

HOUSE No. 772

The Commonwealth of Massachusetts

PRESENTED BY:

Lori A. Ehrlich and 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>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>David Biele</i>	<i>4th Suffolk</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>

<i>Brendan P. Crighton</i>	<i>Third Essex</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Shawn Dooley</i>	<i>9th Norfolk</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>

<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>
<i>Lenny Mirra</i>	<i>2nd Essex</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>

HOUSE No. 772

By Representative Ehrlich of Marblehead and Senator Lewis, a joint petition (accompanied by bill, House, No. 772) of Lori A. Ehrlich and others relative to ivory and rhinoceros horn trafficking. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 **IVORY AND RHINOCEROS HORN TRAFFICKING**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (3) the ivory is not raw;

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

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

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

56 (vi) the import, purchase, sale or possession with intent to sell ivory or rhinoceros horn to
57 a bona fide educational or scientific institution for educational or scientific purposes; provided,
58 however, that: (1) the import, purchase, sale or possession with intent to sell the ivory or
59 rhinoceros horn is not prohibited by federal law; and (2) the ivory or rhinoceros horn was legally
60 acquired before January 1, 1991, and was not subsequently transferred from one person to
61 another for financial gain or profit after July 1, 2020;

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

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

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

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

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

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

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

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

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

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

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

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

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