

SENATE No. 440

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>Chris Walsh</i> | <i>6th Middlesex</i> |
| <i>Josh S. Cutler</i> | <i>6th Plymouth</i> |
| <i>Lori A. Ehrlich</i> | <i>8th Essex</i> |
| <i>Paul R. Heroux</i> | <i>2nd Bristol</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> |
| <i>Michael O. Moore</i> | <i>Second Worcester</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> |
| <i>Bruce E. Tarr</i> | <i>First Essex and Middlesex</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Michael J. Barrett</i> | <i>Third Middlesex</i> |
| <i>Angelo L. D'Emilia</i> | <i>8th Plymouth</i> |
| <i>Cynthia S. Creem</i> | <i>First Middlesex and Norfolk</i> |
| <i>Leonard Mirra</i> | <i>2nd Essex</i> |
| <i>Thomas J. Calter</i> | <i>12th Plymouth</i> |
| <i>William N. Brownsberger</i> | <i>Second Suffolk and Middlesex</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> |

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| <i>Edward F. Coppinger</i> | <i>10th Suffolk</i> |
| <i>Danielle W. Gregoire</i> | <i>4th Middlesex</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> |
| <i>Kenneth J. Donnelly</i> | <i>Fourth Middlesex</i> |
| <i>Kathleen O'Connor Ives</i> | <i>First Essex</i> |
| <i>Thomas M. Stanley</i> | <i>9th Middlesex</i> |
| <i>Thomas M. Petrolati</i> | <i>7th Hampden</i> |
| <i>Robert L. Hedlund</i> | <i>Plymouth and Norfolk</i> |
| <i>Barbara L'Italien</i> | <i>Second Essex and Middlesex</i> |
| <i>Cory Atkins</i> | <i>14th Middlesex</i> |
| <i>Daniel J. Ryan</i> | <i>2nd Suffolk</i> |
| <i>Sean Garballey</i> | <i>23rd Middlesex</i> |
| <i>Byron Rushing</i> | <i>9th Suffolk</i> |
| <i>Brian A. Joyce</i> | <i>Norfolk, Bristol and Plymouth</i> |
| <i>Kevin J. Kuros</i> | <i>8th Worcester</i> |
| <i>Walter F. Timilty</i> | <i>7th Norfolk</i> |
| <i>Todd M. Smola</i> | <i>1st Hampden</i> |
| <i>James Arciero</i> | <i>2nd Middlesex</i> |
| <i>Anne M. Gobi</i> | <i>Worcester, Hampden, Hampshire and Middlesex</i> |
| <i>Marc R. Pacheco</i> | <i>First Plymouth and Bristol</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |
| <i>Paul Brodeur</i> | <i>32nd Middlesex</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> |
| <i>Benjamin Swan</i> | <i>11th Hampden</i> |
| <i>Timothy J. Toomey, Jr.</i> | <i>26th Middlesex</i> |
| <i>Carlos Gonzalez</i> | <i>10th Hampden</i> |
| <i>Brian R. Mannal</i> | <i>2nd Barnstable</i> |

SENATE No. 440

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

The Commonwealth of Massachusetts

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

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 Massachusetts General Laws, as appearing in the 2014 Official Edition,
2 are hereby amended by inserting after chapter 131A the following new chapter:-

3 CHAPTER 131B IVORY AND RHINO HORN TRAFFICKING

4 Section 1.

5 (a) "Ivory" means a tooth or tusk composed of ivory from an animal, including but not
6 limited to, an elephant, hippopotamus, mammoth, narwhal, walrus, or whale or a piece thereof,
7 whether raw ivory or worked ivory, or made into or part of an ivory product.

8 (b) "Ivory product" means an item that contains, or that is wholly or partially made from
9 ivory.

10 (c) "Raw ivory" means polished or unpolished ivory that is unaltered or minimally
11 changed by carving.

12 (d) "Rhinoceros horn" means the horn, or a piece thereof, of a species of rhinoceros.

13 (e) "Rhinoceros horn product" means an item that contains or that is wholly or partially
14 made from any rhinoceros horn.

15 (f) "Total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn
16 products" means the fair market value of the ivory, ivory products, rhinoceros horn, and
17 rhinoceros horn products, or the actual price paid for the ivory, ivory products, rhinoceros horn,
18 and rhinoceros products, whichever is greater.

19 (g) "Worked ivory" means embellished, carved, marked, or otherwise altered ivory that
20 can no longer be considered raw ivory.

21 Section 2.

22 (a) In addition to the prohibitions and penalties established under M.G.L. ch.131A, §1- 7,
23 and any other applicable law, no person shall import, sell, offer for sale, purchase, barter or
24 possess with intent to sell, any ivory, ivory product, rhinoceros horn or rhinoceros horn product,
25 except as provided in this section.

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

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

34 (d) The prohibitions set forth in this section shall not apply to employees or agents of the
35 federal or state government undertaking law enforcement activities pursuant to federal or state
36 law or any mandatory duties required by federal or state law.

37 (e) The prohibition on import set forth in subsection (a) of this section shall not apply
38 where the import is expressly authorized by federal license or permit or a lawful permit issued
39 under the Convention on International Trade in Endangered Species of Wild Fauna and Flora
40 (CITES).

41 (f) The division of fisheries and wildlife may permit, under terms and conditions as the
42 department may prescribe, the import, sale, offer for sale, purchase, barter, or possession with
43 intent to sell, ivory, ivory product, rhinoceros horn or rhinoceros horn product for bona fide
44 educational purposes or for conducting noncommercial scientific purposes under a permit issued
45 pursuant to subsection (e) of this section, or to a museum, unless this activity is prohibited by
46 federal law.

47 Section 3.

48 (a) Whoever violates this section or any rule or regulation adopted under this Chapter
49 shall be punished by:

50 (1) for a first offense shall be fined not less than \$4,000 or an amount equal to two times
51 the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products
52 involved in the offense, whichever is greater; and may be imprisoned up to 18 months.

53 (2) for a second or subsequent offense, shall be fined not less than \$8,000 or an amount
54 equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros
55 horn products involved in the offense, whichever is greater, and may be imprisoned for up to 3
56 years

57 (3) for subsequent offenses or for any offense where the value the trafficked ivory and/or
58 rhino horn and other trafficked items combined equals \$25,000, may be imprisoned for up to 7
59 years and fined no less than an amount equal to \$100,000.

60 (b) Upon a conviction for violating the provisions of section 2, the court shall order the
61 seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in
62 the violation and determine the penalty for the violation based on the assessed value of the seized
63 products according to subsection (a) of this section. After sentencing the defendant, the court
64 shall order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros horn products
65 be transferred to the department of environmental protection for proper disposition. The
66 department, at its discretion, may destroy the ivory, ivory products, rhinoceros horn, and
67 rhinoceros horn products or donate them to an educational or scientific institution or
68 organization, including, but not necessarily limited to, a museum or university.