

HOUSE No. 1275

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 to prevent trafficking in ivory and rhino horns.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>

<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Thomas M. Petrolati</i>	<i>7th Hampden</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Robert L. Hedlund</i>	<i>Plymouth and Norfolk</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>

<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Nicholas A. Boldyga</i>	<i>3rd Hampden</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Robert F. Fennell</i>	<i>10th Essex</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>

HOUSE No. 1275

By Representative Ehrlich of Marblehead and Senator Lewis, a joint petition (accompanied by bill, House, No. 1275) of Lori A. Ehrlich, Jason M. Lewis and others for legislation to prevent trafficking in ivory and rhino horns. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to prevent trafficking in ivory and rhino horns.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The Legislature finds that wildlife trafficking is one of the world's most lucrative criminal
2 activities. Valued at \$7-10 billion annually, it ranks 4th globally in terms of value, just behind
3 the trafficking of drugs, people, and counterfeiting.

4 The Legislature finds that there is a direct link between the destruction of elephant and
5 rhinoceros populations and the violent actions of global criminal networks. Wildlife traffickers
6 operate primarily within well-organized, transnational criminal and terrorist syndicates that often
7 participate in other illegal activities such as narcotics and weapons trafficking. These groups use
8 poaching as a substantial source of funding for their violent activities, the proliferation of which
9 threatens U.S. national security.

10 The Legislature finds that trafficking in elephant ivory and rhinoceros horns is at the
11 highest rate ever recorded and that the most effective way to discourage the illegal trafficking is
12 to eliminate markets and profits for traffickers.

13 The Legislature determines that it is an important public purpose to protect all species of
14 elephants and rhinoceros by prohibiting the import, sale, purchase, barter, or possession with
15 intent to sell, of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product.

16 SECTION 1: The General Laws are hereby amended by inserting after chapter 131A the
17 following chapter:

18 CHAPTER 131B

19 IVORY AND RHINO HORN TRAFFICKING

20 Section 1.

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

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

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

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

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

31 (f) "Total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn
32 products" means the fair market value of the ivory, ivory products, rhinoceros horn, and

33 rhinoceros horn products, or the actual price paid for the ivory, ivory products, rhinoceros horn,
34 and rhinoceros products, whichever is greater.

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

37 SECTION 2. Chapter 131B of the General Laws is hereby amended by inserting after
38 section 1 the following section:

39 Section 2. (a) In addition to the prohibitions and penalties established under M.G.L.
40 ch.131A, §1- 7, and any other applicable law, no person shall import, sell, offer for sale,
41 purchase, barter or possess with intent to sell, any ivory, ivory product, rhinoceros horn or
42 rhinoceros horn product, except as provided in this section.

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

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

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

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

64 SECTION 3. Chapter 131B of the General Laws is hereby amended by inserting after
65 section 2 the following section:

66 Section 3. (a) Whoever violates this section or any rule or regulation adopted under this
67 Chapter shall be punished by:

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

71 (2) for a second or subsequent offense, shall be fined not less than \$8,000 or an amount
72 equal

73 to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros
74 horn products involved in the offense, whichever is greater, and may be imprisoned for up to 3
75 years

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

79 (b) Upon a conviction for violating the provisions of section 2, the court shall order the
80 seizure of all ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in
81 the violation and determine the penalty for the violation based on the assessed value of the seized
82 products according to subsection (a) of this section. After sentencing the defendant, the court
83 shall order that the seized ivory, ivory products, rhinoceros horn, and rhinoceros horn products
84 be transferred to the department of environmental protection for proper disposition. The
85 department, at its discretion, may destroy the ivory, ivory products, rhinoceros horn, and
86 rhinoceros horn products or donate them to an educational or scientific institution or
87 organization, including, but not necessarily limited to, a museum or university.

88 SECTION 4. Chapter 131B of the General Laws is hereby amended by inserting after
89 section 3 the following section:

90 Section 4. (a) There shall be established and set up on the books of the commonwealth a
91 separate fund, to be known as the Endangered Elephant and Rhino Conservation and Education
92 Fund. The fund shall be used by the department of environmental protection, in consultation with
93 the division of fisheries and wildlife, to increase or expand enforcement efforts related to the
94 provisions of this chapter, to develop or increase education and outreach programs enhancing

95 rhinoceros and African and Asian elephant conservation or to provide financial rewards offered
96 to persons providing information leading to the arrest and conviction of persons found to be in
97 violation of section 2. The department may use the fund for necessary and reasonable
98 administrative and personnel costs related to the specific purposes of the fund. The department
99 shall not use the fund for existing personnel or overhead costs. The commissioner of the
100 department of environmental protection shall establish rules and regulations relating to the fund.

101 (b) The fund shall consist of all revenues received by the commonwealth under section 3.
102 There shall be credited to the fund any revenue from appropriations or other monies authorized
103 by the general court and specifically designated to be credited to the fund, any appropriation or
104 grant explicitly made to the fund and from public and private sources as gifts, grants and
105 donations to further enhance elephant and rhino conservation and enforcement of this Chapter.

106 (c) The state treasurer shall deposit amounts in the fund in accordance with section 34 of
107 chapter 29 in a manner that will secure the highest interest rate available consistent with the
108 safety of the fund and with the requirement that all amounts on deposit shall be available for
109 immediate withdrawal at any time. The fund may be expended by the commissioner
110 environmental protection without further appropriation for the purposes stated in this section and
111 any funds remaining at the end of any fiscal year shall not revert to the General Fund and shall
112 be available for use in subsequent fiscal years. Funds deposited and expended from the
113 Endangered Elephant and Rhino Conservation and Education Fund shall not be assessed any
114 indirect costs.