

SENATE No. 576

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 rhinoceros horn trafficking.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>2/19/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/25/2021</i>
<i>Adam J. Scanlon</i>	<i>14th Bristol</i>	<i>3/1/2021</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>3/4/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/8/2021</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>3/15/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/25/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/7/2021</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>10/29/2021</i>

SENATE No. 576

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 576) of Jason M. Lewis, Lori A. Ehrlich, Steven G. Xiarhos, Michael J. Barrett and other members of the General Court for legislation relative to ivory and rhonoceros horn trafficking. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 496 OF 2019-2020.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-Second General Court
(2021-2022)**
—————

An Act relative to ivory and rhinoceros 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 chapter:-

3 CHAPTER 131B.

4 IVORY AND RHINOCEROS HORN TRAFFICKING

5 Section 1. (a) As used in this chapter, the following terms shall have the following
6 meanings, unless the context requires otherwise:-

7 "Ivory", a tooth or tusk from any species of elephant, mammoth or mastodon, or a piece
8 thereof, or an item or product containing a tooth or tusk from any of said species, or containing a
9 piece thereof.

10 "Rhinoceros horn", the horn, or a piece thereof, or derivative such as powder, of any
11 species of rhinoceros, or an item or product containing rhinoceros horn or a piece or derivative
12 thereof.

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 facia 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 that is
34 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 documentation
40 that the item meets the federal criteria for exemption for antique articles under 16 U.S.C. 1539
41 (h), as further clarified by the United States Fish and Wildlife Service Director's Order 210
42 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, 1990, or was
46 imported into the United States under a Convention on International Trade in Endangered

47 Species of Wild Fauna and Flora pre-Convention certificate with no limitation on its commercial
48 use;

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

52 (3) the ivory is not raw;

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

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

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

57 (vi) the import, purchase, sale or possession with intent to sell ivory or rhinoceros horn to
58 a bona fide educational or scientific institution for educational or scientific purposes; provided,
59 however, that: (1) the import, purchase, sale or possession with intent to sell the ivory or
60 rhinoceros horn is not prohibited by federal law; and (2) the ivory or rhinoceros horn 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, 2020;

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

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

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

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

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

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

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

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

86 Section 4. (a) There shall be an Elephant Ivory and Rhinoceros Horn Trafficking
87 Enforcement Fund. The director of law enforcement shall administer the fund to increase or
88 expand enforcement and educational efforts related to the provisions of this chapter which may

89 include financial rewards offered to a person providing information leading to the arrest and
90 conviction of a person found to be in violation of this chapter. The office of law enforcement
91 may use the fund for necessary and reasonable administrative and personnel costs related to the
92 specific purposes of the fund. The office of law enforcement shall not use the fund for personnel
93 or overhead costs not related to the purposes of the fund. The fund shall not be assessed any
94 indirect costs.

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

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

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