

SENATE No. 450

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to ivory and rhino horn trafficking.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2017</i>
<i>Carmin L. Gentile</i>	<i>13th Middlesex</i>	<i>1/24/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>1/24/2017</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/25/2017</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>1/25/2017</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/25/2017</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>1/25/2017</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>1/26/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>1/26/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>1/30/2017</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/30/2017</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>1/31/2017</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/31/2017</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/31/2017</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>2/2/2017</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>1/31/2017</i>

<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/31/2017</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/31/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/31/2017</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>1/31/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/1/2017</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>2/1/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>2/1/2017</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>2/1/2017</i>
<i>Walter F. Timitly</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/2/2017</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/2/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/2/2017</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/2/2017</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>2/2/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/2/2017</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/2/2017</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/2/2017</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>2/2/2017</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/2/2017</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	<i>2/3/2017</i>
<i>John C. Velis</i>	<i>4th Hampden</i>	<i>2/3/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/3/2017</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>2/3/2017</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/3/2017</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>	<i>2/3/2017</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>2/3/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/3/2017</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/3/2017</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/15/2017</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>3/10/2017</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>4/24/2017</i>
<i>Mathew Muratore</i>	<i>1st Plymouth</i>	<i>5/11/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>5/11/2017</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>	<i>9/7/2017</i>

SENATE No. 450

By Mr. Lewis, a petition (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. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 440 OF 2015-2016.]

The Commonwealth of Massachusetts

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

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 (c) "Rhinoceros horn" means the horn, or a piece thereof, or derivative such as powder,
8 of any species of rhinoceros, and includes any item or product containing rhinoceros horn.

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

11 (h) "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 (i) "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 that a fixed component of an antique that is not made wholly
36 or primarily of the ivory or rhinoceros horn, provided that the antique status is established by the
37 owner or seller of the antique with documentation demonstrating provenance and showing the
38 antique to be not less than 100 years old, and provided that the total weight of the ivory or
39 rhinoceros horn is less than 200 grams.

40 (5) The purchase, sale, offer for sale, or possession with intent to sell, ivory or rhinoceros
41 horn for educational or scientific purposes by a bona fide educational or scientific institution if
42 both of the following criteria are satisfied:

43 (A) The purchase, sale, offer for sale, possession with intent to sell, or import with intent
44 to sell the ivory or rhinoceros horn is not prohibited by federal law.

45 (B) The ivory or rhinoceros horn was legally acquired before January 1, 1991, and was
46 not subsequently transferred from one person to another for financial gain or profit after July 1,
47 2017.

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

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

54 SECTION 3. (a) Whoever violates this section or any rule or regulation adopted under
55 this chapter shall be punished by:

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

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

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

68 (b) Upon a conviction for violating the provisions of section 2, the court shall order the
69 seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in
70 the violation and determine the penalty for the violation based on the assessed value of the seized
71 products according to subsection (a) of this section. After sentencing the defendant, the court
72 shall order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros horn products
73 be transferred to the department of fish and game for proper disposition. The department, at its
74 discretion, may destroy the ivory, ivory products, rhinoceros horn, and rhinoceros horn products
75 or donate them to an educational or scientific institution or organization, including, but not
76 necessarily limited to, a museum or university.

77 SECTION 4. (a) There shall be established and set up on the books of the commonwealth
78 a separate fund, to be known as the Elephant Ivory and Rhino Horn Trafficking Enforcement
79 Fund. The fund shall be used by the office of law enforcement within the executive office of
80 energy and environmental affairs in consultation with the environmental crimes strike force, to
81 increase or expand enforcement and educational efforts related to the provisions of this chapter,
82 or to provide financial rewards offered to persons providing information leading to the arrest and
83 conviction of persons found to be in violation of section 2. The office of law enforcement may
84 use the fund for necessary and reasonable administrative and personnel costs related to the
85 specific purposes of the fund. The office of law enforcement shall not use the fund for existing
86 personnel or overhead costs. The secretary of the executive office of energy and environmental
87 affairs in consultation with the director of the office of law enforcement and the environmental
88 crimes strike force shall establish rules and regulations relating to the fund.

89 (b) The fund shall consist of all revenues received by the commonwealth under section 3.
90 There shall be credited to the fund any revenue from appropriations or other monies authorized

91 by the general court and specifically designated to be credited to the fund, any appropriation or
92 grant explicitly made to the fund and from public and private sources as gifts, grants and
93 donations to further enhance elephant ivory and rhino horn trafficking and enforcement of this
94 Chapter.

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

103 SECTION 5. This act shall take effect 6 months from the date of passage.