation an educational or a scientific tax exemption, from the federal Internal Revenue
17 Service or the institution's national or state tax authority.

18 "Sale" or "sell", selling, trading, bartering or offering for sale, trade or barter for
19 monetary or nonmonetary consideration, including, but not limited to any transfer of ownership
20 that occurs in the course of a commercial transaction.

21 Section 2. (a) Notwithstanding any general or special law to the contrary and in addition
22 to the prohibitions and penalties established under sections 1 to 7, inclusive, of chapter 131A, no
23 person shall sell, purchase or possess with intent to sell, any ivory or rhinoceros horn, except as
24 provided in this section.

25 (b) It shall be prima facie evidence of possession with intent to sell when a person
26 possesses ivory or rhinoceros horn in a retail or wholesale outlet; provided, however, that
27 nothing in this subsection shall preclude a finding of intent to sell based on any other evidence
28 which may independently establish such intent.

29 (c) Subsection (a) shall not apply to:

30 (i) an employee or agent of the federal or state government undertaking a law
31 enforcement activity pursuant to federal or state law or a mandatory duty required by federal
32 law;

33 (ii) an activity that is authorized by an exemption or permit under federal law or
34 that is otherwise expressly authorized under federal law;

35 (iii) ivory or rhinoceros horn that is a fixed component of a musical instrument,
36 including, but not limited to, a string or wind instrument or piano; provided, however, that the
37 ivory or rhinoceros horn was legally acquired; and provided further, that the total weight of the
38 ivory or rhinoceros horn is less than 200 grams;

39 (iv) ivory or rhinoceros horn for which the seller can provide historical
40 documentation that the item meets the federal criteria for exemption for antique articles under 16
41 U.S.C. 1539 (h), as further clarified by the United States Fish and Wildlife Service Director's
42 Order 210 Appendix 1;

43 (v) manufactured or handcrafted items that contain a de minimis amount of ivory,
44 provided, that the seller can demonstrate compliance with all of the following criteria:

45 (1) the ivory was imported into the United States prior to January 18,
46 1990, or was imported into the United States under a Convention on International Trade in
47 Endangered Species of Wild Fauna and Flora pre-Convention certificate with no limitation on its
48 commercial use;

49 (2) the ivory is a fixed or integral component of a larger manufactured or
50 handcrafted item and is not in its current form the primary source of the value of the item;
51 provided, however, that the ivory does not account for more than 50 percent of the value of the
52 item;

53 (3) the ivory is not raw;

54 (4) the manufactured or handcrafted item is not made wholly or primarily
55 of ivory; provided, however, that the ivory does not account for more than 50 percent of the item
56 volume;

57 (5) the total weight of the ivory component or components is less than 200
58 grams; and

59 (6) the item was manufactured or handcrafted before July 6, 2016;

60 (vi) the import, purchase, sale or possession with intent to sell ivory or rhinoceros
61 horn to a bona fide educational or scientific institution for educational or scientific purposes;
62 provided, however, that: (1) the import, purchase, sale or possession with intent to sell the ivory
63 or rhinoceros horn is not prohibited by federal law; and (2) the ivory or rhinoceros horn was
64 legally acquired before January 1, 1991, and was not subsequently transferred from one person to
65 another for financial gain or profit after July 1, 2019;

66 (vii) the non-commercial transfer of ownership of ivory or rhinoceros horn that is
67 part of an estate or other items being conveyed to a lawful beneficiary of an estate, trust or other
68 inheritance upon the death of an owner; or

69 (viii) a person who donates ivory or rhinoceros horn to a bona fide educational or
70 scientific institution for educational or scientific purposes.

71 Section 3. (a) Violations of this chapter shall be punished:

72 (i) for a first offense, by a fine of not more than \$4,000 or 2 times the total value
73 of the ivory and rhinoceros horn involved in the offense, whichever is greater, or imprisonment
74 up to 6 months in a house of correction, or both;

75 (ii) for a second offense, by a fine of not less than \$8,000 or 2 times the total
76 value of the ivory and rhinoceros horn involved in the offense, whichever is greater, or by
77 imprisonment for up to 18 months in a house of correction, or both; or

78 (iii) for a third or subsequent offense or for an offense where the total value of the
79 ivory or rhinoceros horn involved in the offense is not less than \$25,000, by imprisonment for up
80 to two and a half years in a house of correction and a fine of not less than \$40,000 or 2 times the
81 total value of the ivory and rhinoceros horn involved in the offense, whichever is greater.

82 Fines assessed pursuant to this section shall be deposited in the Elephant Ivory and Rhino
83 Horn Trafficking Enforcement Fund under section 4.

84 (b) Upon a conviction for violation of this chapter, the court shall order the seizure of all
85 ivory and rhinoceros horn involved in the violation and shall transfer the products to the
86 department of fish and game for proper disposition. The department, at its discretion, may
87 destroy the ivory and rhinoceros horn or donate it to an educational or scientific institution or
88 organization.

89 Section 4. (a) There shall be an Elephant Ivory and Rhinoceros Horn Trafficking
90 Enforcement Fund. The director of law enforcement shall administer the fund to increase or
91 expand enforcement and educational efforts related to the provisions of this chapter which may
92 include financial rewards offered to a person providing information leading to the arrest and
93 conviction of a person found to be in violation of this chapter. The office of law enforcement
94 may use the fund for necessary and reasonable administrative and personnel costs related to the
95 specific purposes of the fund. The office of law enforcement shall not use the fund for personnel

96 or overhead costs not related to the purposes of the fund. The fund shall not be assessed any
97 indirect costs.

98 (b) There shall be credited to the fund: (i) all revenues received under section 3; (ii)
99 revenue from appropriations or other money authorized by the general court and specifically
100 designated to be credited to the fund; and (iii) funds from public or private sources including, but
101 not limited to, gifts, grants, donations, rebates and settlements received by the commonwealth
102 that are specifically designated to be credited to the fund.

103 The fund may be expended by the director of law enforcement without further
104 appropriation and any funds remaining at the end of a fiscal year shall not revert to the General
105 Fund and shall be available for use in subsequent fiscal years. The director shall report annually,
106 not later than October 1, on the fund's activity to the senate and house chairs of the joint
107 committee on environment, natural resources and agriculture and the house and senate
108 committees on ways and means. The report shall include, but not be limited to, an accounting of:
109 (i) revenue received by the fund; (ii) expenditures from the fund, including the recipient, date
110 and reason for the expenditure; and (iii) the total fund balance.

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