

Massachusetts Gun Laws 2013

Compiled from the Massachusetts General Laws

Editor
J. Steven Foley, Esq.

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5 State Street 2R
Worcester, MA 01608
www.attorneyfoley.com
774-275-0711

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CHAPTER 4 STATUTES

Section 7

Definitions of statutory terms; statutory construction

Section 7. In construing statutes the following words shall have the meanings herein given, unless a contrary intention clearly appears:

First, "Aldermen", "board of aldermen", "mayor and aldermen", "city council" or "mayor" shall, in a city which has no such body or officer, mean the board or officer having like powers or duties.

Second, "Annual meeting", when applied to towns, shall mean the annual meeting required by law to be held in the month of February, March or April.

Second A, "Appointing authority", when used in connection with the operation of municipal governments shall include the mayor of a city and the board of selectmen of a town unless some other local office is designated as the appointing authority under the provisions of a local charter.

Third, "Assessor" shall include any person chosen or appointed in accordance with law to perform the duties of an assessor.

Third A, "Board of selectmen", when used in connection with the operation of municipal governments shall include any other local office which is performing the duties of a board of selectmen, in whole or in part, under the provisions of a local charter.

[There is no clause Fourth.]

Fifth, "Charter", when used in connection with the operation of city and town government shall include a written instrument adopted, amended or revised pursuant to the provisions of chapter forty-three B which establishes and defines the structure of city and town government for a particular community and which may create local offices, and distribute powers, duties and responsibilities among local offices and which may establish and define certain procedures to be followed by the city or town government. Special laws enacted by the general court applicable only to one city or town shall be deemed to have the force of a charter and may be amended, repealed and revised in accordance with the provisions of chapter forty-three B unless any such special law contains a specific prohibition against such action.

Fifth A, "Chief administrative officer", when used in connection with the operation of municipal governments, shall include the mayor of a city and the board of selectmen in a town unless some other local office is designated to be the chief administrative officer under the provisions of a local charter.

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Fifth B, "Chief executive officer", when used in connection with the operation of municipal governments shall include the mayor in a city and the board of selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

Sixth, "City solicitor" shall include the head of the legal department of a city or town.

Sixth A, "Coterminous", shall mean, when applied to the term of office of a person appointed by the governor, the period from the date of appointment and qualification to the end of the term of said governor; provided that such person shall serve until his successor is appointed and qualified; and provided, further, that the governor may remove such person at any time, subject however to the condition that if such person receives notice of the termination of his appointment he shall have the right, at his request, to a hearing within thirty days from receipt of such notice at which hearing the governor shall show cause for such removal, and that during the period following receipt of such notice and until final determination said person shall receive his usual compensation but shall be deemed suspended from his office.

Seventh, "District", when applied to courts or the justices or other officials thereof, shall include municipal.

Eighth, "Dukes", "Dukes county" or "county of Dukes" shall mean the county of Dukes county.

Ninth, "Fiscal year", when used with reference to any of the offices, departments, boards, commissions, institutions or undertakings of the commonwealth, shall mean the year beginning with July first and ending with the following June thirtieth.

Tenth, "Illegal gaming," a banking or percentage game played with cards, dice, tiles or dominoes, or an electronic, electrical or mechanical device or machine for money, property, checks, credit or any representative of value, but excluding: (i) a lottery game conducted by the state lottery commission, under sections 24, 24A and 27 of chapter 10; (ii) a game conducted under chapter 23K; (iii) pari-mutuel wagering on horse races under chapters 128A and 128C and greyhound races under said chapter 128C; (iv) a game of bingo conducted under chapter 271; and (v) charitable gaming conducted under said chapter 271.

Eleventh, "Grantor" may include every person from or by whom a freehold estate or interest passes in or by any deed; and "grantee" may include every person to whom such estate or interest so passes.

Twelfth, "Highway", "townway", "public way" or "way" shall include a bridge which is a part thereof.

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Thirteenth, "In books", when used relative to the records of cities and towns, shall not prohibit the making of such records on separate leaves, if such leaves are bound in a permanent book upon the completion of a sufficient number of them to make an ordinary volume.

Fourteenth, "Inhabitant" may mean a resident in any city or town.

[There is no clause Fifteenth.]

Sixteenth, "Issue", as applied to the descent of estates, shall include all the lawful lineal descendants of the ancestor.

Seventeenth, "Land", "lands" and "real estate" shall include lands, tenements and hereditaments, and all rights thereto and interests therein; and "recorded", as applied to plans, deeds or other instruments affecting land, shall, as affecting registered land, mean filed and registered.

Eighteenth, "Legal holiday" shall include January first, July fourth, November eleventh, and Christmas Day, or the day following when any of said days occurs on Sunday, and the third Monday in January, the third Monday in February, the third Monday in April, the last Monday in May, the first Monday in September, the second Monday in October, and Thanksgiving Day. "Legal holiday" shall also include, with respect to Suffolk county only, Evacuation Day, on March seventeenth, and Bunker Hill Day, on June seventeenth, or the day following when said days occur on Sunday; provided, however, that all state and municipal agencies, authorities, quasi-public entities or other offices located in Suffolk county shall be open for business and appropriately staffed on Evacuation Day, on March seventeenth, and Bunker Hill Day, on June seventeenth, and that section forty-five of chapter one hundred and forty-nine shall not apply to Evacuation Day, on March seventeenth, and Bunker Hill Day, on June seventeenth, or the day following when said days occur on Sunday.

Eighteenth A, "Commemoration day" shall include March fifteenth, in honor of Peter Francisco day, May twentieth, in honor of General Marquis de Lafayette and May twenty-ninth, in honor of the birthday of President John F. Kennedy. The governor shall issue a proclamation in connection with each such commemoration day.

Eighteenth B, "Legislative body", when used in connection with the operation of municipal governments shall include that agency of the municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters and whether styled a city council, board of aldermen, town council, town meeting or by any other title.

Nineteenth, "Month" shall mean a calendar month, except that, when used in a statute providing for punishment by imprisonment, one "month" or a multiple thereof shall mean a period of thirty days or the corresponding multiple thereof; and "year", a calendar year.

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Nineteenth A, "Municipality" shall mean a city or town.

Twentieth, "Net indebtedness" shall mean the indebtedness of a county, city, town or district, omitting debts created for supplying the inhabitants with water and other debts exempted from the operation of the law limiting their indebtedness, and deducting the amount of sinking funds available for the payment of the indebtedness included.

Twenty-first, "Oath" shall include affirmation in cases where by law an affirmation may be substituted for an oath.

Twenty-second, "Ordinance", as applied to cities, shall be synonymous with by-law.

Twenty-third, "Person" or "whoever" shall include corporations, societies, associations and partnerships.

Twenty-fourth, "Place" may mean a city or town.

Twenty-fifth, "Preceding" or "following", used with reference to any section of the statutes, shall mean the section last preceding or next following, unless some other section is expressly designated in such reference.

Twenty-sixth, "Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

- (a) specifically or by necessary implication exempted from disclosure by statute;
- (b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;
- (c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;
- (d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;
- (e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;

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(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person;

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;

(j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess **firearms** issued pursuant to chapter one hundred and forty or any **firearms** identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any **firearms**, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;

[There is no subclause (k).]

(l) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument;

(m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

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(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.

(o) the home address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

(p) the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).

(q) Adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.

(r) Information and records acquired under chapter 18C by the office of the child advocate.

(s) trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy; provided, however, that this subclause shall not exempt a public entity from disclosure required of a private entity so licensed.

(t) statements filed under section 20C of chapter 32.

[Subclause (u) of first paragraph of Clause Twenty-sixth added by 2012, 139, Sec. 5 effective July 1, 2012. See 2012, 139, Sec. 229.]

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(u) trade secrets or other proprietary information of the University of Massachusetts, including trade secrets or proprietary information provided to the University by research sponsors or private concerns.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.

Twenty-seventh, "Salary" shall mean annual salary.

Twenty-eighth, "Savings banks" shall include institutions for savings.

[There is no clause Twenty-ninth.]

Thirtieth, "Spendthrift" shall mean a person who is liable to be put under guardianship on account of excessive drinking, gaming, idleness or debauchery.

Thirty-first, "State", when applied to the different parts of the United States, shall extend to and include the District of Columbia and the several territories; and the words "United States" shall include said district and territories.

Thirty-second, "State auditor" and "state secretary" shall mean respectively the auditor of the commonwealth and the secretary of the commonwealth. "State treasurer" or "treasurer of the commonwealth" shall mean the treasurer and receiver general as used in the constitution of the commonwealth, and shall have the same meaning in all contracts, instruments, securities and other documents.

Thirty-third, "Swear" shall include affirm in cases in which an affirmation may be substituted for an oath. When applied to public officers who are required by the constitution to take oaths therein prescribed, it shall refer to those oaths; and when applied to any other officer it shall mean sworn to the faithful performance of his official duties.

Thirty-fourth, "Town", when applied to towns or officers or employees thereof, shall include city.

Thirty-fifth, "Valuation", as applied to a town, shall mean the valuation of such town as determined by the last preceding apportionment made for the purposes of the state tax.

Thirty-sixth, "Water district" shall include water supply district.

Thirty-seventh, "Will" shall include codicils.

Thirty-eighth, "Written" and "in writing" shall include printing, engraving, lithographing and any other mode of representing words and letters; but if the written signature of a

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person is required by law, it shall always be his own handwriting or, if he is unable to write, his mark.

Thirty-ninth, "Annual election", as applied to municipal elections in cities holding such elections biennially, shall mean biennial election.

Fortieth, "Surety" or "Sureties", when used with reference to a fidelity bond of an officer or employee of a county, city, town or district, shall mean a surety company authorized to transact business in the commonwealth.

Forty-first, "Population", when used in connection with the number of inhabitants of a county, city, town or district, shall mean the population as determined by the last preceding national census.

[There is no clause Forty-second.]

Forty-third, "Veteran" shall mean (1) any person, (a) whose last discharge or release from his wartime service as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States, or on full time national guard duty under Titles 10 or 32 of the United States Code or under sections 38, 40 and 41 of chapter 33 for not less than 90 days active service, at least 1 day of which was for wartime service; provided, however, than any person who so served in wartime and was awarded a service-connected disability or a Purple Heart, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 90 days of active service; (2) a member of the American Merchant Marine who served in armed conflict between December 7, 1941 and December 31, 1946, and who has received honorable discharges from the United States Coast Guard, Army, or Navy; (3) any person (a) whose last discharge from active service was under honorable conditions, and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States for not less than 180 days active service; provided, however, that any person who so served and was awarded a service-connected disability or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 180 days of active service.

"Wartime service" shall mean service performed by a "Spanish War veteran", a "World War I veteran", a "World War II veteran", a "Korean veteran", a "Vietnam veteran", a "Lebanese peace keeping force veteran", a "Grenada rescue mission veteran", a "Panamanian intervention force veteran", a "Persian Gulf veteran", or a member of the "WAAC" as defined in this clause during any of the periods of time described herein or for which such medals described below are awarded.

"Spanish War veteran" shall mean any veteran who performed such wartime service between February fifteenth, eighteen hundred and ninety-eight and July fourth, nineteen hundred and two.

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"World War I veteran" shall mean any veteran who (a) performed such wartime service between April sixth, nineteen hundred and seventeen and November eleventh, nineteen hundred and eighteen, or (b) has been awarded the World War I Victory Medal, or (c) performed such service between March twenty-fifth, nineteen hundred and seventeen and August fifth, nineteen hundred and seventeen, as a Massachusetts National Guardsman.

"World War II veteran" shall mean any veteran who performed such wartime service between September 16, 1940 and July 25, 1947, and was awarded a World War II Victory Medal, except that for the purposes of chapter 31 it shall mean all active service between the dates of September 16, 1940 and June 25, 1950.

"Korean veteran" shall mean any veteran who performed such wartime service between June twenty-fifth, nineteen hundred and fifty and January thirty-first, nineteen hundred and fifty-five, both dates inclusive, and any person who has received the Korea Defense Service Medal as established in the Bob Stump National Defense Authorization Act for fiscal year 2003.

"Korean emergency" shall mean the period between June twenty-fifth, nineteen hundred and fifty and January thirty-first, nineteen hundred and fifty-five, both dates inclusive.

"Vietnam veteran" shall mean (1) any person who performed such wartime service during the period commencing August fifth, nineteen hundred and sixty-four and ending on May seventh, nineteen hundred and seventy-five, both dates inclusive, or (2) any person who served at least one hundred and eighty days of active service in the armed forces of the United States during the period between February first, nineteen hundred and fifty-five and August fourth, nineteen hundred and sixty-four; provided, however, that for the purposes of the application of the provisions of chapter thirty-one, it shall also include all active service between the dates May seventh, nineteen hundred and seventy-five and June fourth, nineteen hundred and seventy-six; and provided, further, that any such person who served in said armed forces during said period and was awarded a service-connected disability or a Purple Heart, or who died in said service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete one hundred and eighty days of active service.

"Lebanese peace keeping force veteran" shall mean any person who performed such wartime service and received a campaign medal for such service during the period commencing August twenty-fifth, nineteen hundred and eighty-two and ending when the President of the United States shall have withdrawn armed forces from the country of Lebanon.

"Grenada rescue mission veteran" shall mean any person who performed such wartime service and received a campaign medal for such service during the period commencing October twenty-fifth, nineteen hundred and eighty-three to December fifteenth, nineteen hundred and eighty-three, inclusive.

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"Panamanian intervention force veteran" shall mean any person who performed such wartime service and received a campaign medal for such service during the period commencing December twentieth, nineteen hundred and eighty-nine and ending January thirty-first, nineteen hundred and ninety.

"Persian Gulf veteran" shall mean any person who performed such wartime service during the period commencing August second, nineteen hundred and ninety and ending on a date to be determined by presidential proclamation or executive order and concurrent resolution of the Congress of the United States.

"WAAC" shall mean any woman who was discharged and so served in any corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States and such woman shall be deemed to be a veteran.

None of the following shall be deemed to be a "veteran":

(a) Any person who at the time of entering into the armed forces of the United States had declared his intention to become a subject or citizen of the United States and withdrew his intention under the provisions of the act of Congress approved July ninth, nineteen hundred and eighteen.

(b) Any person who was discharged from the said armed forces on his own application or solicitation by reason of his being an enemy alien.

(c) Any person who has been proved guilty of wilful desertion.

(d) Any person whose only service in the armed forces of the United States consists of his service as a member of the coast guard auxiliary or as a temporary member of the coast guard reserve, or both.

(e) Any person whose last discharge or release from the armed forces is dishonorable.

"Armed forces" shall include army, navy, marine corps, air force and coast guard.

"Active service in the armed forces", as used in this clause shall not include active duty for training in the army national guard or air national guard or active duty for training as a reservist in the armed forces of the United States.

Forty-fourth, "Registered mail", when used with reference to the sending of notice or of any article having no intrinsic value shall include certified mail.

Forty-fifth, "Pledge", "Mortgage", "Conditional Sale", "Lien", "Assignment" and like terms, when used in referring to a security interest in personal property shall include a corresponding type of security interest under chapter one hundred and six of the General Laws, the Uniform Commercial Code.

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Forty-sixth, "Forester", "state forester" and "state fire warden" shall mean the commissioner of environmental management or his designee.

Forty-seventh, "Fire fighter", "fireman" or "permanent member of a fire department", shall include the chief or other uniformed officer performing similar duties, however entitled, and all other fire officers of a fire department, including, without limitation, any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, or members of the Massachusetts military reservation fire department.

Forty-eighth, "Minor" shall mean any person under eighteen years of age.

Forty-ninth, "Full age" shall mean eighteen years of age or older.

Fiftieth, "Adult" shall mean any person who has attained the age of eighteen.

Fifty-first, "Age of majority" shall mean eighteen years of age.

Fifty-second, "Superior court" shall mean the superior court department of the trial court, or a session thereof for holding court.

Fifty-third, "Land court" shall mean the land court department of the trial court, or a session thereof for holding court.

Fifty-fourth, "Probate court", "court of insolvency" or "probate and insolvency court" shall mean a division of the probate and family court department of the trial court, or a session thereof for holding court.

Fifty-fifth, "Housing court" shall mean a division of the housing court department of the trial court, or a session thereof for holding court.

Fifty-sixth, "District court" or "municipal court" shall mean a division of the district court department of the trial court, or a session thereof for holding court, except that when the context means something to the contrary, said words shall include the Boston municipal court department.

Fifty-seventh, "Municipal court of the city of Boston" shall mean the Boston municipal court department of the trial court, or a session thereof for holding court.

Fifty-eighth, "Juvenile court" shall mean a division of the juvenile court department of the trial court, or a session thereof for holding court.

Fifty-ninth, "Gender identity" shall mean a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at

birth. Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held as part of a person's core identity; provided, however, that gender-related identity shall not be asserted for any improper purpose.

CHAPTER 6 THE GOVERNOR, LIEUTENANT GOVERNOR AND COUNCIL, CERTAIN OFFICERS UNDER THE GOVERNOR AND COUNCIL, AND STATE LIBRARY

Section 168B

Rules and regulations

Section 168B. The executive director of the department shall promulgate rules and regulations to ensure the prompt collection, exchange, dissemination and distribution of firearms record information in accordance with sections 121 to 131P, inclusive, of chapter one hundred and forty.

Section 15ZZZ

Eddie Eagle Gun Safety Week

Section 15ZZZ. The governor shall annually issue a proclamation setting apart the first week of October as Eddie Eagle Gun Safety Week and recommending that said week be observed in an appropriate manner by the people.

Section 172

Dissemination of record information; certification; eligibility for access; scope of inquiry; listing; access limited; rules; use of information

Section 172. (a) The department shall maintain criminal offender record information in a database, which shall exist in an electronic format and be accessible via the world wide web. Except as provided otherwise in this chapter, access to the database shall be limited as follows:

(1) Criminal justice agencies may obtain all criminal offender record information, including sealed records, for the actual performance of their criminal justice duties. Licensing authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record information, including sealed records, for the purpose of firearms

licensing in accordance with sections 121 to 131P, inclusive, of chapter 140. The criminal record review board may obtain all criminal offender record information, including sealed records, for the actual performance of its duties.

(2) A requestor authorized or required by statute, regulation or accreditation requirement to obtain criminal offender record information other than that available under clause (3) may obtain such information to the extent and for the purposes authorized to comply with said statute, regulation or accreditation requirement.

(3) A requestor or the requestor's legally designated representative may obtain criminal offender record information for any of the following purposes: (i) to evaluate current and prospective employees including full-time, part-time, contract, internship employees or volunteers; (ii) to evaluate applicants for rental or lease of housing; (iii) to evaluate volunteers for services; and (iv) to evaluate applicants for a professional or occupational license issued by a state or municipal entity. Criminal offender record information made available under this section shall be limited to the following: (i) felony convictions for 10 years following the disposition thereof, including termination of any period of incarceration or custody, (ii) misdemeanor convictions for 5 years following the disposition thereof, including termination of any period of incarceration or custody, and (iii) pending criminal charges, which shall include cases that have been continued without a finding until such time as the case is dismissed pursuant to section 18 of chapter 278; provided, however, that prior misdemeanor and felony conviction records shall be available for the entire period that the subject's last available conviction record is available under this section; and provided further, that a violation of section 7 of chapter 209A and a violation of section 9 of chapter 258E shall be treated as a felony for purposes of this section.

[Clause (4) of subsection (a) as amended by 2010, 256, Sec. 21 and 2012, 36, Sec. 3 effective May 4, 2012. See 2010, 256, Sec. 145 as amended by 2010, 359, Sec. 102.]

(4) Any member of the general public may upon written request to the department and in accordance with regulations established by the department obtain the following criminal offender record information on a subject: (i) convictions for any felony punishable by a term of imprisonment of 5 years or more, for 10 years following the disposition thereof, including termination of any period of incarceration or custody; (ii) information indicating custody status and placement within the correction system for an individual who has been convicted of any offense and sentenced to any term of imprisonment, and at the time of the request: is serving a sentence of probation or incarceration, or is under the custody of the parole board; (iii) felony convictions for 2 years following the disposition thereof, including any period of incarceration or custody; and (iv) misdemeanor convictions for 1 year following the disposition thereof, including any period of incarceration or custody.

(5) A subject who seeks to obtain his own criminal offender record information and the subject's legally designated representative may obtain all criminal offender record information from the department pertaining to the subject under section 175.

CHAPTER 6 THE GOVERNOR, LIEUTENANT GOVERNOR AND COUNCIL

(6) The commissioner may provide access to criminal offender record information to persons other than those entitled to obtain access under this section, if the commissioner finds that such dissemination to such requestor serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to criminal offender record information necessary to sustain the public interest. The commissioner shall make an annual report to the governor and file a copy of the report with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate documenting all access provided under this paragraph, without inclusion of identifying data on a subject. The annual report shall be available to the public upon request.

(7) Housing authorities operating pursuant to chapter 121B may obtain from the department conviction and pending criminal offender record information for the sole purpose of evaluating applications for housing owned by such housing authority, in order to further the protection and well-being of tenants of such housing authorities.

[Clause (8) of subsection (a) as amended by 2010, 256, Sec. 21 and 2010, 359, Secs. 4 and 5 effective May 4, 2012. See 2010, 256, Sec. 145 as amended by 2010, 359, Sec. 102.]

(8) The department of telecommunications and cable and the department of public utilities may obtain from the department all available criminal offender record information for the purpose of screening applicants for motor bus driver certificates and applicants who regularly transport school age children or students under chapter 71B in the course of their job duties. The department of public telecommunications and cable and the department of public utilities shall not disseminate such information for any purpose other than to further the protection of children.

(9) The department of children and families and the department of youth services may obtain from the department data permitted under section 172B.

(10) A person providing services in a home or community-based setting for any elderly person or disabled person or who will have direct or indirect contact with such elderly or disabled person or access to such person's files may obtain from the department data permitted under section 172C.

(11) The IV-D agency as set forth in chapter 119A may obtain from the department data permitted under section 172D and section 14 of chapter 119A.

(12) A long-term care facility, as defined in section 72W of chapter 111, an assisted living residence as defined in section 1 of chapter 19D, and any continuing care facility as defined in section 1 of chapter 40D may obtain from the department data permitted under section 172E.

(13) The department of early education and care may obtain from the department data permitted under section 172F.

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(14) Operators of camps for children may obtain from the department data permitted under section 172G.

(15) An entity or organization primarily engaged in providing activities or programs to children 18 years of age or younger that accepts volunteers may obtain from the department data permitted under section 172H.

(16) School committees or superintendents that have contracted with taxicab companies to provide for the transportation of pupils pursuant to section 7A of chapter 71 may obtain from the department data permitted under section 172I.

(17) The commissioner of banks may obtain from the department data permitted under section 172J, section 3 of chapter 255E and section 3 of chapter 255F.

(18) A children's camp or school that plans to employ a person or accept a volunteer for a climbing wall or challenge course program may obtain from the department data permitted under section 172K.

(19) A victim of a crime, a witness or a family member of a homicide victim, as defined in section 1 of chapter 258B, may obtain from the department data permitted under section 178A.

(20) The motor vehicle insurance merit rating board may obtain from the department data permitted under section 57A of chapter 6C.

(21) The department of early education and care, or its designee, may obtain from the department data permitted under sections 6 and 8 of chapter 15D.

(22) The district attorney may obtain from the department data permitted under section 2A of chapter 38.

(23) A school committee and superintendent of any city, town or regional school district and the principal, by whatever title the position be known, of a public or accredited private school of any city, town or regional school district, may obtain from the department data permitted under section 38R of chapter 71.

(24) The Massachusetts Port Authority may obtain from the department data permitted under section 61 of chapter 90.

[Clause (25) of subsection (a) as amended by 2010, 256, Sec. 21 and 2010, 359, Sec. 6 effective May 4, 2012. See 2010, 256, Sec. 145 as amended by 2010, 359, Sec. 102.]

(25) The department of children and families may obtain from the department data permitted under section 26A of chapter 119, section 3B of chapter 210 (26) The state

CHAPTER 6 THE GOVERNOR, LIEUTENANT GOVERNOR AND COUNCIL

racing commission may obtain from the department data permitted under section 9A of chapter 128A.

(27) A court, office of jury commissioner, and the clerk of court or assistant clerk may obtain from the department data permitted under section 33 of chapter 234A.

(28) The pension fraud unit within the public employee retirement administration commission may obtain from the department data permitted under section 1 of chapter 338 of the acts of 1990.

(29) Special education school programs approved under chapter 71B may obtain from the department all criminal offender record information provided for in paragraph (3) of subsection (a).

(30) The department shall configure the database to allow for the exchange, dissemination, distribution and direct connection of the criminal record information system to criminal record information systems in other states and relevant federal agencies including the Federal Bureau of Investigation and Immigration and Customs Enforcement that utilize fingerprint or iris scanning and similar databases.

(b) Notwithstanding the foregoing, convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses as defined in section 178C of chapter 6 that are punishable by a term of incarceration in state prison shall remain in the database permanently and shall be available to all requestors listed in paragraphs (1) through (3), inclusive, of subsection (a) unless sealed under section 100A of chapter 276.

(c) The department shall specify the information that a requestor shall provide to query the database, including, but not limited to, the subject's name, date of birth and the last 4 digits of the subject's social security number; provided, however, that a member of the public accessing information under paragraph (4) of subsection (a) shall not be required to provide the last four digits of the subject's social security number. To obtain criminal offender record information concerning a subject pursuant to subsection (a)(2) or (a)(3), the requestor must certify under the penalties of perjury that the requestor is an authorized designee of a qualifying entity, that the request is for a purpose authorized under subsection (a)(2) or (a)(3), and that the subject has signed an acknowledgement form authorizing the requestor to obtain the subject's criminal offender record information. The requestor must also certify that he has verified the identity of the subject by reviewing a form of government-issued identification. Each requestor shall maintain acknowledgement forms for a period of 1 year from the date the request is submitted. Such forms shall be subject to audit by the department. The department may establish rules or regulations imposing other requirements or affirmative obligations upon requestors as a condition of obtaining access to the database; provided, however, that such additional rules and regulations are not in conflict with the state and federal Fair Credit Reporting Acts.

In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant's criminal offender record information shall provide the applicant with the criminal history record in the person's possession, whether obtained from the department or any other source, (a) prior to questioning the applicant about his criminal history and (b) if the person makes a decision adverse to the applicant on the basis of his criminal history; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time in connection with an adverse decision based on this information. Failure to provide such criminal history information to the individual in accordance with this section may subject the offending person to investigation, hearing and sanctions by the board.

(d) Except as authorized by this section, it shall be unlawful to request or require a person to provide a copy of his criminal offender record information. Violation of this subsection is punishable by the penalties set forth in section 178.

(e) No employer or person relying on volunteers shall be liable for negligent hiring practices by reason of relying solely on criminal offender record information received from the department and not performing additional criminal history background checks, unless required to do so by law; provided, however, that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the subject's identifying information consistent with the requirements set forth in this section and in the department's regulations.

No employer shall be liable for discriminatory employment practices for the failure to hire a person on the basis of criminal offender record information that contains erroneous information requested and received from the department, if the employer would not have been liable if the information had been accurate; provided, however, that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the individual's information consistent with the requirements set forth in this section and the department's regulations.

Neither the board nor the department shall be liable in any civil or criminal action by reason of any criminal offender record information or self-audit log that is disseminated by the board, including any information that is false, inaccurate or incorrect because it was erroneously entered by the court or the office of the commissioner of probation.

(f) A requestor shall not disseminate criminal offender record information except upon request by a subject; provided, however, that a requestor may share criminal offender record information with individuals within the requesting entity that have a need to know the contents of the criminal offender record information to serve the purpose for which the information was obtained; and provided further, that upon request, a requestor shall share criminal offender record information with the government entities charged with

overseeing, supervising, or regulating them. A requestor shall maintain a secondary dissemination log for a period of one year following the dissemination of a subject's criminal offender record information. The log shall include the following information: (i) name of subject; (ii) date of birth of the subject; (iii) date of the dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose for the dissemination. The secondary dissemination log shall be subject to audit by the department.

Unless otherwise provided by law or court order, a requestor shall not maintain a copy, electronic or otherwise, of requested criminal offender record information obtained from the department for more than 7 years from the last date of employment, volunteer service or residency or from the date of the final decision of the requestor regarding the subject.

(g) The department shall maintain a log of all queries that shall indicate the name of the requestor, the name of the subject, the date of the query, and the certified purpose of the query. A self-audit may be requested for no fee once every 90 days. The commissioner may impose a fee in an amount as determined by the secretary of public safety and security, for self-audit requests made more than once every 90 days. Upon request, the commissioner may transmit the self-audit electronically. Further, if funding is available and technology reasonably allows, the department shall establish a mechanism that will notify a subject, or an advocate or agent designated by the subject, by electronic mail or other communication mechanism whenever a query is made regarding the subject. The self-audit log and query log shall not be considered a public record.

(h) Notwithstanding the provisions of this section, the motor vehicle insurance merit rating board may disseminate information concerning convictions of automobile law violations as defined in section 1 of chapter 90C, or information concerning a charge of operating a motor vehicle while under the influence of intoxicating liquor that results in assignment to a driver alcohol program as described in section 24D of chapter 90, directly or indirectly, to an insurance company doing motor vehicle insurance business within the commonwealth, or to such insurance company's agents, independent contractors or policyholders to be used exclusively for motor vehicle insurance purposes.

(i) Notwithstanding any other provisions of this section, information indicating custody status and placement within the correction system shall be available to any person upon request; provided, however that no information shall be disclosed that identifies family members, friends, medical or psychological history, or any other personal information unless such information is directly relevant to such release or custody placement decision, and no information shall be provided if its release would violate any other provisions of state or federal law.

(j) The parole board, subject to sections 130 and 154 of chapter 127, the department of correction, a county correctional authority or a probation officer with the approval of a justice of the appropriate division of the trial court may, in its discretion, make available a summary, which may include references to criminal offender record information or evaluative information, concerning a decision to release an individual on a permanent or temporary basis, to deny such release, or to change the individual's custody status.

(k) Notwithstanding any other provision of this section or any other general or special law to the contrary, members of the public who are in fear of an offender may obtain from the department advance notification of the temporary or permanent release of an offender from custody, including but not limited to expiration of a sentence, furlough, parole, work release or educational release. An individual seeking access to advance notification shall verify by a written declaration under the penalties of perjury that the individual is in fear of the offender and that advance notification is warranted for physical safety reasons.

(l) Any individual or entity that receives or obtains criminal offender record information from any source in violation of sections 168 through 175 of this chapter, whether directly or through an intermediary, shall not collect, store, disseminate, or use such criminal offender record information in any manner or for any purpose.

(m) Notwithstanding this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

(n) The commissioner, upon the advice of the board, shall promulgate rules and regulations to carry out the provisions of this section.

Section 172B1/2

Local fingerprint submission requirement for applicants for licenses in specified occupations

[Text of section added by 2010, 256, Sec. 23 effective May 4, 2012. See 2010, 256, Sec. 145 as amended by 2010, 359, Sec. 102.]

Section 172B1/2. Municipalities may, by local ordinance, require applicants for licenses in specified occupations to submit a full set of fingerprints for the purpose of conducting a state and national criminal history records check pursuant to sections 168 and 172 and 28 U.S.C. § 534. Fingerprint submissions may be submitted by the licensing authority to the identification unit within the department of state police through the criminal history systems board, or its successor, for a state criminal records check and to the Federal Bureau of Investigation for a national criminal records check.

Municipalities may, by local ordinance, establish the appropriate fee charged to applicants for administering a fingerprinting system. For the purposes of section 2LLL of chapter 29, \$30 of the fee shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund and the remainder of the fee may be retained by the licensing authority for costs associated with the administration of the system.

CHAPTER 7 EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Section 22C

Procurement by state of goods or services from persons with an office or facility in Northern Ireland; certification; bids

Section 22C. (a) Except as otherwise provided in this section, a state agency, a state authority, the house of representatives or the state senate may not procure goods or services from any person employing ten or more employees in an office or other facility located in Northern Ireland, who fails to certify that:

- (1) he does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and
- (2) he promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination.

The certification shall also confirm that the certifying person is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

(b) A state agency, a state authority, or the house of representatives or the senate may procure goods or services from a person who employs ten or more employees in an office or other facility located in Northern Ireland and fails to provide the certification required by subsection (c) only after certifying, in writing, to the secretary or, in the case of a state authority, to the chief operating officer that:

- (1) the procurement is essential; and
- (2) compliance with this section would eliminate the only bid or offer or would result in inadequate competition.

(c) In any solicitation, a state agency, a state authority, the house of representatives or the senate shall provide notice of the requirements of this section. Prior to reviewing responses to bid documents for any procurements or, if there are none, prior to entering into any contractual arrangement, the awarding authority shall obtain from such person seeking a contract a statement under pains and penalties of perjury from an authorized representative, on a form to be provided by the awarding authority, that he does not employ ten or more employees in an office or other facility located in Northern Ireland or, if he does, certifying compliance with the principles listed in subsection (a) or declaring that he does not so certify.

(d) In any procurement that includes bidders or offerors who employ ten or more employees in an office or other facility located in Northern Ireland and do not certify compliance with the principles listed in subsection (a), the awarding authority may award the contract to a person who does not certify compliance with the principles listed in subsection (a) only if there is no comparable low bid or offer by a person who does so certify or who does not employ ten or more employees in an office or other facility located in Northern Ireland.

(e) A person who employs persons in Northern Ireland for the sole purpose of reporting the news, or solely for the purpose of providing goods or services for the provision of international telecommunications shall not be subject to the provisions of sections twenty-two C to twenty-two D, inclusive.

CHAPTER 15A PUBLIC EDUCATION

Section 40

Optional retirement system; providers; regulations; participation; funds

Section 40. (1)(a) Notwithstanding the provisions of chapter thirty-two of the General Laws, or of any general or special law to the contrary the board of higher education shall establish an optional retirement program under which custodial accounts described in section 403(b)(7) of the Internal Revenue Code, as it may be amended from time to time, or contracts providing retirement and death benefits may be purchased for eligible members who elect to participate in the program. The benefits to be provided for participants in such optional retirement program shall be provided through such custodial accounts or individual or group annuity contracts, which may be fixed or variable in nature, or a combination thereof; provided that, at all times, those annuity contracts issued by licensed insurers under the optional retirement program shall provide the minimum values and guarantees required by the laws governing such contracts in the commonwealth; and provided, further, that the benefits shall be payable only to participants in the program or their beneficiaries, and such benefits shall be paid only by the selected providers in accordance with the terms of the custodial accounts, annuity contracts or certificates providing coverage to the participant; provided that such optional retirement program shall not allow a participant to withdraw contributions while an active participant in the commonwealth's optional retirement program.

(b) Said council shall select at least two but no more than four providers for the optional retirement program and enter into contracts with them in accordance with the laws governing the procurement of services for executive agencies of the commonwealth, provided that such procurements shall not be subject to the approval of the commissioner of administration; provided, further, that the selected providers shall be authorized to conduct business within the commonwealth, and each and every provider or issuer of annuity contracts under the optional retirement program which is a life insurance

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company shall hold a certificate of authority to do a life insurance business in the commonwealth, maintain the minimum required capital and surplus required for life insurance companies under the laws of the commonwealth, be a member of the commonwealth's life and health insurance guaranty association and be a member of the life and health insurance guaranty associations in any and all jurisdictions where required by law with similar retirement programs funded in whole or in part through the provider's annuities in which participants in the optional retirement program might participate upon transfer of employment; and provided, further, that said council shall coordinate the transfer of funds and information between payroll centers, the selected providers and plan participants.

(c) The council shall promulgate regulations governing the administration of and participation in the plan. Such regulations shall be subject to the provisions of chapter thirty A, and a copy of such regulations, and any amendments thereto, shall be filed in advance of their taking effect with the general court. The council shall file the proposed regulation, amendment or repeal with the clerk of the house of representatives, who shall refer such regulations to the joint committee on public service. Within thirty days after such referral, the committee on public service may hold a public hearing on the regulations and shall issue a report to the council. Said report shall contain any proposed changes to the regulations voted upon by the public service committee. The council shall review said report and shall adopt final regulations as deemed appropriate in view of said report and shall file with the chairmen of the public service committee its final regulations. If the final regulations do not contain the changes proposed by the public service committee, the council shall send a letter to the public service committee accompanying the final regulations stating the reasons why such proposed changes were not adopted. Not earlier than forty-five days after the filing of such letter and final regulations with the public service committee, the council shall file the final regulations with the state secretary as provided in section five of said chapter thirty A and said regulations shall thereupon take effect.

If no such proposed changes to the regulations are made to the council within sixty days of the initial filing of the proposed regulation or any amendment or a repeal of such regulation with the clerk of the house of representatives, the council may file the final regulations with the state secretary as provided in section five of said chapter thirty A and said regulations shall thereupon take effect.

(2)(a) Participation in the optional retirement program provided by this section shall be limited to persons who are otherwise eligible for membership in the state employees' retirement system as established under the provisions of chapter 32; provided, however, that they are faculty members, chancellors, vice chancellors, presidents, vice presidents, deans, or holding a position classified as a senior administrator IV, senior administrator III, senior administrator II, senior administrator I of the board of higher education or public institutions of higher education, as defined in section 5.

(b) Elections to participate in the optional retirement program shall be made as follows:

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(i) Any eligible employee who is initially appointed on or after the effective date of the optional retirement program may elect in writing, or in another form acceptable to the council, to participate in the optional retirement program within 180 days of the effective date of the appointment. Any such election shall be effective as of the effective date of appointment. If an eligible employee fails to make an election as provided in this paragraph, such employee shall become a member of the state employees' retirement system established under the provisions of said chapter thirty-two.

(ii) Any eligible employee who is a member of any retirement system established under the provisions of said chapter thirty-two on the effective date of the optional retirement program but who has less than ten years of creditable service on the effective date of the optional retirement program may elect in writing, or in another form acceptable to the council, to participate in the optional retirement program within ninety days after the effective date of the optional retirement program. Any such election shall become effective on the first day of the pay period next following such election, and shall constitute a waiver of all retirement benefits to which the individual may be entitled as an employee under any retirement system established under the provisions of said chapter thirty-two.

(iii) Any employee who is a member of any retirement system established under the provisions of said chapter thirty-two but who has less than ten years of creditable service on the date such employee becomes eligible to participate in the optional retirement program may elect in writing, or in another form acceptable to the council, to participate in such optional retirement program within ninety days of the date said employee becomes eligible. Any such election shall become effective on the first day of the pay period next following such election, and shall constitute a waiver of all retirement benefits to which the individual may be entitled as an employee under any retirement system established under the provisions of said chapter thirty-two.

(iv) Any eligible employee electing to participate in the optional retirement program shall be ineligible for membership in the state employees' retirement system as long as he remains continuously employed in any eligible position within a public institution of higher education, as defined in section five; provided, that the election by an eligible employee to participate in the optional retirement program shall be irrevocable for so long as the employee continues to meet the eligibility requirements; provided further, however, if an employee becomes ineligible to continue in the optional retirement program, the employee shall thereafter participate in the state employees' retirement system established in accordance with the provisions of said chapter thirty-two.

(3)(a) Any eligible employee electing to participate in the optional retirement program shall not be required to make contributions to the state employee's retirement system but shall contribute to the optional retirement program an amount equal to the contribution which would have been required had such employee been a member of the state employees' retirement system.

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(b) For each eligible employee electing to participate in the optional retirement program, the state employees retirement system shall contribute an amount equal to five percent of each employee's regular compensation, as defined in section one of chapter thirty-two, to the optional retirement program and a plan established to provide life and disability benefits to all participants in the program; provided, however, that not more than one percent of said contribution shall be made to the plan established to provide said life and disability benefits; and provided, further, that the balance of said contribution shall be remitted to the appropriate provider for application to the participating employee's contract or custodial account, less any monthly fees established by the council and approved in advance by the state comptroller in order to cover the reasonably necessary direct costs incurred by the council in establishing and administering the plan; and provided, further, that no funds shall be invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual or corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland, and no assets shall be invested in the stocks, securities or other obligations of any such company so engaged.

(c) If any eligible employee is a member of any retirement system established under the provisions of said chapter thirty-two at the time such employee elects to participate in the optional retirement program, the employee may direct that the amount of the accumulated total deductions, and any interest to which the employee would be entitled under said chapter thirty-two if the employee withdrew from the system, credited to such employee's account in such retirement system be transferred directly to such employee's account in the optional retirement program. Any such transfer shall be made in the form of a direct trustee-to-trustee transfer in compliance with the requirements of subchapter D of chapter one of the federal Internal Revenue Code.

(d) The funds accumulated under the optional retirement program shall be exempt from taxation. The rights of a participant to a custodial account, an annuity, the annuity contracts or certificates providing coverage to participants, and all right in and to the funds accumulated under the custodial accounts, annuity contracts or certificates shall be exempt from taxation, including income taxes levied under the provisions of said chapter sixty-two. No assignment of any right in or to any funds or annuities under the optional retirement program shall be valid except such assignment as may be made for the purpose of making restitution in the case of dereliction from duty by any participant as set forth in section fifteen of said chapter thirty-two as long as such assignment does not violate the restrictions of the Internal Revenue Code; provided that nothing in this section shall prevent a participant's custodial account or annuity from being attached, taken on execution, assigned, or subject to other process to satisfy a support order under chapter two hundred and eight, two hundred and nine, or two hundred and seventy-three as long as such order constitutes a qualified domestic relations order under the terms of the Internal Revenue Code.

(e) Any eligible employee enrolled in the optional retirement program who retires and wishes to retain his group insurance coverage as provided in chapter 32A, or retires and

wishes to enroll in group insurance coverage pursuant to said chapter 32A, may do so in the same manner, and subject to the same limitations and requirements as an active employee member of the state retirement system. Any eligible employee enrolled in the optional retirement program who retains or enrolls in the group insurance coverage upon retirement shall be deemed to have authorized his optional retirement program plan provider to deduct from the retired employees account, on a monthly basis, and forward to the group insurance commission, an amount equal to the retired employee's share of the premium as set by said chapter 32A and each annual appropriation act. Each optional retirement program plan provider shall be required to deduct and forward said premium amounts, as determined by the group insurance commission, to the group insurance commission in advance of the month for which the premium is due and in a manner as may be prescribed by the group insurance commission. For group insurance commission purposes employees who were members of the state retirement system when they became eligible to participate in the optional retirement program, and who then enrolled in the optional retirement program, may add their time in the state retirement system to their time in the optional retirement program in determining years of creditable service.

(f) After December 31, 1995, no contribution shall be made under any provision of this section in excess of, or on the basis of compensation in excess of, any limitation that may be imposed pursuant to federal law, including, but not limited to, the limitations in 26 U.S.C. sections 401(a)(17), 402(g), 403(b) and 415, to the extent such limitations apply. The board of higher education may adopt rules and regulations as it deems necessary from time to time to effectuate the purposes of this section, including, but not limited to, rules or regulations establishing such limitations only when it determines that such limitations are necessary to comply with applicable provisions of the United States Internal Revenue Code. For these purposes section 13212(d)(3) of the Revenue Reconciliation Act of 1993, Public Law 103-66, which provides for a special governmental limit under 26 U.S.C. section 401(a)(17), and section 1.401(a)(17)-1(d)(4) of the United States Treasury Regulations, which provides rules implementing said section 13212(d)(3), shall apply to all members in service who were members in service on or before December 31, 1995.

CHAPTER 18 DEPARTMENT OF TRANSITIONAL ASSISTANCE

Section 5I

Purchase of alcoholic beverages, lottery tickets or tobacco with direct cash assistance funds by eligible recipient; penalty

Section 5I. (a) As used in sections 5I and 5J the following terms shall, unless the context clearly requires otherwise, have the following meanings:--

"Access device", a card, code or other means of access that can be used, alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods or other things of value, or that can be used to initiate a transfer of funds under the

CHAPTER 18 DEPARTMENT OF TRANSITIONAL ASSISTANCE

federal Food and Nutrition Act of 2008, 7 U.S.C. § 2011 et seq., or regulations issued pursuant to the federal Food and Nutrition Act of 2008.

"Direct cash assistance", any manner of cash assistance provided by the department of transitional assistance including, but not limited to, temporary aid to families with dependent children, wherein the assistance is provided directly to the recipient, rather than a vendor.

"Electronic benefit transfer card", a card that provides benefits through an electronic benefit transfer.

"Electronic benefit transfer transaction", the use of a credit or debit card service, automated teller machine, point-of-sale terminal or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

"Vacation services", furnishing interstate or foreign travel services solely for the purpose of recreation including, but not limited to transportation, lodging and travel agent services; provided, however, that vacation services shall not include travel related to: a personal or family emergency, the death of a family member, employment, medical treatment, appearance before a court of law, court-authorized parental visitation and such other categories of travel which may be designated from time to time by the department as non-recreational travel.

(b) No person shall knowingly use or accept direct cash assistance funds held on electronic benefit transfer cards or access devices for the purchase or sale of the following services or products: alcoholic beverages as defined in section 1 of chapter 138; lottery tickets; tobacco products as defined in section 1 of chapter 64C; visual material or performances intended to create or simulate sexual conduct or sexual excitement as those terms are defined in section 31 of chapter 272; firearms and ammunition as defined in section 121 of chapter 140; vacation services; tattoos or body piercings; jewelry; for gambling as defined in section 2 of chapter 23K or for the payment to the commonwealth of or any political subdivision thereof of any fees, fines, bail or bail bonds ordered by a court.

(c) Any eligible recipient of direct cash assistance who knowingly makes a prohibited purchase in violation of this section shall reimburse the department for such purchase and, for the second offense, shall be disqualified from the direct cash assistance program for a period of 2 months and, for the third offense, shall be disqualified from the direct cash assistance program permanently; provided, however, that the department shall only disqualify an eligible recipient after notice and a hearing pursuant to section 30A.

[Subsection (d) added by 2012, 239, Sec. 5 effective August 7, 2012.]

(d) the department shall submit semi-annual reports detailing enforcement and violations of the section. The report shall include, but not necessarily be limited to, the number of alleged violations reported, the number of alleged violations investigated, the

number of violations found, the amount received for reimbursements for purchases made in violation of this section, the number of 2 month disqualifications, the number of permanent disqualification notices, hearings, and permanent disqualifications, and further specify actions taken to improve the implementation of this section and limit the number of eligible recipients who knowingly make a prohibited purchase in violation of this section. The reports shall be filed with the clerks of the house of representatives and the senate, with the first report to be filed not later than March 15, 2013.

Section 5J

Acceptance of direct cash assistance funds on electronic benefit transfer cards for purchase of alcoholic beverages, lottery tickets or tobacco; penalty

Section 5J. (a) The department shall maintain policies and practices as necessary to prevent cash assistance provided under this chapter from being used in any electronic benefit transfer transaction at: liquor stores; casinos, gambling casinos or gaming establishments licensed pursuant to chapter 23K; retail establishments which provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, as defined in Section 408(a) of the Social Security Act, as amended; adult bookstores or adult paraphernalia stores, as defined in section 9A of chapter 40A; firearms dealers licensed under section 122 of chapter 140 and ammunitions dealers licensed pursuant to section 122B of chapter 140; tattoo parlors; manicure shops or aesthetic shops registered pursuant to chapter 112; rent-to-own stores; jewelry stores; or on cruise ships. Such establishments shall not accept electronic benefits transfer cards. A store owner who knowingly allows a prohibited electronic benefit transfer transaction in violation of this section or subsection (b) of section 5I shall be punished by a fine of not more than \$500 for a first offense, by a fine of not less than \$500 nor more than \$2,500 for a second offense and by a fine of not less than \$2,500 for a third or subsequent offense.

(b) A store owner who knowingly violates this section and who also possesses a license to sell alcoholic beverages under section 12 of chapter 138 shall be referred to the appropriate licensing authority for possible disciplinary action pursuant to section 64 of said chapter 138.

(c) A store owner who knowingly violates this section and who also possesses a license to sell lottery tickets under sections 26 and 27 of chapter 10 shall be referred to the director of the state lottery for possible disciplinary action.

CHAPTER 21A EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

Section 10C

Authority of officers

Section 10C. The secretary, undersecretary, director, deputy directors of enforcement, chiefs of enforcement and all deputy chiefs of enforcement, law enforcement coordinators, and the wardens, as defined in section 1 of chapter 131, and all environmental police officers and deputy environmental police officers shall have and exercise throughout the commonwealth, subject to such rules and regulations as the director, with the approval of the secretary, may from time to time adopt, all the authority of police officers and constables, except the service of civil process. Such rules and regulations shall be filed with the state secretary in accordance with section 37 of chapter 30. The director may authorize in writing any such deputy directors of enforcement, chiefs of enforcement, deputy chiefs of enforcement, and any environmental police officer to have in their possession and carry a firearm, revolver, club, billy, handcuffs, twisters, or any other weapon or article required in the performance of official duty.

CHAPTER 22C THE DEPARTMENT OF STATE POLICE

Section 68

Special investigations bureau employees; appointment as special officers

Section 68. The colonel may, at the request of the director of the bureau of special investigations, with the approval of the fraudulent claims commission, appoint as special state police officers employees of said bureau who have undergone training as required by said colonel. These special state police officers shall serve for 1 year, subject to removal by the colonel, and they shall have and exercise throughout the commonwealth the same powers as state police officers to serve warrants and other criminal processes for any criminal offense resulting from either a fraudulent claim for payment or service under any assistance program administered by the department of transitional assistance or any program administered by the department of children and families or a receipt of payment or services by a person entitled thereto or for any violation of chapter 273 relative to the support of spouses and children for whom the department of transitional assistance is entitled to receive payment, or in whose behalf said department is giving aid. They shall not have the authority to arrest without a warrant. They shall report to the colonel as to their official acts at such times and in such manner as he may require. They shall serve without pay, except their regular compensation as employees of said bureau, and they shall receive no fees for service or return of any criminal process. This section shall not be construed as authorizing any person appointed as a special state police officer as provided herein to carry a firearm in the performance of his duties.

CHAPTER 29 STATE FINANCE

Section 2LLL

Firearms Fingerprint Identity Verification Trust Fund

Section 2LLL. There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Firearms Fingerprint Identity-Verification Trust Fund. Amounts credited to such fund shall be available, without further appropriation, to the department of state police to finance fingerprint identification verifications with the fingerprint records maintained by the Federal Bureau of Investigations or any other federal agency for the verification of firearms license applicant identities. \$25 of the fee assessed under sections 122, 122B, 129B, 131, 131A, 131F, and 131H of chapter 140 shall be deposited into the fund. The funds shall be utilized for the sole purpose of making payments charged to the department by the Federal Bureau of Investigations or other entity for fingerprint identification verification.

CHAPTER 32 RETIREMENT SYSTEMS AND PENSIONS

Section 23

Management of funds

Section 23. (1)(a) The funds of the state employees' retirement system and the teachers' retirement system and the assets of the State-Boston retirement system attributable to teachers who are members of that system shall be held in the PRIT Fund. The board of each such system shall annually, on or before May 1, file in the office of the commissioner, on a form prescribed by the commissioner, a sworn statement of the financial condition of the system as of December 31 of the previous year and of all the financial transactions of the system during the previous year. The commissioner may, for cause shown, extend the time for filing any such statement.

(b) Notwithstanding any general or special law to the contrary, assets of the State-Boston retirement system attributable to teachers who are members of the system shall be invested in the PRIT Fund, and for purposes of those assets and the payment of benefits to those teachers and their beneficiaries, the State-Boston retirement system shall be considered a participating system in the PRIT Fund, but the system shall not receive a share of any appropriations made under section 22B or under paragraph (b) of subdivision (8) of section 22, and the board of the system shall not be able to revoke this participation.

(2) Systems for Counties, Cities and Towns. -- (a) The county, city or town treasurer, the secretary-treasurer of the Massachusetts Department of Transportation, the treasurer of the Massachusetts Bay Transportation Authority, the treasurer of the Massachusetts Housing Finance Agency, the secretary-treasurer of the Massachusetts Port Authority, the

treasurer of the Blue Hills Regional Vocational School system, the treasurer of the Greater Lawrence Sanitary District, and the treasurer of the Minuteman Regional Vocational Technical School District shall be the treasurer-custodian of the system established under the provisions of sections one to twenty-eight, inclusive, or under corresponding provisions of earlier laws, in any county, city or town, the Massachusetts Department of Transportation, the Massachusetts Bay Transportation Authority, the Massachusetts Housing Finance Agency, the Massachusetts Port Authority, the Blue Hills Regional Vocational School system, the Greater Lawrence Sanitary District, or the Minuteman Regional Vocational Technical School District, as the case may be, and shall have the custody of the funds of any such system. Payments from such funds shall be made by him only upon vouchers signed by two persons designated by the board of any such system by a vote a duly attested copy of which, bearing upon its face specimen signatures of such persons, shall be filed with the treasurer-custodian as his authority for making payments upon vouchers so signed. No voucher shall be drawn unless it shall have been previously authorized by vote of the board.

(b) The board of each system shall invest and reinvest the funds of the system in the PRIT Fund under subdivision (8) of section 22, in the PRIT Fund by purchasing shares of the fund, as provided for in the trust agreement adopted by the PRIM board under subdivision (2A), or under the standards in subdivision (3), provided that: (i) no investment of funds shall be made in stocks, securities or other obligations of a company which derives more than 15 per cent of its revenues from the sale of tobacco products; (ii) in investing funds the board shall employ an investment manager or investment managers who shall invest the funds of the system; and (iii) no funds shall be invested directly in mortgages or collateral loans.

[Paragraphs (c) and (d) of subdivision (2) inserted preceding paragraphs (c) and (d) of subdivision (2) as appearing in the 2010 Official Edition by 2011, 176, Sec. 40 effective February 16, 2012.]

(c) No investment of funds shall take place until the board has received from the commission an acknowledgement of receipt of the following: (i) certification that, in making the selection, the board has complied with the process established in section 23B; (ii) a copy of the vendor certification required under section 23B; (iii) copies of disclosure forms submitted by the selected vendor; (iv) a certification that the investment is not a prohibited investment as set forth in regulations of the commission; (v) if the board has retained a consultant, a copy of the consultant reports pertaining to the investment and the selected vendor; and (F) a copy of the board certification required under section 23B.

The commission may withhold the acknowledgement if it determines that it is in the best interest of the retirement system; provided, however, that it must so notify the board within 10 days of receipt of completed documents as required by this section.

(d) Prior to the retention of an investment consultant the board shall have received from the commission an acknowledgement of receipt of the following: (i) certification that, in

making the selection, the board has complied with the process established in section 23B; (ii) copy of the vendor certification required under section 23B; (iii) copies of disclosure forms submitted by the selected consultant; and (iv) copy of the board certification required under section 23B.

(c) The board of each such system shall designate one or more banks or trust companies, organized under the laws of the commonwealth or of the United States, in which the treasurer-custodian shall keep on deposit such sums as may be required for current disbursements; provided, that any such sum on deposit in any one bank or trust company shall not exceed ten per cent of the amount of the paid-up capital and surplus thereof. The board shall also designate one or more such banks or trust companies in which the securities of the system shall be kept under the name of the retirement system in one or more safe deposit boxes. The board, subject to rules promulgated by the commission, may deposit such securities in a securities depository registered with the Securities and Exchange Commission of the United States. Such securities may be kept under the joint custody of the treasurer-custodian and a member of the board other than the treasurer-custodian, who shall be designated by the board, or such securities may be kept by a custodian who shall be designated by the board, which custodian shall be a bank or trust company, organized under the laws of the commonwealth or of the United States. The board may cause any stock, bond or other security, or cash, of any such system to be registered and held, or deposited and held, in the name of one or more nominees appointed by him for the purpose of facilitating security trading, money management and certificate delivery. The board shall designate the members of any such nominee only from among the following individuals: the assistant treasurers of the respective county, city, or town; any employee of a custodian that is authorized pursuant to this paragraph to have custody of securities or cash of a system; and the treasurer-custodian himself. Each individual so designated shall be covered with respect to his service on behalf of any such nominee by a fidelity bond, in such form and amount as the public employee retirement administration commission may determine, which coverage may be by separate bond or by incorporation in a bond otherwise required by section three of chapter thirty-five, section thirty-five of chapter forty-one, section thirty-nine A of chapter forty-one or other applicable law or practice. Such custodian shall collect the interest and dividends on all securities deposited with it, shall collect all called and matured securities deposited with it, and shall deposit the same in a bank or trust company as directed by the board; shall advise the board of all such deposits, of all stock dividends, rights, calls and maturities of all securities deposited with it; shall purchase, sell, deliver, and receive securities on the order of the board; and shall prepare and deliver to the board a list, at such time as the board may require, of all securities held by it with their current market values. Such custodian may make a reasonable charge for such services.

(d) Any person who assists any board or member thereof in the purchase, sale, investment or reinvestment of the funds of any such system, without the written consent of the public employee retirement administration commission after notice in writing by him to such board or member to desist therefrom as provided for in subdivision (4) shall be punished as provided for in section twenty-four.

CHAPTER 32 RETIREMENT SYSTEMS AND PENSIONS

(e) The board of each such system shall annually, on or before May first, file in the office of the public employee retirement administration commission, on a form prescribed by him, a sworn statement of the financial condition of such system as of December thirty-first of the previous year and of all the financial transactions thereof during the previous year. The commission may for cause shown extend the time for filing any such statement.

(f) The board may employ any qualified bank, trust company, corporation, firm, or person to advise it on the investment of the fund and may pay for such advice.

(g) Clauses (i) to (vii), inclusive, of paragraph (b) shall not apply to the board of any local retirement system which upon application is determined by the commission to have a record of investment management which merits broader investment powers, provided that:--

(i) no funds are to be invested directly in mortgages or in collateral loans;

(ii) subsequent to the date of such determination no new investment of funds shall be made in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or development in any activity in South Africa, and no new investment of funds shall be made in the stocks, securities or other obligations of any company so engaged; provided, however, that if the board elects to invest in banks, financial institutions or any companies doing business in South Africa, excluding the aforementioned, the board shall review the platform of guiding principles defined in subdivision (5) and monies shall be invested as much as reasonably possible in such banks, financial institutions or companies which have adopted said platform of guiding principles so long as such use is consistent with sound investment policy and no new investment of funds shall be made in stocks, securities or other obligations of any company which derives more than 15 per cent of its revenues from the sale of tobacco products;

(iii) subsequent to the date of such determination no new investment of funds shall be made in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or development in any activity in Northern Ireland, and no new investment of funds shall be made in the stocks, securities or other obligations of any company so engaged. In making such determination the commission shall consider the diversification of the risk of the investments of such board, the return on the investments of such board, the past performance of the investment portfolio of such board and the extent and quality of professional advice received by such board regarding the investment of funds. Any such board shall invest and reinvest consistent with sound investment policy and the requirements of subdivision (3).

(h) Clauses (i), (ii), and (iii) of paragraph (g) shall apply to any retirement system named in paragraph (a).

(2A) Pension Reserves Investment Management Board. -- (a) There shall be an unpaid pension reserves investment management board which shall have general supervision of the investment and reinvestment of the PRIT Fund established under the provisions of subdivision (8) of section twenty-two.

Such board shall consist of nine members as follows: the governor, ex officio, or his designee, the state treasurer, ex officio, or his designee, who shall serve as chairman of the board, a private citizen experienced in the field of investment or financial management appointed by the state treasurer, an employee or retiree who is a member of the state teachers retirement system who shall be elected by the members in or retired from such a system for a term of three years in such a manner as the board shall determine, an employee or retiree who is a member of the state employees' retirement system who shall be elected by the members in or retired from such system for a term of three years in such a manner as the board shall determine, the elected member of the state retirement board, one of the elected members of the teachers' retirement board, who shall be chosen by the members of the teachers' retirement board, a person who is not an employee or official of the commonwealth who shall be appointed by the governor, and a representative of a public safety union who shall be appointed by the governor. The appointed members shall serve for four years. Any vacancy among the appointed members that may occur before the expiration of a term shall be filled by an appointment by the treasurer, or the governor, whoever had the right of making the initial appointment. Any appointed member of the board, including members appointed to fill a vacancy shall be eligible for reappointment. Any appointed member may be removed from his appointment for cause by the treasurer or the governor, whoever had the right of making the original appointment.

(b) Five members of the board shall constitute a quorum. The members of the board shall not receive a salary but shall be reimbursed for actual and necessary expenses. The provisions of chapter two hundred and sixty-eight A shall apply to all members of the board; provided, however, that the board may make investments in which a member has an interest or involvement if, however, such interest or involvement is disclosed in advance to the other members of the board and contemporaneously recorded in the minutes of the board; and provided, further, that no member having such an interest or involvement may participate in any particular matter, as defined in section one of chapter two hundred and sixty-eight A, relating to such investment.

(c) The PRIM board may commingle moneys on deposit in the PRIT Fund for purposes of investment; provided, however, that the board shall maintain appropriate records to account for amounts credited to particular accounts or funds. The PRIM board may offer to purchasing systems, and may allocate to the state employees' and teachers' retirement systems, shares in the PRIT Fund which represent undivided interests in specified portions of the assets of the fund rather than undivided interests in the whole.

CHAPTER 32 RETIREMENT SYSTEMS AND PENSIONS

(d) The PRIM board shall annually on or before May first, file with the clerk of the house of representatives and with the secretary of the retirement board of each system which is a participant in said fund, on a form prescribed by the commission, a sworn statement of the financial condition of said fund as of December thirty-first the previous year. The commission may for cause shown extend the time for filing any such statement.

(e) The PRIM board shall:

(i) act as trustees for each participating retirement system for which it invests or manages monies in accordance with the standard of care set forth in subdivision (3); provided, however, that the duties and obligations of the PRIM board and of participating or purchasing systems shall be set forth in a declaration of trust adopted by the PRIM board; and provided, further, that any declaration of trust and any amendments thereto adopted by said board shall be subject to the approval of the joint committee on public service; and provided, further, that if said committee takes no final action relative thereto within forty-five days of the date of the filing thereof with the clerk of the house of representatives and the senate, such declarations of trust and such amendments thereto shall be deemed to be approved;

(ii) employ an executive director as provided in paragraph (f);

(iii) employ investment advisors, legal counsel, and consultants as it deems necessary;

(iv) establish a formula to measure the value of the shares in said fund purchased by or held by participating retirement systems and other purchasing retirement systems;

(v) determine and allocate annually to participating and other purchasing retirement systems earnings on shares owned by said systems;

(vi) adopt an annual budget and supplemental budgets as deemed necessary by the board subject to the approval of the house and senate committees on ways and means; provided, however, that if the said committees has taken no final action to disapprove any such budget, within sixty days of its being filed with said general court it shall be deemed to be approved; and provided, further, that if the general court disapproves any such budget within such sixty days, said board shall operate under the annualized budgetary level most recently approved pending the filing and subsequent approval of any other such annual or supplemental request;

(vii) approve or ratify decisions of the executive director;

(viii) formulate policies and procedures deemed necessary and appropriate to carry out its function;

(ix) maintain a record of its proceedings;

CHAPTER 32 RETIREMENT SYSTEMS AND PENSIONS

(x) undertake any other activities necessary to implement the duties and powers set forth herein.

(xi) File quarterly, on or before March first, June first, September first, and December first of each year, with the house and senate committee on ways and means and with the joint committee on public service a report detailing brokerage transactions, fees paid to investment consultants and managers, master trustee and custody fees, a detailed investment portfolio analysis describing all holdings in the PRIT Fund, and a budget status report detailing expenses by month; provided, however, that said analysis and said reports shall be made available on the first day of each month upon the request of the chairman of any said committees.

(xii) Assess fees to participating and other purchasing retirement systems for the reasonable and necessary expenses incurred by the board in managing the PRIT Fund, which shall be paid by the board from earnings of the PRIT Fund without appropriation and in conformance with the budgetary levels established pursuant to clause (vi).

(xiii) acts as treasurer-custodian of the PRIT Fund and shall have the custody of the funds and securities of said fund.

(xiv) put a mechanism in place to monitor current market conditions to detect and immediately notify the board of potential high-risk corporate investments, so that the board can take action, when possible, to prevent investment losses.

(f) The PRIM board shall select an executive director who shall serve at the pleasure of the board. The provisions of sections nine A, forty-five, forty-six and forty-six C of chapter thirty, chapter thirty-one, and chapter one hundred and fifty E shall not apply to the executive director or any other employees of the board.

(g) The executive director, shall with the approval of the board:

(i) plan, direct, coordinate and execute administrative and investment functions in conformity with the policies and directives of the board;

(ii) employ professional and clerical staff as necessary.

(iii) report to the board on all operations under his control and supervision;

(iv) require state officials from any department or officials from any participating retirement system to produce and provide access to any financial documents the board deems necessary in the conduct of its investment activities;

(v) undertake any other activities necessary to implement the powers and duties set forth herein.

(h) Subject to the approval or ratification of the PRIM board, the executive director shall invest and reinvest such funds held by such board to the extent not required for current disbursements, as much as reasonably possible to benefit and expand the economic climate within the commonwealth so long as such is consistent with sound investment policy and the other requirements of this section; provided, however, that consistent with sound investment policy and in accordance with the procedures and processes employed to oversee the allocation of traditional investment of funds, the director shall whenever reasonably possible ensure that funds are invested in banks or financial institutions which directly or through any subsidiary may make loans to small businesses, as defined in clause (a) of subdivision (7), and that when electing to make such investments the board shall review the guidelines for investing in small businesses contained in said subdivision (7) and monies shall be invested as much as reasonably possible in such banks, financial institutions or companies which provide capital to small businesses under those guidelines so long as such use is consistent with sound investment policy; provided further, that no funds are to be invested directly in mortgages or in collateral loans; provided, further, that no investment of funds shall be made in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or development in any activity in South Africa, and no new investment of funds shall be made in the stocks, securities or other obligations of any company so engaged; provided, further, that if the board elects to invest in banks, financial institutions or any companies doing business in South Africa, excluding the aforementioned, the board shall review the platform of guiding principles defined in subdivision (5) and monies shall be invested as much as reasonably possible in such banks, financial institutions or companies which have adopted said platform of guiding principles so long as such use is consistent with sound investment policy; and provided, further, that no funds are to be invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or deployment in any activity in Northern Ireland, and no assets shall be invested in the stocks, securities or other obligations of any such company so engaged. No public pension funds under this subdivision shall remain invested in the stocks, securities, or other obligations of any company which derives more than 15 per cent of its revenues from the sale of tobacco products; provided, however, that if sound investment policy so requires, the PRIM board may vote to spread the sale of such stocks, securities or other obligations of such company over no more than three years, so that no less than one-third the value of said investment is sold in any one year. So long as any funds remain invested in any stocks, securities, or other obligations of any such company, the PRIM board shall annually, on or before January 31, file with the clerk of the senate and the clerk of the house of representatives a report listing all such related investments held by the fund and their book value as of the preceding December first. The investment and fund management policies adopted by the PRIM board shall not be subject to any rules or regulations promulgated by the public employee retirement administration commission governing the investment of funds by the retirement boards.

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(i) at least two members of the PRIT board shall be minority people, as set forth in the definition of "Minority" contained in section forty C of chapter seven of the General Laws, as added by section seven of chapter five hundred and seventy-nine of the acts of nineteen hundred and eighty.

(j) The PRIM board shall be subject to the provisions of sections thirty-nine A and sections forty (E) to forty (J), inclusive, of chapter seven.

(3) Fiduciary Standards. -- A fiduciary as defined in section one shall discharge his duties for the exclusive purpose of providing benefits to members and their beneficiaries with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and by diversifying the investments of the system so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. Each member of a retirement board established under this chapter shall upon the commencement of the member's term file with the commission a statement acknowledging the member is aware of and will comply with the standards set forth in chapter 268A, this chapter and rules and regulations promulgated under this chapter.

(4) Orders to protect the system. -- If the commission determines after a hearing that the investment or recordkeeping practices of any board are not being conducted with reasonable care, skill, prudence or diligence, he may order such board to take or desist from any action that in his judgment is necessary to preserve the integrity of the system. If the commission has reason to believe that the investment and recordkeeping practices of any board are not being conducted with reasonable care, skill, prudence or diligence, he may issue a temporary order which shall remain in effect until an investigation, hearing and determination can be made. Violation of any such order shall be punished as provided for in section twenty-four.

(5) The platform of guiding principles for investment in South Africa shall mean, without limitation, the following standards of corporate activity:

(a) Worker's rights: companies should uphold worker's rights including the recognition of representative unions and their rights to bargain collectively, to strike, to picket peacefully, the establishment of a policy that strike breakers will not be hired and that investment should enhance employment creation;

(b) Equality of opportunity: companies should eliminate all discrimination on the basis of race, religion, sex, political opinion or physical handicap and implement affirmative action programs;

(c) Environmental protection: investment should incorporate environmentally sound and clean practices and technology;

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(d) Training and education: investment should enhance the productive capacities of South Africans, and in particular, institute training and adult education programs for workers in consultation with the trade union movement;

(e) Conditions of work and life: conditions of work and life offered by companies should compare favorably with the best conditions in the relevant sector domestically;

(f) Security of employment: investment should contribute to the security of employment of South Africans;

(g) Empower black business: companies should, where possible, adopt business practices which enhance the development of black business in South Africa.

(6) Confidentiality of certain records. Any documentary material or data made or received by a member of the PRIM board which consists of trade secrets or commercial or financial information that relates to the investment of public trust or retirement funds, shall not be disclosed to the public if disclosure is likely to impair the government's ability to obtain such information in the future or is likely to cause substantial harm to the competitive position of the person or entity from whom the information was obtained. The provisions of the open meeting law shall not apply to the PRIM board when it is discussing the information described in this subdivision. This subdivision shall apply to any request for information covered by this subdivision for which no disclosure has been made by the effective date of this subdivision.

(7) The guidelines for investing in small businesses with a principal place of business in the commonwealth shall be:

(a) For the purposes of this section small business shall be a business entity, including its affiliates, that: (i) is independently owned and operated; (ii) has a principal place of business in the commonwealth; and (iii) would be defined as a "small business" under applicable federal law, as established in the United States Code and promulgated from time to time by the United States Small Business Administration.

(b) Investments shall be made by banks or financial institutions with demonstrated experience making capital available to small businesses with good management, which are fast growing and identify the potential to use increased capital to create jobs and which are experiencing difficulty in accessing capital.

(c) Capital shall be provided to small businesses in a variety of financial instruments, including but not limited to: working capital and expansion loans to businesses, both secured and non-secured; provide lines of credit; capital expenditure loans; term loans; project finance loans; grants; loan guarantees; and mezzanine and structured finance loans.

(d) Capital shall not be provided unless financial and managerial advisory services are also provided to the business that is served.

CHAPTER 33 MILITIA

Section 129

Maintenance of armories by private organizations

Section 129. Except as provided in section one hundred and thirty, no body of men shall maintain an armory or associate together as a company or organization for drill or parade with firearms, or so drill or parade, except the armed forces of the United States, the armed forces of the commonwealth, and, the Ancient and Honorable Artillery Company of Massachusetts; provided, that any veteran association composed wholly of past members of the militia of the commonwealth may maintain an armory for the use of the organizations of the militia to which its members belonged.

Section 130

Drills or parades by armed citizens or foreign troops; conditions

Section 130. The commander-in-chief may prescribe rules and regulations under which bodies of citizens of the United States, or foreign troops to whose admission to the United States the government of the United States has consented, may drill or parade with firearms or harmless imitations thereof. He may authorize the use by any such body of any state armory or air installation for drill or training.

CHAPTER 48 FIRES, FIRE DEPARTMENTS AND FIRE DISTRICTS

Section 89

Fire fighters; firearms

Section 89. No fire fighter shall be required to carry firearms in the performance of his duty.

CHAPTER 64H TAX ON RETAIL SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY

Section 6

Exemptions

Section 6. The following sales and the gross receipts therefrom shall be exempt from the tax imposed by this chapter:--

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(a) Sales which the commonwealth is prohibited from taxing under the constitution or laws of the United States.

(b) Sales of tangible personal property in transit or stored at points of entry intended for export or import or which the vendor is obligated under the terms of any agreement to deliver (1) to a purchaser outside the commonwealth or to a designee outside the commonwealth of a purchaser outside the commonwealth or (2) to an interstate carrier for delivery to a purchaser outside the commonwealth or to a designee outside the commonwealth of a purchaser outside the commonwealth.

(c) Casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail; provided, however, that nothing contained in this paragraph shall be construed to exempt any such sale of a motor vehicle or trailer, as defined in section one of chapter ninety, or any such sale of a boat or airplane from the tax imposed under chapter sixty-four I.

(d) Sales to the United States, the commonwealth or any political subdivision thereof, or their respective agencies.

(e) Sales to any corporation, foundation, organization or institution, which is exempt from taxation under the provisions of section five hundred and one (c)(3) of the Federal Internal Revenue Code, as amended, and in effect for the applicable period; provided, however, that such sales shall not be exempt unless (1) the tangible personal property or services which are the subject of such sales is used in the conduct of such religious, charitable, educational or scientific enterprise, (2) such corporation, foundation, organization or institution shall have first obtained a certification from the commissioner stating that it is entitled to such exemption, and (3) the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale, and the number of such certificate. The certificate of exemption issued by the commissioner under clause (2) shall be effective for a period of 10 years from the date of its issuance or until January first, nineteen hundred and eighty-four, whichever shall last expire provided that ninety days prior to said date the commissioner shall notify such corporation, foundation, organization or institution of the expiration date of said certificate. Such corporation, foundation, organization or institution must obtain from the commissioner a renewal of such certificate in order to be entitled to a continuance of such exemption beyond the expiration date of any existing certificate.

(f) Sales of building materials and supplies to be used in the construction, reconstruction, alteration, remodeling or repair of (1) any building structure, public highway, bridge or other public works owned by or held in trust for the benefit of any governmental body or agency mentioned in paragraph (d) and used exclusively for public purposes; (2) any building or structure owned by or held in trust for the benefit of any corporation, foundation, organization or institution described in paragraph (e) and used exclusively in the conduct of its religious, scientific, charitable or educational purposes; and (3) any building, structure, residence, school or other facility included under any written contract dated on or after January 1, 1985 arising out of or related to the

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Massachusetts Port Authority residential and school soundproofing programs, notwithstanding whether such building, structure, residence, school or other facility is owned by or held in trust for the benefit of the Massachusetts Port Authority or is used exclusively for public purposes; provided, however, that such governmental body or agency or such corporation, foundation, organization or institution shall have first obtained a certificate from the commissioner stating that it is entitled to such exemption and the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale and the number of such certificate. In this paragraph the words "building materials and supplies" shall include all materials and supplies consumed, employed or expended in the construction, reconstruction, alteration, remodeling or repair of any building, structure, public highway, bridge or other such public work, as well as such materials and supplies physically incorporated therein. Said terms shall also include rental charges for construction vehicles, equipment and machinery rented specifically for use on the site of any such tax exempt project or while being used exclusively for the transportation of materials for any such tax exempt project.

(g) Sales of tangible personal property includable in the measure of the excises levied under the provisions of chapters sixty-four A, sixty-four E, 64F and 138.

(h) Sales of food products for human consumption. "Food products" includes cereals and cereal products, flour and flour products, milk and milk products, including ice cream, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, soft drinks, herbs, spices and salt, sugar and sugar products, candy and confectionery; coffee and coffee substitutes, tea, cocoa and cocoa products; and ice when used for household consumption. "Food products" does not include alcoholic beverages as defined in chapter one hundred and thirty-eight except as hereinafter provided, medicines, tonics and preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form sold as dietary supplements or adjuncts. "Food products" does not include meals consisting of any of the items defined as food products in this paragraph for consumption on or off the premises where sold.

"Honor snack tray", any vending arrangement in which only candy or snacks are available in an open tray for the benefit of employees in an establishment that normally does not sell food or food products and for which payment is made on the honor system.

"Meals" shall mean any food or beverage, or both, prepared for human consumption and provided by a restaurant, where the food or beverages is intended for consumption on or off the restaurant premises, and includes food or beverages sold on a "take out" or "to go" basis, whether or not they are packaged or wrapped and whether or not they are taken from the premises of the restaurant.

"Restaurant", shall mean any eating establishment where food, food products, or beverages are provided and for which a charge is made, including but not limited to, a cafe, lunch counter, private or social club, cocktail lounge, hotel dining room, catering business, tavern, diner, snack bar, dining room, vending machine, and any other place or

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establishment where food or beverages are provided, whether stationary or mobile, temporary or permanent; provided, however, that delicatessen, grocery, market or bakery stores shall not be considered eating establishments within the meaning of this chapter except for any part of such a store which engages, in the sale of dinners, luncheons, barbecued chicken, other than barbecued chicken sold whole and unsliced, sandwiches, snacks, pizzas, and other similar items which are commonly sold at snack bars, coffee shops or luncheon counters; provided, further, that such stores shall not be deemed to be restaurants under this chapter based solely on the preparation and sale of prepared meat, poultry and fish items if such sales constitute less than a major portion of the total sale of such stores; and provided, further, that a vending machine or honor snack tray shall not be considered an eating establishment within the meaning of this chapter in the instance in which it sells only snacks or candy with a sales price of less than \$3.50; and, provided further, that a bed and breakfast establishment or bed and breakfast home, as defined in chapter sixty-four G, shall not be considered an eating establishment within the meaning of this chapter where the value of a breakfast served is included in the rent subject to tax under said chapter sixty-four G.

The following food or beverages sold by a restaurant for consumption off the restaurant premises shall not be deemed to be a meal for the purposes of this chapter:-- (a) Food sold by weight, liquid or dry measure, count, or in unopened original containers or packages, including, but not limited to, meat, bread, milk, specialty foods, cream and ice cream; provided, that such foods are commonly sold in such manner in a retail food store which is not a restaurant; (b) Beverages in unopened original containers or packages when sold as a unit having a capacity of at least twenty-six fluid ounces; and (c) Bakery products including but not limited to doughnuts, muffins, bagels, and similar items sold in units of six or more. Prepared meals, snacks, sandwiches, food platters, poultry, fish or meat items, or other food combinations, to the extent that such items are sold by a restaurant whose principal business is the preparation or sale of such items in such form as to be available for immediate consumption without further significant preparation, whether for on or off premise consumption, shall not be excluded under clause (a), (b), or (c).

(i) The sales, furnishing or service of (1) water; (2) gas, steam or electricity used for residential purposes; (3) gas, steam or electricity which are consumed and used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold or in the heating of such industrial plant; provided that the exemption under this subparagraph (3) shall only be allowed with respect to a metered building, location or premises at which not less than seventy-five percent of the gas, steam or electricity consumed at such metered building, location or premises is used for the purposes of such manufacturing or heating; and the term "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business; and (4) residential main telephone services billed on a monthly recurring basis or billed as message units, and residential intra local access and transport area service billed on a recurring monthly basis; provided that such exemption under this subparagraph (4) shall not exceed the amount of thirty dollars per month.

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(j) Sales of (1) fuel used for residential heating purposes; (2) fuel used for heating purposes in an industrial plant; provided that the exemption under this subparagraph (2) shall only be allowed with respect to a building, location or premises in which not less than seventy-five percent of the building, location or premises is used in the actual manufacture of tangible personal property to be sold; and the term "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business; and (3) fuel used in the operation of aircraft or used in the operation of railroads.

(k) Sales of articles of clothing, including footwear, intended to be worn or carried on or about the human body up to one hundred and seventy-five dollars of the sales price on any article of clothing. For the purposes of this section clothing or footwear shall not include special clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when so used.

(l) Sales of medicine, insulin needles and insulin syringes on prescriptions of registered physicians and sales of insulin; sales of oxygen, blood or blood plasma; sales of artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual; sales of artificial limbs, artificial eyes, hearing aids and other equipment worn as a correction or substitute for any functioning portion of the body; sales of artificial teeth by a dentist and the materials used by a dentist in dental treatment; sales of eyeglasses, when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser; sales of crutches and wheel chairs for the use of invalids and crippled persons; and sales of baby oil; and the rental, sales and repairs of kidney dialysis machines, enteral and parenteral feedings, and feeding devices, suction machines, physician-prescribed, medically necessary breast pumps, oxygen concentrators, oxygen regulators, oxygen humidifiers, oxygen masks, oxygen cannulas, ultrasonic nebulizers, life sustaining resuscitators, incubators, heart pacemakers, canes, all types of hospital beds for home use, tripod quad canes, breast prosthesis, alternating pressure pad units and patient lifts, when prescribed by a physician.

(m) Sales of newspapers, magazines, books required for instructional purposes in educational institutions, books used for religious worship, publications of any corporation, foundation, organization or institution described in paragraph (e) of this section, and motion picture films for commercial exhibition.

(n) Sales of coffins, caskets, burial garments or other materials which are ordinarily sold by a funeral director as part of the business of funeral directing.

(o) Sales of vessels or barges of fifty tons burden or over when constructed in the commonwealth and sold by builders thereof; sales of fuel or substitute therefor, supplies and repairs to vessels engaged in foreign and interstate commerce and sales of vessels

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used directly and exclusively in commercial fishing, machinery and equipment therefor and replacement parts for such vessels, machinery and equipment.

(p) (1) Sales of livestock and poultry of a kind which ordinarily constitute food for human consumption; (2) sales of feed, including the bags in which the feed is customarily contained, for livestock and poultry of a kind which ordinarily constitute food for human consumption or are to be sold in the regular course of business or for animals produced for research, testing, or other purposes relating to the promotion or maintenance of the health, safety or well being of human beings or animals or for fur-bearing animals, the pelts of which are sold in the regular course of business; (3) sales of fertilizer, including ground limestone, hydrated lime, seed inoculants and plant hormones, as well as other substances commonly regarded in the same category and for the same use, but not including any sales of pesticides, including insecticides, herbicides, fungicides, miticides and all materials registered with the Environmental Protection Agency as pesticides under the Federal Insecticide, Fungicide and Rodenticide Act and other pesticides commonly regarded in the same category and for the same purpose, except when purchased by a person licensed under chapter 132B or otherwise exempt under paragraph (r); and (4) sales of plants, including parts of plants, suitable for planting to produce food for human consumption or when such plants, including parts thereof or the produce thereof, are to be sold in the regular course of business, including such items as seed potatoes, onion sets, asparagus roots, berry plants or bushes, and fruit trees.

(q) (1) Sales of both returnable and nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; (2) containers when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this chapter; (3) returnable containers when sold with the contents or resold for refilling. As used in this paragraph the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable" containers. Nothing in this paragraph shall be construed so as to tax the sale of bags in which feed for livestock and poultry is contained.

(r) Sales of materials, tools and fuel, or any substitute therefor, which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly and exclusively in agricultural production; in commercial fishing; in an industrial plant in the actual manufacture of tangible personal property to be sold, including the publishing of a newspaper; in the operation of commercial radio broadcasting or television transmission; in the furnishing of power to an industrial manufacturing plant; in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes; in the production of animals for research, testing, or other purposes relating to the promotion or maintenance of the health, safety or well being of human beings or animals or in research and development by a manufacturing corporation or a research and development corporation within the meaning of sections thirty-eight C or forty-two B of chapter sixty-three. However, the exemption in this paragraph so far as it applies to sales of electricity, gas and steam consumed and

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used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold shall be limited to the extent allowed in paragraph (i). For the purpose of this paragraph, the raising of poultry and livestock shall be construed to be included in the term "agricultural production"; any material, tool or fuel shall be construed to be consumed and used only if its normal useful life is less than one year or if its cost is allowable as an ordinary and necessary business expense for federal income tax purposes or if it is nuclear fuel or a nuclear fuel assembly; and the term "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business.

(s) Sales of machinery, or replacement parts thereof, used directly and exclusively in agricultural production; in commercial fishing; in an industrial plant in the actual manufacture of tangible personal property to be sold, including the publishing of a newspaper; in the operation of commercial radio broadcasting or television transmission; in the furnishing of power to an industrial manufacturing plant; in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes; in the production of animals for research, testing, or other purposes relating to the promotion or maintenance of the health, safety or well being of human beings or animals or in research and development by a manufacturing corporation or a research and development corporation within the meaning of section thirty-eight C or forty-two B of chapter sixty-three. For the purpose of this paragraph, the raising of poultry and livestock shall be construed to be included in the term "agricultural production"; the term "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business; and machinery shall be deemed to be used directly and exclusively in the actual manufacture, conversion or processing of tangible personal property to be sold only where such machinery is used solely during a manufacturing, conversion or processing operation to effect a direct and immediate physical change upon the tangible personal property to be sold; to guide or measure a direct and immediate physical change upon such property where such function is an integral and essential part of tuning, verifying or aligning the component parts of such property; or to test or measure such property where such function is an integral part of the production flow or function; used solely to store, transport, convey or handle such property during the manufacturing, converting, or processing operations heretofore specified; or used solely to place such property in the container, package or wrapping in which such property is normally sold to the ultimate consumer thereof. Machinery used directly and exclusively in the actual manufacture, conversion or processing of any tangible personal property which is not to be sold and which would be exempt under paragraph (r) or this paragraph if purchased from a vendor thereof or machinery used during any manufacturing, converting or processing, conveying or packaging operation or function or for any other purpose, except as heretofore specified, shall not be exempt under this paragraph even though such operation, function or purpose is an integral or essential part of a continuous production flow or manufacturing process. Where a portion of a group of portable or mobile machinery is used directly and exclusively in the actual manufacture, conversion or processing of tangible personal property to be sold, as heretofore defined, the number represented by such portion, if otherwise qualifying, shall be exempt under this paragraph

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even though the machinery in said group is used interchangeably and not otherwise identifiable as to use.

(t) Sales of tangible personal property through coin operated vending machines at ten cents or less, provided the retailer is primarily engaged in making such sales and keeps records satisfactory to the commissioner.

(u) Sale of a motor vehicle purchased by and for the use of a person who has suffered loss, or permanent loss of use of, both legs or both arms or one leg and one arm or by and for the use of a veteran who has been determined to be permanently disabled by the medical advisory board established under section 8C of chapter 90 and has been issued a disabled veteran number plate under section 2 of said chapter 90. This exemption shall apply to one motor vehicle only owned and registered for the personal, noncommercial use of such person.

(v) Sales of wearing materials or any cloth made up of natural or synthetic fibers and used for clothing purposes.

(w) Sales of the flag of the United States.

(x) Sales of fire trucks to any volunteer, nonprofit fire company or similar organization furnishing public fire protection, and sales of ambulances to any volunteer, nonprofit organization furnishing a public ambulance service, provided that such company or organization has first obtained a certification from the commissioner stating that it is entitled to this exemption.

(y) Sales of concrete mixing units or replacement parts thereof, to be mounted on truck chassis; provided, however, that sales of truck chassis shall not be exempt under this paragraph.

(z) All medical implements, pads, pouches and solutions purchased by a person who has undergone a colostomy or an ileostomy and which are used entirely as the result of such operation.

(aa) Sales of new and used motor buses used to provide scheduled, intracity local service (as defined by the department of telecommunications and energy), and repair or replacement parts therefor, and materials and tools used in and for the maintenance and repair thereof to, and for the use of common carriers of passengers by motor vehicle for hire, which hold at least one certificate, issued by the department of telecommunications and energy pursuant to the provisions of section seven of chapter one hundred and fifty-nine A. Upon receipt of appropriate evidence of the possession of such a certificate, the commissioner shall prepare and issue to any such duly certificated common carrier a statement that it is entitled to the exemption granted by this paragraph.

The presentation of a copy of the statement which the commissioner is required to prepare and furnish hereunder to the registrar of motor vehicles shall be deemed to

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constitute compliance with the provisions of the second paragraph of section twenty-five in respect to furnishing evidence of the payment of the tax which would otherwise be due under this chapter.

If any common carrier which qualifies for the exemption granted by this subsection (aa) should ever lose its exempt status hereunder and thereafter purchase any of the items of personal property enumerated hereinabove without paying in full the tax due, it shall be liable to pay interest on the entire unpaid portion of any tax due from it at the rate of six per cent per annum until paid.

Any vendor to whom a copy of the statement, which the commissioner is required to prepare and furnish hereunder, is furnished shall be entitled to rely thereon and he shall not be liable for the collection or payment of the tax which would otherwise be imposed by this chapter.

[There is no paragraph (bb).]

(cc) meals prepared by employees thereof and served in any hospital, sanatorium, convalescent or nursing home, or boarding home for the aged licensed under section seventy-one of chapter one hundred and eleven or in any institution or private house licensed under section twenty-nine of chapter nineteen; meals prepared by the members thereof and served on its premises by any church or synagogue or by any church or synagogue organization to any organization of such church or synagogue the proceeds of which are to be used for religious or charitable purposes; meals served to a resident in a facility providing continuing care to an individual which facility must provide a disclosure statement to a prospective resident as required by section seventy-six of chapter ninety-three; meals served on the premises of an organization which is located within the boundaries of a Massachusetts army or air national guard base that serves as social club for members of the Massachusetts army or air national guard; meals served in an assisted living residence certified pursuant to the provisions of chapter nineteen D; meals furnished by any person while transporting passengers for hire by air to or from any place within the commonwealth, meals furnished to any organization in which membership is limited to persons sixty years of age or over or to elderly or handicapped persons residing in a housing project qualifying under section thirty-eight to forty, inclusive, of chapter one hundred and twenty-one B and said organization has previously filed with the commissioner, on a form approved by the commissioner, satisfactory proof of its eligibility hereunder; and meals furnished to students by an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on; and meals served by summer camps for children eighteen years of age or under or developmentally disabled individuals; provided, however, that such summer camp which offers its facilities off-season to individuals sixty years of age or over for a period not to exceed thirty days in any calendar year shall not lose its exemption hereunder; and meals furnished through programs established under section one L of chapter fifteen.

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For the purposes of this section a developmentally disabled individual shall mean an individual who has a severe chronic disability which:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is likely to continue indefinitely;

(C) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; and (vii) economic self-sufficiency; and

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(dd) Sales of equipment directly relating to any solar, windpowered; or heat pump system, which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of an individual's principal residence in the commonwealth.

(ee) Sales of patterns, molds, dies, tools, sand-handling equipment and machinery, and replacement parts thereof, used exclusively in the manufacture of cast metal products to be sold in the regular course of business.

(ff) Sales of printed material which is manufactured in the commonwealth to the special order of a purchaser, to the extent the material is delivered to an interstate carrier, a mailing house or a United States Post Office for delivery or mailing to a purchaser located outside the commonwealth or a purchasers designee located outside the commonwealth, including sales of direct and cooperative direct mail promotional advertising materials which are manufactured both inside and outside the commonwealth and which are distributed to residents of the commonwealth from locations both inside and outside the commonwealth. For the purpose of this paragraph, "direct and cooperative direct mail promotional advertising materials" shall mean individual discount coupons, or advertising leaflets incorporating the coupons within the promotional advertising materials no greater than 6 pages in length, and including any accompanying envelopes and labels. In order to be exempt hereunder, the promotional advertising materials shall be distributed as a part of a package of materials promoting 1 or more than 1 business, each operated at separate and distinct locations, and directed in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of such material. For the purpose of this paragraph, "direct and cooperative direct mail promotional advertising materials" shall not include mail order catalogs, department store catalogs, telephone directories, or similar printed advertising books, booklets or circulars greater than 6 pages in total length.

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(gg) Sales by a typographer, compositor or color separator of composed type, film positives, film negatives, or reproduction proofs thereof, for use in the preparation of printed matter or folding boxes to be sold, or the fabrication or transfer of such film positives, film negatives, reproduction proofs or impressed matters where the fabrication is for and the transfer is to a printer, publisher, or manufacturer of folding boxes, for use in printing.

[There is no paragraph (hh).]

(ii) Rental receipts or charges in connection with service contracts by and between waste service firms and customers for the use, maintenance and repair of refuse containers or bins placed on customers premises by waste service firms.

(jj) sales of "scientific equipment or apparatus" within the meaning of section 170 (e) (4) (B) (v) of the Internal Revenue Code of the United States as amended on January first, nineteen hundred and eighty-three, by the manufacturer when such scientific equipment or apparatus is donated by said manufacturer at no charge to a public or private nonprofit educational institution located in the commonwealth or to the Massachusetts Technology Park Corporation for the purposes of clause (4) of paragraph (b) of section six of chapter forty J, or to the Bay State Skills Corporation.

(kk) Sales of tangible personal property purchased with federal food stamps and not otherwise exempt under this chapter.

(ll) Sales of one thousand dollars or more of (i) rare coins of numismatic value; (ii) gold or silver bullion or coins; or (iii) gold or silver tender of any nation traded and sold according to its value as precious metal. The word "bullion" shall not include fabricated precious metal which has been processed or manufactured for industrial, professional or artistic uses.

[There are no paragraphs (mm), (nn) and (oo).]

(pp) Sales of vessels used exclusively to provide scheduled commuter passenger service, repair or replacement parts therefor, and materials and tools used in and for the maintenance and repair thereof.

(qq) Sales of gas, steam, electricity or heating fuel for use by any business that has 5 or fewer employees that had gross income of less than \$1,000,000 for the preceding calendar year, and that reasonably expects gross income of less than \$1,000,000 for the current calendar year. For purposes of this paragraph, employees shall include partners, owners, officers and any other individuals who work for the business but shall not include any employee who normally works for fewer than thirty hours per week or who is hired for a period of less than five months. For purposes of this paragraph, a business shall include all members of an affiliated group, as defined by section 1504 of the Internal Revenue Code, and any other combination of related parties as the commissioner may define by regulation; provided, however, that the commissioner may by regulation

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require that such business shall have first obtained a certification from the commissioner stating that it is entitled to such exemption and shall maintain such employment and other records indicating its continuing eligibility for such exemption; that the vendor keep a record of the sales price of each such separate sale, and the number of such certificate; and any other conditions and requirements under which a business may qualify for this exemption; provided, further, that the burden of proving that such business qualifies shall be upon the vendor unless he takes in good faith from the purchaser such certificate to the effect that the business qualifies for this exemption and such certificate is received and made available to the commissioner not later than sixty days from the date of the notice from the commissioner to produce such certificate.

(rr) Sales of commercial gun safes and trigger lock devices.

(ss) Sales of machinery and equipment, if its operation, function or purpose is an integral or essential part of a continuous production flow or process of manufacturing printed material to be sold and such machinery and equipment is used exclusively for that purpose; and sales of prepress items which are used exclusively as part of a continuous production flow or process of manufacturing printed material to be sold.

(tt) Sales of tangible personal property purchased by a consultant contractor or subcontractor, or operating contractor or subcontractor, of any governmental body or agency, described in paragraph (d), for use in fulfilling a consulting or operating contract to provide qualified services in a public project, provided that the consultant contractor or subcontractor or operating contractor or subcontractor is required both to acquire such property and to be reimbursed for the cost of such property pursuant to such contract.

For purposes of this paragraph:

(A) A consultant contractor or operating contractor of any governmental body or agency described in paragraph (d) is a person who enters into a consulting or operating contract to provide qualified services, and agrees to act as the agent for, such governmental body or agency with respect to purchases of tangible personal property on behalf of such governmental body or agency.

(B) A consultant or operating subcontractor is any person who enters into a contract with a consultant or operating contractor to provide qualified services and agrees to act as the agent for a governmental body or agency with respect to purchases of tangible personal property on behalf of such governmental body in fulfilling a consulting contract. A consultant subcontractor or operating subcontractor shall be considered to be reimbursed for the cost of tangible personal property whether it receives such funds directly from any governmental body or agency described in paragraph (d) or indirectly through a consultant contractor or subcontractor or operating contractor or subcontractor, as the case may be.

(C) A consultant subcontractor or operating subcontractor who enters into a contract to provide qualified services with any higher-tiered consultant subcontractor or higher-

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tiered operating subcontractor is deemed to be a consultant subcontractor or operating subcontractor.

(D) A consulting or operating contract is a contract to provide qualified services under which any governmental body or agency described in paragraph (d) authorizes purchases of tangible personal property to be made on its behalf by a person who agrees to provide qualified services to such governmental body or agency. A governmental body or agency described in paragraph (d) shall be considered to have authorized such purchases to be made on its behalf by a person when it enters into such a contract that expressly authorizes the person to act as an agent or sub-agent of such governmental body or agency for purposes of making such purchases.

(E) Tangible personal property shall be considered to be used in fulfilling a consulting or operating contract if its acquisition has been authorized by the terms of such contract and any one or more of the following has occurred: (i) it is completely expended in the performance of a contract to provide qualified services; (ii) title to and possession of such property is turned over to a governmental body or agency described in paragraph (d) pursuant to the consulting or operating contract; or (iii) it becomes an ingredient and component part of tangible personal property that is turned over to said governmental body or agency pursuant to the consulting or operating contract; provided, however, that tangible personal property shall not be considered to be used in fulfilling a consulting or operating contract if it is used to administer, oversee, supply, maintain, or control any of the consultant contractor's or operating contractor's or consultant subcontractors or operating subcontractor's own offices, facilities, workshops, vehicles, equipment or business operations.

(F) Qualified services shall include:

- (i) studying the feasibility or environmental impact of a public project;
- (ii) providing engineering, architectural or other design services necessary to complete a public project;
- (iii) managing the planning, design, or construction of a public project; or
- (iv) managing the operation or maintenance of any publicly owned mass transportation equipment or facilities.

(G) A public project is any project for the construction, alteration, remodeling, repair, remediation or operation of any public highway, tunnel, bridge, building, real property structure, public mass transportation equipment or facility, or other public work which is owned by or held in trust for the benefit of any governmental body or agency mentioned in paragraph (d) and the cost of which is funded, in whole or in part, by funds appropriated to or authorized for expenditure by any governmental body or agency described in paragraph (d).

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(uu) Sales of repair or replacement parts exclusively for use in aircraft or in the significant overhauling or rebuilding of aircraft or aircraft parts or components on a factory basis.

(vv) Sales of aircraft.

[Paragraph (ww) applicable as provided by 2005, 158, Sec. 9 as amended by 2007, 63, Sec. 15.]

(ww) Sales of tangible personal property to a qualifying motion picture production company or to an accredited film school student for the production expenses related to a school film project.

For the purposes of this paragraph a qualifying motion picture production company must expend in the aggregate not less than \$50,000 within the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive 12 month period and have the approval of the secretary of economic development and the commissioner.

Any motion picture production company that intends to film all, or parts of, a motion picture or television program in the commonwealth and qualify for the exemption provided by this paragraph shall provide an estimate of total expenditures to be made in the commonwealth in connection with the filming or production of such motion picture or television program and shall designate a member or representative of the motion picture production company as a primary liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures and other information as required by the commissioner. Said estimate of expenditures shall be filed prior to the commencement of filming in the commonwealth. Any qualifying motion picture production company that has been approved which fails to expend \$50,000 within a consecutive 12 month period shall be liable for the sales taxes that would have been paid had the approval not been granted. The sales taxes shall be considered due as of the date that taxable expenditures were made.

The commissioner shall promulgate rules for the implementation of this paragraph.

[Paragraph (xx) effective until December 31, 2018 applicable as provided by 2008, 130, Sec. 50. Deleted by 2008, 130, Sec. 35. See 2008, 130, Secs. 53 and 54 as amended by 2011, 9, Sec. 25. See also 2011, 9, Sec. 56.]

(xx)(1) Sales of tangible personal property purchased for a certified life sciences company, to the extent authorized pursuant to the life sciences tax incentive program established by section 5 of chapter 23I, for use in connection with the construction, alteration, remodeling, repair or remediation of research, development or manufacturing facilities and utility support systems. Only purchases made on or after the effective date of this section shall be eligible for this exemption.

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(2) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

"Life sciences", advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications including, but not limited to, agricultural biotechnology, biogenerics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research and veterinary science.

"Life sciences company", a business corporation, partnership, firm, unincorporated association or other entity engaged in life sciences research, development, manufacturing or commercialization in the commonwealth, and any affiliate thereof, which is, or the members of which are, subject to taxation under this chapter.

"Utility support systems", all areas of utility support systems including, but not limited to, site, civil, mechanical, electrical and plumbing systems.

CHAPTER 66 PUBLIC RECORDS

Section 10

Public inspection and copies of records; presumption; exceptions

Section 10. (a) Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search. The following fees shall apply to any public record in the custody of the state police, the Massachusetts bay transportation authority police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages plus fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the

CHAPTER 66 PUBLIC RECORDS

custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

(c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

The commissioner of the department of criminal justice information services, the department of criminal justice information services and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel, shall not be public records in the custody of the employers of such personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed, but such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees

under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The home address and telephone number or place of employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

CHAPTER 71 PUBLIC SCHOOLS

Section 37H

Policies relative to conduct of teachers or students; student handbooks

Section 37H. The superintendent of every school district shall publish the district's policies pertaining to the conduct of teachers and students. Said policies shall prohibit the use of any tobacco products within the school buildings, the school facilities or on the school grounds or on school buses by any individual, including school personnel. Said policies shall further restrict operators of school buses and personal motor vehicles, including students, faculty, staff and visitors, from idling such vehicles on school grounds, consistent with section 16B of chapter 90 and regulations adopted pursuant thereto and by the department. The policies shall also prohibit bullying as defined in section 37O and shall include the student-related sections of the bullying prevention and intervention plan required by said section 37O. Copies of these policies shall be provided to any person upon request and without cost by the principal of every school within the district.

Each school district's policies pertaining to the conduct of students shall include the following: disciplinary proceedings, including procedures assuring due process; standards and procedures for suspension and expulsion of students; procedures pertaining to discipline of students with special needs; standards and procedures to assure school building security and safety of students and school personnel; and the disciplinary measures to be taken in cases involving the possession or use of illegal substances or weapons, the use of force, vandalism, or violation of a student's civil rights. Codes of discipline, as well as procedures used to develop such codes shall be filed with the department of education for informational purposes only.

In each school building containing the grades nine to twelve, inclusive, the principal, in consultation with the school council, shall prepare and distribute to each student a student handbook setting forth the rules pertaining to the conduct of students. The student

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handbook shall include an age-appropriate summary of the student-related sections of the bullying prevention and intervention plan required by section 37O. The school council shall review the student handbook each spring to consider changes in disciplinary policy to take effect in September of the following school year, but may consider policy changes at any time. The annual review shall cover all areas of student conduct, including but not limited to those outlined in this section.

Notwithstanding any general or special law to the contrary, all student handbooks shall contain the following provisions:

(a) Any student who is found on school premises or at school-sponsored or school-related events, including athletic games, in possession of a dangerous weapon, including, but not limited to, a gun or a knife; or a controlled substance as defined in chapter ninety-four C, including, but not limited to, marijuana, cocaine, and heroin, may be subject to expulsion from the school or school district by the principal.

(b) Any student who assaults a principal, assistant principal, teacher, teacher's aide or other educational staff on school premises or at school-sponsored or school-related events, including athletic games, may be subject to expulsion from the school or school district by the principal.

(c) Any student who is charged with a violation of either paragraph (a) or (b) shall be notified in writing of an opportunity for a hearing; provided, however, that the student may have representation, along with the opportunity to present evidence and witnesses at said hearing before the principal.

After said hearing, a principal may, in his discretion, decide to suspend rather than expel a student who has been determined by the principal to have violated either paragraph (a) or (b).

(d) Any student who has been expelled from a school district pursuant to these provisions shall have the right to appeal to the superintendent. The expelled student shall have ten days from the date of the expulsion in which to notify the superintendent of his appeal. The student has the right to counsel at a hearing before the superintendent. The subject matter of the appeal shall not be limited solely to a factual determination of whether the student has violated any provisions of this section.

(e) Any school district that suspends or expels a student under this section shall continue to provide educational services to the student during the period of suspension or expulsion, under section 21 of chapter 76. If the student moves to another district during the period of suspension or expulsion, the new district of residence shall either admit the student to its schools or provide educational services to the student in an education service plan, under section 21 of chapter 76.

[Paragraphs (f) and (g) of the fourth paragraph added by 2012, 222, Sec. 1 effective July 1, 2014. See 2012, 222, Sec. 12.]

(f) Districts shall report to the department of elementary and secondary education the specific reasons for all suspensions and expulsions, regardless of duration or type, in a manner and form established by the commissioner. The department of elementary and secondary education shall use its existing data collection tools to obtain this information from districts and shall modify those tools, as necessary, to obtain the information. On an annual basis, the department of elementary and secondary education shall make district level de-identified data and analysis, including the total number of days each student is excluded during the school year, available to the public online in a machine readable format. This report shall include district level data disaggregated by student status and categories established by the commissioner.

(g) Under the regulations promulgated by the department, for each school that suspends or expels a significant number of students for more than 10 cumulative days in a school year, the commissioner shall investigate and, as appropriate, shall recommend models that incorporate intermediary steps prior to the use of suspension or expulsion. The results of the analysis shall be publicly reported at the school district level.

CHAPTER 90 MOTOR VEHICLES AND AIRCRAFT

Section 61

Logan Airport security zone; access; penalties

Section 61. (a) Notwithstanding the provisions of any general or special law to the contrary, as a matter of public safety and security, there is hereby created a security zone bordering the General Edward Lawrence Logan Airport that shall include the area between the mean high water line of said airport and a line measured 500 feet seaward of and parallel to said mean high water line from Wood Island Basin to the easterly end of Jeffries Cove as shown on a plan entitled “Plan of General Edward Lawrence Logan International Airport Security Zone” prepared by Massachusetts Port Authority Capital Programs Department, April 2002.

(b) No person, except authorized law enforcement or military personnel and authorized personnel of the authority, shall: (1) carry or otherwise possess a firearm, rifle, shotgun, assault weapon, ammunition, explosive device or material, or any hoax device as defined by section 102A1/2 of chapter 266, within said security zone; (2) engage in any activity within said security zone that jeopardizes or may jeopardize the safety or security of any person or of the airport; or (3) enter said security zone or engage in any activity, including boating, anchoring, fishing, shell-fishing, hunting, swimming or other underwater activities, within said security zone, except (i) as may be expressly permitted in writing by said authority; or (ii) with respect to shell-fishing, as may be authorized by the department of marine fisheries within the security zone and in accordance with regulations or policies as may be promulgated by said department of marine fisheries in coordination with the authority, except in no event shall the total number of shell-fishermen within said security zone exceed 50 and no person shall engage in shell-fishing

within the security zone without prior notice provided by said department of marine fisheries to the authority setting forth (a) the number of shell-fishermen working within the security zone, (2) the time said fishermen will be working within the security zone, and (3) all other information as the Authority may reasonably require, or (iii) with respect to boating in the vicinity of Logan Airport, as may be clearly and conspicuously demarcated within said security zone by said authority to allow boats to travel through navigable waters within said security zone, provided that in no circumstance may any boat enter within 250 feet seaward of the mean high water line surrounding said airport.

(c) Notwithstanding the provisions of any general or special law to the contrary, no person shall engage in shell-fishing within a regulated shell-fishing zone consisting of the security zone, as defined in subparagraph (a), and shell-fish beds located within the property of the authority, unless such person has registered with the authority to access the regulated shell-fishing zone in accordance with the provisions of this chapter.

(d) Within 7 days of the receipt of a completed application for registration to access the regulated shell-fishing zone, the authority may forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall, within 14 days, advise the licensing authority, in writing, of any criminal record of the applicant arising from within or without the commonwealth. In searching for any history of the applicant, the authority or the colonel may utilize, or cause to be utilized, files maintained by the department of mental health, department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. If the information available to the authority or the colonel does not indicate that the applicant should be restricted from the regulated shell-fishing zone, the authority shall issue a registration card to the applicant within such 14 day period.

(e) The authority may not prescribe any other condition for the issuance of a registration card and shall, within 21 days from the date of application, either approve the application and issue the registration card or deny the application and notify the applicant of the reason for such denial in writing.

(f) Any person who violates the provisions of this section shall be subject to immediate arrest and shall be punished by imprisonment in a house of correction for not more than 2 years or by a fine of not more than \$25,000, or both.

CHAPTER 90B MOTORBOATS, OTHER VESSELS AND RECREATIONAL VEHICLES

Section 26

Prohibited or limited operation by underage persons; restrictions

Section 26. (a)(1) No person under 14 years of age shall operate an all terrain vehicle or recreation utility vehicle. This section shall not apply to a person operating a recreation

vehicle or snow vehicle in preparation for, or while a participant in, a sanctioned race, rally or organized event which is supervised by a person aged 18 or older and which has been authorized or approved by a municipal permitting authority. It shall be an affirmative defense in a delinquency proceeding for a violation of this section that a juvenile was supervised by a person aged 18 or older while operating such a vehicle within 21 days before such sanctioned race, rally or organized event or while a participant in such a sanctioned race, rally or organized event.

(2) No person between 14 and 16 years of age shall operate an all-terrain vehicle or recreation utility vehicle with an engine capacity greater than 90 cubic centimeters; provided, however, that a person between 14 and 16 years of age may operate an all-terrain vehicle or recreation utility vehicle with an engine capacity equal to or less than 90 cubic centimeters if directly supervised by a person 18 years of age or older.

(b) No person aged 18 years of age or older shall knowingly permit another, who is under the age of 18, to operate a snow vehicle or recreation vehicle in his custody or under his control in violation of this chapter. Lack of ownership of the vehicle or mistake as to the age of the operator shall not be available defenses to a violation of this section.

(c) No person operating or in control of a snow vehicle or recreation vehicle shall refuse to stop such vehicle after having been requested or signaled to do so by a law enforcement officer. No such person shall refuse to give his correct name, address and registration number to such officer.

(d) No person shall operate or ride in or on a snow vehicle or a recreation vehicle or ride in or on a sled, inflated tube or similar article attached to such vehicle and which is pulled by such vehicle, without wearing protective headgear. Such headgear shall conform to minimum standards for construction and performance as the registrar of motor vehicles may prescribe.

(e) No person shall operate a snow vehicle or a recreation vehicle on privately-owned property unless: (i) the operator is the owner or lessee or an immediate family member of the owner or lessee of the property; (ii) the operator has in his possession either a document, signed by the owner or lessee of such property or his agent, authorizing the operation of a such vehicle on the property by the operator or valid proof of current membership in a club, association or other organization to which express authorization for the operation of such vehicles on the property has been granted; provided, however, that such operation shall be consistent with the express authorization granted and any restrictions imposed therewith; or (iii) the owner or lessee of the property has designated the area for use by such vehicles by posting reasonable notice of such designation in a manner approved by the director.

No person shall operate a snow vehicle or recreation vehicle on publicly-owned property except on trails marked and designated for use by such vehicles, or without the express permission of the owner.

(f) No person shall operate a snow vehicle or a recreation vehicle in a manner that harasses or otherwise harms deer or other wildlife. No person shall operate a snow vehicle or recreation vehicle in a reforested or planted area in a manner that causes damage to growing stock. No person shall operate a snow vehicle or a recreation vehicle in a manner that causes damage to public or private property including, but not limited to, lands owned or managed by the department of conservation and recreation or the division of fisheries and wildlife, wetlands or other waters of the commonwealth, priority habitats delineated as such by the division of fisheries and wildlife pursuant to chapter 131A, lands used for public water supply purposes or historic or archaeological sites.

(g) No person shall carry a firearm, rifle or shotgun in or on a snow vehicle or recreation vehicle or on a trailer or sled attached thereto unless such firearm, rifle or shotgun is unloaded and in an enclosed case. This section shall not apply to a law enforcement officer or other person with enforcement powers authorized in section 32, or to a paraplegic as provided in section 65 of chapter 131.

(h) No person shall operate a snow vehicle or recreation vehicle after the registration has been suspended or revoked.

CHAPTER 90C PROCEDURE FOR MOTOR VEHICLE OFFENSES

Section 2

Citations and citation books

Section 2. Each police chief shall issue citation books to each permanent full-time police officer of his department whose duties may or will include traffic duty or traffic law enforcement, or directing or controlling traffic, and to such other officers as he at his discretion may determine. Each police chief shall obtain a receipt on a form approved by the registrar from such officer to whom a citation book has been issued. Each police chief shall also maintain citation books at police headquarters for the recording of automobile law violations by police officers to whom citation books have not been issued.

Each police chief appointed by the trustees of the commonwealth's state universities and community colleges under section 22 of chapter 15A shall certify to the registrar, on or before January first of each year, that:

(a) the police officers appointed by the trustees at the state university or community college have been issued a current first aid/CPR certificate;

(b)(i)(A) 51 per cent of such police officers have completed either the basic full-time recruit academy operated or certified by the municipal police training committee or the campus police academy operated by the Massachusetts state police, or

CHAPTER 90C PROCEDURE FOR MOTOR VEHICLE OFFENSES

(B) 51 per cent of the police officers have completed a basic reserve/intermittent police officer training course approved by the municipal police training committee and have had at least 5 years experience issuing citations pursuant to this chapter; and

(ii) the remaining 49 per cent of police officers have completed a minimum of a basic reserve/intermittent police officer training course approved by the municipal police training committee;

(c) such officers have completed annual in-service training of no less than 40 hours;

(d) such officers meet the same firearms qualification standards as set from time to time by the municipal police training committee if such officers have been authorized by the board of trustees of the state university or community college to carry firearms;

(e) the state university or community college police department submits uniform crime reports to the FBI;

(f) a memorandum of understanding has been entered into with the police chief of the municipality wherein the state university or community college is located outlining the policies and procedures for utilizing the municipality's booking and lock-up facilities, fingerprinting and breathalyzer equipment if the state university or community college police department does not provide booking and lock-up facilities, fingerprinting or breathalyzer equipment; and

(g) the state university or community college police department has policies and procedures in place for use of force, pursuit, arrest, search and seizure, racial profiling and motor vehicle law enforcement.

Notwithstanding the previous paragraph, nothing in this section shall limit the authority granted to the police chiefs and police officers at the state universities and community colleges under said section 22 of said chapter 15A or section 18 of chapter 73.

Notwithstanding the provisions of any general or special law, other than a provision of this chapter, to the contrary, any police officer assigned to traffic enforcement duty shall, whether or not the offense occurs within his presence, record the occurrence of automobile law violations upon a citation, filling out the citation and each copy thereof as soon as possible and as completely as possible and indicating thereon for each such violation whether the citation shall constitute a written warning and, if not, whether the violation is a criminal offense for which an application for a complaint as provided by subsection B of section three shall be made, whether the violation is a civil motor vehicle infraction which may be disposed of in accordance with subsection (A) of said section three, or whether the violator has been arrested in accordance with section twenty-one of chapter ninety. Said police officer shall inform the violator of the violation and shall give a copy of the citation to the violator. Such citation shall be signed by said police officer and by the violator, and whenever a citation is given to the violator in person that fact shall be so certified by the police officer. The violator shall be requested to sign the

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citation in order to acknowledge that it has been received. If a written warning is indicated, no further action need be taken by the violator. No other form of notice, except as provided in this section, need be given to the violator.

A failure to give a copy of the citation to the violator at the time and place of the violation shall constitute a defense in any court proceeding for such violation, except where the violator could not have been stopped or where additional time was reasonably necessary to determine the nature of the violation or the identity of the violator, or where the court finds that a circumstance, not inconsistent with the purpose of this section to create a uniform, simplified and non-criminal method for disposing of automobile law violations, justifies the failure. In such case the violation shall be recorded upon a citation as soon as possible after such violation and the citation shall be delivered to the violator or mailed to him at his residential or mail address or to the address appearing on his license or registration as appearing in registry of motor vehicles records. The provisions of the first sentence of this paragraph shall not apply to any complaint or indictment charging a violation of section twenty-four, twenty-four G or twenty-four L of chapter ninety, providing such complaint or indictment relates to a violation of automobile law which resulted in one or more deaths.

At or before the completion of his tour of duty, a police officer to whom a citation book has been issued and who has recorded the occurrence of an automobile law violation upon a citation shall deliver to his police chief or to the person duly authorized by said chief all remaining copies of such citation, duly signed, except the police officer's copy which shall be retained by him. If the police officer has directed that a written warning be issued, the part of the citation designated as the registry of motor vehicles record shall be forwarded forthwith by the police chief or person authorized by him to the registrar and shall be kept by the registrar in his main office.

If the police officer has not directed that a written warning be issued and has not arrested the violator, the police chief or a person duly authorized by him shall retain the police department copy of each citation, and not later than the end of the sixth business day after the date of the violation:

(a) in the case of citations alleging only one or more civil motor vehicle infractions, shall cause all remaining copies of such citations to be mailed or delivered to the registrar; or

(b) in the case of citations alleging one or more criminal automobile law violations, shall cause all remaining copies of such citations to be delivered to the clerk-magistrate of the district court for the judicial district where the violation occurred. Failure to comply with the provisions of this paragraph shall not constitute a defense to any complaint or indictment charging a violation of section twenty-four, twenty-four G or twenty-four L of chapter ninety if such violation resulted in one or more deaths. Each clerk-magistrate shall maintain a record in the form prescribed by the chief justice of the district court department of such citations and shall notify the registrar of the disposition of such citations in accordance with the provisions of section twenty-seven of said chapter ninety.

If a citation is spoiled, mutilated or voided, it shall be endorsed with a full explanation thereof by the police officer voiding such citation, and shall be returned to the registrar forthwith and shall be duly accounted for upon the audit sheet for the citation book from which said citation was removed.

CHAPTER 92A1/2 WATERSHED MANAGEMENT

Section 14

Ware river watershed advisory committee

Section 14. The commissioner shall establish a Ware river watershed advisory committee. The purpose of the committee shall be to advise the division on its policies and regulations regarding recreational activities, land use and environmental, wildlife and habitat matters within the Ware river watershed. The commissioner of the department shall appoint to the advisory committee 1 person from 3 names nominated by each of the following organizations: the Massachusetts Council of Sportsmen, the Worcester County League of Sportsmen, Trout Unlimited, a rod and gun club located in the town of Barre, Hubbardston, Oakham or Rutland, a designee of the board of selectmen of each of the towns of Barre, Hubbardston, Oakham and Rutland, a representative of the historical societies in each of the towns of Barre, Hubbardston, Oakham and Rutland, a representative of the Massachusetts Wildlife Federation, a representative of the Massachusetts Audubon Society, a representative of the Sierra Club, and a representative of the Upper Ware river watershed association and 1 member from the general public.

The committee shall elect a chairperson from among its members, shall meet at least twice each calendar year and may provide for alternate members to participate fully in its meetings whenever a regular member is unable to do so.

CHAPTER 94C CONTROLLED SUBSTANCES ACT

Section 32

Class A controlled substances; unlawful manufacture, distribution, dispensing or possession with intent to manufacture, etc.; eligibility for parole

Section 32. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance in Class A of section thirty-one shall be punished by imprisonment in the state prison for not more than ten years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than one thousand nor more than ten thousand dollars, or by both such fine and imprisonment.

(b) Any person convicted of violating this section after one or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture,

distribute, or dispense a controlled substance as defined by section thirty-one of this chapter under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not less than 3 1/2 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 3 1/2 years and a fine of not less than two thousand and five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum 3 1/2 year term of imprisonment, as established herein.

(c) Any person serving a mandatory minimum sentence for violating any provision of this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

Section 32A

Class B controlled substances; unlawful manufacture, distribution, dispensing or possession with intent to manufacture, etc.; eligibility for parole

Section 32A. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a controlled substance in Class B of section thirty-one shall be punished by imprisonment in the state prison for not more than ten years, or in a jail or house of correction for not more than two and one-half years, or by a fine of not less than one thousand nor more than ten thousand dollars, or both such fine and imprisonment.

(b) Any person convicted of violating this section after one or more prior convictions of manufacturing, distributing, dispensing, or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section thirty-one of this

chapter under this or any other prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not less than 2 nor more than ten years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 2 years and a fine of not less than two thousand and five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(c) Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute or dispense phencyclidine or a controlled substance defined in clause (4) of paragraph (a) or in clause (2) of paragraph (c) of class B of section thirty-one shall be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than ten years or by imprisonment in a jail or house of correction for not less than one nor more than two and one-half years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of one year and a fine of not less than one thousand nor more than ten thousand dollars may be imposed but not in lieu of the mandatory minimum one year term of imprisonment, as established herein.

(d) Any person convicted of violating the provisions of subsection (c) after one or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute, or dispense a controlled substance, as defined in section thirty-one or of any offense of any other jurisdiction, either federal, state or territorial, which is the same as or necessarily includes, the elements of said offense, shall be punished by a term of imprisonment in the state prison for not less than 3 1/2 nor more than fifteen years and a fine of not less than two thousand five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(e) Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, provided that said person shall not be eligible for parole upon a finding of any one of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

Section 32B

Class C controlled substances; unlawful manufacturer, distribution, dispensing or possession with intent to manufacture, etc.; eligibility for parole

Section 32B. (a) Any person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute, or dispense a controlled substance in Class C of section thirty-one shall be imprisoned in state prison for not more than five years or in a jail or house of correction for not more than two and one-half years, or by a fine of not less than five hundred nor more than five thousand dollars, or both such fine and imprisonment.

(b) Any person convicted of violating this section after one or more prior convictions of manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance as defined by section thirty-one under this or any prior law of this jurisdiction or of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of said offense shall be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than ten years, or by imprisonment in a jail or house of correction for not less than 18 months nor more than two and one-half years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 18 months and a fine of not less than one thousand nor more than ten thousand dollars may be imposed, but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(c) Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

Section 32E

Trafficking in marihuana, cocaine, heroin, morphine, opium, etc.; eligibility for parole

Section 32E. (a) Any person who trafficks in marihuana by knowingly or intentionally manufacturing, distributing, dispensing, or cultivating or possessing with intent to manufacture, distribute, dispense, or cultivate, or by bringing into the commonwealth a net weight of fifty pounds or more of marihuana or a net weight of fifty pounds or more of any mixture containing marihuana shall, if the net weight of marihuana or any mixture thereof is:

(1) Fifty pounds or more, but less than one hundred pounds, be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than fifteen years or by imprisonment in a jail or house of correction for not less than one nor more than two and one-half years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of one year and a fine of not less than five hundred nor more than ten thousand dollars may be imposed but not in lieu of the mandatory minimum one year term of imprisonment, as established herein.

(2) One hundred pounds or more, but less than two thousand pounds, be punished by a term of imprisonment in the state prison for not less than 2 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 2 years and a fine of not less than two thousand and five hundred nor more than twenty-five thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) Two thousand pounds or more, but less than ten thousand pounds, be punished by a term of imprisonment in the state prison for not less than 3 1/2 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 3 1/2 years and a fine of not less than five thousand nor more than fifty thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(4) Ten thousand pounds or more, be punished by a term of imprisonment in the state prison for not less than 8 nor more than fifteen years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of 8 years and a fine of not less than twenty thousand nor more than two hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

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(b) Any person who trafficks in a controlled substance defined in clause (4) of paragraph (a), clause (2) of paragraph (c) or in clause (3) of paragraph (c) of Class B of section thirty-one by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute or dispense or by bringing into the commonwealth a net weight of 18 grams or more of a controlled substance as so defined, or a net weight of 18 grams or more of any mixture containing a controlled substance as so defined shall, if the net weight of a controlled substance as so defined, or any mixture thereof is:

(1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not less than 2 nor more than 15 years. No sentence imposed under this clause shall be for less than a minimum term of imprisonment of 2 years, and a fine of not less \$2,500 nor more than \$25,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Thirty-six grams or more, but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 3 1/2 nor more than 20 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 3 1/2 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) One hundred grams or more, but less than two hundred grams, be punished by a term of imprisonment in the state prison for not less than 8 nor more than twenty years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 8 years and a fine of not less than ten thousand nor more than one hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(4) Two hundred grams or more, be punished by a term of imprisonment in the state prison for not less than 12 nor more than twenty years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 12 years and a fine of not less than fifty thousand nor more than five hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(c) Any person who trafficks in heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof by knowingly or intentionally manufacturing, distributing or dispensing or possessing with intent to manufacture, distribute, or dispense or by bringing into the commonwealth a net weight of 18 grams or more of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or a net weight of 18 grams or more of any mixture containing heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof shall, if the net weight of heroin or any salt thereof, morphine or any salt thereof, opium or any derivative thereof or any mixture thereof is:--

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(1) Eighteen grams or more but less than 36 grams, be punished by a term of imprisonment in the state prison for not less than 3 1/2 nor more than 20 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 3 1/2 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Thirty-six grams or more but less than 100 grams, be punished by a term of imprisonment in the state prison for not less than 5 nor more than 20 years. No sentence imposed under this clause shall be for less than a mandatory minimum term of imprisonment of 5 years, and a fine of not less than \$5,000 nor more than \$50,000 may be imposed, but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) One hundred grams or more but less than two hundred grams, be punished by a term of imprisonment in the state prison for not less than 8 nor more than twenty years. No sentence imposed under the provisions of this clause shall be for less than the mandatory minimum term of imprisonment of 8 years, and a fine of not less than ten thousand nor more than one hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established therein.

(4) Two hundred grams or more, be punished by a term of imprisonment in the state prison for not less than 12 nor more than twenty years. No sentence imposed under the provisions of this clause shall be for less than a mandatory minimum term of imprisonment of 12 years and a fine of not less than fifty thousand nor more than five hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established therein.

(d) Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to the house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

(i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;

(ii) the defendant engaged in a course of conduct whereby he directed the activities of another others who committed any felony in violation of chapter 94C; or

(iii) the offense was committed during the commission or attempted commission of a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be

limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

Section 32J

Controlled substances violations in, on, or near school property; eligibility for parole

Any person who violates the provisions of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I while in or on, or within 300 feet of the real property comprising a public or private accredited preschool, accredited headstart facility, elementary, vocational, or secondary school if the violation occurs between 5:00 a.m. and midnight, whether or not in session, or within one hundred feet of a public park or playground shall be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than fifteen years or by imprisonment in a jail or house of correction for not less than two nor more than two and one-half years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of imprisonment of two years. A fine of not less than one thousand nor more than ten thousand dollars may be imposed but not in lieu of the mandatory minimum two year term of imprisonment as established herein. In accordance with the provisions of section eight A of chapter two hundred and seventy-nine such sentence shall begin from and after the expiration of the sentence for violation of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I.

Lack of knowledge of school boundaries shall not be a defense to any person who violates the provisions of this section.

Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to a house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

- (i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;
- (ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C.
- (iii) the offense was committed during the commission or attempted commission of the a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be

limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

CHAPTER 112 REGISTRATION OF CERTAIN PROFESSIONS AND OCCUPATIONS

Section 12A

Report of treatment of wounds, burns, overdose and other injuries; penalty

Section 12A. Every physician attending or treating a case of bullet wound, gunshot wound, powder burn or any other injury arising from or caused by the discharge of a gun, pistol, BB gun, or other air rifle or firearm, or examining or treating a person with a burn injury affecting five per cent or more of the surface area of his body, or, whenever any such case is treated in a hospital, sanatorium or other institution, the manager, superintendent or other person in charge thereof, shall report such case at once to the colonel of the state police and to the police of the town where such physician, hospital, sanatorium or institution is located or, in the case of burn injuries, notification shall be made at once to the state fire marshal and to the police of the town where the burn injury occurred. This section shall not apply to such wounds, burns or injuries received by any member of the armed forces of the United States or of the commonwealth while engaged in the actual performance of duty. Every physician attending or treating a case of wound or injury caused by a knife or sharp or pointed instrument shall, if in his opinion a criminal act was involved, report such case forthwith to the police authorities of the town in which he attended or treated such wound or injury. Whoever violates any provision of this section shall be punished by a fine of not less than fifty nor more than one hundred dollars. The colonel of state police shall make available to the commissioner of public health all reports regarding: (i) bullet wounds, gunshot wounds, powder burns or any other injury arising from or caused by the discharge of a rifle, shotgun, firearm or air rifle; (ii) burn injuries affecting 5 per cent or more of the surface area of the human body; and (iii) wounds or injuries caused by a knife or other sharp or pointed instrument; provided, however, that personal information identifying the victim or the perpetrator may be redacted if the release of such information may compromise an investigation.

In cases of examination or treatment of a person with injuries resulting from opiate, illegal or illicit drug overdose, a hospital, community health center or clinic shall report de-identified, aggregate information in a manner to be determined in conjunction with the department of public health.

CHAPTER 125 CORRECTIONAL INSTITUTIONS OF THE COMMONWEALTH

Section 14

Superintendent; powers and duties

Section 14. Subject to rules and regulations established by the commissioner and according to law, the superintendent shall be responsible for the custody and control of all prisoners in the correctional institution, and shall govern and employ them pursuant to their respective sentences until their sentences have been performed or they are otherwise discharged by due course of law, or they are removed by the commissioner, and shall also have the charge and custody of the institution and of the land, buildings, furniture, tools, implements, stock, provisions, and all other property belonging to it or within its precincts. The superintendent shall establish and maintain at each correctional institution of the commonwealth a safe and secure place for the storage of firearms carried by uniformed correctional officers of said institutions to and from their place of employment.

CHAPTER 131 INLAND FISHERIES AND GAME AND OTHER NATURAL RESOURCES

Section 1

Definitions; rules of construction

Section 1. In this chapter, unless the context otherwise requires, the following words shall have the following meanings and the following rules of construction shall apply:—

“Angling”, fishing with hand line or rod, with a hook baited with natural or artificial bait.

“Assistant”, any assistant to the director of law enforcement, appointed under section six of chapter twenty-one, or under section thirty of chapter five hundred and twenty-four of the acts of nineteen hundred and sixty-four.

“Birds”, wild or undomesticated birds.

“Closed season”, the time during which fish, birds or mammals cannot lawfully be taken.

“Coastal waters”, all waters of the commonwealth within the rise and fall of the tide and the marine limits of the jurisdiction of the commonwealth, but not waters within or above any fishway or dam nor waters above any jurisdictional boundary legally established pursuant to section five of chapter one hundred and thirty of the General Laws in rivers and streams flowing into the sea.

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“Commissioner”, the commissioner of fisheries, wildlife and environmental law enforcement.

“Dealer”, any person who commercially handles fish, game birds or game mammals protected by this chapter.

“Department”, the department of fisheries, wildlife and environmental law enforcement.

“Deputy”, any deputy environmental police officer appointed under section 10A of chapter 21A.

“Director”, the director of fisheries and wildlife.

“Division”, the division of fisheries and wildlife.

“Environmental police officer”, an enforcement officer appointed under the authority of section 10A of chapter 21A.

“Falcon”, the female peregrine, but applied generally to the females of all long-winged hawks (Falconidae), and to all hawks trained to hunt game.

“Falconry”, the sport of hunting game with trained raptors.

“Fish”, an aquatic vertebrate animal of the osteichthyes class commonly known as finny fish, found in the inland waters.

The verb “to fish” in all of its moods and tenses, to take or attempt to take fish by any method or means, whether or not such method or means results in their capture; and said verb also includes every attempt to take and every act of assistance to any other person in taking or attempting to take fish, except operating a boat or assisting a person licensed under this chapter by cutting holes in the ice for ice fishing.

“Fur buyer”, a person who deals in raw furs.

“Game”, any wild bird or mammal commonly hunted for food or sport.

“Great pond”, a natural pond the area of which is twenty acres or more.

“Green pelt”, a pelt which has not been dried, cured or tanned.

“Hook”, any lure or device designed to take not more than one fish at a time.

“Horned pout”, all fish in the family Ictaluridae.

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The verb “to hunt”, in all of its moods and tenses, includes pursuing, shooting, killing and capturing mammals and birds and all lesser acts such as disturbing, harrying or worrying, or placing, setting, drawing or using any device commonly used to take mammals and birds, whether or not such acts result in taking; and includes every attempt to take and every act of assistance to any other person in taking or attempting to take mammals and birds.

“Inland waters”, all waters within the jurisdiction of the commonwealth other than coastal waters.

“Loaded shotgun or rifle”, any shotgun or rifle having a shell or cartridge in either the magazine or chamber thereof, or, in the case of a muzzle loading shotgun or rifle, containing powder in the flash pan, a percussion cap and shot or ball.

“Mammals”, wild or undomesticated mammals.

“Management”, the collection and application of biological information for the purpose of obtaining optimum levels of wildlife within an ecosystem and maintaining those levels. The term includes, but is not limited to, research, census, law enforcement, habitat acquisition, preservation and maintenance, propagation, live trapping and transplantation, education and other activities effective in encouraging better conservation of wildlife in the commonwealth. This term also includes, when and where appropriate, the periodic or total protection of a species or population, as well as regulated taking.

“Marine fisheries”, all fisheries in coastal waters.

“Nature preserve”, an area of land that: retains or has recovered to a substantial degree its natural or primeval character; provided, however, that it need not be completely undisturbed; has native floral, faunal or ecological features of scientific or educational interest; or is necessary for the protection of land so described.

“Nongame wildlife”, any nondomesticated animal not regulated by the division as a game species and any plant, native to the commonwealth, which is not classified as domesticated.

“Open season”, the time during which fish, birds and mammals may lawfully be taken.

“Propagator”, a person who propagates fish, birds or mammals.

“Raptors”, all birds found in the wild that are members of the order Falconiformes or Strigiformes, and specifically but not by way of limitation, falcons, hawks, owls and eagles.

“Taxidermist”, a person who prepares, stuffs, mounts or preserves fish, birds or mammals.

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“Trap”, any device capable of taking, catching or holding a mammal or bird, whether in the set or unset position.

The verb “to trap”, in all of its moods and tenses, includes any act of staking out, setting, using, tending, placing, maintaining or picking up a trap where furbearing mammals or birds might be found.

“Warden”, any fish and game warden referred to in section three of chapter four hundred and thirteen of the acts of nineteen hundred and thirty-seven.

“Woodlands”, any land bearing wood growth, wood, weeds, grass or other growth likely to be burned over.

Whoever knowingly counsels, aids or assists in a violation of any provision of this chapter, or of any rule or regulation made thereunder, or knowingly shares in any of the proceeds of said violation by receiving or possessing either fish, birds or mammals, shall be deemed to have incurred the penalties imposed upon the person guilty of such violation.

Whenever the taking of fish, birds or mammals is allowed by law, reference is had to taking by lawful means and in lawful manner.

Unless the context otherwise requires, any reference to the taking or having in possession of a fish, bird or mammal shall include the taking or having in possession of any part or portion thereof.

The provisions of this chapter and regulations made thereunder, unless otherwise specifically provided, shall apply only to fish and fisheries in or taken from the inland waters of the commonwealth.

In construing this chapter, the provisions thereof forbidding possession of various species of fish, birds and mammals during certain periods of the year, shall not be held to prohibit a resident of the commonwealth who has lawfully taken, killed or come into possession of such fish, birds or mammals from having the dead bodies or carcasses thereof in possession for his own personal use and not for sale, unless prohibited by federal legislation or regulation so to do, but the burden shall be on him to prove that such possession was lawful in its origin; nor shall they be held to prohibit a person from bringing into this commonwealth the dead bodies or carcasses of fish, birds or mammals which were lawfully taken or killed in another state, province or country, or from having such fish, birds or mammals in possession for the aforesaid purpose after the arrival thereof in the commonwealth, unless, in either event, prohibited by federal legislation or regulation so to do, if before any such fish, birds or mammals are so imported they are tagged or marked in accordance with the laws of such other state, province or country and with the federal laws relative to interstate commerce, and if no more such fish, birds or mammals are imported at one time than is permitted by the laws of such other state,

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province or country to be exported therefrom; but the burden shall be on such person to prove that such possession was lawful in its origin.

Section 4

Powers of director

Section 4. The director may:

- (1) destroy from time to time license books, stubs, licenses and license blanks after the same have been properly audited by the state auditor, and such other documents as the director deems advisable after the same have been noted in the official records;
- (2) notwithstanding any other provisions of this chapter, but subject to federal law, rules and regulations, take or in writing authorize other persons to take and possess fish, fish spawn, birds, the nest or eggs thereof, mammals, reptiles or amphibians at any time or in any manner for purposes of observation, research, control or management for which a fee shall be charged, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven, and, in the director's discretion, excuse certain persons so authorized from any licensing provision of this chapter and he may, subject to federal law, rules and regulations, regulate the trapping and taking of raptors for the purpose of falconry in accordance with rules and regulations established under the provisions of section five;
- (3) investigate questions relating to reptiles, amphibians, fish, birds or mammals and, personally or by agents, institute and conduct inquiries pertaining to such questions and conduct such biological research as will, in his opinion, tend to conserve, improve and increase the supply of reptiles, amphibians, fish, birds and mammals.
- (4) occupy not more than four great ponds within the commonwealth at any one time for the purpose of scientific study or experiment; make rules and regulations relative to fishing within said waters, such rules and regulations being subject to section thirty-seven of chapter thirty; and from time to time close or open such waters, or any part thereof, for fishing; provided, that no great pond shall be occupied as aforesaid unless notice of such proposed occupation shall have been given, at least thirty days prior thereto, by the director to the mayor of the city and the selectmen of the town where the pond is located; and, provided further, that if a petition relating to any such great pond, signed by not less than twenty-five persons, shall be filed with the director within thirty days, after notice to a mayor or selectmen, the director shall hold a public hearing and shall not occupy such pond until ten days thereafter;
- (5) if, in his opinion, the presence in any great pond or in waters acquired for public fishing grounds of any species of fish having destructive proclivities toward other fish constitutes a hindrance or detriment to the promotion and development of fishing therein, by order, suspend, with respect to such waters, the operation of any or all provisions of law establishing closed seasons on such species of fish having such destructive

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proclivities and regulating the number and length of fish of such species that may be lawfully taken or had in possession. Any such suspension shall become effective upon the filing of the order of suspension in the office of the director, but no such suspension shall be terminated until after notice of such termination has been conspicuously posted on the shores of such waters and filed with the clerk of each city and town bordering thereon;

(6) with the approval of the riparian owners and all persons owning any right of fishing in the waters affected, establish restricted areas in any nonnavigable brook or stream, or portion thereof, or in any pond other than a great pond, or portion thereof, when, in his opinion, such brook, stream or pond, or portion thereof, is a suitable area for the breeding of fish, and make rules and regulations for the taking of fish within such area;

(7) screen such of said ponds, brooks and streams in the commonwealth not used as sources of water supply by cities and towns as he deems necessary for the protection of fish therein, except that mercantile and manufacturing rights existing on April thirtieth, nineteen hundred and twenty, shall not be affected;

(8) cause any great pond to be stocked or restocked with such fish as he judges best suited to the waters thereof, and in every such instance he may prescribe and enforce such reasonable regulations relative to fishing in the pond or its tributaries, or both, as he deems for the public interest, but this paragraph shall not apply to ponds used as sources of public water supply;

(9) manage any natural or artificial pond or any brook or stream by reclaiming and by stocking and restocking with such fish as he judges best suited to the waters thereof; provided that in respect to privately owned ponds such management and stocking shall only be with the written consent of the owner or lessee thereof, and shall not prevent such owner or lessee from drawing down or making such use of said waters for commercial or other purposes as appear to him to be advisable, in conformance with the provisions of section forty-eight; and, provided further, that the owner or lessee of such privately owned waters shall agree in writing with the director that such stocked waters shall be open for public fishing, and the public may thereafter fish therein. Such agreement may be terminated by the owner or lessee by giving written notice to that effect to the director at least twenty-four months before the effective date of such termination. Nothing in this clause shall be construed to prohibit the director from providing common sunfish, *Lepomis Gibbosus*, and bluegills taken from salvage operations to stock private waters wherein members of youth organizations may fish, notwithstanding that the public is prohibited from fishing in such waters;

(10) at any time in any inland waters where the loss of fish from any cause is apparent, salvage fish for distribution, and, with the approval in each instance of the commissioner of environmental protection, from time to time remove fish from any reservoir used as a source of public water supply when permitted by the proper authorities in charge, for the purpose of stocking or restocking any inland waters of the commonwealth wherein any holder of a sporting or fishing license issued under this chapter is entitled to fish;

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(11) in the performance of his duties, enter upon and pass through or over private lands, whether or not covered by water, and may authorize his agents in writing so to do. He and they may, in the course of such duties, remedy conditions caused by wildlife, resulting or likely to result in damage to property;

(12) for the purpose of this chapter and of chapter one hundred and thirty, establish suitable markers designating the jurisdictional bounds established pursuant to section five of chapter one hundred and thirty. Thereupon, the director shall file a plan or maps showing the location of said markers with the clerk of the city or town wherein the marker has been established. A person shall not alter, remove or destroy any marker so established by the director.

(13) conduct statewide information and promotion programs in wildlife conservation, including the utilization of wildlife compatible with good conservation principles;

(13A) Conduct investigations into non-game species of wildlife and wild plants to obtain information relating to population, distribution, habitat requirements, limiting factors, and other biological and ecological parameters deemed necessary to understand the status of such biota and based upon such investigations to promulgate rules and regulations, subject to the provisions of chapter thirty A, listing those species of wildlife and wild plants which are determined to be endangered, and such list shall include, but not be limited to, the United States List of Endangered and Threatened Wildlife and Wild Plants.

(14) if he deems that the presence of anadromous fish in any of the inland waters of the commonwealth is essential for the management of fish, birds or mammals in, or on lands adjoining, said waters, for the purpose of providing suitable passage for said anadromous fish coming into fresh water to spawn; he may (a) together with his agents, environmental police officers and members of the state police in areas over which they have jurisdiction, seize and remove, summarily, if need be, at the expense of the owner of or person using and maintaining the same, all illegal obstructions, except dams, mills or machinery, to the passage of such fish; (b) examine all dams and other obstructions to such passage in brooks, rivers and streams, where in his judgment fishways are needed; (c) determine whether existing fishways, if any, are suitable and sufficient for the passage of such fish in such brooks, rivers and streams or whether a new fishway is needed for the passage of such fish over such dam or obstruction; and prescribed by written order what changes or repairs, if any, shall be made therein, and where, how and when a new fishway shall be built, and at what times the same shall be kept open, and shall serve a copy of such order upon the owner of or person using or maintaining the dam or obstruction.

A certificate of the director that service has been made under clause (14) shall be sufficient proof thereof. The supreme judicial or the superior court shall, on petition of the director, have jurisdiction in equity to enforce any such order and to restrain any violation thereof. If the director deems that a passage for anadromous fish should be provided, or if he finds that there is no fishway in or around a dam or obstruction where a fishway is required by law to be maintained, he may enter with workmen and materials

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upon the premises of the person required to maintain a fishway there and may, at the expense of the commonwealth, if in his opinion the person required by law to construct or maintain such fishway is unable to afford such expense, otherwise at the expense of the owner of or the person using or maintaining, such dam, improve an existing fishway, or cause one to be constructed if none exists, and may, if necessary, take the land of any other person who is not obliged by law to maintain said fishway. If a fishway has been constructed in accordance with this section he shall not require the owner of or the person using or maintaining the dam or other obstruction to alter such fishway within five years after its completion. All damages caused by taking land under this paragraph shall be recovered from the commonwealth under chapter seventy-nine. The amount so recovered shall be a charge against the person required by law to construct and maintain such fishway and shall be recovered in contract in the name of the commonwealth, with costs and with interest at the rate of twelve per cent per annum.

(15) The director, after consultation with the director of the division of law enforcement, may issue an order prohibiting the possession or use, during the period from October first to the following April first in any place where birds or mammals may be found, of any rifle chambered to take larger than twenty-two long rifle ammunition. Any such order shall be in effect forty-eight hours after publication in one or more newspapers circulated in the area. When, in his opinion, the director determines that such order is no longer necessary, he shall, by like publication, rescind such order.

No order issued under this clause shall be deemed to prohibit the possession or use of any rifle during the daylight hours on any target range used primarily for target shooting purposes or the use of a primitive firearm with a rifled bore if authorized by the director with the approval of the board acting under the provisions of section five.

Whoever violates any order issued under the provisions of this clause shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment for not more than six months.

(16) enter into such contracts as the director, in consultation with the commissioner, deems necessary or appropriate in order to fulfill the responsibilities and mandates of the agency, including, but not limited to, contracts for the cutting and sale of timber on lands managed by the division, and shall deposit monies received from such contracts into the Inland Fisheries and Game Fund pursuant to section 2C; provided, however, that it shall be a condition of each contract for the cutting and sale of timber that clear-cutting timber on lands managed by the division is specifically prohibited.

Section 10

Hunting or trapping within wildlife sanctuary

Section 10. Whenever such wildlife sanctuary has been established by an order as provided in section nine, no person, except as authorized by the director under clause (2) of section four, shall hunt, trap or take any bird or mammal within said sanctuary, nor

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shall any person enter such sanctuary with a firearm, trap, snare, or other device of any kind or description adapted to the killing, taking or injuring of birds and mammals, nor shall any person take, molest, disturb or destroy any nest, eggs or young of such birds or mammals or remove the eggs or young from the nest.

Section 11

Licenses; requirements; fees; trapper training courses

Section 11. A person shall not fish in any inland waters of the commonwealth, unless he is a minor under fifteen years of age, nor hunt or trap any bird or mammal except as otherwise provided in sections four, fourteen, fifteen, twenty, twenty-one, twenty-three and thirty-seven without first having obtained a sporting, hunting, fishing, or trapping license. No sporting or hunting license shall be issued unless the applicant provides to the issuing authority proof of compliance with section fourteen.

The director, with the approval of the fisheries and wildlife board, shall establish classes of sporting, hunting, fishing, and trapping licenses, which shall be issued upon payment of the appropriate fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. Such license classes may specify the types of fish and game authorized to be taken, the time period when the license is valid if less than one year, and such related aspects as the director may determine, provided that for a class of license valid for a consecutive period of days less than one calendar year, said days shall be specified on the license and the duration of the license shall be so limited, notwithstanding any provisions of section eighteen and section thirty-two.

Resident sporting, hunting, fishing, and trapping licenses shall be issued to the following classes of persons:-- (1) A citizen of the United States, resident in the commonwealth for at least six consecutive months immediately prior to his application for a license, and (2) a person who is on active duty in the armed forces of the United States and is stationed within the commonwealth. Nonresident sporting, hunting, fishing, and trapping licenses shall be issued to any other citizen of the United States.

Sporting, hunting, and fishing licenses shall be issued to aliens:-- (1) who have established residence in the commonwealth for a period of at least six consecutive months immediately prior to making application, and (2) all other aliens; provided, however, that in the case of a hunting or sporting license, an alien shall hold a valid permit issued under the provisions of section one hundred and thirty-one H of chapter one hundred and forty.

Notwithstanding the foregoing, no fee shall be charged for any license issued under this section to a resident citizen of the commonwealth over the age of seventy, or for a fishing license which is issued to a resident citizen of the commonwealth who is blind, under the age of 18 or has an intellectual disability, or for a sporting, hunting, or fishing license

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issued to a paraplegic; provided, however, that in the case of a nonresident citizen who is a paraplegic, that said nonresident shows sufficient evidence to the issuing agent that he or she is so afflicted; and provided, further, that the state in which said nonresident is a resident provides a reciprocal privilege to residents of this commonwealth who are similarly afflicted.

The fee for an archery stamp or a primitive firearms stamp issued under section thirteen and the portion of such fee which the authorized agent or city or town clerk issuing such stamp may retain shall be determined under the aforementioned chapter seven provision.

The fee for a Massachusetts waterfowl stamp issued under section thirteen, the designated portion of said fee which may be retained by the authorizing agent or city or town clerk issuing such stamp and the amount which shall be transferred to the state treasurer for deposit and disbursement, shall be determined by the commissioner of administration annually under the provisions of section three B of chapter seven. The state treasurer shall forward upon request of the director and subject to annual appropriation, one dollar of the fee for each stamp issued to Ducks Unlimited, Inc., of Long Grove, Illinois pursuant to an agreement between the director and Ducks Unlimited, Inc. Such funds are to be used exclusively for waterfowl management in the Atlantic provinces of Canada. A written report shall be annually submitted to the division by Ducks Unlimited, Inc. setting forth what projects, activities and expenses were realized from the commonwealth's contribution. The state treasurer shall forward upon request of the director and subject to annual appropriation, up to three dollars of the fee from each stamp issued to the National Fish and Wildlife Foundation of Washington, D.C. for fulfillment of the North American Waterfowl Management Plan pursuant to an agreement between the director and the National Fish and Wildlife Foundation or to another nonprofit, waterfowl conservation and management organization whose purpose is to acquire, enhance, develop, or protect waterfowl habitat with the approval of the Fisheries and Wildlife Board. Such funds are to be used exclusively for waterfowl management in the Atlantic provinces of Canada and the northeastern United States. A written report shall be annually submitted to the division by the National Fish and Wildlife Foundation and/or any other organization receiving funds, setting forth what projects, activities and expenses were realized from the commonwealth's contribution. Any unexpended balance shall be credited to the Inland Fisheries and Game Fund.

A person shall not kill nor possess any species of game bird or mammal for which a permit is required unless he shall first have paid the established fee. A fee shall accompany each such permit application granted, the amount of which shall be determined pursuant to section three B of chapter seven, except that no fee shall be charged those persons qualifying for a farmer or landowner permit as determined by the director.

The director shall also provide trapper training courses to certify licensed trappers on the effective use of box, cage and conibear type traps, for furbearing mammals, including beaver or muskrat. Such training courses shall be held at least twice each calendar year.

Section 13

Construction of licensing laws; archery or primitive firearm season on deer; migratory waterfowl season; certificates for veterans hospitals and schools for mentally-retarded

Section 13. Nothing in section four or sections eleven to sixteen, inclusive, shall be construed as affecting in any way the general laws relating to trespass, or as authorizing the hunting or the possession of birds or mammals contrary to law, or the taking of fish or the possession thereof, contrary to law, or the trapping of mammals contrary to law; and provided, further, that said sections eleven to sixteen, inclusive, shall not be deemed to prohibit any legal resident of the commonwealth or any member of his immediate family fifteen years of age or older from hunting on land owned or leased by him, or to prohibit any such resident or any such member of any age from trapping on such land, or from fishing in inland waters bordered by such land if he is or they are actually domiciled thereon and if such land is used principally for agricultural purposes, and not for club, shooting or fishing purposes; and provided further, that the burden of proof shall rest upon the person claiming any such exception to show that he is entitled thereto.

A person shall not hunt deer during the exclusive archery season on deer nor during the exclusive primitive firearm season on deer as established by the director unless he has obtained from the director, his authorized agents or from a city or town clerk and has attached to the back of his hunting or sporting license, in the manner provided by the director, a stamp authorizing him so to hunt. The director is hereby authorized to issue such stamps in such form as he may determine and require such records be kept as he may deem necessary.

A person shall not hunt migratory waterfowl within the commonwealth or its coastal waters during the open season on waterfowl as established by the director unless he has first obtained from the director, his authorized agents or from a city or town clerk, a Massachusetts waterfowl stamp authorizing him so to hunt. Said stamp shall be signed across the face by the bearer, shall not be transferable and shall be carried at all times upon the person while hunting migratory waterfowl. The director is hereby authorized to issue such stamp in such form as he may prescribe.

The director is authorized to issue free of charge a special certificate to the head of each veterans' hospital within the commonwealth. Any such certificate shall permit groups of patients, designated by the hospital authorities, to fish in inland waters of the commonwealth without possessing sporting or fishing licenses. Such groups shall be limited to not more than fifteen patients each day from any one hospital and each such group shall be under the supervision of the chief of special services of the hospital or a person designated by him. Said certificate shall be carried on the person of the chief of special services or the person designated by him while the group is fishing and shall be shown upon demand of any officer empowered to enforce this chapter.

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The director is authorized to issue free of charge a special certificate to the administration of any publicly supported school for the mentally retarded within the commonwealth. Such certificate shall permit groups of mentally retarded students designated by the school administration to fish in inland waters of the commonwealth without possessing sporting or fishing licenses. Each group shall be under the supervision of a teacher or a person designated by the school administration. Said certificate shall be carried on the person of the teacher or person designated by the school administration while the group is fishing and shall be shown upon demand of any officer empowered to enforce the provisions of this chapter.

Section 14

Hunter education programs; issuance of licenses to minors; target practice; confiscation of firearms

Section 14. It shall be unlawful for any resident or non-resident to hunt for any bird or mammal in the commonwealth unless such person has successfully completed a hunter education course as prescribed by this section, or unless such person has held a license so to hunt, before January 1, 2007. Said hunter education course shall be conducted, under the direction of the division of law enforcement and shall include, but not be limited to, the safe handling of hunting equipment, firearms, archery tackle or other equipment used in recreational hunting; and the responsibilities of the hunter to himself, the wildlife, the landowner and the general public. Said course shall be minimum of twelve hours in length and shall be made available to the public in all areas of the commonwealth. The division of law enforcement shall provide agency-qualified instructors and furnish said instructors with necessary materials and equipment to conduct such courses. Said instructors shall be certified by the division of law enforcement, with the approval of the director of law enforcement, in cooperation with the director of the division of fisheries and wildlife.

The division of law enforcement shall establish the content of said courses. A person, upon the successful completion of said course shall be issued a certificate of completion except that nothing in this section shall require the issuance of a certificate of completion, to a person who is under the age of fifteen. A certificate issued by another state or province, which claims completion of a comparable course, shall if approved by the director be accepted by the division of law enforcement in lieu of said certificate of completion. The division of law enforcement may provide insurance for participants, officers and civilian instructors in said course of instruction.

The hunter education program of the division of law enforcement, for the purpose of conducting such course may cooperate with any departments or divisions of the federal government, the commonwealth or any of its subdivisions, and any associations or organizations.

Except as hereinafter provided, no sporting, hunting, fishing or trapping license shall be granted to a minor under the age of fifteen, nor, except as hereinafter provided, shall a

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sporting or hunting license be granted to a minor fifteen to seventeen years of age, inclusive; but the director, any city or town clerk, or any person duly authorized under the provisions of section twelve may issue a fishing license to any minor fifteen to seventeen years of age, inclusive, if such minor has been a resident of the commonwealth for at least six months and is a citizen of the United States, or a fishing license to non-resident minor fifteen to seventeen years, inclusive, or a trapping license to any minor twelve to seventeen years of age, inclusive, if such minor is a citizen of the United States. The director or any city or town clerk shall issue a hunting or sporting license to any minor fifteen to seventeen years of age, inclusive, who presents to the person authorized to issue such license, either a written statement that at all times when hunting or target practicing other than on a duly recognized range said minor shall be accompanied by a person eighteen years of age or older, or a certificate of completion as provided in this section. Every application for a license hereunder, except a fishing license, from a minor fifteen to seventeen years of age, inclusive, shall be in writing and shall be accompanied by the written consent thereto of the parent or guardian, which shall be preserved for one year by the director, the city or town clerk or any person duly authorized, as the case may be.

Nothing in this section or any other provision of law shall prohibit any minor from participating in target practice on any skeet trap or target range; nor prohibit a minor twelve to fourteen years of age, inclusive, from participating in the hunting of birds and mammals when accompanied by a duly licensed adult; provided, however, that the bag limit established by law or regulation for one person shall not be exceeded; and, provided further, that only one firearm shall be used. Not more than one such minor shall at any time accompany one adult, and such minors shall not be required to be licensed.

Any firearm whether discharged by air, mechanical action or otherwise, use or possession by any minor who is not licensed, or who is not accompanied as provided in this section, or which is used in violation of this section, shall be confiscated by any officer empowered to enforce this section, and shall be disposed of by the director of law enforcement for the best interest of the commonwealth, after a hearing, due notice of which has been given.

Section 20

Field trials for retriever or bird dogs

Section 20. Upon application to the director by an incorporated or unincorporated club or organization having a membership of citizens who have been residents of the commonwealth for at least six consecutive months immediately prior to making application, and upon payment of a fee by the applicant, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven for the filing thereof, the director may issue a license to such club or organization to hold a field trial under the rules and regulations of the American Kennel Club, Inc., American Field or other bird dog or kennel association as recognized by the director for retriever or bird dogs at the time and place stated in the

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license. The license shall authorize members of the licensee to shoot and kill with firearms, under the supervision of an environmental police officer of the division of law enforcement except that, in the case of such a field trial conducted on property under the ownership or control of the division, under the supervision of an employee of the division, pheasants, quail, chukar partridge, mallard ducks, or other species authorized by the director, which are propagated or legally acquired by members of the licensee, and released by members of the licensee at the field trial held at the time and place specified in the license. The license shall be valid only during the daylight hours, and the written consent of the owner of or the person having legal control of, the land on which such field trial is held shall first be obtained. Before any pheasant, quail, chukar partridge, mallard duck, or other species so shot is removed from the premises, the environmental police officer of the division of law enforcement or the employee of the division, as the case may be, shall attach to it a tag, which shall be furnished by the director for a reasonable fee, and which shall remain attached to the bird until the bird is prepared for consumption. A licensee shall pay to the environmental police officer of the division of law enforcement or the employee of the division, as the case may be, a fee for services rendered at such a field trial, the amount of which shall be determined pursuant to the aforementioned chapter seven provision. Such environmental police officer shall be designated by the director of the division of law enforcement or such employee of the division shall be designated by the director, as the case may be, to supervise such a field trial. Persons participating in any such field trial pursuant to the provisions of this section shall not be required to secure hunting or sporting licenses for this purpose.

Section 21

Training of hunting dogs; field trials

Section 21. Except as provided in sections 21A, 70, 81 and 82, nothing in this chapter shall be construed to prohibit the training of hunting dogs, so-called, or conducting or engaging in a field trial with such dogs; provided, however, that except during other open seasons promulgated by the director, no firearms may be carried by any person so training or conducting or engaging in such field trials. A person shall not conduct any field trial where the use of buildings of the division, the services of any personnel of the division are deemed necessary by the director or birds or mammals are provided by the director without first obtaining a permit so to do from the director, which permit may be issued upon payment of a fee, the amount of which shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven for the filing thereof. Such field trials shall be conducted in accordance with such rules and regulations as the director may prescribe, authority to issue such permits and make, alter, amend and rescind such rules and regulations being hereby granted to him. Nothing in this chapter shall be construed to require a person attending or participating in such a field trial or such training to obtain a hunting or sporting license; provided, that no firearm other than a pistol or revolver and blank cartridges are used or possessed by such person; and provided further, that no birds or mammals are taken or killed.

Section 57

Sundays

Section 57. Every Sunday shall be a closed season. Except as otherwise provided in sections four, thirty-one and thirty-seven, a person, on Sunday, shall not hunt any bird or mammal or carry on that day on his person a rifle, shotgun or bow and arrow or, unless otherwise permitted by law, a pistol or revolver, in any place where birds or mammals might be found. This section shall not render unlawful the possession or carrying of a rifle, shotgun, pistol, revolver or bow and arrow, for the purpose of using the same on a skeet, trap or target range, nor for the purpose of using the same for sport target shooting at artificial targets by an owner or lessee, or his guest, upon his own or leased property, or by members or guests of clubs or associations on supervised firing ranges, nor shall it prohibit the taking of mammals by means of traps, nor the training of falcons or protected species, nor the exercising of such falcons as regulated by the director.

Section 58

Shooting upon or across highway; hunting near dwelling

Section 58. A person shall not discharge any firearm or release any arrow upon or across any state or hard surfaced highway, or within one hundred and fifty feet, of any such highway, or possess a loaded firearm or hunt by any means on the land of another within five hundred feet of any dwelling in use, except as authorized by the owner or occupant thereof.

Section 60

Weapons; careless or negligent use causing injury or death to another; report

Section 60. A person shall not use any firearm, bow and arrow or other weapon or article in a careless or negligent manner so as to cause bodily injury or death to another while engaged in hunting or target shooting. Any person, while so engaged, who causes injury or death to any other person by reason of the use of any firearm, bow and arrow or other weapon or article and any person having knowledge of such injury or death shall immediately report the same to the state or local police who shall in turn submit a copy of such report to the director of law enforcement.

Any person found guilty of, or convicted of, any violation of the first sentence of this section or any person failing to make the report required by this section who is the holder of any hunting or sporting license issued under the provisions of this chapter shall forthwith lose any rights thereunder, and said license shall be surrendered to any officer empowered to enforce the provisions of this chapter and no other hunting or sporting license shall be granted to him for a period of five years.

Section 61

Weapons; careless or negligent use causing damage to property or livestock; tort liability

Section 61. A person shall not use any firearm, bow and arrow or other weapon or article in a careless or negligent manner so as to cause damage to property or livestock of another while engaged in hunting, fishing, trapping or target shooting. Whoever violates any provision of this section shall be liable in tort to the owner for the loss of such property or livestock for the amount of the damage, which shall be in addition to any other penalty imposed by any other provision of law.

Section 62

Weapons; intoxicating liquor or drugs

Section 62. A person, while under the influence of intoxicating liquor or of drugs shall not hunt or carry a firearm, bow and arrow or other weapon while engaged in hunting or target shooting.

Section 63

Loaded shotgun or rifle in motor vehicle, aircraft or motorboat

Section 63. A person, other than the director of law enforcement, his deputy directors of enforcement, chiefs of enforcement, deputy chiefs of enforcement, environmental police officers, deputy environmental police officers, warden and members of the state or local police in areas over which they have jurisdiction, special officers or persons charged with the protection of persons or property while acting in the discharge of their respective duties, as such, and paraplegics as provided in section sixty-five, shall not, except upon land owned or occupied by him, have in his possession or under his control in or on any motor vehicle or aircraft a loaded shotgun or rifle, nor shall he have in his possession or under his control in any motor boat a loaded shotgun or rifle unless authorized by the director in regulations relating to the hunting of migratory waterfowl; and any person shall, upon the demand of any officer authorized to enforce this chapter, display for inspection any shotgun or rifle in his possession or under his control in a motor vehicle, aircraft or motorboat while not on property owned or occupied by him.

Section 64

Automatic firearms, machine guns or bows; use of tracer ammunition

Section 64. A person shall not use for hunting purposes any type of full automatic firearm, machine gun or submachine gun, or any crossbow, except as provided in section

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69, nor use any tracer or incendiary ammunition for hunting or outdoor target shooting purposes except on a skeet, trap, or target range.

Section 65

Hunting from motor vehicle, snowmobile, aircraft or watercraft

Section 65. Except as otherwise provided by law, a person shall not hunt any bird or mammal by the aid or use of any motor vehicle, including a snowmobile, helicopter or other aircraft, or any bird by the aid or use of any boat or floating device propelled by sail, steam, naphtha, gasoline, electricity, compressed air or similar motive power, unless such boat or floating device is beached, resting at anchor, or fastened within or tied immediately alongside of any type of fixed hunting blind; nor shall he, for the purpose of taking or killing a wild bird, place or cause to be placed upon the shores or foreshores of or in or upon any waters within the commonwealth, grain of any kind.

Nothing in this section shall prohibit the shooting of wounded or crippled migratory game birds from a powered craft in coastal waters seaward of the first upstream bridge, or the picking up or retrieving of dead or injured migratory game birds by means of a motorboat, sailboat or other water craft.

Paraplegics issued a hunting license under the provisions of section eleven may use a motor vehicle, or a recreational vehicle or snow vehicle as defined in section twenty of chapter ninety B, as an aid to hunting birds or mammals, provided that said person shall not shoot or have in his possession or under his control a loaded rifle or shotgun while said vehicle is in motion.

Section 65A

Online shooting or spearing

Section 65A. (a) For the purposes of this section, “online shooting or spearing” means the use of a computer or any other device, equipment, software or technology, to remotely control the aiming and discharge of any weapon including, but not limited to, any firearm, bow and arrow, spear, slingshot, harpoon or any other projectile device or any other weapon capable of killing or capable of inflicting injury capable of killing any bird, mammal, reptile or fish.

(b) Whoever:

(1) engages in online shooting or spearing of any bird, mammal, reptile or fish;

(2) owns or operates a shooting range, site, gallery or other facility in the commonwealth utilized for online shooting or spearing;

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RESOURCES*

- (3) creates, maintains or utilizes an Internet Web site, or a service or business via any other means, from any location within the commonwealth for the operation of online shooting or spearing;
- (4) possesses or confines any bird, mammal, reptile or fish to promote or for use in online shooting or spearing; or
- (5) imports into or exports out of the commonwealth any bird, mammal, reptile or fish, or the remains thereof, injured or killed by online shooting or spearing, shall be punished by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$2,500, or by both such fine and imprisonment.
- (c) The department shall revoke any license issued pursuant to section 12 to any person who violates this section. The department shall not issue nor renew a license under said section 12 to any person who violates this section for not less than 3 years nor more than 5 years from the date of such violation.
- (d) This section shall apply to any person, firm, corporation, partnership, limited liability company, association or other business entity.
- (e) Any bird, mammal, reptile or fish, or the remains thereof, possessed in violation of this section shall be subject to seizure by the department.

Section 66

Shotgun shells, load

Section 66. A person shall not, except during the prescribed open season when deer may be hunted lawfully with a shotgun, have in his possession a shotgun shell loaded with a rifled slug, single ball, buckshot of any size, BB shot or air rifle shot in any place where birds or mammals might be found, except on a skeet, trap or target range between sunrise and sunset; provided, however, that the director shall promulgate rules and regulations prescribing the type and size of such BB shot.

Section 67

Rifles, revolvers and pistols; caliber

Section 67. A person shall not use or possess, where birds or mammals may be found, any rifle chambered to take larger than twenty-two long rifle ammunition, or any revolver or pistol chambered to take larger than thirty-eight caliber ammunition between the hours of one half hour after sunset to one half hour before sunrise of any day throughout the year.

Section 68

Hunting with artificial light; swivel or pivot gun

Section 68. A person shall not hunt any bird or mammal except raccoon or opossum by the aid or use of any artificial light, or hunt any bird with a swivel or pivot gun. Any weapon or equipment used in such hunting by any person convicted of a violation of this section shall be confiscated and forfeited to the use of the commonwealth and disposed of by the director of law enforcement for the best interest of the commonwealth; and any motor vehicle, as defined in section one of chapter ninety, or other vehicle, boat or canoe so used may be seized and libeled in accordance with the provisions of chapter two hundred and fifty-seven.

Section 70

Hunting with rifle, revolver or pistol, or by the aid of a dog; primitive firearms

Section 70. A person shall not, during the open season when deer may be hunted lawfully with a shotgun, hunt a bird or mammal with a rifle, revolver or pistol or by the aid of a dog, or have in his possession or under his control in any wood or field, a rifle, revolver or pistol, or a dog. Nothing in this section shall be deemed to prohibit the use of dogs to hunt waterfowl in coastal waters and salt marshes during the open season on migratory waterfowl.

Notwithstanding the provisions of this section, the director may authorize the use of primitive firearms or shotguns with a rifled bore for hunting during any period when deer may be hunted by means of a firearm under rules and regulations promulgated in accordance with section five.

Section 71

Orange clothing while hunting

Section 71. A person shall not, during the open season when deer may be hunted lawfully with a shotgun, hunt or enter the woodlands of the commonwealth for the purpose of hunting unless he wears in a conspicuous manner on his chest, back and head a minimum of five hundred square inches of clothing or material of a hunter orange color which meets such requirements as the director may by rules and regulations establish. This section shall not apply to any person engaged in waterfowl hunting from within a blind or from a boat.

Section 78

Protection of property by owner or tenant; transportation of firearms to or from range

Section 78. Nothing in section sixty-six or sixty-seven shall be construed to prohibit an owner or tenant of land or his authorized agent, as provided in section thirty-seven from protecting his property nor prohibit a person from transporting firearms or ammunition to or from the commonwealth or to or from any range.

Section 81

Suspension of open seasons because of fire hazard

Section 81. Whenever it shall appear to the governor that by reason of extreme drought there is danger of fire resulting from hunting, trapping, fishing or other cause, he may, by proclamation suspend the opening or continuance of any or all open seasons established by or under the authority of this chapter, or any authorized extension thereof, and proclaim a closed season on any or all birds, fish or mammals, for such time as he may therein designate, and may therein prohibit hunting, trapping, fishing and the possession of firearms on property of another during the same time, and he may, by the same or another proclamation, proclaim that any or all sections of the woodlands in the commonwealth where danger of fire might exist shall be closed for such time as he may therein designate to hunters, trappers, fishermen and such other persons as he deems proper under the circumstances except the owners or tenants of such property and their agents and employees, or persons holding written permission from any such owner or tenant to enter thereon for any lawful purpose other than hunting, trapping or fishing. As soon as the fire hazard is deemed to be over, the governor, for the purpose of providing just and reasonable facilities for hunting, trapping and fishing, in like manner may extend any such open season for a period or periods not exceeding, in the aggregate, the time of such suspension, and if, by reason of any such extension such open season in whole or in part coincides with any other open season in such manner as to cause any conflict in the laws relating thereto, he may, in like manner, postpone such other open season for such time as may be necessary to avoid such conflict.

Every such proclamation shall take effect as therein stated. A proclamation issued under this section shall be published in such newspapers or posted in such places and in such manner under the direction of the department as the governor may order; but failure to comply with this paragraph shall not in any way invalidate any proclamation made under authority of this section.

CHAPTER 132B MASSACHUSETTS PESTICIDE CONTROL ACT

Section 2

Definitions

Section 2. Unless the context clearly requires otherwise, when used in this chapter, the following words and phrases shall have the following meanings:—

“Active ingredient”, in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which prevents, destroys, repels, or mitigates any pest; in the case of a plant regulator, an ingredient which through physiological action accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of ornamental or crop plants or the products thereof; in the case of a defoliant, an ingredient which causes the leaves or foliage to drop from a plant; and, in the case of a desiccant, an ingredient which artificially accelerates the drying of plant tissue.

“Administrator”, the Administrator of the United States Environmental Protection Agency.

“Adulterated”, when used with reference to a pesticide, any pesticide the strength or purity of which falls below the professed standard of purity as expressed on its labeling under which it is sold; a pesticide for which any substance has been substituted wholly or in part; or a pesticide from which any valuable constituent has been wholly or in part abstracted.

“Advisory council”, a council established by regulations adopted by the department for the purposes set forth in section five.

“Agency”, any executive office, department, division, agency, board, branch, bureau or commission of the commonwealth.

“Agricultural commodity”, a plant, or part thereof, or animal or animal product produced by a person primarily for sale, consumption, propagation, or other use by man or animals.

“Animal”, all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

“Anti-microbial pesticide”, a pesticide that is used for the control of microbial pests, including, but not limited to, viruses, bacteria, algae and protozoa, and is intended to disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms. Anti-microbial pesticide shall not include any fungicide or pesticide used on plants, turf or other vegetation or for ornamental uses.

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“Certified applicator”, an individual who is certified under the provisions of section ten as authorized to use or supervise the use of any pesticide which is classified by the department as being for restricted use.

“Private applicator”, a certified applicator who uses or supervises the use of any pesticide which is classified by the department as being for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

“Commercial applicator”, a certified applicator, whether or not he is a private applicator with respect to some users, who uses or supervises the use of any pesticide which is classified by the department as being for restricted use for any purpose or on any land other than as provided in the preceding paragraph.

“Licensed applicator”, an individual who is licensed under the provisions of section ten as authorized to be present while pesticides classified by the department as being for restricted use are being applied under the direct supervision of a certified applicator, or to use or to be present to supervise the use or land of another for hire any pesticide classified by the department as being for general use.

“Beneficial insects”, insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

“Board”, the pesticide board, established by section three.

“Commissioner”, the commissioner of food and agriculture.

“Child care center”, any public or private facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center or preschool, or known under any other name, which receives children not of common parentage who are not more than six years of age, or who are not more than 21 years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Child care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; periodic religious instruction classes conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family child care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

“Defoliant”, a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

“Department”, the department of food and agriculture.

“Desiccant”, a substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

“Device”, an instrument or contrivance, other than a firearm, intended to hold or dispense a pesticide and used in conjunction with a pesticide, the purpose of which is to trap, destroy, repel, or mitigate any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.

“Director”, the pesticides program director established by section four.

“Distribution” or “Distribute”, to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive.

“Environment”, includes water, air, land, and all plants and man and other living animals therein, and the interrelationships which exist among these.

“Federally registered pesticide”, a pesticide which is registered pursuant to FIFRA.

“FIFRA”, the Federal Insecticide, Fungicide, and Rodenticide Act, Public Law 92-516, as amended.

“Fungi” or “Fungus”, non-chlorophyll-bearing thallophytes of a lower order than mosses and liver-worts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals.

“Imminent hazard”, a situation in which the continued use of a pesticide would result in unreasonable adverse effects on the environment.

“Inert ingredient”, an ingredient which is not active.

“Insect”, a small invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, moths, beetles, bugs, bees, flies, and their immature stages, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, millipedes, and wood lice.

“Integrated pest management”, a comprehensive strategy of pest control whose major objective is to achieve desired levels of pest control in an environmentally responsible manner by combining multiple pest control measures to reduce the need for reliance on chemical pesticides; more specifically, a combination of pest controls which addresses

conditions that support pests and may include, but is not limited to, the use of monitoring techniques to determine immediate and ongoing need for pest control, increased sanitation, physical barrier methods, the use of natural pest enemies and a judicious use of lowest risk pesticides when necessary.

“Label”, the written, printed, or graphic matter, on or attached to, the pesticide or device or any of its containers or wrappers.

“Labeling”, all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide or device, but shall not include publications of the United States Environmental Protection Agency, the United States Department of Agriculture, or Interior, or Health, Education and Welfare, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research or disseminate information in the field of pesticides, except as otherwise provided by regulation of the department.

“Land”, land and water areas, including airspace, and structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile.

“Licensed pesticide dealer”, a person who distributes pesticides classified by the department as being for restricted use or pesticides whose uses or distribution are further restricted by regulations adopted by the department, with the approval of the board.

“Misbranded”, (a) in the case of a pesticide or device, if the labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; (b) in the case of a pesticide or device, if it is an imitation of, or is offered for sale under the name of, another pesticide or device; (c) in the case of a pesticide or device, if any word, statement, or other information required by or under authority of FIFRA or this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; (d) in the case of a pesticide, if it is contained in a package or other container or wrapping which does not conform to standards established pursuant to FIFRA or this chapter; (e) in the case of a pesticide, if it does not contain a label bearing the registration number assigned under FIFRA to each establishment in which it was produced; (f) in the case of a pesticide, if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under FIFRA or this chapter, is adequate to protect health and the environment; (g) in the case of a pesticide, if its label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under FIFRA or this chapter, is adequate to protect health and the environment; (h) in the case of a pesticide, if its label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if there be one, through which the ingredient

statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions or purchase, except that a pesticide is not misbranded if the administrator has permitted the ingredient statement to be placed on another part of the container pursuant to FIFRA; (i) in the case of a pesticide, if its labeling does not contain a statement of the use classification under which it is registered; (j) in the case of a pesticide, if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the name and address of the producer, registrant, or person for whom the pesticide is produced; the name, brand, or trademark under which the pesticide is distributed; the net weight or measure of the content, as required by the administrator; and the registration number assigned to the pesticide by said administrator pursuant to FIFRA; (k) in the case of a pesticide containing any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by FIFRA or this chapter the skull and crossbones; the word "POISON" prominently in red on a background of distinctly contrasting color; and a statement of practical treatment, first aid or otherwise, in case or poisoning by the pesticide; and (l) in the case of a pesticide, if its container does not bear a label, as required by the department pursuant to this chapter.

"Nematode", invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts. Nematodes may also be referred to as nemas or eel-worms.

"Person", an individual, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or its political subdivisions, administrative agencies, public or quasi-public corporation or body, or any other legal entity or its legal representative, agent or assign, or a group of persons.

"Pest", an insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other micro-organism, except viruses, bacteria or other micro-organisms on or in living man or other living animal, which is declared to be a pest by the administrator or by the department with the approval of the board.

"Pesticide", a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; provided that the term "Pesticide" shall not include any article that is a "new animal drug" within the meaning of section 201 (w) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. s 321 (w)), or that has been determined by the Secretary of the United States Department of Health, Education and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201 (x) of such act (21 U.S.C. s 321 (x)).

“Plant regulator”, a substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term “plant regulator” shall not include any nutrient mixtures or soil amendments commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted package concentration.

“Produce”, to manufacture, prepare, compound, propagate, process or repackage any pesticide or device.

“Producer”, a person who manufactures, prepares, compounds, propagates, processes or repackages any pesticide or device.

“Protect health and the environment” or “protection of health and environment”, protection against any unreasonable adverse effects on the environment.

“Registrant”, a person who has registered any pesticide pursuant to the provisions of this chapter.

“School”, any public or private school for preschool, elementary, middle or high school students.

“School administration”, a school committee, private school board of directors, or other body of school supervisory officers.

“School age child care program”, any public or private program or facility operated on a regular basis which provides supervised group care for children not of common parentage who are enrolled in kindergarten and are of sufficient age to enter first grade the following year, or an older child who is not more than 14 years of age, or not more than 21 years of age if such child has special needs. Such a program may operate before and after school and may also operate during school vacation and holidays. A school age child care program shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to a school age day care program; periodic religious instruction classes conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

“Standard written notification”, includes the following information: the approximate dates on which the spraying, release, deposit or application of a pesticide shall commence and conclude; the specific location of the anticipated application; the product name and

type of each pesticide to be used; a department-approved fact sheet and United States Environmental Protection Agency registration number for each pesticide; a description of the purpose of the pesticide application; and a department-approved statement describing ways to minimize exposure, and precautions to be taken, especially for sensitive individuals such as children, the elderly, pregnant women and those with health problems.

“Under the direct supervision of a certified applicator”, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, and who is responsible for the pesticide applications made by that person, even though such certified applicator is not physically present at the time and place the pesticide is applied.

“Unreasonable adverse effects on the environment”, an unreasonable risk to man or the environment, taking into account the economic, social and environmental cost and benefits of the use of any pesticide.

“Weed”, a plant which grows where not wanted.

“Wildlife”, vertebrate animals, excluding man, that are wild by nature, including fish, birds, mammals, reptiles and amphibians.

CHAPTER 136 OBSERVANCE OF A COMMON DAY OF REST AND LEGAL HOLIDAYS

Section 4

License; application; issuance; fee; revocation, etc.; application of section

Section 4. (1) The mayor of a city or the selectmen of a town, upon written application describing the proposed dancing or game, sport, fair, exposition, play, entertainment or public diversion, except as provided in section one hundred and five of chapter one hundred and forty-nine, may grant, upon such reasonable terms and conditions as they may prescribe, a license to hold on Sunday dancing or any game, sport, fair, exposition, play, entertainment or public diversion for which a charge in the form of payment or collection of money or other valuable consideration is made for the privilege of being present thereat or engaging therein, except horse racing, dog racing, boxing, wrestling and hunting with firearms; provided, however, that no such license shall be issued for dancing for which a charge in the form of the payment or collection of money or other valuable consideration is made for the privilege of engaging therein; and provided further, however, that no license issued under this paragraph shall be granted to permit such activities before one o'clock in the afternoon; and provided further, that such application, except an application to conduct an athletic game or sport, shall be approved

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by the commissioner of public safety and shall be accompanied by a fee of two dollars, or in the case of an application for the approval of an annual license by a fee of fifty dollars.

(2) Licenses may be issued by the authorities designated in paragraph (1) to permit such activities before one o'clock in the afternoon, with the written approval of the commissioner of public safety and upon such reasonable terms and conditions as prescribed by him therein. The application for the approval of the proposed activity by the commissioner shall be in writing and shall be accompanied by a fee of five dollars or in the case of an application for the approval of an annual license by a fee of one hundred dollars.

(3) The licensing authority, or the commissioner of public safety or his designee, may revoke, cancel or suspend any license issued under this section upon evidence that the terms or conditions of such license or provisions of law are being violated; provided, however, that said commissioner shall not revoke, cancel or suspend any license issued under paragraph (1) which he is not required by said paragraph to approve.

(4) The city council of a city or board of selectmen of a town may determine fees for the issuance of licenses, but in no event shall any such fee be greater than twenty dollars per event and four hundred dollars per year.

(5) The city council of a city and board of selectmen of a town may make regulations relative to granting of licenses under this section and may revoke or amend them from time to time.

(6) The provisions of this section shall not apply to premises licensed under the provisions of section one hundred and eighty-three A of chapter one hundred and forty; provided, however, that paragraph (2), insofar as it regulates activities on such premises between the hours of two o'clock in the morning and one o'clock in the afternoon on Sunday, shall apply to premises licensed under said section one hundred and eighty-three A of said chapter one hundred and forty.

(7) Sections two and three and this section shall not apply to golf, tennis, bowling, skiing, or any activity in a gymnasium or on any rink, court, or field, for which a charge is made only for the privilege of engaging therein and not for the privilege of being present thereat as a spectator, nor to the conduct for charitable purposes of amateur contests involving time trial driving of automobiles nor to beano games licensed under the provisions of section thirty-eight of chapter ten.

(8) Sections 2 and 3 and this section shall not apply to an athletic game or contest for which a charge in the form of the payment of money or other valuable consideration is made for the privilege of being present thereat, conducted, presented or exhibited on Sunday prior to 1 o'clock antemeridian; provided, however, the said athletic game or contest was commenced before the hour of 9 o'clock postmeridian on Saturday and it was necessary to continue said game after midnight on Saturday in order to complete the game.

CHAPTER 136 OBSERVANCE OF A COMMON DAY OF REST AND LEGAL HOLIDAYS

(8A) Sections 2 and 3 and this section shall not apply to the exhibition of motion pictures by a movie theater, including any drive-in theater, licensed under the provisions of section 181 of chapter 140.

(9) Sections two and three and this section shall not apply to standardbred racing conducted under the provisions of clauses (b) and (c) of section eleven of chapter twenty.

CHAPTER 140 LICENSES

Section 121

Firearms sales; definitions; antique firearms; application of law; exceptions

Section 121. As used in sections 122 to 131P, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Ammunition”, cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun. The term “ammunition” shall also mean tear gas cartridges, chemical mace or any device or instrument which contains or emits a liquid, gas, powder or any other substance designed to incapacitate.

“Assault weapon”, shall have the same meaning as a semiautomatic assault weapon as defined in the federal Public Safety and Recreational Firearms Use Protection Act, 18 U.S.C. section 921(a)(30) as appearing in such section on September 13, 1994, and shall include, but not be limited to, any of the weapons, or copies or duplicates of the weapons, of any caliber, known as: (i) Avtomat Kalashnikov (AK) (all models); (ii) Action Arms Israeli Military Industries UZI and Galil; (iii) Beretta Ar70 (SC-70); (iv) Colt AR-15; (v) Fabrique National FN/FAL, FN/LAR and FNC; (vi) SWD M-10, M-11, M-11/9 and M-12; (vii) Steyr AUG; (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and (ix) revolving cylinder shotguns, such as, or similar to, the Street Sweeper and Striker 12; provided, however, that the term assault weapon shall not include: (i) any of the weapons, or replicas or duplicates of such weapons, specified in appendix A to 18 U.S.C. section 922 as appearing in such appendix on September 13, 1994, as such weapons were manufactured on October 1, 1993; (ii) any weapon that is operated by manual bolt, pump, lever or slide action; (iii) any weapon that has been rendered permanently inoperable or otherwise rendered permanently unable to be designated a semiautomatic assault weapon; (iv) any weapon that was manufactured prior to the year 1899; (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable assault weapon; (vi) any semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition; or (vii) any semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine.

“Conviction”, a finding or verdict of guilt or a plea of guilty, whether or not final sentence is imposed.

“Firearm”, a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk- through metal detectors.

“Gunsmith”, any person who engages in the business of repairing, altering, cleaning, polishing, engraving, blueing or performing any mechanical operation on any firearm, rifle, shotgun or machine gun.

“Imitation firearm”, any weapon which is designed, manufactured or altered in such a way as to render it incapable of discharging a shot or bullet.

“Large capacity feeding device”, (i) a fixed or detachable magazine, box, drum, feed strip or similar device capable of accepting, or that can be readily converted to accept, more than ten rounds of ammunition or more than five shotgun shells; or (ii) a large capacity ammunition feeding device as defined in the federal Public Safety and Recreational Firearms Use Protection Act, 18 U.S.C. section 921(a)(31) as appearing in such section on September 13, 1994. The term “large capacity feeding device” shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber ammunition.

“Large capacity weapon”, any firearm, rifle or shotgun: (i) that is semiautomatic with a fixed large capacity feeding device; (ii) that is semiautomatic and capable of accepting, or readily modifiable to accept, any detachable large capacity feeding device; (iii) that employs a rotating cylinder capable of accepting more than ten rounds of ammunition in a rifle or firearm and more than five shotgun shells in the case of a shotgun or firearm; or (iv) that is an assault weapon. The term “large capacity weapon” shall be a secondary designation and shall apply to a weapon in addition to its primary designation as a firearm, rifle or shotgun and shall not include: (i) any weapon that was manufactured in or prior to the year 1899; (ii) any weapon that operates by manual bolt, pump, lever or slide action; (iii) any weapon that is a single-shot weapon; (iv) any weapon that has been modified so as to render it permanently inoperable or otherwise rendered permanently unable to be designated a large capacity weapon; or (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable large capacity weapon.

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“Length of barrel” or “barrel length”, that portion of a firearm, rifle, shotgun or machine gun through which a shot or bullet is driven, guided or stabilized and shall include the chamber.

“Licensing authority”, the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them.

“Machine gun”, a weapon of any description, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged by one continuous activation of the trigger, including a submachine gun.

“Purchase” and “sale” shall include exchange; the word “purchaser” shall include exchanger; and the verbs “sell” and “purchase”, in their different forms and tenses, shall include the verb exchange in its appropriate form and tense.

“Rifle”, a weapon having a rifled bore with a barrel length equal to or greater than 16 inches and capable of discharging a shot or bullet for each pull of the trigger.

“Sawed-off shotgun”, any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon as modified has one or more barrels less than 18 inches in length or as modified has an overall length of less than 26 inches.

“Semiautomatic”, capable of utilizing a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and requiring a separate pull of the trigger to fire each cartridge.

“Shotgun”, a weapon having a smooth bore with a barrel length equal to or greater than 18 inches with an overall length equal to or greater than 26 inches, and capable of discharging a shot or bullet for each pull of the trigger.

“Violent crime”, shall mean any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that: (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.

“Weapon”, any rifle, shotgun or firearm.

Where the local licensing authority has the power to issue licenses or cards under this chapter, but no such licensing authority exists, any resident or applicant may apply for such license or firearm identification card directly to the colonel of state police and said colonel shall for this purpose be the licensing authority.

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The provisions of sections 122 to 129D, inclusive, and sections 131, 131A, 131B and 131E shall not apply to:

- (A) any firearm, rifle or shotgun manufactured in or prior to the year 1899;
- (B) any replica of any firearm, rifle or shotgun described in clause (A) if such replica: (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and
- (C) manufacturers or wholesalers of firearms, rifles, shotguns or machine guns.

Section 121A

Identification of firearms; certificate by ballistics expert as prima facie evidence

Section 121A. A certificate by a ballistics expert of the department of the state police or of the city of Boston of the result of an examination made by him of an item furnished him by any police officer, signed and sworn to by such expert, shall be prima facie evidence of his findings as to whether or not the item furnished is a firearm, rifle, shotgun, machine gun, sawed off shotgun or ammunition, as defined by section one hundred and twenty-one, provided that in order to qualify as an expert under this section he shall have previously qualified as an expert in a court proceeding.

Section 122

Licenses; contents; fingerprints of applicants; procedure on refusal of license; fees; punishment for improper issuance

Section 122. The chief of police or the board or officer having control of the police in a city or town, or persons authorized by them, may, after an investigation into the criminal history of the applicant to determine eligibility for a license under this section, grant a license to any person except an alien, a minor, a person who has been adjudicated a youthful offender, as defined in section fifty-two of chapter one hundred and nineteen, including those who have not received an adult sentence or a person who has been convicted of a felony or of the unlawful use, possession or sale of narcotic or harmful drugs, to sell, rent or lease firearms, rifles, shotguns or machine guns, or to be in business as a gunsmith. Every license shall specify the street and number of the building where the business is to be carried on, and the license shall not protect a licensee who carries on his business in any other place. The licensing authority to whom such application is made shall cause one copy of said applicant's fingerprints to be forwarded to the department of the state police, who shall within a reasonable time thereafter advise such authority in writing of any criminal record of the applicant. The taking of fingerprints shall not be required in issuing a renewal of a license, if the fingerprints of said applicant are on file

with the department of the state police. The licensing authority to whom such application is made shall cause one copy of such application to be forwarded to the commissioner of the department of criminal justice information services. Any person refused a license under this section may within ten days thereafter apply to the colonel of state police for such license, who may direct that said licensing authorities grant said license, if, after a hearing, he is satisfied there were no reasonable grounds for the refusal to grant such license and that the applicant was not barred by the provisions of law from holding such a license. The fee for an application for a license issued under this section shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. A person licensed to sell, rent or lease firearms, rifles, shotguns or machine guns shall not be assessed any additional fee for a gunsmith's license. Whoever knowingly issues a license in violation of this section shall be punished by imprisonment for not less than six months nor more than two years in a jail or house of correction.

Section 122B

Sale of ammunition; license; fees; rules and regulations; refusal, suspension or revocation of license; judicial review; penalties

Section 122B. No person shall sell ammunition in the commonwealth unless duly licensed. The chief of police or the board or officer having control of the police in a city or town, or persons authorized by them, may, after an investigation into the criminal history of the applicant to determine eligibility to be licensed under this section, grant a license to any person, except an alien, a minor, a person who has been adjudicated a youthful offender, as defined in section fifty-two of chapter one hundred and nineteen, including those who have not received an adult sentence or a person who has been convicted of a felony in any state or federal jurisdiction, or of the unlawful use, possession or sale of narcotic or harmful drugs, to sell ammunition. Every license shall specify the street and number, if any, of the building where the business is to be carried on. The licensing authority to whom such application is made shall cause one copy of the application to be forwarded to the commissioner of the department of criminal justice information services, who shall within a reasonable time thereafter advise such authority in writing of any criminal record disqualifying the applicant. The fee for an application for a license to sell ammunition shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. The licensing authority to whom such application is made shall cause one copy of any approved application to be forwarded to the commissioner of the department of criminal justice information services.

Any lawfully incorporated sporting or shooting club shall, upon application, be licensed to sell or supply ammunition for regulated shooting on their premises, as for skeet, target

or trap shooting; provided, however, that such club license shall, in behalf of said club, be issued to and exercised by an officer or duly authorized member of the club who himself possesses a firearm identification card or a license to carry a firearm and who would not be disqualified to receive a license to sell ammunition in his own right. The licensing authority may revoke or suspend a license to sell ammunition for violation of any provision of this chapter.

The secretary of the executive office of public safety may establish such rules and regulations as he may deem necessary to carry out the provisions of this section.

Any person refused a license under this section or once issued a license under this section has had said license suspended or revoked may obtain a judicial review of such refusal, suspension or revocation by filing within thirty days of such refusal, suspension or revocation a petition for review thereof in the district court having jurisdiction in the city or town in which the applicant filed for such license, and a justice of said court, after a hearing, may direct that a license be issued the applicant if satisfied there was no reasonable ground for refusing such license and that the applicant was not prohibited by law from holding the same.

Whoever not being licensed, as hereinbefore provided, sells ammunition within the commonwealth shall be punished by a fine of not less than five hundred nor more than one thousand dollars or by imprisonment for not less than six months nor more than two years.

Section 123

Conditions of licenses

Section 123. A license granted under section one hundred and twenty-two shall be expressed to be and shall be subject to the following conditions:— First, That the provisions in regard to the nature of the license and the building in which the business may be carried on under it shall be strictly adhered to. Second, That every licensee shall, before delivery of a firearm, rifle or shotgun, make or cause to be made a true, legible entry in a sales record book to be furnished by the commissioner of the department of criminal justice information services and to be kept for that purpose, specifying the complete description of the firearm, rifle or shotgun, including the make, serial number, if any, type of firearm, rifle or shotgun, and designation as a large capacity weapon, if applicable, whether sold, rented or leased, the date of each sale, rental or lease, the license to carry firearms number or permit to purchase number and the identification card number in the case of a firearm or the identification card number or the license to carry firearms number in the case of a rifle or shotgun, the sex, residence and occupation of the purchaser, renter or lessee, and shall before delivery, as aforesaid, require the purchaser, renter or lessee personally to write in said sales record book his full name. Said book shall be open at all times to the inspection of the police. Third, That the license or a copy thereof, certified by the official issuing the same, shall be displayed on the premises in a position where it can easily be read. Fourth, That no firearm, rifle or shotgun, or machine

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gun shall be displayed in any outer window of said premises or in any other place where it can readily be seen from the outside. Fifth, That the licensee shall submit a record of all sales, rentals and leases forthwith at the time of such sale, rental or lease via electronic communication link to the commissioner of the department of criminal justice information services. Sixth, That every firearm, rifle or shotgun shall be unloaded when delivered. Seventh, That no delivery of a firearm shall be made to any person not having a license to carry firearms issued under the provisions of section one hundred and thirty-one nor shall any delivery of a rifle or shotgun or ammunition be made to any minor nor to any person not having a license to carry firearms issued under the provisions of section one hundred and thirty-one or a firearm identification card issued under the provisions of section one hundred and twenty-nine B nor shall any large capacity firearm or large capacity feeding device therefor be delivered to any person not having a Class A license to carry firearms issued under section 131 nor shall any large capacity rifle or shotgun or large capacity feeding device therefor be delivered to any person not having a Class A or Class B license to carry firearms issued under said section 131; provided, however, that delivery of a firearm by a licensee to a person possessing a valid permit to purchase said firearm issued under the provisions of section one hundred and thirty-one A and a valid firearm identification card issued under section one hundred and twenty-nine B may be made by the licensee to the purchaser's residence or place of business, subject to the restrictions imposed upon such permits as provided under section 131A. Eighth, That no firearm shall be sold, rented or leased to a minor or a person who has not a permit then in force to purchase, rent or lease the same issued under section one hundred and thirty-one A, and a firearm identification card issued under the provisions of section one hundred and twenty-nine B, or unless such person has a license to carry firearms issued under the provisions of section one hundred and thirty-one; nor shall any rifle or shotgun be sold, rented or leased to a person who has not a valid firearm identification card as provided for in section one hundred and twenty-nine B, or has a license to carry firearms as provided in section one hundred and thirty-one; that no large capacity firearm nor large capacity feeding device therefor shall be sold, rented, leased or transferred to any person not having (i) a Class A license to carry firearms issued under section 131 or (ii) a proper permit issued under section 131A and a firearm identification card issued under section 129B; that no large capacity rifle or shotgun nor large capacity feeding device therefor shall be sold to any person not having a Class A or Class B license to carry firearms issued under said section 131; and that no machine gun shall be sold, rented or leased to any person who has not a license to possess the same issued under section one hundred and thirty-one. Ninth, That upon the sale, rental or lease of a firearm, subject to a permit to purchase issued under the provisions of section one hundred and thirty-one A, the licensee under section one hundred and twenty-two shall take up such permit to purchase and shall endorse upon it the date and place of said sale, rental or lease, and shall transmit the same to the executive director of the criminal history systems board; and that upon the sale, rental or lease of a machine gun shall endorse upon the license to possess the same the date and place of said sale, rental or lease, and shall within seven days transmit a notice thereof to said executive director. In case of a sale under the provisions of section one hundred and thirty-one E the licensee under section one hundred and twenty-two shall write in the sales record book the number of the license to carry firearms issued the purchaser under the provisions of section one hundred and thirty-one, or the number

of the firearm identification card issued the purchaser under the provisions of section one hundred and twenty-nine B, whichever is applicable under the provisions of condition Eighth of this section. Tenth, That this license shall be subject to forfeiture as provided in section one hundred and twenty-five for breach of any of its conditions, and that, if the licensee hereunder is convicted of a violation of any such conditions, this license shall thereupon become void. Eleventh, That the second, fifth, eighth and ninth conditions shall not apply to a gunsmith with regard to repair or remodeling or servicing of firearms, rifles or shotguns unless said gunsmith has manufactured a firearm, rifle or shotgun for the purchaser, but said gunsmith shall keep records of the work done by him together with the names and addresses of his customers. Such records shall be kept open for inspection by the police at all times. Twelfth, That any licensee shall keep records of each sale, rental or lease of a rifle or shotgun, specifying the description of said rifle or shotgun, together with the name and address of the purchaser, renter or lessee, and the date of such transaction. Thirteenth, That the current validity of any firearm identification card, license to carry firearms or permit to purchase, rent or lease firearms presented, and that the person presenting said card, license or permit is the lawful holder thereof, shall be verified by the licensee prior to any sale, rental or lease of a rifle, shotgun, firearm or large capacity feeding device; and, upon being presented with such card or license that is expired, suspended or revoked, the licensee shall notify the licensing authority of the presentment of such expired, suspended or revoked card, license or permit; and further, the licensee may take possession of such card or license provided that, in such case, such licensee shall: (i) issue a receipt, in a form provided by the commissioner of the department of criminal justice information services, to the holder thereof which shall state that the holder's card or license is expired, suspended or revoked, was taken by such licensee and forwarded to the licensing authority by whom it was issued and such receipt shall be valid for the date of issuance for the purpose of providing immunity from prosecution under section 10 of chapter 269 for unlawfully possessing a firearm, rifle or shotgun or large capacity weapon; (ii) notify the cardholder or licensee of his requirement to renew said card or license; and (iii) forward such expired card or license to the licensing authority forthwith; provided, however, that such licensee shall be immune from civil and criminal liability for good faith compliance with the provisions herein. Fourteenth, That the licensee shall conspicuously post at each purchase counter the following warning in bold type not less than one inch in height: **"IT IS UNLAWFUL TO STORE OR KEEP A FIREARM, RIFLE, SHOTGUN OR MACHINE GUN IN ANY PLACE UNLESS THAT WEAPON IS EQUIPPED WITH A TAMPER-RESISTANT SAFETY DEVICE OR IS STORED OR KEPT IN A SECURELY LOCKED CONTAINER."**, and that such licensee shall provide said warning, in writing, to the purchaser or transferee of any firearm, rifle, shotgun or machine gun in bold type not less than one-quarter inch in height. Fifteenth, That all licensees shall maintain a permanent place of business that is not a residence or dwelling wherein all transactions described in this section shall be conducted and wherein all records required to be kept under this section shall be so kept. Sixteenth, That no licensee shall sell, lease, rent, transfer or deliver or offer for sale, lease, rent, transfer or delivery to any person any assault weapon or large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Seventeenth, That any licensee from whom a rifle, shotgun, firearm or machine gun is lost or stolen shall report such loss or theft to the licensing authority and the

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executive director of the criminal history systems board forthwith. Such report shall include a complete description of the weapon, including the make, model, serial number and caliber and whether such weapon is a large capacity weapon. Eighteenth, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery any firearm, to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler and the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm has a frame, barrel, cylinder, slide or breechblock that is composed of: (i) any metal having a melting point of less than 900 degrees Fahrenheit; (ii) any metal having an ultimate tensile strength of less than 55,000 pounds per square inch; or (iii) any powdered metal having a density of less than 7.5 grams per cubic centimeter. This clause shall not apply to any make and model of firearm for which a sample of three firearms in new condition all pass the following test: Each of the three samples shall fire 600 rounds, stopping every 100 rounds to tighten any loose screws and to clean the gun if required by the cleaning schedule in the user manual, and as needed to refill the empty magazine or cylinder to capacity before continuing. For any firearm that is loaded in a manner other than via a detachable magazine, the tester shall also pause every 50 rounds for ten minutes. The ammunition used shall be the type recommended by the firearm manufacturer in its user manual or, if none is recommended, any standard ammunition of the correct caliber in new condition. A firearm shall pass this test if it fires the first 20 rounds without a malfunction, fires the full 600 rounds with not more than six malfunctions and completes the test without any crack or breakage of an operating part of the firearm. The term “crack” or “breakage” shall not include a crack or breakage that does not increase the danger of injury to the user. For purposes of evaluating the results of this test, malfunction shall mean any failure to feed, chamber, fire, extract or eject a round or any failure to accept or eject a magazine or any other failure which prevents the firearm, without manual intervention beyond that needed for routine firing and periodic reloading, from firing the chambered round or moving a new round into position so that the firearm is capable of firing the new round properly. “Malfunction” shall not include a misfire caused by a faulty cartridge the primer of which fails to detonate when properly struck by the firearm’s firing mechanism. Nineteenth, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearms wholesaler, and the sale, by its terms, prohibits such purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm is prone to accidental discharge which, for purposes of this clause, shall mean any make and model of firearm for which a sample of five firearms in new condition all undergo, and none discharge during, the following test: Each of the five sample firearms shall be: (a) test loaded; (b) set so that the firearm is in a condition such that pulling the trigger and taking any action that must simultaneously accompany the pulling of the trigger as part of the firing procedure would fire the handgun; and (c) dropped onto a solid slab of concrete from a height of one meter from each of the following positions: (i) normal firing position; (ii) upside down; (iii) on grip; (iv) on the muzzle; (v) on either side; and (vi) on the exposed hammer or striker or, if there is no exposed hammer or striker, the rearmost part of the firearm. If the firearm is designed so that its hammer or striker may be set in other positions, each sample firearm shall be tested as above with the hammer or striker

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in each such position but otherwise in such condition that pulling the trigger, and taking any action that must simultaneously accompany the pulling of the trigger as part of the firing procedure, would fire the firearm. Alternatively, the tester may use additional sample firearms of the same make and model, in a similar condition, for the test of each of these hammer striker settings. Twentieth, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery, any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler, and the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm is prone to: (i) firing more than once per pull of the trigger; or (ii) explosion during firing. Twenty-first, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler and the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm has a barrel less than three inches in length, unless the licensee discloses in writing, prior to the transaction, to the prospective buyer, lessee, deliverer or transferee the limitations of the accuracy of the particular make and model of the subject firearm, by disclosing the make and model's average group diameter test result at seven yards, average group diameter test result at 14 yards and average group diameter test result at 21 yards. For purposes of this clause, "average group diameter test result" shall mean the arithmetic mean of three separate trials, each performed as follows on a different sample firearm in new condition of the make and model at issue. Each firearm shall fire five rounds at a target from a set distance and the largest spread in inches between the centers of any of the holes made in a test target shall be measured and recorded. This procedure shall be repeated two more times on the firearm. The arithmetic mean of each of the three recorded results shall be deemed the result of the trial for that particular sample firearm. The ammunition used shall be the type recommended by the firearm manufacturer in its user manual or, if none is recommended, any standard ammunition of the correct caliber in new condition. No licensee shall sell any rifle or shotgun, contrary to the provisions of section one hundred and thirty or section 131E.

Clauses Eighteenth to Twenty-first, inclusive, of the first paragraph shall not apply to: (a) any firearm lawfully owned or possessed under a license issued under this chapter on or before October 21, 1998; or (b) any firearm designated by the secretary of public safety, with the advice of the gun control advisory board established pursuant to section 1311/2 of chapter 140, as a firearm solely designed and sold for formal target shooting competition. The secretary of public safety shall compile a list, on a bi-annual basis, of firearms designated as formal target shooting firearms in accordance with this paragraph. Such list shall be made available for distribution by the executive office of public safety.

No person licensed under the provisions of section 122 or section 122B shall sell, rent, lease, transfer or deliver any rifle, shotgun or firearm or ammunition or ammunition feeding device contrary to the provisions of section 130 or section 131E; and no such licensee shall sell, rent, lease, transfer or deliver any rifle, shotgun or firearm or ammunition or ammunition feeding device to any person who does not have in his possession the required firearm identification card or proof of exemption therefrom,

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license to carry firearms or permit to purchase, rent or lease firearms and who does not present such card, proof, license or permit to the licensee in person at the time of purchase, rental or lease. No person licensed under the provisions of section 122 or section 122B shall fill an order for such weapon, ammunition or ammunition feeding device that was received by mail, facsimile, telephone or other telecommunication unless such transaction or transfer includes the in-person presentation of the required card, proof, license or permit as required herein prior to any sale, delivery or any form of transfer of possession of the subject weapon, ammunition or ammunition feeding device. Transactions between persons licensed under section 122 or between federally licensed dealers shall be exempt from the provisions of this paragraph.

The licensing authority shall enter, one time per calendar year, during regular business hours, the commercial premises owned or leased by any licensee, wherein such records required to be maintained under this section are stored or maintained, and inspect, in a reasonable manner, such records and inventory for the purpose of enforcing the provisions of this section. If such records and inventory contain evidence of violations of this section, the inspecting officer shall produce and take possession of copies of such records and, in the event that the licensee subject to inspection does not possess copying equipment, the inspecting officer shall arrange to have copied, in a reasonable time and manner, such records that contain evidence of such violations and the costs for such copying shall be assessed against the owner of such records. Licensees found to be in violation of this section shall be subject to the suspension or permanent revocation of such license issued under section 122 and to the provisions of section 128. Nothing herein shall prohibit the licensing authority or the department of state police from conducting such inspections pursuant to a valid search warrant issued by a court of competent jurisdiction.

Notwithstanding the provisions of this section, a person licensed under the provisions of section one hundred and twenty-two, or section one hundred and twenty-two B, may sell or transfer firearms, rifles, shotguns, machine guns or ammunition at any regular meeting of an incorporated collectors club or at a gun show open to the general public; provided, however, that all other provisions of this section are complied with and that such sale or transfer is in conformity with federal law or regulations applicable to the transfer or sale of firearms, rifles, shotguns, machine guns or ammunition, including the restrictions imposed upon firearm identification cards issued under section 129B, licenses to carry firearms issued under section 131 and permits to purchase, lease or rent firearms issued under section 131A.

Section 124

Term of licenses

Section 124. Licenses issued under sections one hundred and twenty-two and one hundred and twenty-two B shall expire three years from the date of issuance.

Section 125

Forfeiture or suspension of licenses; notice

Section 125. The officials authorized to issue a license under section one hundred and twenty-two, after due notice to the licensee and reasonable opportunity for him to be heard, may declare his license forfeited, or may suspend his license for such period of time as they may deem proper, upon satisfactory proof that he has violated or permitted a violation of any condition thereof or has violated any provision of this chapter, or has been convicted of a felony. The pendency of proceedings before a court shall not suspend or interfere with the power to declare a forfeiture. If the license is declared forfeited, the licensee shall be disqualified to receive a license for one year after the expiration of the term of the license so forfeited. The commissioner of the department of criminal justice information services shall be notified in writing of any forfeiture under this section.

Section 126

Placards, signs or advertisements; prima facie evidence

Section 126. If there is exposed from, maintained in or permitted to remain on any vehicle or premises any placard, sign or advertisement purporting or designed to announce that firearms, rifles, shotguns or machine guns are kept in or upon such vehicle or premises or that an occupant of any vehicle or premises is a gunsmith, it shall be prima facie evidence that firearms, rifles, shotguns or machine guns are kept in or upon such vehicle or premises for sale or that the occupant is engaged in business as a gunsmith.

Section 127

Transfer of licenses

Section 127. The officials authorized to issue a license under section one hundred and twenty-two may transfer licenses from one location to another within the city or town in which the licenses are in force, but such transfer shall be granted only to the original licensee and upon the same terms and conditions upon which the license was originally granted. The commissioner of the department of criminal justice information services shall be notified in writing of any transfers made under this section.

Section 128

Penalty for violation of statute on selling, renting or leasing weapons; evidence on sale of machine gun

Section 128. Any licensee under a license described in section one hundred and twenty-three, and any employee or agent of such a licensee, who violates any provision of said

section required to be expressed in the second, fourth, sixth, seventh, eighth, ninth, sixteenth, eighteenth, nineteenth, twentieth or twenty-first condition of said license, and except as provided in section one hundred and twenty-eight A, any person who, without being licensed as hereinbefore provided, sells, rents or leases a firearm, rifle, shotgun or machine gun, or is engaged in business as a gunsmith, shall be punished by a fine of not less than \$1,000 nor more than \$10,000, or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment.

Evidence that a person sold or attempted to sell a machine gun without being licensed under section one hundred and twenty-three shall, in a prosecution under this section, constitute prima facie evidence that such person is engaged in the business of selling machine guns.

Section 128A

Application of Sec. 128

Section 128A. The provisions of section one hundred and twenty-eight shall not apply to any person who, without being licensed as provided in section one hundred and twenty-two, sells or transfers a firearm, rifle or shotgun to a person licensed under said section one hundred and twenty-two, or to a federally licensed firearms dealer or to a federal, state or local historical society, museum or institutional collection open to the public. The provisions of section one hundred and twenty-eight shall not apply to any resident of the commonwealth who, without being licensed as provided in section one hundred and twenty-two, sells or transfers to other than a federally licensed firearms dealer or organization named above not more than four firearms, including rifles and shotguns in any one calendar year; provided, however, that the seller has a firearm identification card or a license to carry firearms, is an exempt person under the conditions of clauses (n), (o), (r) and (s) of the fourth paragraph of section one hundred and twenty-nine C, or is permitted to transfer ownership under the conditions of section one hundred and twenty-nine D and the purchaser has, in the case of sale or transfer of a firearm, a permit to purchase issued under the provisions of section one hundred and thirty-one A and a firearm identification card issued under section one hundred and twenty-nine B, or has such permit to purchase and is an exempt person under the provisions of section one hundred and twenty-nine C, or has been issued a license to carry firearms under the provisions of section one hundred and thirty, or in the case of sale or transfer of a rifle or shotgun, the purchaser has a firearm identification card or a license to carry firearms or is an exempt person as hereinbefore stated; and provided, further, that such resident reports within seven days, in writing to the commissioner of the department of criminal justice information services on forms furnished by said executive director, the names and addresses of the seller and the purchaser of any such large capacity feeding device, firearm, rifle or shotgun, together with a complete description of the firearm, rifle or shotgun, including its designation as a large capacity weapon, if applicable, the calibre, make and serial number and the purchaser's license to carry firearms number, permit to purchase number and identifying number of such documentation as is used to establish exempt person status in the case of a firearm or the purchaser's license to carry number or

firearm identification card number or said document identity number, in the case of a rifle or shotgun.

Section 128B

Unauthorized purchase of firearms; report to commissioner; penalties

Section 128B. Any resident of the commonwealth who purchases or obtains a firearm, rifle or shotgun or machine gun from any source within or without the commonwealth, other than from a licensee under section one hundred and twenty-two or a person authorized to sell firearms under section one hundred and twenty-eight A, and any nonresident of the commonwealth who purchases or obtains a firearm, rifle, shotgun or machine gun from any source within or without the commonwealth, other than such a licensee or person, and receives such firearm, rifle, shotgun or machine gun, within the commonwealth shall within seven days after receiving such firearm, rifle, shotgun or machine gun, report, in writing, to the commissioner of the department of criminal justice information services the name and address of the seller or donor and the buyer or donee, together with a complete description of the firearm, rifle, shotgun or machine gun, including the caliber, make and serial number. Whoever violates any provision of this section shall for the first offense be punished by a fine of not less than \$500 nor more than \$1,000 and for any subsequent offense by imprisonment in the state prison for not more than ten years.

Section 129

Fictitious name or address and other false information; penalties

Section 129. Whoever in purchasing, renting or hiring a firearm, rifle, shotgun or machine gun, or in making application for any form of license or permit issued in connection therewith, or in requesting that work be done by a gunsmith, gives a false or fictitious name or address or knowingly offers or gives false information concerning the date or place of birth, his citizenship status, occupation, or criminal record, shall for the first offense be punished by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment for not more than one year, or both; and for a second or subsequent offense, shall be punished by imprisonment for not less than two and one half years nor more than five years in the state prison.

Section 129B

Firearm identification cards; conditions and restrictions

Section 129B. A firearm identification card shall be issued and possessed subject to the following conditions and restrictions:

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(1) Any person residing or having a place of business within the jurisdiction of the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority an application for a firearm identification card, or renewal of the same, which the licensing authority shall issue, unless the applicant:

(i) has ever, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, both as defined in section 52 of chapter 119, for the commission of: (a) a felony; (b) a misdemeanor punishable by imprisonment for more than two years; (c) a violent crime as defined in section 121; (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; or (e) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C including, but not limited to, a violation under said chapter 94C; provided, however, that except for the commission of a violent crime or a crime involving the trafficking of controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever is last occurring, not less than five years immediately preceding such application, such applicant's right or ability to possess a non-large capacity rifle or shotgun shall be deemed restored in the commonwealth with respect to such conviction or adjudication and such conviction or adjudication shall not disqualify such applicant for a firearm identification card;

(ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of: (a) a felony; (b) a misdemeanor punishable by imprisonment for more than two years; (c) a violent crime as defined in section 121; (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; or (e) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C; provided, however, that, except for the commission of a violent crime or a crime involving the trafficking of weapons or controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever is last occurring, not less than five years immediately preceding such application, and such applicant's right or ability to possess a rifle or shotgun has been fully restored in the jurisdiction wherein the subject conviction or adjudication was entered, such conviction or adjudication shall not disqualify such applicant for a firearm identification card;

(iii) has been confined to any hospital or institution for mental illness, unless the applicant submits with his application an affidavit of a registered physician attesting that such physician is familiar with the applicant's mental illness and that in such physician's opinion the applicant is not disabled by such an illness in a manner that should prevent the applicant from possessing a firearm, rifle or shotgun;

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(iv) is or has been under treatment for or confinement for drug addiction or habitual drunkenness, unless such applicant is deemed to be cured of such condition by a licensed physician, in which case he may make application for such card after the expiration of five years from the date of such confinement or treatment and upon presentation of an affidavit issued by such physician to the effect that such physician knows the applicant's history of treatment and that in such physician's opinion the applicant is deemed cured;

(v) is at the time of the application less than 15 years of age;

(vi) is at the time of the application more than 15 but less than 18 years of age, unless the applicant submits with his application a certificate of his parent or guardian granting the applicant permission to apply for a card;

(vii) is an alien;

(viii) is currently subject to: (a) an order for suspension or surrender issued pursuant to section 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; or (b) a permanent or temporary protection order issued pursuant to chapter 209A or a similar order issued by another jurisdiction; or

(ix) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction.

(2) Within seven days of the receipt of a completed application for a card, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall, within 30 days, advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a card; provided, however, that the taking of fingerprints shall not be required in issuing the renewal of a card if the renewal applicant's fingerprints are on file with the department of state police. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of mental health, department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. If the information available to the colonel does not indicate that the possession of a non-large capacity rifle or shotgun by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within such 30 day period.

(3) The licensing authority may not prescribe any other condition for the issuance of a firearm identification card and shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such card shall be issued unless the colonel has certified, in writing, that the information available

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to him does not indicate that the possession of a rifle or shotgun by the applicant would be in violation of state or federal law.

(4) A firearm identification card shall be revoked or suspended by the licensing authority or his designee upon the occurrence of any event that would have disqualified the holder from being issued such card or from having such card renewed or for a violation of a restriction provided under this section. Any revocation or suspension of a card shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such card and receipt for fee paid for such card, and the person whose card is so revoked or suspended shall take all action required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended card may be reinstated only upon the termination of all disqualifying conditions.

(5) Any applicant or holder aggrieved by a denial, revocation or suspension of a firearm identification card, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receipt of notice of such denial, revocation or suspension or within 90 days after the expiration of the time limit in which the licensing authority is required to respond to the applicant, file a petition to obtain judicial review in the district court having jurisdiction in the city or town wherein the applicant filed for or was issued such card. A justice of such court, after a hearing, may direct that a card be issued or reinstated to the petitioner if the justice finds that such petitioner is not prohibited by law from possessing such card.

(6) A firearm identification card shall not entitle a holder thereof to possess: (i) a large capacity firearm or large capacity feeding device therefor, except under a Class A license issued to a shooting club as provided under section 131 or under the direct supervision of a holder of a Class A license issued to an individual under section 131 at an incorporated shooting club or licensed shooting range; or (ii) a non-large capacity firearm or large capacity rifle or shotgun or large capacity feeding device therefor, except under a Class A license issued to a shooting club as provided under section 131 or under the direct supervision of a holder of a Class A or Class B license issued to an individual under section 131 at an incorporated shooting club or licensed shooting range. A firearm identification card shall not entitle a holder thereof to possess any rifle or shotgun that is, or in such manner that is, otherwise prohibited by law. A firearm identification card shall be valid for the purpose of purchasing and possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate. Except as otherwise provided herein, a firearm identification card shall not be valid for the use, possession, ownership, transfer, purchase, sale, lease, rental or transportation of a rifle or shotgun if such rifle or shotgun is a large capacity weapon as defined in section 121.

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(7) A firearm identification card shall be in a standard form provided by the commissioner of the department of criminal justice information services in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and shall contain an identification number, name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the cardholder and shall be marked "Firearm Identification Card". If a firearm identification card is issued for the sole purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate, such card shall clearly state that such card is valid for such limited purpose only. The application for such card shall be made in a standard form provided by the commissioner of the department of criminal justice information services which shall require the applicant to affirmatively state, under the pains and penalties of perjury, that he is not disqualified on any of the grounds enumerated in clauses (i) to (ix), inclusive, from being issued such card.

(8) Any person who knowingly files an application containing false information shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both such fine and imprisonment.

(9) A firearm identification card shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issue, except that if the cardholder applied for renewal before the card expired, the card shall remain valid for a period of 90 days after the stated expiration date on the card, unless the application for renewal is denied; provided, however, that if the cardholder is on active duty with the armed forces of the United States on the expiration date of his card, the card shall remain valid until the cardholder is released from active duty and for a period of not less than 90 days following such release. A card issued on February 29 shall expire on March 1. The executive director of the criminal history systems board shall send electronically or by first class mail to the holder of a firearm identification card, a notice of the expiration of the card not less than 90 days before its expiration, and shall enclose with the notice a form for the renewal of the card. The executive director of the criminal history systems board shall include in the notice all pertinent information about the penalties that may be imposed if the firearm identification card is not renewed within the 90 days before expiration. The commissioner of criminal justice information services shall provide electronic notice of expiration only upon the request of a cardholder. A request for electronic notice of expiration shall be forwarded to the department on a form furnished by the commissioner. Any electronic address maintained by the department for the purpose of providing electronic notice of expiration shall be considered a firearms record and shall not be disclosed except as provided in section 10 of chapter 66.

(9A) Except as provided in clause (9B), the fee for an application for a firearm identification card shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in the case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited in the General Fund; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity

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Verification Trust Fund. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly that portion of the firearm identification card application fee which is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year.

(9B) The application fee for a firearm identification card issued for the sole purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate shall be \$25, which shall be payable to the licensing authority and shall not be prorated or refunded in the case of revocation or denial. The licensing authority shall retain 50 per cent of the fee and the remaining portion shall be deposited in the General Fund. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly that portion of the firearm identification card application fee which is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year. There shall be no application fee for the renewal of a firearm identification card issued under this clause.

A firearm identification card issued under this clause shall display, in clear and conspicuous language, that the card shall be valid only for the purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate.

[Clause (9C) inserted by 2011, 68, Sec. 93 effective July 1, 2011. See 2011, 68, Sec. 221.]

(9C) Except as provided in clause (9B), the fee for an application for a firearm identification card for any person under the age of 18 shall be \$25, which shall be payable to the licensing authority and shall not be prorated or refunded in the case of revocation or denial. The licensing authority shall retain 50 per cent of the fee and the remaining portion shall be deposited into the General Fund. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly that portion of the firearm identification card application fee which is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year.

(10) Any person over the age of 70 shall be exempt from the requirement of paying a renewal fee for a firearm identification card.

(11) A cardholder shall notify, in writing, the licensing authority that issued such card, the chief of police into whose jurisdiction such cardholder moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of such card.

(12) Notwithstanding the provisions of section 10 of chapter 269, any person in possession of a non-large capacity rifle or shotgun whose firearm identification card issued under this section is invalid for the sole reason that it has expired, meaning after 90 days beyond the stated expiration date on the card, but who shall not be disqualified

from renewal upon application therefor under this section, shall be subject to a civil fine of not less than \$500 nor more than \$5,000 and the provisions of said section 10 of said chapter 269 shall not apply; provided, however, that the exemption from the provisions of said section 10 of said chapter 269 provided herein shall not apply if: (i) such firearm identification card has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such firearm identification card is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such firearm identification card has been denied. Any law enforcement officer who discovers a person to be in possession of a rifle or shotgun after such person's firearm identification card has expired, meaning after 90 days beyond the stated expiration date on the card, or has been revoked or suspended solely for failure to give notice of a change of address shall confiscate any rifle or shotgun and such expired or suspended card then in possession, and such officer shall forward such card to the licensing authority by whom it was issued as soon as practicable. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended card within one year of such confiscation or such weapon may be otherwise disposed of in accordance with the provisions of section 129D. Pending the issuance of a renewed firearm identification card, a receipt for the fee paid, after five days following issuance, shall serve as a valid substitute and any rifle or shotgun so confiscated shall be returned, unless the applicant is disqualified. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131 or 131F.

(13) Upon issuance of a firearm identification card under this section, the licensing authority shall forward a copy of such approved application and card to the executive director of the criminal history systems board, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a firearm identification card under this section.

(14) Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such manner that is, prohibited by state or federal law.

(15) The secretary of the executive office of public safety, or his designee, may promulgate regulations to carry out the purposes of this section.

Section 129C

Application of Sec. 129B; ownership or possession of firearms or ammunition; transfers; report to commissioner; exemptions; exhibiting license to carry, etc. on demand

Section 129C. No person, other than a licensed dealer or one who has been issued a license to carry a pistol or revolver or an exempt person as hereinafter described, shall own or possess any firearm, rifle, shotgun or ammunition unless he has been issued a

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firearm identification card by the licensing authority pursuant to the provisions of section one hundred and twenty-nine B.

No person shall sell, give away, loan or otherwise transfer a rifle or shotgun or ammunition other than (a) by operation of law, or (b) to an exempt person as hereinafter described, or (c) to a licensed dealer, or (d) to a person who displays his firearm identification card, or license to carry a pistol or revolver.

A seller shall, within seven days, report all such transfers to the commissioner of the department of criminal justice information services according to the provisions set forth in section one hundred and twenty-eight A, and in the case of loss, theft or recovery of any firearm, rifle, shotgun or machine gun, a similar report shall be made forthwith to both the commissioner of the department of criminal justice information services and the licensing authority in the city or town where the owner resides. Failure to so report shall be cause for suspension or permanent revocation of such person's firearm identification card or license to carry firearms, or both, and shall be punished by a fine of not less than \$200 nor more than \$1,000 for a first offense and by a fine of not less than \$1,000 nor more than \$5,000 for a second offense.

The provisions of this section shall not apply to the following exempted persons and uses:

- (a) Any device used exclusively for signalling or distress use and required or recommended by the United States Coast Guard or the Interstate Commerce Commission, or for the firing of stud cartridges, explosive rivets or similar industrial ammunition;
- (b) Federally licensed firearms manufacturers or wholesale dealers, or persons employed by them or by licensed dealers, or on their behalf, when possession of firearms, rifles or shotguns is necessary for manufacture, display, storage, transport, installation, inspection or testing;
- (c) To a person voluntarily surrendering a firearm, rifle or shotgun and ammunition therefor to a licensing authority, the colonel of the state police or his designee if prior written notice has been given by said person to the licensing authority or the colonel of the state police, stating the place and approximate time of said surrender;
- (d) The regular and ordinary transport of firearms, rifles or shotguns as merchandise by any common carrier;
- (e) Possession by retail customers for the purpose of firing at duly licensed target concessions at amusement parks, piers and similar locations, provided that the firearms, rifles or shotguns to be so used are firmly chained or affixed to the counter and that the proprietor is in possession of a firearm identification card or license to carry firearms;
- (f) Possession of rifles and shotguns and ammunition therefor by nonresident hunters with valid nonresident hunting licenses during hunting season;

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(g) Possession of rifles and shotguns and ammunition therefor by nonresidents while on a firing or shooting range;

(h) Possession of rifles and shotguns and ammunition therefor by nonresidents traveling in or through the commonwealth, providing that any rifles or shotguns are unloaded and enclosed in a case;

(i) Possession of rifles and shotguns by nonresidents while at a firearm showing or display organized by a regularly existing gun collectors' club or association;

(j) Any resident of the commonwealth returning after having been absent from the commonwealth for not less than 180 consecutive days or any new resident moving into the commonwealth, with respect to any firearm, rifle or shotgun and any ammunition therefor then in his possession, for 60 days after such return or entry into the commonwealth;

(k) Any person under the age of fifteen with respect to the use of a rifle or shotgun by such person in hunting or target shooting, provided that such use is otherwise permitted by law and is under the immediate supervision of a person holding a firearm identification card or a license to carry firearms, or a duly commissioned officer, noncommissioned officer or enlisted member of the United States Army, Navy, Marine Corps, Air Force or Coast Guard, or the National Guard or military service of the commonwealth or reserve components thereof, while in the performance of his duty;

(l) The possession or utilization of any rifle or shotgun during the course of any television, movie, stage or other similar theatrical production, or by a professional photographer or writer for examination purposes in the pursuit of his profession, providing such possession or utilization is under the immediate supervision of a holder of a firearm identification card or a license to carry firearms;

(m) The temporary holding, handling or firing of a firearm for examination, trial or instruction in the presence of a holder of a license to carry firearms, or the temporary holding, handling or firing of a rifle or shotgun for examination, trial or instruction in the presence of a holder of a firearm identification card, or where such holding, handling or firing is for a lawful purpose;

(n) The transfer of a firearm, rifle or shotgun upon the death of an owner to his heir or legatee shall be subject to the provisions of this section, provided that said heir or legatee shall within one hundred and eighty days of such transfer, obtain a firearm identification card or a license to carry firearms if not otherwise an exempt person who is qualified to receive such or apply to the licensing authority for such further limited period as may be necessary for the disposition of such firearm, rifle or shotgun;

(o) Persons in the military or other service of any state or of the United States, and police officers and other peace officers of any jurisdiction, in the performance of their official duty or when duly authorized to possess them;

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(p) Carrying or possession by residents or nonresidents of so-called black powder rifles, shotguns, and ammunition therefor as described in such paragraphs (A) and (B) of the third paragraph of section 121, and the carrying or possession of conventional rifles, shotguns, and ammunition therefor by nonresidents who meet the requirements for such carrying or possession in the state in which they reside.

[There is no clause (q).]

(r) Possession by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the Internal Revenue Service and possession by the members of any such organization when on official parade duty or ceremonial occasions.

(s) Possession by federal, state and local historical societies, museums, and institutional collections open to the public, provided such firearms, rifles or shotguns are unloaded, properly housed and secured from unauthorized handling;

(t) the possession of firearms, rifles, shotguns, machine guns and ammunition, by banks or institutional lenders, or their agents, servants or employees, when the same are possessed as collateral for a secured commercial transaction or as a result of a default under a secured commercial transaction.

(u) Any nonresident who is eighteen years of age or older at the time of acquiring a rifle or shotgun from a licensed firearms dealer; provided, however, that such nonresident must hold a valid firearms license from his state of residence; provided, further, that the licensing requirements of such nonresident's state of residence are as stringent as the requirements of the commonwealth for a firearm identification card, as determined by the colonel of the state police who shall, annually, publish a list of those states whose requirements comply with the provisions of this clause.

Any person, exempted by clauses (o), (p) and (q), purchasing a rifle or shotgun or ammunition therefor shall submit to the seller such full and clear proof of identification, including shield number, serial number, military or governmental order or authorization, military or other official identification, other state firearms license, or proof of nonresidence, as may be applicable.

Nothing in this section shall permit the sale of rifles or shotguns or ammunition therefor to a minor under the age of eighteen in violation of section one hundred and thirty nor may any firearm be sold to a person under the age of 21 nor to any person who is not licensed to carry firearms under section one hundred and thirty-one unless he presents a valid firearm identification card and a permit to purchase issued under section one hundred and thirty-one A, or presents such permit to purchase and is a properly documented exempt person as hereinbefore described.

Nothing in this section shall permit the sale or transfer of any large capacity rifle or shotgun or large capacity feeding device therefor to any person not in possession of a Class A or Class B license to carry firearms issued under section 131, or of any large capacity firearm or large capacity feeding device therefor to any person not in possession of a Class A license to carry firearms issued under section 131.

The possession of a firearm identification card issued under section one hundred and twenty-nine B shall not entitle any person to carry a firearm in violation of section ten of chapter two hundred and sixty-nine and, the possession of a firearm identification card issued under section 129B shall not entitle any person to possess any large capacity rifle or shotgun or large capacity feeding device therefor in violation of subsection (m) of said section 10 of said chapter 269.

Any person who, while not being within the limits of his own property or residence, or such person whose property or residence is under lawful search, and who is not exempt under this section, shall on demand of a police officer or other law enforcement officer, exhibit his license to carry firearms, or his firearm identification card or receipt for fee paid for such card, or, after January first, nineteen hundred and seventy, exhibit a valid hunting license issued to him which shall bear the number officially inscribed of such license to carry or card if any. Upon failure to do so such person may be required to surrender to such officer said firearm, rifle or shotgun which shall be taken into custody as under the provisions of section one hundred and twenty-nine D, except that such firearm, rifle or shotgun shall be returned forthwith upon presentation within thirty days of said license to carry firearms, firearm identification card or receipt for fee paid for such card or hunting license as hereinbefore described. Any person subject to the conditions of this paragraph may, even though no firearm, rifle or shotgun was surrendered, be required to produce within thirty days said license to carry firearms, firearm identification card or receipt for fee paid for such card, or said hunting license, failing which the conditions of section one hundred and twenty-nine D will apply. Nothing in this section shall prevent any person from being prosecuted for any violation of this chapter.

Section 129D

Surrender of firearms and ammunition to licensing authority upon denial of application for, or revocation of, identification card or license; right to transfer; sale by colonel of state police; rules and regulations

Section 129D. Upon revocation, suspension or denial of an application for a firearm identification card pursuant to the conditions of section one hundred and twenty-nine B, or of any firearms license if said firearms identification card is not then in force or of any machine gun license, the person whose application was so revoked, suspended or denied shall without delay deliver or surrender, to the licensing authority where he resides, all firearms, rifles, shotguns and machine guns and ammunition which he then possesses unless an appeal is pending. Such person, or his legal representative, shall have the right,

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at any time up to one year after said delivery or surrender, to transfer such firearms, rifles, shotguns and machine guns and ammunition to any licensed dealer or any other person legally permitted to purchase or take possession of such firearms, rifles, shotguns and machine guns and ammunition and upon notification in writing by the purchaser or transferee and the former owner, the licensing authority shall within ten days deliver such firearms, rifles, shotguns and machine guns and ammunition to the transferee or purchaser and due care shall be observed by the licensing authority in the receipt and holding of any such firearm, rifle, shotgun or machine gun and ammunition.

The licensing authority, after taking possession of any firearm, rifle, shotgun, machine gun or ammunition by any means, may transfer possession of such weapon for storage purposes to a federally and state licensed dealer of such weapons and ammunition who operates a bonded warehouse on the licensed premises that is equipped with a safe for the secure storage of firearms and a weapon box or similar container for the secure storage of other weapons and ammunition; provided, however, that the licensing authority shall not transfer to such dealer possession of any weapon that is or may be evidence in any current or pending criminal case concerning a violation of any general or special law, rule or regulation governing the use, possession or ownership of such weapon. Any such dealer that takes possession of a weapon under the provisions of this section shall: (i) inspect such weapon; (ii) issue to the owner a receipt indicating the make, model, caliber, serial number and condition of each weapon so received; and (iii) store and maintain all weapons so received in accordance with such regulations, rules or guidelines as the secretary of the executive office of public safety may establish under this section. The owner shall be liable to such dealer for reasonable storage charges and may dispose of any such weapon as provided under this section by transfer to a person lawfully permitted to purchase or take possession of such weapon.

Firearms, rifles, shotguns or machine guns and ammunition not disposed of after delivery or surrender according to the provisions of this section shall be sold at public auction by the colonel of the state police to the highest bidding person legally permitted to purchase and possess said firearms, rifles, shotguns or machine guns and ammunition and the proceeds shall be remitted to the state treasurer. Any such weapon that is stored and maintained by a licensed dealer as provided under this section may be so auctioned at the direction of: (i) the licensing authority at the expiration of one year following initial surrender or delivery to such licensing authority; or (ii) the dealer then in possession, if the storage charges for such weapon have been in arrears for 90 days; provided, however, that in either case, title shall pass to the licensed dealer for the purpose of transferring ownership to the auctioneer; and provided further, that in either case, after deduction and payment for storage charges and all necessary costs associated with such surrender and transfer, all surplus proceeds, if any, shall be immediately returned to the owner of such weapon.

The secretary of the executive office of public safety may make and promulgate such rules and regulations as are necessary to carry out the provisions of this section.

Section 130

Sale or furnishing weapons or ammunition to aliens or minors; penalty; exceptions

Section 130. Whoever sells or furnishes a rifle, shotgun or ammunition to any alien eighteen years of age or older who does not hold a permit card issued to him under section one hundred and thirty-one H or, except as provided in this section or section one hundred and thirty-one E, whoever sells or furnishes any alien or any person under eighteen years of age a rifle, shotgun, machine gun or ammunition, or whoever sells or furnishes to any person under 21 years of age a firearm or large capacity rifle or shotgun or ammunition therefor shall have his license to sell firearms, rifles, shotguns, machine guns and or ammunition revoked and shall not be entitled to apply for such license for ten years from the date of such revocation and shall be punished by a fine of not less than \$1,000 nor more than \$10,000, or by imprisonment in a state prison for not more than ten years or by imprisonment in a house of correction for not more than two and one-half years, or by both such fine and imprisonment. Nothing in this section or section one hundred and thirty-one E shall be construed to prohibit a parent or guardian from allowing his child or ward, who has not attained age fifteen, the supervised use of a rifle or shotgun or ammunition therefor, according to the provisions of section one hundred and twenty-nine C, nor from furnishing such child or ward, who has attained age fifteen, with a rifle or shotgun that is not a large capacity weapon or ammunition; provided, however, that said child or ward, being fifteen years of age or older, has been issued a valid firearm identification card or alien permit to possess a rifle or shotgun which is in his possession. Nothing in this section shall be construed to prohibit an instructor from furnishing rifles or shotguns or ammunition therefor to pupils; provided, however, that said instructor has the consent of a parent or guardian of a pupil under the age of eighteen years.

Section 130B

Firearm licensing review board; members; license applicants; hearings

Section 130B. (a) There shall be a firearm licensing review board, established within the department of criminal justice information services, in this section called the board, comprised of 7 members, 1 of whom shall be a member of the department of criminal justice information services appointed by the commissioner and who shall be the chair, 1 of whom shall be the secretary of public safety or his designee, 1 of whom shall be the colonel of state police or his designee, 1 of whom shall be appointed by the Massachusetts Chiefs of Police Association, 1 of whom shall be the attorney general or his designee, 1 whom shall be an attorney with litigation experience in firearm licensing cases and appointed by the governor from a list of qualified persons submitted to the governor by the Massachusetts Bar Association, and 1 of whom shall be a retired member of the judiciary and appointed by the governor.

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(b) An applicant for a firearm identification card or license to carry who has been convicted of or adjudicated a delinquent child or youthful offender by reason of an offense or offenses punishable by 2 1/2 years imprisonment or less when committed under the laws of the commonwealth which was not: (a) an assault or battery on a family member or household member, as defined by section 1 of chapter 209A, except that the determination to be made under clause (e) of said section 1 of said chapter 209A shall be made by the review board, may, after the passage of 5 years from conviction, adjudication as a youthful offender or a delinquent child or release from confinement, commitment, probation or parole supervision for such conviction or adjudication, whichever is last occurring, file a petition for review of eligibility with the firearm licensing review board.

(c) The petitioner shall provide to the board a copy of a completed firearm identification card or license to carry application, which application shall have previously been submitted to the licensing authority or be submitted to the licensing authority contemporaneously with the petition filed with the board. The petitioner shall have the burden to prove his suitability to receive a firearm identification card or a license to carry by clear and convincing evidence. The board shall set a reasonable filing fee to file the petition.

(d) If the board determines, by 2/3rds vote, that: (i) the sole disqualifier for the petitioner is any conviction or adjudication as a youthful offender or a delinquent child for an offense or offenses punishable by 2 1/2 years imprisonment or less when committed under the laws of the commonwealth, arising out of a single incident and which does not otherwise disqualify the petitioner under subclauses (a), (d) or (e) of clause (i) or clauses (ii) to (ix), inclusive, of paragraph (1) of section 129B or subclauses (a), (d) or (e) of clause (i) or clauses (ii) to (vii), inclusive, of paragraph (d) of section 131, and which was not an assault or battery on a family member or household members, as defined by section 1 of chapter 209A, except that the determination to be made under clause (e) of said section 1 of said chapter 209A shall be made by the board; (ii) 5 years has passed since such conviction or adjudication or release from confinement, commitment, probation or parole supervision for such conviction or adjudication, whichever is last occurring; and (iii) by clear and convincing evidence, that the petitioner is a suitable person to be a firearm identification card or license to carry holder, the board shall determine that the petitioner's right or ability to possess a firearm is fully restored in the commonwealth with respect to such conviction or adjudication and that such conviction or adjudication shall not prohibit such petitioner from applying to a licensing authority for a firearm identification card or license to carry. The board shall make a determination on a petition within 60 days after receipt of the petition.

(e) The board shall hold hearings at such times and places as in its discretion it reasonably determines to be required, but not less than once every 90 days, and shall give reasonable notice of the time and place of the hearing to the petitioner. The board shall have the power to compel attendance of witnesses at hearings.

(f) All hearings shall be conducted in an informal manner, but otherwise according to the rules of evidence, and all witnesses shall be sworn by the chair. If requested by the petitioner and payment for stenographic services, as determined by the board, accompanies such request, the board shall cause a verbatim transcript of the hearing to be made. The board's decisions and findings of facts therefore shall be communicated in writing to the petitioner and to the licensing authority to whom the petitioner has applied or intends to apply within 20 days of rendering a decision.

(g) Members of the board shall serve without compensation, but shall be entitled to reasonable subsistence and travel allowances in the performance of their duties.

Section 131

Licenses to carry firearms; Class A and B; conditions and restrictions

Section 131. All licenses to carry firearms shall be designated Class A or Class B, and the issuance and possession of any such license shall be subject to the following conditions and restrictions:

(a) A Class A license shall entitle a holder thereof to purchase, rent, lease, borrow, possess and carry: (i) firearms, including large capacity firearms, and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of firearms as the licensing authority deems proper; and (ii) rifles and shotguns, including large capacity weapons, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as it deems proper. A violation of a restriction imposed by the licensing authority under the provisions of this paragraph shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that the provisions of section 10 of chapter 269 shall not apply to such violation.

The colonel of state police may, after an investigation, grant a Class A license to a club or facility with an on-site shooting range or gallery, which club is incorporated under the laws of the commonwealth for the possession, storage and use of large capacity weapons, ammunition therefor and large capacity feeding devices for use with such weapons on the premises of such club; provided, however, that not less than one shareholder of such club shall be qualified and suitable to be issued such license; and provided further, that such large capacity weapons and ammunition feeding devices may be used under such Class A club license only by such members that possess a valid firearm identification card issued under section 129B or a valid Class A or Class B license to carry firearms, or by such other persons that the club permits while under the direct supervision of a certified firearms safety instructor or club member who, in the case of a large capacity firearm, possesses a valid Class A license to carry firearms or, in the case of a large capacity rifle

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or shotgun, possesses a valid Class A or Class B license to carry firearms. Such club shall not permit shooting at targets that depict human figures, human effigies, human silhouettes or any human images thereof, except by public safety personnel performing in line with their official duties.

No large capacity weapon or large capacity feeding device shall be removed from the premises except for the purposes of: (i) transferring such firearm or feeding device to a licensed dealer; (ii) transporting such firearm or feeding device to a licensed gunsmith for repair; (iii) target, trap or skeet shooting on the premises of another club incorporated under the laws of the commonwealth and for transporting thereto; (iv) attending an exhibition or educational project or event that is sponsored by, conducted under the supervision of or approved by a public law enforcement agency or a nationally or state recognized entity that promotes proficiency in or education about semiautomatic weapons and for transporting thereto and therefrom; (v) hunting in accordance with the provisions of chapter 131; or (vi) surrendering such firearm or feeding device under the provisions of section 129D. Any large capacity weapon or large capacity feeding device kept on the premises of a lawfully incorporated shooting club shall, when not in use, be secured in a locked container, and shall be unloaded during any lawful transport. The clerk or other corporate officer of such club shall annually file a report with the colonel of state police and the commissioner of the department of criminal justice information services listing all large capacity weapons and large capacity feeding devices owned or possessed under such license. The colonel of state police or his designee, shall have the right to inspect all firearms owned or possessed by such club upon request during regular business hours and said colonel may revoke or suspend a club license for a violation of any provision of this chapter or chapter 269 relative to the ownership, use or possession of large capacity weapons or large capacity feeding devices.

(b) A Class B license shall entitle a holder thereof to purchase, rent, lease, borrow, possess and carry: (i) non-large capacity firearms and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of such firearm as the licensing authority deems proper; provided, however, that a Class B license shall not entitle the holder thereof to carry or possess a loaded firearm in a concealed manner in any public way or place; and provided further, that a Class B license shall not entitle the holder thereof to possess a large capacity firearm, except under a Class A club license issued under this section or under the direct supervision of a holder of a valid Class A license at an incorporated shooting club or licensed shooting range; and (ii) rifles and shotguns, including large capacity rifles and shotguns, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as he deems proper. A violation of a restriction provided under this paragraph, or a restriction imposed by the licensing authority under the provisions of this paragraph, shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that the provisions of section 10 of chapter 269 shall not apply to such violation.

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A Class B license shall not be a valid license for the purpose of complying with any provision under this chapter governing the purchase, sale, lease, rental or transfer of any weapon or ammunition feeding device if such weapon is a large capacity firearm or if such ammunition feeding device is a large capacity feeding device for use with a large capacity firearm, both as defined in section 121.

(c) Either a Class A or Class B license shall be valid for the purpose of owning, possessing, purchasing and transferring non-large capacity rifles and shotguns, and for purchasing and possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate, consistent with the entitlements conferred by a firearm identification card issued under section 129B.

(d) Any person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to such licensing authority or the colonel of state police, an application for a Class A or Class B license to carry firearms, or renewal of the same, which such licensing authority or said colonel may issue if it appears that the applicant is a suitable person to be issued such license, and that the applicant has good reason to fear injury to his person or property, or for any other reason, including the carrying of firearms for use in sport or target practice only, subject to such restrictions expressed or authorized under this section, unless the applicant:

(i) has, in any state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (a) a felony; (b) a misdemeanor punishable by imprisonment for more than two years; (c) a violent crime as defined in section 121; (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; or (e) a violation of any law regulating the use, possession or sale of controlled substances as defined in section 1 of chapter 94C;

(ii) has been confined to any hospital or institution for mental illness, unless the applicant submits with his application an affidavit of a registered physician attesting that such physician is familiar with the applicant's mental illness and that in such physician's opinion the applicant is not disabled by such an illness in a manner that should prevent such applicant from possessing a firearm;

(iii) is or has been under treatment for or confinement for drug addiction or habitual drunkenness, unless such applicant is deemed to be cured of such condition by a licensed physician, and such applicant may make application for such license after the expiration of five years from the date of such confinement or treatment and upon presentment of an affidavit issued by such physician stating that such physician knows the applicant's history of treatment and that in such physician's opinion the applicant is deemed cured;

(iv) is at the time of the application less than 21 years of age;

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(v) is an alien;

(vi) is currently subject to: (A) an order for suspension or surrender issued pursuant to section 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; or (B) a permanent or temporary protection order issued pursuant to chapter 209A or a similar order issued by another jurisdiction; or

(vii) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction.

(e) Within seven days of the receipt of a completed application for a license to carry or possess firearms, or renewal of same, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall within 30 days advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a license to carry or possess firearms. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. The colonel shall inquire of the commissioner of the department of mental health relative to whether the applicant is disqualified from being so licensed. If the information available to the colonel does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within said 30 day period.

The licensing authority may also make inquiries concerning the applicant to: (i) the commissioner of the department of criminal justice information services relative to any disqualifying condition and records of purchases, sales, rentals, leases and transfers of weapons or ammunition concerning the applicant; (ii) the commissioner of probation relative to any record contained within the department of probation or the statewide domestic violence record keeping system concerning the applicant; and (iii) the commissioner of the department of mental health relative to whether the applicant is a suitable person to possess firearms or is not a suitable person to possess firearms. The director or commissioner to whom the licensing authority makes such inquiry shall provide prompt and full cooperation for that purpose in any investigation of the applicant.

The licensing authority shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such license shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law.

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(f) A license issued under this section shall be revoked or suspended by the licensing authority, or his designee, upon the occurrence of any event that would have disqualified the holder from being issued such license or from having such license renewed. A license may be revoked or suspended by the licensing authority if it appears that the holder is no longer a suitable person to possess such license. Any revocation or suspension of a license shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such license and the person whose license is so revoked or suspended shall take all actions required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the commissioner of the department of criminal justice information services and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended license may be reinstated only upon the termination of all disqualifying conditions, if any.

Any applicant or holder aggrieved by a denial, revocation or suspension of a license, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receiving notice of such denial, revocation or suspension or within 90 days after the expiration of the time limit during which the licensing authority is required to respond to the applicant, file a petition to obtain judicial review in the district court having jurisdiction in the city or town wherein the applicant filed for, or was issued, such license. A justice of such court, after a hearing, may direct that a license be issued or reinstated to the petitioner if such justice finds that there was no reasonable ground for denying, suspending or revoking such license and that the petitioner is not prohibited by law from possessing same.

(g) A license shall be in a standard form provided by the executive director of the criminal history systems board in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and shall contain a license number which shall clearly indicate whether such number identifies a Class A or Class B license, the name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the licensee. Such license shall be marked "License to Carry Firearms" and shall clearly indicate whether the license is Class A or Class B. The application for such license shall be made in a standard form provided by the executive director of the criminal history systems board, which form shall require the applicant to affirmatively state under the pains and penalties of perjury that such applicant is not disqualified on any of the grounds enumerated above from being issued such license.

(h) Any person who knowingly files an application containing false information shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both such fine and imprisonment.

(i) A license to carry or possess firearms shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issue and shall expire on the

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anniversary of the licensee's date of birth occurring not less than 5 years but not more than 6 years from the date of issue, except that if the licensee applied for renewal before the license expired, the license shall remain valid for a period of 90 days beyond the stated expiration date on the license, unless the application for renewal is denied if the licensee is on active duty with the armed forces of the United States on the expiration date of his license, the license shall remain valid until the licensee is released from active duty and for a period of not less than 90 days following such release. Any renewal thereof shall expire on the anniversary of the licensee's date of birth occurring not less than 5 years but not more than 6 years from the effective date of such license. Any license issued to an applicant born on February 29 shall expire on March 1. The fee for the application shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth and not less than \$50,000 of the funds deposited into the General Fund shall be allocated to the Firearm Licensing Review Board, established in section 130B, for its operations and that any funds not expended by said board for its operations shall revert back to the General Fund; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. For law enforcement officials, or local, state, or federal government entities acting on their behalf, the fee for the application shall be set at \$25, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$12.50 of the fee, and \$12.50 of the fee shall be deposited into the general fund of the commonwealth. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit such portion of the license application fee into the Firearms Record Keeping Fund quarterly, not later than January 1, April 1, July 1 and October 1 of each year. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly such portion of the license application fee as is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year. For the purposes of section 10 of chapter 269, an expired license to carry firearms shall be deemed to be valid for a period not to exceed 90 days beyond the stated date of expiration, unless such license to carry firearms has been revoked.

Any person over the age of 70 and any law enforcement officer applying for a license to carry firearms through his employing agency shall be exempt from the requirement of paying a renewal fee for a Class A or Class B license to carry.

(j)(1) No license shall be required for the carrying or possession of a firearm known as a detonator and commonly used on vehicles as a signaling and marking device, when carried or possessed for such signaling or marking purposes.

(2) No license to carry shall be required for the possession of an unloaded large capacity rifle or shotgun or an unloaded feeding device therefor by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the Internal Revenue Service, or by the members of any such organization when on official parade duty or during ceremonial occasions. For purposes of this subparagraph, an "unloaded large capacity rifle or

shotgun" and an "unloaded feeding device therefor" shall include any large capacity rifle, shotgun or feeding device therefor loaded with a blank cartridge or blank cartridges, so-called, which contain no projectile within such blank or blanks or within the bore or chamber of such large capacity rifle or shotgun.

(k) Whoever knowingly issues a license in violation of this section shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months nor more than two years in a jail or house of correction, or by both such fine and imprisonment.

(l) The executive director of the criminal history systems board shall send electronically or by first class mail to the holder of each such license to carry firearms, a notice of the expiration of such license not less than 90 days prior to such expiration and shall enclose therein a form for the renewal of such license. The taking of fingerprints shall not be required in issuing the renewal of a license if the renewal applicant's fingerprints are on file with the department of the state police. Any licensee shall notify, in writing, the licensing authority who issued said license, the chief of police into whose jurisdiction the licensee moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of said license. The commissioner of criminal justice information services shall provide electronic notice of expiration only upon the request of a cardholder. A request for electronic notice of expiration shall be forwarded to the department on a form furnished by the commissioner. Any electronic address maintained by the department for the purpose of providing electronic notice of expiration shall be considered a firearms record and shall not be disclosed except as provided in section 10 of chapter 66.

(m) Notwithstanding the provisions of section 10 of chapter 269, any person in possession of a firearm, rifle or shotgun whose license issued under this section is invalid for the sole reason that it has expired, meaning after 90 days beyond the stated expiration date on the license, but who shall not be disqualified from renewal upon application therefor under this section, shall be subject to a civil fine of not less than \$500 nor more than \$5,000 and the provisions of section 10 of chapter 269 shall not apply; provided, however, that the exemption from the provisions of said section 10 of said chapter 269 provided herein shall not apply if: (i) such license has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such license is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such license has been denied. Any law enforcement officer who discovers a person to be in possession of a firearm, rifle or shotgun after such person's license has expired, meaning after 90 days beyond the stated expiration date on the license, has been revoked or suspended, solely for failure to give notice of a change of address, shall confiscate such firearm, rifle or shotgun and the expired or suspended license then in possession and such officer, shall forward such license to the licensing authority by whom it was issued as soon as practicable. The officer shall, at the time of confiscation, provide to the person whose

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firearm, rifle or shotgun has been confiscated, a written inventory and receipt for all firearms, rifles or shotguns confiscated and the officer and his employer shall exercise due care in the handling, holding and storage of these items. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended license within one year of such confiscation or may be otherwise disposed of in accordance with the provisions of section 129D. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131F.

(n) Upon issuance of a license to carry or possess firearms under this section, the licensing authority shall forward a copy of such approved application and license to the executive director of the criminal history systems board, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a license under this section.

(o) No person shall be issued a license to carry or possess a machine gun in the commonwealth, except that a licensing authority or the colonel of state police may issue a machine gun license to:

(i) a firearm instructor certified by the municipal police training committee for the sole purpose of firearm instruction to police personnel;

(ii) a bona fide collector of firearms upon application or upon application for renewal of such license.

(p) The executive director of the criminal history systems board shall promulgate regulations in accordance with chapter 30A to establish criteria for persons who shall be classified as bona fide collectors of firearms.

(q) Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such manner that is, prohibited by state or federal law.

(r) The secretary of the executive office of public safety or his designee may promulgate regulations to carry out the purposes of this section.

Section 131 1/2

Gun control advisory board

Section 131 1/2. The governor shall appoint a gun control advisory board, hereinafter referred to as the board. The board shall consist of seven individuals, one of whom shall be a member of the gun owners action league, one of whom shall be a police chief selected from a list of four selected by the police chiefs association and one of whom shall be the director of the firearms record bureau within the department of criminal justice information services. It shall be the responsibility of the board to advise the executive office of public safety on matters relating to the implementation of sections 121

to 131P, inclusive, and section 2SS of chapter 29. The board shall serve without compensation and shall adopt operating rules and procedures for its organization and activities.

Section 131 3/4

Roster of large capacity rifles, shotguns, firearms, and feeding devices

Section 131 3/4. The secretary of public safety shall, with the advice of the gun control advisory board established pursuant to the provisions of section 1311/2, compile and publish a roster of large capacity rifles, shotguns, firearms and feeding devices, all as defined in section 121, and such weapons referred to in clauses Eighteenth to Twenty-first, inclusive, of section 123.

The secretary shall, not less than three times annually, publish the roster in newspapers of general circulation throughout the commonwealth, and shall send a copy thereof to all dealers licensed in the commonwealth under the provisions of said section 122 of said chapter 140; and further, the licensing authority shall furnish said roster to all cardholders and licensees upon initial issuance and upon every renewal of the same.

The secretary may amend the roster upon his own initiative or with the advice of said board. A person may petition the secretary to place a weapon on, or remove a weapon from, the roster, subject to the provisions of this section. A person who so petitions shall give the reasons why the roster should be so amended.

A petition to amend the roster shall be submitted in writing to the secretary and shall be in the form and manner prescribed by the secretary. Upon receipt of the petition to place a weapon on the roster, the secretary shall, within 45 days of receipt of the petition, either notify the petitioner by certified mail that the petition is denied, or it shall modify the roster. An addition to the roster shall be effective on the date it is included in the next publication in newspapers of general circulation as provided under this section.

The secretary may promulgate rules and regulations relative to the appeal of a decision on a petition to modify the roster and any other regulations consistent with the provisions of this section and section 2SS of chapter 29, sections 11 and 14 of chapter 131, sections 121, 122, 122B, 123, 128, 128A, 128B, 129B, 129C, 129D, 130, 131, 131A, 131E, 131F and 131K of chapter 140 to effectuate the purposes of each said section.

Section 131A

Permits to purchase, rent or lease firearms, or to purchase ammunition; fee; penalties

Section 131A. A licensing authority under section one hundred and thirty-one, upon the application of a person qualified to be granted a license thereunder by such authority,

may grant to such a person, other than a minor, a permit to purchase, rent or lease a firearm if it appears that such purchase, rental or lease is for a proper purpose, and may revoke such permit at will. The colonel of the state police or a person authorized by him, upon the application of a person licensed under section one hundred and thirty-one F, may grant to such licensee, other than a minor, a permit to purchase, rent or lease a firearm, rifle or shotgun, or to purchase ammunition therefor, if it appears that such purchase, rental or lease is for a proper purpose, and may revoke such permit at will. Such permits shall be issued on forms furnished by the commissioner of the department of criminal justice information services shall be valid for not more than ten days after issue, and a copy of every such permit so issued shall within one week thereafter be sent to the said executive director. The licensing authority may impose such restrictions relative to the caliber and capacity of the firearm to be purchased, rented or leased as he deems proper. Whoever knowingly issues a permit in violation of this section shall be punished by a fine of not less than five hundred nor more than one thousand dollars and by imprisonment for not less than six months nor more than two years in a jail or house of correction.

The fee for the permits shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund.

Section 131B

Penalty for loan of money secured by weapons

Section 131B. Whoever loans money secured by mortgage, deposit or pledge of a firearm, rifle, shotgun or machine gun shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or by both; provided, however that nothing herein shall prohibit a bank or other institutional lender from loaning money secured by a mortgage, deposit, or pledge of a firearm, rifle, shotgun or machine gun to a manufacturer, wholesaler, or dealer of firearms, rifles, or shotguns. The provisions of section one hundred and twenty-three shall not be applicable to any such mortgage, deposit or pledge unless or until the lender takes possession of the collateral upon default or the collateral is removed from the premises of the debtor.

Section 131C

Carrying of firearms in a vehicle

Section 131C. (a) No person carrying a loaded firearm under a Class A license issued under section 131 or 131F shall carry the same in a vehicle unless such firearm while

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carried therein is under the direct control of such person. Whoever violates the provisions of this subsection shall be punished by a fine of \$500.

(b) No person carrying a firearm under a Class B license issued under section 131 or 131F shall possess the same in a vehicle unless such weapon is unloaded and contained within the locked trunk of such vehicle or in a locked case or other secure container. Whoever violates the provisions of this subsection shall be punished by a fine of \$500.

(c) No person possessing a large capacity rifle or shotgun under a Class A or Class B license issued under section 131 or 131F shall possess the same in a vehicle unless such weapon is unloaded and contained within the locked trunk of such vehicle or in a locked case or other secure container. Whoever violates the provisions of this subsection shall be punished by a fine of not less than \$500 nor more than \$5,000.

(d) The provisions of this section shall not apply to (i) any officer, agent or employee of the commonwealth or any state or the United States; (ii) any member of the military or other service of any state or of the United States; (iii) any duly authorized law enforcement officer, agent or employee of any municipality of the commonwealth; provided, however, that any such person described in clauses (i) to (iii), inclusive, is authorized by a competent authority to carry or possess the weapon so carried or possessed and is acting within the scope of his duties.

(e) A conviction of a violation of this section shall be reported forthwith by the court or magistrate to the licensing authority who shall immediately revoke the card or license of the person so convicted. No new such card or license may be issued to any such person until one year after the date of revocation.

Section 131E

Purchase by residents; licenses; firearm identification cards; purchase for use of another; penalties; revocation of licenses or cards; reissuance

Section 131E. Any resident of the commonwealth may purchase firearms, rifles, shotguns and ammunition feeding devices from any dealer licensed under section 122, or from such person as shall be qualified under section 128A, or ammunition from a licensee under section 122B, subject to the following conditions and restrictions:

(a) rifles, shotguns and feeding devices therefor may be so purchased only upon presentment of: (i) a valid firearm identification card issued under section 129B; or (ii) a valid Class A or Class B license to carry firearms issued under section 131; or (iii) valid proof of exempt status under section 129C; provided, however, that large capacity rifles and shotguns and large capacity feeding devices therefor may be so purchased only upon presentment of a Class A or Class B license to carry firearms issued under said section 131; and provided further, that no rifle or shotgun or ammunition or ammunition feeding device therefor shall be sold to any person less than 18 years of age; and provided further,

that no large capacity rifle or shotgun or large capacity feeding device therefor shall be sold to any person less than 21 years of age;

(b) firearms and feeding devices therefor may be so purchased only upon presentment of: (i) a valid Class A or Class B license to carry firearms issued under section 131; or (ii) a valid firearm identification card issued under section 129B together with a valid permit to purchase a firearm issued under section 131A; or (iii) a valid permit to purchase a firearm issued under section 131A together with valid proof of exempt status under section 129C; provided, however, that large capacity firearms and large capacity feeding devices therefor may be so purchased only upon presentment of: (i) a valid Class A license to carry firearms issued under section 131; or (ii) a valid firearm identification card issued under section 129B together with a valid and proper permit to purchase a firearm issued under section 131A; or (iii) a valid and proper permit to purchase a firearm issued under section 131A together with valid proof of exempt status under section 129C; and provided further, that neither a firearm identification card issued under section 129B, nor proof of exempt status under section 129C, shall be valid for the purpose of purchasing any firearm or ammunition feeding device therefor without being presented together with a valid and proper permit to purchase issued under section 131A; and provided further, that an alien permit to possess a rifle or shotgun shall not be valid for the purpose of purchasing firearms or ammunition or ammunition feeding devices therefor; and provided further, that no firearm or ammunition or ammunition feeding device therefor shall be sold to any person less than 21 years of age. Any person who uses said license to carry firearms or firearm identification card for the purpose of purchasing a firearm, rifle or shotgun for the unlawful use of another, or for resale to or giving to an unlicensed person, shall be punished by a fine of not less than one thousand nor more than fifty thousand dollars, or by imprisonment for not less than two and one-half years nor more than ten years in a state prison, or by both such fine and imprisonment. A conviction of a violation of this section shall be reported forthwith by the court to the licensing authority which issued the license or firearm identification card, which shall immediately revoke the license or firearm identification card of such person. No new license or firearm identification card under section one hundred and twenty-nine B or section one hundred and thirty-one shall be issued to any such person within two years after the date of said revocation.

Section 131F

Nonresidents or aliens; temporary license to carry firearms or ammunition

Section 131F. A Class A or Class B temporary license to carry firearms or feeding devices or ammunition therefor, within the commonwealth, may be issued by the colonel of state police, or persons authorized by him, to a nonresident or any person not falling within the jurisdiction of a local licensing authority or to an alien that resides outside the commonwealth for purposes of firearms competition and subject to such terms and conditions as said colonel may deem proper; provided, however, that no license shall be issued to a person who:

(i) has, in any state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (a) a felony; (b) a misdemeanor punishable by imprisonment for more than two years; (c) a violent crime as defined in section 121; (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; or (e) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C;

(ii) has been confined to any hospital or institution for mental illness, unless the applicant submits with his application an affidavit of a registered physician attesting that such physician is familiar with the applicant's mental illness and that in such physician's opinion the applicant is not disabled by such an illness in a manner that should prevent such applicant from possessing a firearm;

(iii) is or has been under treatment for or confinement for drug addiction or habitual drunkenness, unless such applicant is deemed to be cured of such condition by a licensed physician, and such applicant may make application for said license after the expiration of five years from the date of such confinement or treatment and upon presentment of an affidavit issued by such physician stating that such physician knows the applicant's history of treatment and that in such physician's opinion the applicant is deemed cured;

(iv) is currently subject to: (A) an order for suspension or surrender issued pursuant to section 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; or (B) a permanent or temporary protection order issued pursuant to chapter 209A or a similar order issued by another jurisdiction; or

(v) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction.

Such license shall be valid for a period of one year but the colonel may renew such license, if in his discretion, such renewal is necessary.

The colonel may also issue such license, subject to such terms and conditions as he deems proper, to any resident of the commonwealth for the purposes of sports competition.

A temporary license issued under this section shall be marked "Temporary License to Carry Firearms", shall clearly indicate whether it is Class A or Class B and shall not be used to purchase firearms in the commonwealth as provided under section 131E. Neither a large capacity firearm nor large capacity feeding device therefor may be carried unless such person has been issued a Class A license; provided, however, that the colonel may permit a Class A or Class B licensee to possess large capacity rifles or shotguns or both, and such entitlement shall be clearly indicated on such license. The fee for an application for the license shall be \$100, which shall be payable to the licensing authority and shall

not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. A license issued under the provisions of this section to a non-resident who is in the employ of a bank, public utility corporation, or a firm engaged in the business of transferring monies, or business of similar nature, or a firm licensed as a private detective under the provisions of chapter one hundred and forty-seven, and whose application is endorsed by his employer, or who is a member of the armed services and is stationed within the territorial boundaries of the commonwealth and has the written consent of his commanding officer, may be issued for any term not to exceed two years, and said licenses shall expire in accordance with the provisions of section one hundred and thirty-one.

A license, otherwise in accordance with provisions of this section, may be issued to a nonresident employee, whose application is endorsed by his employer, of a federally licensed Massachusetts manufacturer of machine guns to possess within the commonwealth a machine gun for the purpose of transporting or testing relative to the manufacture of machine guns, and the license shall be marked “temporary license to possess a machine gun” and may be issued for any term not to exceed two years and shall expire in accordance with the provisions of section one hundred and thirty-one.

Section 131F1/2

Theatrical productions; carrying firearms and blank ammunition

Section 131F1/2. Notwithstanding the provisions of subsection (a) of section ten of chapter two hundred and sixty-nine of the General Laws or any other law to the contrary, the carrying or possession of a firearm and blank ammunition therefor, during the course of any television, movie, stage or other similar theatrical production, by a person within such production, shall be authorized; provided, however, that such carrying or possession of such firearm shall be under the immediate supervision of a person licensed to carry firearms.

Section 131G

Carrying of firearms by non-residents; conditions

Section 131G. Any person who is not a resident of the commonwealth may carry a pistol or revolver in or through the commonwealth for the purpose of taking part in a pistol or revolver competition or attending any meeting or exhibition of any organized group of firearm collectors or for the purpose of hunting; provided, that such person is a resident of the United States and has a permit or license to carry firearms issued under the laws of any state, district or territory thereof which has licensing requirements which prohibit the issuance of permits or licenses to persons who have been convicted of a felony or who have been convicted of the unlawful use, possession or sale of narcotic or harmful drugs; provided, further, that in the case of a person traveling in or through the commonwealth

for the purpose of hunting, he has on his person a hunting or sporting license issued by the commonwealth or by the state of his destination. Police officers and other peace officers of any state, territory or jurisdiction within the United States duly authorized to possess firearms by the laws thereof shall, for the purposes of this section, be deemed to have a permit or license to carry firearms as described in this section.

Section 131H

Ownership or possession of firearms by aliens; penalties; seizure and disposition

Section 131H. No alien shall own or have in his possession or under his control a firearm except as provided in section one hundred and thirty-one F or a rifle or shotgun except as provided in this section or section one hundred and thirty-one F. The colonel of the state police may, after an investigation, issue a permit to an alien to own or have in his possession or under his control a rifle or shotgun; subject to such terms and conditions as said colonel may deem proper. The fee for the permit shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. Upon issuing such permit said colonel shall so notify, in writing, the chief of police or the board or officer having control of the police in the city or town in which such alien resides. Each such permit card shall expire at twelve midnight on December thirty-first next succeeding the effective date of said permit, and shall be revocable for cause by said colonel. In case of revocation, the fee for such permit shall not be prorated or refunded. Whenever any such permit is revoked, said colonel shall give notification as hereinbefore provided. The permit issued to an alien under this section shall be subject to sections one hundred and twenty-nine B and one hundred and twenty-nine C except as otherwise provided by this section.

Violation of any provision of this section shall be punished by a fine of not less than five hundred nor more than one thousand dollars, and by imprisonment for not more than six months in a jail or house of correction. If, in any prosecution for violation of this section, the defendant alleges that he has been naturalized, or alleges that he is a citizen of the United States, the burden of proving the same shall be upon him. Any firearm, rifle or shotgun owned by an alien or in his possession or under his control in violation of this section shall be forfeited to the commonwealth. Any such firearm, rifle or shotgun may be the subject of a search warrant as provided in chapter two hundred and seventy-six.

The director of law enforcement of the department of fisheries, wildlife and environmental law enforcement, deputy directors of enforcement, chiefs of enforcement, deputy chiefs of enforcement, environmental police officers and deputy environmental police officers, wardens as defined in section one of chapter one hundred and thirty-one and members of the state police in areas over which they have jurisdiction, and all officers qualified to serve criminal process shall arrest, without a warrant, any person

found with a firearm, rifle or shotgun in his possession if they have reason to believe that he is an alien and if he does not have in his possession a valid permit as provided in this section.

Section 131I

Falsifying firearm license or identification card; penalty

Section 131I. Whoever falsely makes, alters, forges or counterfeits or procures or assists another to falsely make, alter, forge or counterfeit a license to carry a firearm or a firearm identification card, or whoever forges or without authority uses the signature, facsimile of the signature, or validating signature stamp of the licensing authority or its designee, or whoever possesses, utters, publishes as true or in any way makes use of a falsely made, altered, forged or counterfeited license to carry a firearm or a firearm identification card, shall be punished by imprisonment in a state prison for not more than five years or in a jail or house of correction for not more than two years, or by a fine of not less than five hundred dollars, or both such fine and imprisonment.

Section 131J

Sale or possession of electrical weapons; penalties

Section 131J. No person shall possess a portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to incapacitate temporarily, injure or kill, except: (1) a federal, state or municipal law enforcement officer, or member of a special reaction team in a state prison or designated special operations or tactical team in a county correctional facility, acting in the discharge of his official duties who has completed a training course approved by the secretary of public safety in the use of such a device or weapon designed to incapacitate temporarily; or (2) a supplier of such devices or weapons designed to incapacitate temporarily, if possession of the device or weapon is necessary to the supply or sale of the device or weapon within the scope of such sale or supply enterprise. No person shall sell or offer for sale such device or weapon, except to federal, state or municipal law enforcement agencies. A device or weapon sold under this section shall include a mechanism for tracking the number of times the device or weapon has been fired. The secretary of public safety shall adopt regulations governing who may sell or offer to sell such devices or weapons in the commonwealth and governing law enforcement training on the appropriate use of portable electrical weapons.

Whoever violates this section shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment in the house of correction for not less than 6 months nor more than 2 1/2 years, or by both such fine and imprisonment. A law enforcement officer may arrest without a warrant any person whom he has probable cause to believe has violated this section.

Section 131K

Firearms or large capacity weapons without safety devices; liability

Section 131K. Any firearm or large capacity weapon, both as defined in section 121, sold within the commonwealth without a safety device designed to prevent the discharge of such weapon by unauthorized users and approved by the colonel of state police including, but not limited to, mechanical locks or devices designed to recognize and authorize, or otherwise allow the firearm to be discharged only by its owner or authorized user, by solenoid use-limitation devices, key activated or combination trigger or handle locks, radio frequency tags, automated fingerprint identification systems or voice recognition, provided, that such device is commercially available, shall be defective and the sale of such a weapon shall constitute a breach of warranty under section 2-314 of chapter 106 and an unfair or deceptive trade act or practice under section 2 of chapter 93A. Any entity responsible for the manufacture, importation or sale as an inventory item or consumer good, both as defined in section 9-102 of chapter 106, of such a weapon that does not include or incorporate such a device shall be individually and jointly liable to any person who sustains personal injury or property damage resulting from the failure to include or incorporate such a device. If death results from such personal injury, such entities shall be liable in an amount including, but not limited to, that provided under chapter 229. Contributory or comparative negligence shall not be valid defenses to an action brought under this section in conjunction with section 2 of chapter 93A or section 2-314 of chapter 106 or both; provided, however, that nothing herein shall prohibit such liable parties from maintaining an action for indemnification or contribution against each other or against the lawful owner or other authorized user of said weapon. Any disclaimer, limit or waiver of the liability provided under this section shall be void.

No entity responsible for the manufacture, importation or sale of such a weapon shall be liable to any person for injuries caused by the discharge of such weapon that does not include or incorporate a safety device as required under this section if such injuries were: (i) self-inflicted, either intentionally or unintentionally, unless such injuries were self-inflicted by a person less than 18 years of age; (ii) inflicted by the lawful owner or other authorized user of said weapon; (iii) inflicted by any person in the lawful exercise of self-defense; or (iv) inflicted upon a co-conspirator in the commission of a crime.

This section shall not apply to any weapon distributed to an officer of any law enforcement agency or any member of the armed forces of the United States or the organized militia of the commonwealth; provided, however, that such person is authorized to acquire, possess or carry such a weapon for the lawful performance of his official duties; and provided further, that any such weapon so distributed is distributed solely for use in connection with such duties. This section shall not apply to any firearm manufactured in or prior to the year 1899, or to any replica of such a firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

Section 131L

Weapons stored or kept by owner; inoperable by any person other than owner or lawfully authorized user; punishment

Section 131L. (a) It shall be unlawful to store or keep any firearm, rifle or shotgun including, but not limited to, large capacity weapons, or machine gun in any place unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user.

(b) A violation of this section shall be punished, in the case of a firearm, rifle or shotgun that is not a large capacity weapon, by a fine of not less than \$500 nor more than \$5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment, and in the case of a large capacity weapon or machine gun, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment.

(c) A violation of this section shall be punished, in the case of a rifle or shotgun that is not a large capacity weapon and such weapon was stored or kept in a place where a person under the age of 18 who does not possess a valid firearm identification card issued under section 129B may have access without committing an unforeseeable trespass, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment.

(d) A violation of this section shall be punished, in the case of a rifle or shotgun that is a large capacity weapon, firearm or machine gun was stored or kept in a place where a person under the age of 18 may have access, without committing an unforeseeable trespass, by a fine of not less than \$5,000 nor more than \$10,000 or by imprisonment for not less than two and one-half years, nor more than ten years, or by both such fine and imprisonment.

(e) A violation of the provisions of this section shall be evidence of wanton or reckless conduct in any criminal or civil proceeding if a person under the age of 18 who was not a trespasser or was a foreseeable trespasser acquired access to a weapon, unless such person possessed a valid firearm identification card issued under section 129B and was permitted by law to possess such weapon, and such access results in the personal injury to or the death of any person.

(f) This section shall not apply to the storage or keeping of any firearm, rifle or shotgun with matchlock, flintlock, percussion cap or similar type of ignition system manufactured in or prior to the year 1899, or to any replica of any such firearm, rifle or shotgun if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

Section 131M

Assault weapon or large capacity feeding device not lawfully possessed on September 13, 1994; sale, transfer or possession; punishment

Section 131M. No person shall sell, offer for sale, transfer or possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Whoever not being licensed under the provisions of section 122 violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment, and for a second offense, by a fine of not less than \$5,000 nor more than \$15,000 or by imprisonment for not less than five years nor more than 15 years, or by both such fine and imprisonment.

The provisions of this section shall not apply to: (i) the possession by a law enforcement officer for purposes of law enforcement; or (ii) the possession by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving such a weapon or feeding device from such agency upon retirement.

Section 131N

Covert weapons; sale, transfer or possession; punishment

Section 131N. No person shall sell, offer for sale, transfer or possess any weapon, capable of discharging a bullet or shot, that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk-through metal detectors. Whoever violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment, and for a second offense, by a fine of not less than \$5,000 nor more than \$15,000 or by imprisonment for not less than five years nor more than 15 years, or by both such fine and imprisonment.

Section 131O

Colonel of state police; statewide firearms surrender program

Section 131O. Notwithstanding any general or special law, rule or regulation to the contrary, the colonel of state police, in conjunction with the secretary of the executive office of public safety, shall promulgate rules and regulations implementing a statewide firearms surrender program. In conjunction with this program only, any citizen of the

commonwealth who complies with the policies set forth by the colonel shall not be asked for identification and shall be immune from prosecution for possession of such firearm; provided, however, that nothing herein shall prohibit the prosecution of any person for the unlawful possession of a firearm who is not in compliance with the conditions and procedures established by the colonel; and provided further, that nothing herein shall prohibit the prosecution of any person for any other offense committed within the commonwealth.

Any firearm surrendered in accordance with the provisions of this program that is reported stolen shall be returned to its lawful owner; provided, however, that any firearm suspected to be evidence in a crime shall remain in the custody and control of the department of state police in the same manner as any other such firearm lawfully seized by the department of state police. The department of state police may test-fire and preserve any and all firearms voluntarily surrendered. All weapons that have been voluntarily surrendered that are not suspected to be evidence of criminal activity and have not been reported stolen shall be disposed of in accordance with procedures established by the colonel.

Section 131P

Basic firearms safety certificate; instructors

Section 131P. (a) Any person making application for the issuance of a firearms identification card under section 129B, a Class A or Class B license to carry firearms under section 131 or 131F or a permit to purchase under section 131A who was not licensed under the provisions of this chapter on June 1, 1998 shall, in addition to the requirements set forth in said section 129B, 131, 131A or 131F, submit to the licensing authority a basic firearms safety certificate; provided, however, that a certificate issued by the division of law enforcement in the department of fisheries, wildlife and environmental law enforcement pursuant to the provisions of section 14 of chapter 131 evidencing satisfactory completion of a hunter education course shall serve as a valid substitute for a basic firearms safety certificate required under this section; and provided further, that an applicant for a firearms identification card for the sole purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate shall not be required to complete a basic firearms safety course as a prerequisite for receiving such card. Persons lawfully possessing a firearm identification card or license to carry firearms on June 1, 1998 shall be exempt from the provisions of this section upon expiration of such card or license and when applying for licensure as required under this chapter. No application for the issuance of a firearm identification card or license to carry shall be accepted or processed by the licensing authority without such certificate attached thereto; provided, however, that the provisions of this section shall not apply to (i) any officer, agent or employee of the commonwealth or any state of the United States; (ii) any member of the military or other service of any state or of the United States; (iii) any duly authorized law enforcement officer, agent or employee of any municipality of the commonwealth; provided, however, that any such person described in clauses (i) to (iii), inclusive, is

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authorized by a competent authority to carry or possess the weapon so carried or possessed and is acting within the scope of his duties.

(b) The colonel of state police shall promulgate rules and regulations governing the issuance and form of basic firearms safety certificates required by this section. Said colonel shall certify certain persons as firearms safety instructors and shall certify safety course curriculum. Such certification shall be for a period of ten years, unless sooner revoked by reason of unsuitability, in the discretion of said colonel. The department of state police may impose a fee of \$50 for initial issuance of such certification to offset the cost of certifying instructors. The fee for certification renewal shall be \$10. Firearms safety instructors shall be any person certified by a nationally recognized organization that fosters safety in firearms, or any other person in the discretion of said colonel, to be competent to give instruction in a basic firearms safety course. Applicants for certification as instructors under the provisions of this section shall not be exempt from the requirements of this chapter or any other law or regulation of the commonwealth or the United States. Upon application to the colonel of state police, said colonel may, in his discretion, certify as a firearms safety instructor any person who operates a firearms safety course or program which provides in its curriculum: (a) the safe use, handling and storage of firearms; (b) methods for securing and childproofing firearms; (c) the applicable laws relating to the possession, transportation and storage of firearms; and (d) knowledge of operation, potential dangers and basic competency in the ownership and usage of firearms.

(c) Any firearms safety instructor certified under the provisions of this section may, in his discretion, issue a basic firearms safety certificate to any person who successfully completes the requirements of a basic firearms safety course approved by the colonel. No firearms safety instructor shall issue or cause to be issued any basic firearms safety certificate to any person who fails to meet minimum requirements of the prescribed course of study including, but not limited to, demonstrated competency in the use of firearms. Instructors certified under the provisions of this section shall forward to the department of state police the names of those persons who have received basic firearms safety certificates. Local licensing authorities, as defined in section 121, shall, upon receipt of an application for a firearm identification card or a Class A or Class B license to carry firearms, make inquiry to the department of state police to confirm the issuance to the applicant of a basic firearms safety certificate.

(d) Any person applying for licensure under the provisions of this chapter who knowingly files or submits a basic firearms safety certificate to a licensing authority which contains false information shall be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment for not more than two years in a house of correction, or by both such fine and imprisonment.

(e) Any firearms safety instructor who knowingly issues a basic firearms safety certificate to a person who has not successfully completed a firearms safety course approved by the colonel shall be punished by a fine of not less than \$5,000 nor more than \$10,000 or by

imprisonment for not more than two years in a house of correction, or by both such fine and imprisonment.

CHAPTER 147 STATE AND OTHER POLICE, AND CERTAIN POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC SAFETY

Section 28

Assistants; employment; divulgence of information or false report; penalty

Section 28. A licensee may employ to assist him in his business as many persons as he may deem necessary but shall not knowingly employ in connection with his business in any capacity any person who has been convicted of a felony or any former licensee whose license has been revoked.

If a licensee falsely states or represents that a person is or was in his employ, such false statement or representation shall be cause for revocation of his license. Whoever falsely states or represents that he has been a licensee or employed by a licensee shall be punished by a fine of not less than fifty nor more than five hundred dollars.

No person shall be employed by any licensee until he shall have executed and furnished to such licensee a statement under oath setting forth his full name, date of birth and residence; his parents' names and places of birth; the business or occupation in which he has been engaged for the three years immediately preceding the date of filing his statement; and that he has not been convicted of a felony or of any offence involving moral turpitude. Such statements shall be kept on file by the licensee and furnished to the colonel of the state police on demand.

Any person who is or has been an employee of a licensee and any licensee who divulges to anyone other than to his employer or as his employer shall direct, except before an authorized tribunal, any information acquired by him during such employment in respect to any of the work to which he has been assigned by such employer, and any such employee who wilfully makes a false report to his employer in respect to any such work, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both.

No minor shall be employed as an investigator or guard by a licensee if the use of firearms is required in the performance of his duties.

*CHAPTER 147 STATE AND OTHER POLICE, AND CERTAIN POWERS AND DUTIES
OF THE DEPARTMENT OF PUBLIC SAFETY*

Section 29

Badges, identification cards, weapons, equipment and vehicles

Section 29. No licensee or employee or agent of a licensee shall use a badge of any kind for identification purposes except a guard or watchman in uniform who shall wear any such badge on the left breast of his uniform. Such badge shall not contain the word "Police" or any part of the seal of the Commonwealth of Massachusetts or of any political subdivision thereof. A licensee or his employee or agent shall carry only such weapons and equipment as are authorized by the colonel of the state police; provided, however, that if said licensee, employee or agent, is authorized to carry a firearm, as defined in section one hundred and twenty-one of chapter one hundred and forty, said firearm shall be loaded while in the performance of his duties. A licensee, or his employee or agent, while in the performance of his duties, shall not carry an imitation firearm as defined in said section one hundred and twenty-one of said chapter one hundred and forty. A licensee or his employee or agent may use as identification a card, approved as to form by the colonel of the state police, which shall bear the signature of the licensee and, if such card is used as identification by an employee or agent, the signature of such employee or agent.

No motor vehicle used in the business of a licensee shall have displayed therein or thereon the words "police" or "emergency", and no such motor vehicle shall be deemed to be a special purpose motor vehicle assigned to emergency disaster services under the provisions of section seven I of chapter ninety.

Whoever violates any provision of this section shall be punished by a fine of not more than fifty dollars.

Section 29A

Daily records concerning guards carrying guns required

Section 29A. Any watch, guard or patrol agency shall maintain daily records which shall include the names of guards and other employees carrying guns in the performance of their duties, the purpose of their carrying such guns and whether such guns are the personal property of the guards and other employees or issued by such agency.

CHAPTER 148 FIRE PREVENTION

Section 39

Sales, possession, use, etc. of combustible or explosive substances to produce visible or audible effects; fireworks; definitions; exceptions; enforcement procedures; penalties

CHAPTER 148 FIRE PREVENTION

Section 39. No person shall sell, or keep or offer for sale, or have in his possession, or under his control, or use, or explode, or cause to explode, any combustible or explosive composition or substance, or any combination of such compositions or substances, or any other article, which was prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation.

For the purposes of this section the word “fireworks” shall include compositions, substances or other articles and shall also include blank cartridges or toy cannons in which explosives are used, the type of toy balloon which requires fire underneath to propel the same, firecrackers, cherry bombs, silver salutes, M-80’s, torpedoes, sky-rockets, Roman candles, sparklers, rockets, wheels, colored fires, fountains, mines, serpents, or other fireworks of like construction or any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance.

Whoever shall sell or keep for sale or offer for sale any fireworks in violation of this section shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment for not more than one year or both. Any officer qualified to serve criminal process may arrest without a warrant any person who shall sell or keep for sale or offer for sale any fireworks in violation of this section and any fireworks found in his possession or under his control upon conviction of such a violation shall be forfeited to the commonwealth.

Whoever shall have in his possession or under his control, or whoever shall use or explode or cause to explode any fireworks in violation of this section shall be punished by a fine of not less than ten dollars nor more than one hundred dollars. Any officer qualified to serve criminal process shall seize all of the fireworks mentioned herein without a warrant, and the fireworks seized shall, upon conviction of such violation, be forfeited to the commonwealth.

Notice of such seizure of the fireworks shall immediately be sent to the marshal by the officer making the seizure, and the fireworks seized shall be held and securely stored by that department until the marshal or his authorized representative takes them into his possession for disposal.

The term “fireworks” as used herein shall not include toy pistols, toy canes, toy guns or other devices in which paper caps or plastic caps containing twenty-five hundredths grains or less of explosive compound are used, if they are so constructed that the hand cannot come in contact with the cap when in place for the explosion, or toy pistol paper caps or plastic caps which contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times; and provided, further, that this section shall not apply (1) to the sale of any fireworks to be shipped directly out of the commonwealth, or (2) to the sale of any such article for the use of, and its use by, persons having obtained a permit for a supervised display of such fireworks from the marshal or some officer designated by him therefor, under any provision of section thirty-nine A, or (3) to the sale of flares, lanterns or fireworks for the use of, and their use by,

railroads, railways, boats, motor vehicles or other transportation agencies, or other activity, lawfully permitted or required to use any or all of such articles for signal purposes, illumination or otherwise, or (4) to the sale or use of blank cartridges for a duly licensed show or theatre or for signal or ceremonial purposes in athletics or sports, or to the sale of special blank cartridges and their use in the proper operation of industrial tools and equipment only, or (5) to experiments at a factory for explosives, or (6) to the sale of blank cartridges for the use of, or their use by, the militia or any organization of war veterans or other organizations authorized by law to parade in public, a color guard armed with firearms, or (7) in teaching the use of firearms by experts, or (8) to the sale of shells for firearms, cartridges, gunpowder, and for the purpose of using, and their use, or in connection with the hunting of game or in target practice with firearms, or (9) to farmers and fruit growers who, having obtained a permit under section thirteen of chapter forty-eight, use firecrackers for the control of damage to their crops by birds.

Section 60

Novelty lighters; application of section

Section 60. (a) For the purposes of this section, “novelty lighter” shall mean a mechanical or electrical device manufactured for the purpose of producing a flame to light cigarettes, cigars or pipes and which, due to the physical or audio features of the device, excluding its capability of producing a flame, would reasonably be expected to cause the lighter to be appealing or attractive to a child under the age of 10 including, but not limited to, lighters that resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, beverage, sporting equipment or that is capable of playing musical notes or displaying flashing lights.

(b) Whoever manufactures, offers for sale, sells, exchanges, gives away, stores or transports any novelty lighter shall be punished by a fine of not less than \$500 and not more than \$1,000 or by imprisonment for not more than 1 year, or both.

(c) This section shall not apply: (i) to a novelty lighter manufactured before January 1, 1980 and which is considered a collectible item within the collectible trade; (ii) to a disposable or refillable lighter with a logo, label, decal or artwork printed thereon or on heat shrinkable sleeves attached thereto but which does not otherwise resemble a novelty lighter; or (iii) if not intended for sale or use in the commonwealth, to the interstate transportation of a novelty lighter or to the temporary storage of a novelty lighter while in interstate commerce.

CHAPTER 149 LABOR AND INDUSTRIES

Section 62

Minors under eighteen

Section 62. No person shall employ a minor under eighteen or permit him to work: (1) in or about blast furnaces; (2) in the operation or management of hoisting machines; (3) in oiling or cleaning hazardous machinery in motion; (4) in the operation or use of any polishing or buffing wheel; (5) at switch tending; (6) at gate tending; (7) at track repairing; (8) as a brakeman, fireman, engineer, motorman or conductor upon a railroad or railway; (9) as a fireman or engineer upon any boat or vessel; (10) in operating motor vehicles of any description, except golf carts on a golf course if the minor is licensed to operate a motor vehicle, and except in the course of employment in an automobile repair shop; (11) in or about establishments wherein gunpowder, nitroglycerine, dynamite or other high or dangerous explosive is manufactured or compounded; (12) in the manufacture of white or yellow phosphorous or phosphorous matches; (13) in any distillery, brewery, or any other establishment where alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, are manufactured, packed, wrapped or bottled; (14) in that part of any hotel, theatre, concert hall, place of amusement or other establishment where intoxicating liquors are sold; (15) in any room or other subdivision of a building at a height of more than thirty feet above the floor of such room or other subdivision, or in any other place at a height of more than thirty feet above the ground level or water level, as the case may be; in the operation or management of any type of elevator other than a self-service elevator, as defined in the regulations of the board of elevator regulations and duly filed with the office of the state secretary, or in the cleaning or repairing of any type of elevator; or (16) in any job or occupation requiring the possession or use of a firearm. This section shall not prohibit the employment of minors in drug stores or retail food stores, nor shall it prevent the employment of a minor, to whom has been issued a license to operate motor vehicles, in the operation on a farm, or on a way for a distance not exceeding ten miles therefrom, of any truck, tractor, trailer or self-propelled agricultural instrument registered by a farmer under chapter ninety, nor in the operation of any vehicle not registered in accordance with the provisions of section nine of said chapter ninety if such vehicle is used exclusively for agricultural purposes.

CHAPTER 209A ABUSE PREVENTION

Section 3B

Order for suspension and surrender of firearms license; surrender of firearms; petition for review; hearing

Section 3B. Upon issuance of a temporary or emergency order under section four or five of this chapter, the court shall, if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, order the immediate suspension and surrender of any license to carry firearms and or firearms identification card which the defendant may hold and order the defendant to surrender all firearms, rifles, shotguns, machine guns and ammunition which he then controls, owns or possesses in accordance with the provisions of this chapter and any license to carry firearms or firearms identification cards which the defendant may hold shall be surrendered to the appropriate law enforcement officials in accordance with the provisions of this chapter and, said law enforcement official may store, transfer or otherwise dispose of any such weapon in accordance with the provisions

of section 129D of chapter 140; provided however, that nothing herein shall authorize the transfer of any weapons surrendered by the defendant to anyone other than a licensed dealer. Notice of such suspension and ordered surrender shall be appended to the copy of abuse prevention order served on the defendant pursuant to section seven. Law enforcement officials, upon the service of said orders, shall immediately take possession of all firearms, rifles, shotguns, machine guns, ammunition, any license to carry firearms and any firearms identification cards in the control, ownership, or possession of said defendant. Any violation of such orders shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment.

Any defendant aggrieved by an order of surrender or suspension as described in the first sentence of this section may petition the court which issued such suspension or surrender order for a review of such action and such petition shall be heard no later than ten court business days after the receipt of the notice of the petition by the court. If said license to carry firearms or firearms identification card has been suspended upon the issuance of an order issued pursuant to section four or five, said petition may be heard contemporaneously with the hearing specified in the second sentence of the second paragraph of section four. Upon the filing of an affidavit by the defendant that a firearm, rifle, shotgun, machine gun or ammunition is required in the performance of the defendant's employment, and upon a request for an expedited hearing, the court shall order said hearing within two business days of receipt of such affidavit and request but only on the issue of surrender and suspension pursuant to this section.

CHAPTER 211F OFFICE OF COMMUNITY CORRECTIONS

Section 3

Sentence to community corrections program; duration; conditions; eligibility

Section 3. (a) Any court exercising jurisdiction is authorized to sentence any eligible offender to a community corrections program; provided, however, that the court designate the duration of the sentence of imprisonment that otherwise would have been imposed.

(b) The court may dictate the duration and conditions of the sentence in a community corrections program for any period of time consistent with existing law.

(c) A sentence to a community corrections program shall be imposed as a condition of probation consistent with chapters two hundred and seventy-six and two hundred and seventy-six A. The court may modify the sentence of an offender serving a sentence in a community corrections program in the same manner as if the offender had been placed on probation.

CHAPTER 211F OFFICE OF COMMUNITY CORRECTIONS

(d) The commissioner shall develop interim standards for the eligibility of offenders for community corrections, taking into consideration the following factors:

- (1) the nature and circumstances of the offense;
- (2) the offender's mental state at the time of the offense;
- (3) the relationship, if any, between the offender and victim;
- (4) the nature and degree of the harm caused by the offense;
- (5) the community view of the gravity of the offense;
- (6) the public concern generated by the offense;
- (7) the age of the offender;
- (8) the deterrent effect a particular sentence may have on the commission of the offense by others;
- (9) the current incidence of the offense in the community and in the commonwealth as a whole;
- (10) the role of the offender in cases involving multiple offenders;
- (11) the mental and emotional condition of the offender;
- (12) the offender's physical condition;
- (13) the offender's family ties and responsibilities;
- (14) the offender's community ties;
- (15) the offender's degree of dependence upon criminal activity for a livelihood;
- (16) the offender's character and personal history;
- (17) the offender's amenability to correction, treatment, or supervision;
- (18) the offender's past criminal history, including convictions, acquittals, guilty pleas, pleas of nolo contendere, dismissals and matters continued without a finding;
- (19) the offender's arrest record;
- (20) the offender's past history of violence.

No offender shall be eligible for sentencing to a community corrections program who is: (1) convicted of a crime that results in serious bodily harm or death to another person, excluding offenses in which negligence was the primary element, (2) convicted of rape, attempted rape, or sexual assault, or (3) convicted of a crime involving the use of a firearm.

CHAPTER 214 EQUITY JURISDICTION

Section 7B

Noise pollution; shooting ranges; exemption from liability; hours of operation

Section 7B. Notwithstanding the provisions of any general or special law, rule or regulation to the contrary, no owner of a rifle, pistol, silhouette, skeet, trap, blackpowder, or other similar range shall be liable in any civil action or criminal prosecution in any matter relating to noise or noise pollution resulting from use of the range, provided said owner of the range was in compliance with any applicable noise control law, ordinance or by-laws in existence at the time of the construction of such range.

No owner shall be liable in any action for nuisance, and no court shall enjoin the use or operation of said range on the basis of noise or noise pollution, provided said owner was in compliance with any noise control law, ordinance or by-laws in existence at the time of the construction of the range.

The exemptions from liability and the immunities from prosecution provided in this section shall also extend to any owner who, in order to satisfy a requirement of law, regulation or by-law, relocates his range within the same parcel of land or a contiguous parcel of land, owned by him at the time that the commonwealth or its political subdivision commences enforcement of such a requirement or that the owner voluntarily complies with such a requirement. In order to maintain these exemptions from liability and immunities from prosecution, owners who relocate their ranges pursuant to the preceding sentence shall remain in compliance with the applicable noise control laws, ordinances or by-laws in existence at the time of the construction of the original range described in the first paragraph.

No standards in rules adopted by any state, city, or town agency for limiting levels of noise in terms of decibel level which may occur in the outdoor atmosphere shall apply to the ranges exempted from liability under the provisions of this section. Such ranges shall be prohibited from operating between the hours of ten o'clock post meridian and eight o'clock ante meridian unless otherwise allowed by the local governing body.

CHAPTER 233 WITNESSES AND EVIDENCE

Section 20D

Crimes subject to immunity

Section 20D. A witness who is called or who may be called to testify before a grand jury or in a criminal proceeding in the supreme judicial court, appeals court or superior court may, in the manner provided in section twenty E, be granted immunity in any proceeding or investigation involving the following crimes: abortion, arson, assault and battery to collect a loan, assault and battery by means of a dangerous weapon, assault to murder, breaking and entering a dwelling house or a building, bribery, burning of a building or dwelling house or other property, burglary, counterfeiting, deceptive advertising, electronic eavesdropping, embezzlement, extortion, firearm violations, forgery, fraudulent personal injury and property damage claims, violation of the gaming laws, gun registration violations, intimidation of a witness or of a juror, insurance law violations, kidnapping, larceny, lending of money or thing of value in violation of the general laws, liquor law violations, mayhem, murder, violation of the narcotic or harmful drug laws, perjury, prostitution, violations of environmental control laws (pollution), violations of conflicts of interest laws, consumer protection laws, pure food and drug law violations, receiving stolen property, robbery, subornation of perjury, uttering, or any felony, being an accessory to any of the foregoing offenses and conspiracy or attempt or solicitation to commit any of the foregoing offenses.

CHAPTER 265 CRIMES AGAINST THE PERSON

Section 17

Armed robbery; punishment

Section 17. Whoever, being armed with a dangerous weapon, assaults another and robs, steals or takes from his person money or other property which may be the subject of larceny shall be punished by imprisonment in the state prison for life or for any term of years; provided, however, that any person who commits any offence described herein while masked or disguised or while having his features artificially distorted shall, for the first offence be sentenced to imprisonment for not less than five years and for any subsequent offence for not less than ten years. Whoever commits any offense described herein while armed with a firearm, shotgun, rifle, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than five years. Any person who commits a subsequent offense while armed with a firearm, shotgun, rifle, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than 15 years.

Section 18

Assault with intent to rob or murder; weapons; punishment; victim sixty years or older; minimum sentence for repeat offenders

Section 18. (a) Whoever, being armed with a dangerous weapon, assaults a person sixty years or older with intent to rob or murder shall be punished by imprisonment in the state prison for not more than twenty years. Whoever commits any offense described herein while armed with a firearm, shotgun, rifle, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than ten years.

Whoever, after having been convicted of the crime of assault upon a person sixty years or older with intent to rob or murder while being armed with a dangerous weapon, commits a second or subsequent such crime, shall be punished by imprisonment for not less than two years. Said sentence shall not be reduced until two years of said sentence have been served nor shall the person convicted be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served two years of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. Whoever, after having been convicted of the crime of assault upon a person 60 years or older with intent to rob or murder while armed with a firearm, shotgun, rifle, machine gun or assault weapon commits a second or subsequent such crime shall be punished by imprisonment in the state prison for not less than 20 years.

(b) Whoever, being armed with a dangerous weapon, assaults another with intent to rob or murder shall be punished by imprisonment in the state prison for not more than twenty years. Whoever, being armed with a firearm, shotgun, rifle, machine gun or assault weapon assaults another with intent to rob or murder shall be punished by imprisonment in state prison for not less than five years and not more than 20 years.

Section 18A

Dangerous weapon; assault in dwelling house; punishment

Section 18A. Whoever, being armed with a dangerous weapon, enters a dwelling house and while therein assaults another with intent to commit a felony shall be punished by imprisonment in the state prison for life, or for a term of not less than ten years. No person imprisoned under this paragraph shall be eligible for parole in less than five years.

Whoever, being armed with a dangerous weapon defined as a firearm, shotgun, rifle or assault weapon, enters a dwelling house and while therein assaults another with intent to commit a felony shall be punished by imprisonment in the state prison for a term of not less than ten years. Such person shall not be eligible for parole prior to the expiration of ten years.

Section 18B

Use of firearms while committing a felony; second or subsequent offenses; punishment

Section 18B. Whoever, while in the commission of or the attempted commission of an offense which may be punished by imprisonment in the state prison, has in his possession or under his control a firearm, rifle or shotgun shall, in addition to the penalty for such offense, be punished by imprisonment in the state prison for not less than five years; provided, however, that if such firearm, rifle or shotgun is a large capacity weapon, as defined in section 121 of chapter 140, or if such person, while in the commission or attempted commission of such offense, has in his possession or under his control a machine gun, as defined in said section 121, such person shall be punished by imprisonment in the state prison for not less than ten years. Whoever has committed an offense which may be punished by imprisonment in the state prison and had in his possession or under his control a firearm, rifle or shotgun including, but not limited to, a large capacity weapon or machine gun and who thereafter, while in the commission or the attempted commission of a second or subsequent offense which may be punished by imprisonment in the state prison, has in his possession or under his control a firearm, rifle or shotgun shall, in addition to the penalty for such offense, be punished by imprisonment in the state prison for not less than 20 years; provided, however, that if such firearm, rifle or shotgun is a large capacity semiautomatic weapon or if such person, while in the commission or attempted commission of such offense, has in his possession or under his control a machine gun, such person shall be punished by imprisonment in the state prison for not less than 25 years.

A sentence imposed under this section for a second or subsequent offense shall not be reduced nor suspended, nor shall any person convicted under this section be eligible for probation, parole, furlough or work release or receive any deduction from his sentence for good conduct until he shall have served the minimum term of such additional sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution or the administrator of a county correctional institution, grant to such offender a temporary release in the custody of an officer of such institution for the following purposes only: (i) to attend the funeral of a spouse or next of kin; (ii) to visit a critically ill close relative or spouse; or (iii) to obtain emergency medical services unavailable at such institution. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file. The provisions of section 87 of chapter 276 relative to the power of the court to place certain offenders on probation shall not apply to any person 17 years of age or over charged with a violation of this section.

Section 21A

Assault, confinement, etc. of person for purpose of stealing motor vehicle; weapons; punishment

Section 21A. Whoever, with intent to steal a motor vehicle, assaults, confines, maims or puts any person in fear for the purpose of stealing a motor vehicle shall, whether he succeeds or fails in the perpetration of stealing the motor vehicle be punished by imprisonment in the state prison for not more than fifteen years or in a jail or house of correction for not more than two and one-half years and a fine of not less than one thousand nor more than fifteen thousand dollars; provided, however, that any person who commits any offense described herein while being armed with a dangerous weapon shall be punished by imprisonment in the state prison for not more than twenty years or in a jail or house of correction for not less than one year nor more than two and one-half years and a fine of not less than five nor more than fifteen thousand dollars. Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine gun or assault weapon, shall be punished by imprisonment in the state prison for not less than five years in state prison.

Section 22

Rape, generally; weapons; punishment; eligibility for furlough, education, training or employment programs

Section 22. (a) Whoever has sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise, or is committed during the commission or attempted commission of an offense defined in section fifteen A, fifteen B, seventeen, nineteen or twenty-six of this chapter, section fourteen, fifteen, sixteen, seventeen or eighteen of chapter two hundred and sixty-six or section ten of chapter two hundred and sixty-nine shall be punished by imprisonment in the state prison for life or for any term of years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

(b) Whoever has sexual intercourse or unnatural sexual intercourse with a person and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for not more than twenty years; and whoever commits a second or subsequent such

CHAPTER 265 CRIMES AGAINST THE PERSON

offense shall be punished by imprisonment in the state prison for life or for any term or years.

Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine-gun or assault weapon, shall be punished by imprisonment in the state prison for not less than ten years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

For the purposes of prosecution, the offense described in subsection (b) shall be a lesser included offense to that described in subsection (a).

Section 24

Assault with intent to commit rape; weapons; punishment; eligibility for furloughs, education, training or employment programs

Section 24. Whoever assaults a person with intent to commit a rape shall be punished by imprisonment in the state prison for not more than twenty years or by imprisonment in a jail or house of correction for not more than two and one-half years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years. Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than five years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 20 years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

Section 24B

Assault of child; intent to commit rape; weapons; punishment

Section 24B. Whoever assaults a child under sixteen with intent to commit a rape, as defined in section thirty-nine of chapter two hundred and seventy-seven, shall be punished by imprisonment in the state prison for life or for any term of years; and whoever over the age of eighteen commits a subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years but not less than five years.

Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for life or for any term of years, but not less than ten years. Whoever over the age of 18 commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.

Section 26

Kidnapping; weapons; child under age 16; punishment

Section 26. Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this commonwealth against his will, or forcibly carries or sends such person out of this commonwealth, or forcibly seizes and confines or inveigles or kidnaps another person, with intent either to cause him to be secretly confined or imprisoned in this commonwealth against his will, or to cause him to be sent out of this commonwealth against his will or in any way held to service against his will, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years. Whoever commits any offence described in this section with the intent to extort money or other valuable thing thereby shall be punished by imprisonment in the state prison for life or for any term of years.

Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than ten years or in the house of correction for not more than two and one-half years. The provisions of the preceding sentence shall not apply to the parent of a child under 18 years of age who takes custody of such child. Whoever commits such offense described in this section while being armed with a firearm, rifle, shotgun, machine gun or assault weapon with the intent to extort money or other valuable thing thereby shall be punished by imprisonment in the state prison for life or for any term of years but not less than 20 years.

Whoever commits any offense described in this section while armed with a dangerous weapon and inflicts serious bodily injury thereby upon another person or who sexually assaults such person shall be punished by imprisonment in the state prison for not less than 25 years. For purposes of this paragraph the term “serious bodily injury” shall mean bodily injury which results in a permanent disfigurement, protracted loss or impairment of a bodily function, limb or organ or substantial risk of death. For purposes of this

paragraph, the term "sexual assault" shall mean the commission of any act set forth in sections 13B, 13B1/2, 13B3/4, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B.

Whoever, without lawful authority, forcibly or secretly confines or imprisons a child under the age of 16 within the commonwealth against his will or forcibly carries or sends such person out of the commonwealth or forcibly seizes and confines or inveigles or kidnaps a child under the age of 16 with the intent either to cause him to be secretly confined or imprisoned in the commonwealth against his will or to cause him to be sent out of the commonwealth against his will or in any way held to service against his will, shall be punished by imprisonment in the state prison for not more than 15 years. The provisions of the preceding sentence shall not apply to the parent of a child under 16 years of age who takes custody of such child.

Section 39

Assault or battery for purpose of intimidation; weapons; punishment

(a) Whoever commits an assault or a battery upon a person or damages the real or personal property of a person with the intent to intimidate such person because of such person's race, color, religion, national origin, sexual orientation, gender identity, or disability shall be punished by a fine of not more than five thousand dollars or by imprisonment in a house of correction for not more than two and one-half years, or by both such fine and imprisonment. The court may also order restitution to the victim in any amount up to three times the value of property damage sustained by the owners of such property. For the purposes of this section, the term "disability" shall have the same meaning as "handicap" as defined in subsection 17 of section one of chapter one hundred and fifty-one B; provided, however, that for purposes of this section, the term "disability" shall not include any condition primarily resulting from the use of alcohol or a controlled substance as defined in section one of chapter ninety-four C.

(b) Whoever commits a battery in violation of this section and which results in bodily injury shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than five years, or by both such fine and imprisonment. Whoever commits any offense described in this subsection while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than two and one-half years. For purposes of this section, "bodily injury" shall mean substantial impairment of the physical condition, including, but not limited to, any burn, fracture of any bone, subdural hematoma, injury to any internal organ, or any injury which occurs as the result of repeated harm to any bodily function or organ, including human skin.

There shall be a surcharge of one hundred dollars on a fine assessed against a defendant convicted of a violation of this section; provided, however, that moneys from such surcharge shall be delivered forthwith to the treasurer of the commonwealth and deposited in the Diversity Awareness Education Trust Fund established under the

provisions of section thirty-nine Q of chapter ten. In the case of convictions for multiple offenses, said surcharge shall be assessed for each such conviction.

A person convicted under the provisions of this section shall complete a diversity awareness program designed by the secretary of the executive office of public safety in consultation with the Massachusetts commission against discrimination and approved by the chief justice of the trial court. A person so convicted shall complete such program prior to release from incarceration or prior to completion of the terms of probation, whichever is applicable.

CHAPTER 266 CRIMES AGAINST PROPERTY

Section 14

Burglary; armed; assault on occupants; weapons; punishment

Section 14. Whoever breaks and enters a dwelling house in the night time, with intent to commit a felony, or whoever, after having entered with such intent, breaks such dwelling house in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entry, or so arming himself in such house, or making an actual assault on a person lawfully therein, shall be punished by imprisonment in the state prison for life or for any term of not less than ten years.

Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. Whoever commits a subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 20 years. The sentence imposed upon a person who, after being convicted of any offence mentioned in this section, commits the like offence, or any other of the offences therein mentioned, shall not be suspended, nor shall he be placed on probation.

Section 17

Entering without breaking at night; breaking and entering in day time; weapons; punishment

Section 17. Whoever, in the night time, enters without breaking, or breaks and enters in the day time, a building, ship, vessel, or vehicle, with intent to commit a felony, the owner or any other person lawfully therein being put in fear, shall be punished by imprisonment in the state prison for not more than ten years. Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than five years or in the house of correction for not more than two and one-half years.

Section 18

Dwelling house; entry at night; breaking and entering in day time; weapons; punishment

Section 18. Whoever, in the night time, enters a dwelling house without breaking, or breaks and enters in the day time a building, ship or motor vehicle or vessel, with intent to commit a felony, no person lawfully therein being put in fear, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than five hundred dollars and imprisonment in jail for not more than two years. Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than five years or by imprisonment in the house of correction for not more than two and one-half years.

Section 30

Larceny; general provisions and penalties

Section 30. (1) Whoever steals, or with intent to defraud obtains by a false pretence, or whoever unlawfully, and with intent to steal or embezzle, converts, or secretes with intent to convert, the property of another as defined in this section, whether such property is or is not in his possession at the time of such conversion or secreting, shall be guilty of larceny, and shall, if the property stolen is a firearm, as defined in section one hundred and twenty-one of chapter one hundred and forty, or, if the value of the property stolen exceeds two hundred and fifty dollars, be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars and imprisonment in jail for not more than two years; or, if the value of the property stolen, other than a firearm as so defined, does not exceed two hundred and fifty dollars, shall be punished by imprisonment in jail for not more than one year or by a fine of not more than three hundred dollars; or, if the property was stolen from the conveyance of a common carrier or of a person carrying on an express business, shall be punished for the first offence by imprisonment for not less than six months nor more than two and one half years, or by a fine of not less than fifty nor more than six hundred dollars, or both, and for a subsequent offence, by imprisonment for not less than eighteen months nor more than two and one half years, or by a fine of not less than one hundred and fifty nor more than six hundred dollars, or both.

(2) The term “property”, as used in the section, shall include money, personal chattels, a bank note, bond, promissory note, bill of exchange or other bill, order or certificate, a book of accounts for or concerning money or goods due or to become due or to be delivered, a deed or writing containing a conveyance of land, any valuable contract in force, a receipt, release or defeasance, a writ, process, certificate of title or duplicate certificate issued under chapter one hundred and eighty-five, a public record, anything which is of the realty or is annexed thereto, a security deposit received pursuant to section fifteen B of chapter one hundred and eighty-six, electronically processed or stored data,

either tangible or intangible, data while in transit, telecommunications services, and any domesticated animal, including dogs, or a beast or bird which is ordinarily kept in confinement.

(3) The stealing of real property may be a larceny from one or more tenants, sole, joint or in common, in fee, for life or years, at will or sufferance, mortgagors or mortgagees, in possession of the same, or who may have an action of tort against the offender for trespass upon the property, but not from one having only the use or custody thereof. The larceny may be from a wife in possession, if she is authorized by law to hold such property as if sole, otherwise her occupation may be the possession of the husband. If such property which was of a person deceased is stolen, it may be a larceny from any one or more heirs, devisees, reversioners, remaindermen or others, who have a right upon such deceased to take possession, but not having entered, as it would be after entry. The larceny may be from a person whose name is unknown, if it would be such if the property stolen were personal, and may be committed by those who have only the use or custody of the property, but not by a person against whom no action of tort could be maintained for acts like those constituting the larceny.

(4) Whoever steals, or with intent to defraud obtains by a false pretense, or whoever unlawfully, and with intent to steal or embezzle, converts, secretes, unlawfully takes, carries away, conceals or copies with intent to convert any trade secret of another, regardless of value, whether such trade secret is or is not in his possession at the time of such conversion or secreting, shall be guilty of larceny, and shall be punished by imprisonment in the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars and imprisonment in jail for not more than two years. The term "trade secret" as used in this paragraph means and includes anything tangible or intangible or electronically kept or stored, which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information, design, process, procedure, formula, invention or improvement.

(5) Whoever steals or with intent to defraud obtains by a false pretense, or whoever unlawfully, and with intent to steal or embezzle, converts, or secretes with intent to convert, the property of another, sixty years of age or older, or of a person with a disability as defined in section thirteen K of chapter two hundred and sixty-five, whether such property is or is not in his possession at the time of such conversion or secreting, shall be guilty of larceny, and shall, if the value of the property exceeds two hundred and fifty dollars, be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than two and one-half years, or by a fine of not more than fifty thousand dollars or by both such fine and imprisonment; or if the value of the property does not exceed two hundred and fifty dollars, shall be punished by imprisonment in the house of correction for not more than two and one-half years or by a fine of not more than one thousand dollars or by both such fine and imprisonment. The court may order, regardless of the value of the property, restitution to be paid to the victim commensurate with the value of the property.

Section 101

Definitions applicable to Secs. 101 to 102D

Section 101. For the purposes of sections 101 to 102D, inclusive, the following terms shall have the following meanings, unless otherwise clearly required:—

“Ammunition”, cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any weapon utilizing a propellant including, but not limited to, ammunition produced by or for the military for national defense and security.

“Biological weapon”, any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance or biological product, except if intended for a purpose not prohibited under this chapter or chapter 265, specifically prepared in a manner to cause death, disease or other biological malfunction in a human, animal, plant or another living organism, deterioration of food, water, equipment supplies or material of any kind, or deleterious alteration of the environment.

“Black powder”, a compound or mixture of sulfur, charcoal and an alkali nitrate including, but not limited to, potassium or sodium nitrate.

“Chemical weapon”, (i) a toxic chemical or substance, including the precursors to any toxic chemical or substance; and (ii) ammunition or a device designed to cause death or bodily harm by means of the release of a toxic chemical or substance.

“Delivery system”, any equipment designed or adapted for use in connection with the deployment of chemical, biological or nuclear weapons.

“Denial of access”, contamination to an area, including any structures thereon, which poses a health risk to humans, animals or plants and which precludes the safe use of such area until the contaminant becomes inactive, decays or is removed.

“Destructive or incendiary device or substance”, an explosive, article or device designed or adapted to cause physical harm to persons or property by means of fire, explosion, deflagration or detonation and consisting of substance capable of being ignited, whether or not contrived to ignite or explode automatically.

“Element”, a substance that is made entirely from 1 type of atom.

“Explosive”, any element, compound or mixture that is manufactured, designed or used to produce an explosion and that contains an oxidizer, fuel or other ingredient, in such proportion, quantity or packing that an ignition by fire, friction, concussion, percussion or detonation of the element or of any part of the compound or mixture may cause such a

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sudden generation of highly heated gases that the resultant gaseous pressures, release of heat or fragmentation is capable of producing destructive effects on contiguous objects or of destroying life or causing bodily harm including, but not limited to, all material which is classified as division 1.1, 1.2, 1.3, 1.4, 1.5 or 1.6 explosives by the United States Department of Transportation or listed pursuant to 18 USC 841(d) and 27 CFR 555.23. Explosive shall not include a pyrotechnic, small arms ammunition, small arms ammunition primers, smokeless powder weighing less than 50 pounds and black powder weighing less than 5 pounds, unless possessed or used for an illegal purpose.

“Hoax explosive”, “hoax destructive or incendiary device or substance” or “hoax chemical, biological or nuclear weapon”, any device, article or substance that would cause a person to reasonably believe that such device, article or substance is: (i) an explosive; (ii) a destructive or incendiary device or substance; or (iii) a chemical, biological or nuclear weapon, harmful radioactive substance or poison capable of causing bodily injury which is actually an inoperable facsimile.

“Nuclear weapon”, a device designed for the purpose of causing bodily injury, death or denial of access through the release of radiation or radiological material either by propagation of nuclear fission or by means of any other energy source.

“Oxidizer”, a substance that yields oxygen readily to stimulate the combustion of organic matter or other fuel.

“Pyrotechnic”, any commercially manufactured combustible or explosive composition or manufactured article designed and prepared for the purpose of producing an audible effect or a visible display and regulated by chapter 148 including, but not limited to: (i) fireworks, firecrackers; (ii) flares, fuses and torpedoes, so-called, and similar signaling devices.

“Small arms ammunition”, any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns.

“Smokeless powder”, a rapid-burning solid material containing nitrocellulose used as a propellant.

Section 121

Entry on land with firearms

Section 121. Whoever, without right, enters upon the land of another with firearms, with intent to fire or discharge them thereon, and, having been requested by the owner or occupant of such land or by his agent to leave such land, remains thereon, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than two months, or both.

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Section 31

Delivery or receipt of articles to or from inmates

Section 31. Whoever delivers or procures to be delivered, or has in his possession with intent to deliver, to an inmate confined in any penal institution, or whoever deposits or conceals in or about the institution, or the dependencies thereof, or upon any land appurtenant thereto, or in any boat or vehicle going into the premises belonging to the institution, any article, with intent that an inmate shall obtain or receive it, and whoever receives from an inmate any article with intent to convey it out of the institution, contrary to the rules and regulations thereof, and without the knowledge and permission of the commissioner of correction or of the superintendent, keeper, sheriff or other officer in charge thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the state prison for not more than three years or in jail for not more than two and one half years.

Any inmate of a correctional institution who, upon returning from a furlough or a work program, brings or attempts to bring into said institution an illegal drug, gun, knife or other similar weapon as defined in section ten of chapter two hundred and sixty-nine of the General Laws, shall be punished by an additional sentence of not less than seven nor more than ten years in state prison.

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Section 10

Carrying dangerous weapons; possession of machine gun or sawed-off shotguns; possession of large capacity weapon or large capacity feeding device; punishment

Section 10. (a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

- (1) being present in or on his residence or place of business; or
- (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or
- (3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

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(4) having complied with the provisions of sections one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or

(5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; and whoever knowingly has in his possession; or knowingly has under control in a vehicle; a rifle or shotgun, loaded or unloaded, without either:

(1) being present in or on his residence or place of business; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(4) having in effect a firearms identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or

(5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns; or

(6) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years, or for not less than 18 months nor more than two and one-half years in a jail or house of correction. The sentence imposed on such person shall not be reduced to less than 18 months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 18 months of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file.

No person having in effect a license to carry firearms for any purpose, issued under section one hundred and thirty-one or section one hundred and thirty-one F of chapter one hundred and forty shall be deemed to be in violation of this section.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person seventeen years of age or older, charged with a violation of this subsection, or to any child between ages fourteen and seventeen so charged, if the court is

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of the opinion that the interests of the public require that he should be tried as an adult for such offense instead of being dealt with as a child.

The provisions of this subsection shall not affect the licensing requirements of section one hundred and twenty-nine C of chapter one hundred and forty which require every person not otherwise duly licensed or exempted to have been issued a firearms identification card in order to possess a firearm, rifle or shotgun in his residence or place of business.

(b) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, any stiletto, dagger or a device or case which enables a knife with a locking blade to be drawn at a locked position, any ballistic knife, or any knife with a detachable blade capable of being propelled by any mechanism, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches, or a slung shot, blowgun, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed starlike object intended to injure a person when thrown, or any armband, made with leather which has metallic spikes, points or studs or any similar device made from any other substance or a cestus or similar material weighted with metal or other substance and worn on the hand, or a manrikigusari or similar length of chain having weighted ends; or whoever, when arrested upon a warrant for an alleged crime, or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned and those mentioned in paragraph (a), shall be punished by imprisonment for not less than two and one-half years nor more than five years in the state prison, or for not less than six months nor more than two and one-half years in a jail or house of correction, except that, if the court finds that the defendant has not been previously convicted of a felony, he may be punished by a fine of not more than fifty dollars or by imprisonment for not more than two and one-half years in a jail or house of correction.

(c) Whoever, except as provided by law, possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred and forty, without permission under section one hundred and thirty-one of said chapter one hundred and forty; or whoever owns, possesses or carries on his person, or carries on his person or under his control in a vehicle, a sawed-off shotgun, as defined in said section one hundred and twenty-one of said chapter one hundred and forty, shall be punished by imprisonment in the state prison for life, or for any term of years provided that any sentence imposed under the provisions of this paragraph shall be subject to the minimum requirements of paragraph (a).

(d) Whoever, after having been convicted of any of the offenses set forth in paragraph (a), (b) or (c) commits a like offense or any other of the said offenses, shall be punished

by imprisonment in the state prison for not less than five years nor more than seven years; for a third such offense, by imprisonment in the state prison for not less than seven years nor more than ten years; and for a fourth such offense, by imprisonment in the state prison for not less than ten years nor more than fifteen years. The sentence imposed upon a person, who after a conviction of an offense under paragraph (a), (b) or (c) commits the same or a like offense, shall not be suspended, nor shall any person so sentenced be eligible for probation or receive any deduction from his sentence for good conduct.

(e) Upon conviction of a violation of this section, the firearm or other article shall, unless otherwise ordered by the court, be confiscated by the commonwealth. The firearm or article so confiscated shall, by the authority of the written order of the court be forwarded by common carrier to the colonel of the state police, who, upon receipt of the same, shall notify said court or justice thereof. Said colonel may sell or destroy the same, except that any firearm which may not be lawfully sold in the commonwealth shall be destroyed, and in the case of a sale, after paying the cost of forwarding the article, shall pay over the net proceeds to the commonwealth.

(f) The court shall, if the firearm or other article was lost by or stolen from the person lawfully in possession of it, order its return to such person.

(g) Whoever, within this commonwealth, produces for sale, delivers or causes to be delivered, orders for delivery, sells or offers for sale, or fails to keep records regarding, any rifle or shotgun without complying with the requirement of a serial number, as provided in section one hundred and twenty-nine B of chapter one hundred and forty, shall for the first offense be punished by confinement in a jail or house of correction for not more than two and one-half years, or by a fine of not more than five hundred dollars.

(h)(1) Whoever owns, possesses or transfers a firearm, rifle, shotgun or ammunition without complying with the provisions of section 129C of chapter 140 shall be punished by imprisonment in a jail or house of correction for not more than 2 years or by a fine of not more than \$500. Whoever commits a second or subsequent violation of this paragraph shall be punished by imprisonment in a house of correction for not more than 2 years or by a fine of not more than \$1,000, or both. Any officer authorized to make arrests may arrest without a warrant any person whom the officer has probable cause to believe has violated this paragraph.

(2) Any person who leaves a firearm, rifle, shotgun or ammunition unattended with the intent to transfer possession of such firearm, rifle, shotgun or ammunition to any person not licensed under section 129C of chapter 140 or section 131 of chapter 140 for the purpose of committing a crime or concealing a crime shall be punished by imprisonment in a house of correction for not more than 2 1/2 years or in state prison for not more than 5 years.

(i) Whoever knowingly fails to deliver or surrender a revoked or suspended license to carry or possess firearms or machine guns issued under the provisions of section one hundred and thirty-one or one hundred and thirty-one F of chapter one hundred and forty,

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or firearm identification card, or receipt for the fee for such card, or a firearm, rifle, shotgun or machine gun, as provided in section one hundred and twenty-nine D of chapter one hundred and forty, unless an appeal is pending, shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years or by a fine of not more than one thousand dollars.

(j) Whoever, not being a law enforcement officer, and notwithstanding any license obtained by him under the provisions of chapter one hundred and forty, carries on his person a firearm as hereinafter defined, loaded or unloaded or other dangerous weapon in any building or on the grounds of any elementary or secondary school, college or university without the written authorization of the board or officer in charge of such elementary or secondary school, college or university shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. For the purpose of this paragraph, "firearm" shall mean any pistol, revolver, rifle or smoothbore arm from which a shot, bullet or pellet can be discharged by whatever means.

Any officer in charge of an elementary or secondary school, college or university or any faculty member or administrative officer of an elementary or secondary school, college or university failing to report violations of this paragraph shall be guilty of a misdemeanor and punished by a fine of not more than five hundred dollars.

[There is no paragraph (k).]

(l) The provisions of this section shall be fully applicable to any person proceeded against under section seventy-five of chapter one hundred and nineteen and convicted under section eighty-three of chapter one hundred and nineteen, provided, however, that nothing contained in this section shall impair, impede, or affect the power granted any court by chapter one hundred and nineteen to adjudicate a person a delinquent child, including the power so granted under section eighty-three of said chapter one hundred and nineteen.

(m) Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession, or knowingly has under his control in a vehicle, a large capacity weapon or large capacity feeding device therefor who does not possess a valid Class A or Class B license to carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years. The possession of a valid firearm identification card issued under section 129B shall not be a defense for a violation of this subsection; provided, however, that any such person charged with violating this paragraph and holding a valid firearm identification card shall not be subject to any mandatory minimum sentence imposed by this paragraph. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served such minimum term of such sentence; provided, however, that the commissioner of correction

may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution or the administrator of a county correctional institution, grant to such offender a temporary release in the custody of an officer of such institution for the following purposes only: (i) to attend the funeral of a spouse or next of kin; (ii) to visit a critically ill close relative or spouse; or (iii) to obtain emergency medical services unavailable at such institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file. The provisions of section 87 of chapter 276 relative to the power of the court to place certain offenders on probation shall not apply to any person 17 years of age or over charged with a violation of this section.

The provisions of this paragraph shall not apply to the possession of a large capacity weapon or large capacity feeding device by (i) any officer, agent or employee of the commonwealth or any other state or the United States, including any federal, state or local law enforcement personnel; (ii) any member of the military or other service of any state or the United States; (iii) any duly authorized law enforcement officer, agent or employee of any municipality of the commonwealth; (iv) any federal, state or local historical society, museum or institutional collection open to the public; provided, however, that any such person described in clauses (i) to (iii), inclusive, is authorized by a competent authority to acquire, possess or carry a large capacity semiautomatic weapon and is acting within the scope of his duties; or (v) any gunsmith duly licensed under the applicable federal law.

(n) Whoever violates paragraph (a) or paragraph (c), by means of a loaded firearm, loaded sawed off shotgun or loaded machine gun shall be further punished by imprisonment in the house of correction for not more than 2 1/2 years, which sentence shall begin from and after the expiration of the sentence for the violation of paragraph (a) or paragraph (c).

(o) For purposes of this section, “loaded” shall mean that ammunition is contained in the weapon or within a feeding device attached thereto.

For purposes of this section, “ammunition” shall mean cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun.

Section 10A

Selling, giving or using silencers; confiscation and destruction

Section 10A. Any person, other than a federally licensed firearms manufacturer, an authorized agent of the municipal police training committee, or a duly authorized sworn law enforcement officer while acting within the scope of official duties and under the direct authorization of the police chief or his designee, or the colonel of the state police, who sells or keeps for sale, or offers, or gives or disposes of by any means other than submitting to an authorized law enforcement agency, or uses or possesses any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or

other firearm to be silent or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm shall be punished by imprisonment for not more than five years in state prison or for not more than two and one-half years in a jail or house of correction. Nothing contained herein shall be construed to prohibit a federally licensed firearms manufacturer from selling such instrument, attachment, weapon or appliance to authorized law enforcement agencies for law enforcement purposes or to the municipal police training committee for law enforcement training. Upon conviction of a violation of this section, the instrument, attachment or other article shall be confiscated by the commonwealth and forwarded, by the authority of the written order of the court, to the colonel of the state police, who shall destroy said article.

Section 10E

Firearms sales, distributions or transfers; penalties; eligibility for probation, parole, furlough or work release

Section 10E. Whoever, except as provided by law, in a single transaction or occurrence or in a series of transactions within a twelve month period, knowingly or intentionally distributes, sells, or transfers possession of a quantity of firearms, rifles, shotguns, machine guns, or any combination thereof, shall, if the quantity of firearms, rifles, shotguns, machine guns, or any combination thereof is:

(1) Three or more, but less than ten, be punished by a term of imprisonment of not more than ten years in the state prison. No sentence imposed under the provisions of this paragraph shall be for less than a mandatory minimum term of imprisonment of three years and a fine of not more than fifty thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(2) Ten or more, but less than twenty, be punished by a term of imprisonment of not more than ten years in the state prison. No sentence imposed under the provisions of this paragraph shall be for less than a mandatory minimum term of imprisonment of five years and a fine of not more than one hundred thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

(3) Twenty or more, be punished by a term of imprisonment not less than ten years up to life imprisonment in the state prison. No sentence imposed under the provisions of this paragraph shall be for less than a mandatory minimum term of imprisonment of ten years and a fine of not more than one hundred and fifty thousand dollars may be imposed but not in lieu of the mandatory minimum term of imprisonment, as established herein.

A prosecution commenced under this section shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of said section shall not be reduced to less than the mandatory minimum term of imprisonment as established in said section, nor shall any sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory minimum term of imprisonment.

A person convicted of violating any provision of this section shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release, or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of corrections may, on the recommendation of the warden, superintendent, or other person in charge of the correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes: to attend the funeral of a relative, to visit a critically ill relative, or to obtain emergency medical or psychiatric services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person, seventeen years of age or over, charged with a violation of said sections, or to any child between the age of fourteen and seventeen, so charged, if the court is of the opinion that the interests of the public require that he shall be tried for such offense instead of being dealt with as a child.

Section 10H

Carrying loaded firearm while under influence of liquor, marijuana, narcotic drugs, depressants or stimulant substances; punishment

Section 10H. Whoever, having in effect a license to carry firearms issued under section 131 or 131F of chapter 140, carries on his person, or has under his control in a vehicle, a loaded firearm, as defined in section 121 of said chapter 140, while under the influence of intoxicating liquor or marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section 1 of chapter 94C, or the vapors of glue shall be punished by a fine of not more than \$5,000 or by imprisonment in the house of correction for not more than two and one-half years, or by both such fine and imprisonment.

Section 11A

Definitions

Section 11A. For the purposes of this section and sections eleven B, eleven C and eleven D, the following words shall have the following meanings:—

“Firearm”, a firearm as defined in section one hundred and twenty-one of chapter one hundred and forty, or a rifle or shotgun.

“Serial number”, the number stamped or placed upon a firearm by the manufacturer in the original process of manufacture.

“Identification number”, the number stamped or placed upon a firearm by the colonel of the state police under authority of section eleven D.

Section 11B

Possession or control of firearm with serial or identification number removed or mutilated, while committing or attempting a felony; destruction

Section 11B. Whoever, while in the commission or attempted commission of a felony, has in his possession or under his control a firearm the serial number or identification number of which has been removed, defaced, altered, obliterated or mutilated in any manner shall be punished by imprisonment in the state prison for not less than two and one half nor more than five years, or in a jail or house of correction for not less than six months nor more than two and one half years. Upon a conviction of a violation of this section, said firearm or other article, by the authority of the written order of the court, shall be forwarded to the colonel of the state police, who shall cause said weapon to be destroyed.

Section 11C

Removal or mutilation of serial or identification numbers of firearms; receiving such firearm; destruction

Section 11C. Whoever, by himself or another, removes, defaces, alters, obliterates or mutilates in any manner the serial number or identification number of a firearm, or in any way participates therein, and whoever receives a firearm with knowledge that its serial number or identification number has been removed, defaced, altered, obliterated or mutilated in any manner, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not less than one month nor more than two and one half years. Possession or control of a firearm the serial number or identification number of which has been removed, defaced, altered, obliterated or mutilated in any manner shall be prima facie evidence that the person having such possession or control is guilty of a violation of this section; but such prima facie evidence may be rebutted by evidence that such person had no knowledge whatever that such number had been removed, defaced, altered, obliterated or mutilated, or by evidence that he had no guilty knowledge thereof. Upon a conviction of a violation of this section said firearm or other article shall be forwarded, by the authority of the written order of the court, to the colonel of the state police, who shall cause said firearm or other article to be destroyed.

Section 11E

Serial identification numbers on firearms

Section 11E. All firearms, rifles and shotguns of new manufacture, manufactured or delivered to any licensed dealer within the commonwealth shall bear serial numbers permanently inscribed on a visible metal area of said firearm, rifle or shotgun, and the manufacturer of said firearm, rifle or shotgun shall keep records of said serial numbers

and the dealer, distributor or person to whom the firearm, rifle or shotgun was sold or delivered.

No licensed dealer shall order for delivery, cause to be delivered, offer for sale or sell within the commonwealth any newly manufactured firearm, rifle or shotgun received directly from a manufacturer, wholesaler or distributor not so inscribed with a serial number nor shall any licensed manufacturer or distributor of firearms, rifles or shotguns deliver or cause to be delivered within the commonwealth any firearm, rifle or shotgun not complying with this section.

No licensed manufacturer within the commonwealth shall produce for sale within the United States, its territories or possessions any firearm, rifle or shotgun not complying with paragraph one of this section. Whoever violates this section shall be punished by a fine of five hundred dollars. Each such violation shall constitute a separate offense.

Section 12

Manufacturing and selling knives, slung shots, swords, bludgeons and similar weapons

Section 12. Whoever manufactures or causes to be manufactured, or sells or exposes for sale, an instrument or weapon of the kind usually known as a dirk knife, a switch knife or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches or a device or case which enables a knife with a locking blade to be drawn at a locked position, any ballistic knife, or any knife with a detachable blade capable of being propelled by any mechanism, slung shot, sling shot, bean blower, sword cane, pistol cane, bludgeon, blackjack, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed starlike object intended to injure a person when thrown, or a manrikigusari or similar length of chain having weighted ends; or metallic knuckles or knuckles of any other substance which could be put to the same use and with the same or similar effect as metallic knuckles, shall be punished by a fine of not less than fifty nor more than one thousand dollars or by imprisonment for not more than six months; provided, however, that sling shots may be manufactured and sold to clubs or associations conducting sporting events where such sling shots are used.

Section 12A

Air rifles; sale to minors

Section 12A. Whoever sells to a minor under the age of eighteen or whoever, not being the parent, guardian or adult teacher or instructor, furnishes to a minor under the age of

eighteen an air rifle or so-called BB gun, shall be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not more than six months.

Section 12B

Air rifles; possession by minors; shooting

Section 12B. No minor under the age of eighteen shall have an air rifle or so-called BB gun in his possession while in any place to which the public has a right of access unless he is accompanied by an adult or unless he is the holder of a sporting or hunting license and has on his person a permit from the chief of police of the town in which he resides granting him the right of such possession. No person shall discharge a BB shot, pellet or other object from an air rifle or so-called BB gun into, from or across any street, alley, public way or railroad or railway right of way, and no minor under the age of eighteen shall discharge a BB shot, pellet or other object from an air rifle or BB gun unless he is accompanied by an adult or is the holder of a sporting or hunting license. Whoever violates this section shall be punished by a fine of not more than one hundred dollars, and the air rifle or BB gun or other weapon shall be confiscated. Upon a conviction of a violation of this section the air rifle or BB gun or other weapon shall, by the written authority of the court, be forwarded to the colonel of the state police, who may dispose of said article in the same manner as prescribed in section ten.

Section 12D

Rifle or shotgun loaded with shells or cartridges; unloaded rifle or shotgun; carrying on public way prohibited; exceptions; punishment

Section 12D. (a) Except as exempted or provided by law, no person shall carry on his person on any public way a loaded rifle or shotgun having cartridges or shells in either the magazine or chamber thereof. For purposes of this section, "loaded shotgun or loaded rifle" shall mean any shotgun or rifle having ammunition in either the magazine or chamber thereof, such ammunition including a live cartridge, primer (igniter), bullet or propellant powder designed for use in any firearm, rifle or shotgun and, in the case of a muzzle loading or black powder shotgun or rifle, containing powder in the flash pan, a percussion cap and shot or ball; but the term "loaded shotgun or loaded rifle" shall not include a shotgun or rifle loaded with a blank cartridge, which contains no projectile within such blank or within the bore or chamber of such shotgun or rifle.

Whoever violates the provisions of this subsection shall be punished by a fine of not less than \$500 nor more than \$5,000 or by imprisonment in the house of correction for not more than two years, or by both such fine and imprisonment, and may be arrested without a warrant; provided, however, that if such rifle or shotgun is a large capacity weapon, as defined in section 121 of chapter 140, such person shall be punished by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor

more than ten years, or by both such fine and imprisonment, and may be arrested without a warrant.

(b) Except as exempted or provided by law, no person shall carry on his person on any public way an unloaded rifle or shotgun, unless such rifle or shotgun is enclosed in a case.

Whoever violates the provisions of this subsection shall be punished by a fine of not less than \$100 nor more than \$1,000, and may be arrested without a warrant; provided, however, that if such unloaded rifle or shotgun is a large capacity weapon and is carried simultaneously with a fully or partially loaded large capacity feeding device, such person shall be punished by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment, and may be arrested without a warrant.

This subsection shall not apply to drills, parades, military reenactments or other commemorative ceremonies, color guards or memorial service firing squads, so-called, as permitted by law.

(c) Upon a conviction of a violation of any provision of this section, such rifle or shotgun shall be confiscated by the commonwealth and, upon written order of the court, such weapon shall be forwarded to the colonel of the state police, who may dispose of such weapon in the manner prescribed in section 10.

(d) The provisions of this section shall not apply to the carrying of a loaded or unloaded rifle or shotgun on a public way by (i) any officer, agent or employee of the commonwealth or any other state or the United States, including any federal, state or local law enforcement personnel; (ii) any member of the military or other service of any state or the United States, including members of the national guard, reserves and junior reserve officer training corps; (iii) any duly authorized law enforcement officer, agent or employee of any municipality of the commonwealth; provided, however, that any such person described in clauses (i) to (iii), inclusive, shall be authorized by a competent authority to so carry a loaded or unloaded rifle or shotgun on a public way and such person is acting within the scope of his duties or training; or (iv) a person who is lawfully engaged in hunting and is the holder of a valid hunting or sporting license issued pursuant to chapter 131. This section shall not apply to the operation of a shooting gallery, licensed and defined under the provisions of section 56A of chapter 140, nor to persons using the same.

Section 12E

Discharge of a firearm within 500 feet of a dwelling or other building in use; exceptions

Section 12E. Whoever discharges a firearm as defined in section one hundred and twenty-one of chapter one hundred and forty, a rifle or shotgun within five hundred feet

of a dwelling or other building in use, except with the consent of the owner or legal occupant thereof, shall be punished by a fine of not less than fifty nor more than one hundred dollars or by imprisonment in a jail or house of correction for not more than three months, or both. The provisions of this section shall not apply to (a) the lawful defense of life and property; (b) any law enforcement officer acting in the discharge of his duties; (c) persons using underground or indoor target or test ranges with the consent of the owner or legal occupant thereof; (d) persons using outdoor skeet, trap, target or test ranges with the consent of the owner or legal occupant of the land on which the range is established; (e) persons using shooting galleries, licensed and defined under the provisions of section fifty-six A of chapter one hundred and forty; and (f) the discharge of blank cartridges for theatrical, athletic, ceremonial, firing squad, or other purposes in accordance with section thirty-nine of chapter one hundred and forty-eight.

Section 12F

Airport secure areas; possession or placement of a cutting device or prohibited weapon; punishment

Section 12F. (a) For the purposes of this section, the following words shall have the following meanings:—

“Airplane”, an aircraft operated by an air carrier holding a certificate issued under 49 U.S.C. 41101 or any aircraft ordinarily used to transport passengers or cargo for hire.

“Cutting device”, any knife, cutlery, straight razor, box cutter or other device containing a fixed, folding or retractable blade, which is not included in the list of weapons set forth in paragraph (b) of section 10.

“Prohibited weapon”, any infernal machine as defined in section 102A of chapter 266, any stun gun as defined in section 131J of chapter 140, any rifle, shotgun or firearm as defined in section 121 of chapter 140 or any weapon included in the list of weapons set forth in paragraph (b) of section 10.

“Secure area”, any area of an airport to which access is restricted through security measures by the airport authority or a public agency and the area beyond a passenger or property screening checkpoint at an airport.

“Airplane cabin”, any passenger or flight crew area within an airplane while the airplane is on the ground in the commonwealth or over the commonwealth.

(b) Whoever occupies, or attempts to enter or occupy, a secure area of an airport or the cabin of an airplane, knowingly having in his possession or in his control and knowingly concealing, a cutting device or a prohibited weapon, notwithstanding any license to possess such a weapon or device, shall be punished by imprisonment in the house of correction for not more than 2 1/2 years or by imprisonment in the state prison for not

more than 5 years or by a fine of not more than \$5,000, or by both such fine and imprisonment.

(c) Whoever, with intent to commit a felony, occupies, or attempts to enter or occupy, a secure area of an airport or the cabin of an airplane knowingly having in his possession or in his control a cutting device or a prohibited weapon shall be punished by imprisonment in the house of correction for not more than 2 years or by imprisonment in the state prison for not more than 10 years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

(d) Whoever, with intent to commit a felony, places, attempts to place or attempts to have placed within a secure area of an airport or the cabin of an airplane, a prohibited weapon or cutting device, notwithstanding any license to possess such a weapon or device, shall be punished by imprisonment in the house of correction for not more than 2 1/2 years or by imprisonment in the state prison for not more than 10 years or by a fine of not more than \$10,000, or by both such fine and imprisonment.

(e) Whoever willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, violates subsection (b), (c) or (d) shall be punished by imprisonment in the state prison for not more than 20 years or by a fine of not more than \$20,000, or by both such fine and imprisonment.

(f) This section shall not apply to:—

(1) any law enforcement officer of a state or political subdivision of a state, an officer or employee of the United States government or United States military personnel authorized to carry prohibited weapons or cutting devices in an official capacity;

(2) a duly licensed individual transporting an unloaded, lawful weapon or cutting device in baggage not accessible to a passenger in flight and, in the case of a lawful weapon, if the air carrier was informed of the presence of the weapon;

(3) a cutting device, which is otherwise lawfully possessed, ordinarily used in the course of the holder's employment, trade or occupation, while the holder is authorized to conduct such employment, trade or occupation within a secure area of an airport or airplane cabin.

Section 14

Deadly weapons, explosives, chemical or biological agents, or other deadly device or substance; threatened use or presence; threat to hijack; disruption of school, public building or transport; punishment; restitution

Section 14. (a) For the purposes of this section, the following words shall have the following meanings:—

“Hijack”, to commandeer or to take control without authority.

“School”, any public or private preschool, headstart facility, elementary, vocational or secondary school, college or university.

“Serious bodily injury”, bodily injury which results in a permanent disfigurement, protracted loss or impairment of a bodily function, limb or organ, or substantial risk of death.

(b) Whoever willfully communicates or causes to be communicated, either directly or indirectly, orally, in writing, by mail, by use of a telephone or telecommunication device including, but not limited to, electronic mail, Internet communications and facsimile communications, through an electronic communication device or by any other means, a threat:—

(1) that a firearm, rifle, shotgun, machine gun or assault weapon, as defined in section 121 of chapter 140, an explosive or incendiary device, a dangerous chemical or biological agent, a poison, a harmful radioactive substance or any other device, substance or item capable of causing death, serious bodily injury or substantial property damage, will be used at a place or location, or is present or will be present at a place or location, whether or not the same is in fact used or present; or

(2) to hijack an aircraft, ship, or common carrier thereby causing anxiety, unrest, fear, or personal discomfort to any person or group of persons shall be punished by imprisonment in the state prison for not more than 20 years or imprisonment in the house of correction for not more than 2 1/2 years, or by fine of not more than \$10,000, or by both such fine and imprisonment.

(c) Whoever willfully communicates or causes to be communicated such a threat thereby causing either the evacuation or serious disruption of a school, school related event, school transportation, or a dwelling, building, place of assembly, facility or public transport, or an aircraft, ship or common carrier, or willfully communicates or causes serious public inconvenience or alarm, shall be punished by imprisonment in the state prison for not less than 3 years nor more than 20 years or imprisonment in the house of correction for not less than 6 months nor more than 2 1/2 years, or by fine of not less than \$1,000 nor more than \$50,000, or by both such fine and imprisonment.

(d) The court shall, after conviction, conduct a hearing to ascertain the extent of costs incurred, damages and financial loss suffered by an individual, public or private entity and the amount of property damage caused as a result of the defendant’s crime. A person found guilty of violating this section shall, in all cases, in addition to any other punishment, be ordered to make restitution to the individual, public or private entity for any costs incurred, damages and financial loss sustained as a result of the commission of the crime. Restitution shall be imposed in addition to incarceration or fine, and not in lieu thereof, however, the court shall consider the defendant’s present and future ability to pay

in its determinations regarding a fine. In determining the amount, time and method of payment of restitution, the court shall consider the financial resources of the defendant and the burden restitution will impose on the defendant.

(e) Nothing in this section shall authorize the criminal prosecution of picketing, public demonstrations or other similar forms of expressing views.

CHAPTER 272 CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER

Section 64

Tramps; punishment; entering buildings; injuries to or threats against persons or property; carrying weapons

Section 64. A tramp shall be punished by imprisonment in the house of correction for not more than thirty days; and if he enters a dwelling house or other building without the consent of the owner or occupant thereof, or wilfully or maliciously injures or threatens to injure any person therein, or threatens to do any injury to any person, or to the property of another, or is found carrying a firearm or other dangerous weapon, he shall be punished by imprisonment in the house of correction for not less than one nor more than two and one half years, but notwithstanding the foregoing a tramp found carrying a firearm or other dangerous weapon in violation of section ten of chapter two hundred and sixty-nine may be prosecuted and punished thereunder.

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Section 58A

Conditions for release of persons accused of certain offenses involving physical force or abuse; hearing; order; review

Section 58A. (1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another or any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209 A or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A or while an order of protection issued under said chapter 209A was in effect against such

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person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268 or a third or subsequent conviction for a violation of section 24 of chapter 90, or arrested and charged with a violation of paragraph (a), (c) or (m) of section 10 of chapter 269; provided, however, that the commonwealth may not move for an order of detention under this section based on possession of a large capacity feeding device without simultaneous possession of a large capacity weapon; or arrested and charged with a violation of section 10G of said chapter 269.

(2) Upon the appearance before a superior court or district court judge of an individual charged with an offense listed in subsection (1) and upon the motion of the commonwealth, the judicial officer shall hold a hearing pursuant to subsection (4) issue an order that, pending trial, the individual shall either be released on personal recognizance without surety; released on conditions of release as set forth herein; or detained under subsection (3).

If the judicial officer determines that personal recognizance will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a federal, state or local crime during the period of release; and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community that the person—

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode or travel;

(v) avoid all contact with an alleged victim of the crime and with any potential witness or witnesses who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial service agency, or other agency;

(vii) comply with a specified curfew;

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- (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, without a prescription by a licensed medical practitioner;
- (x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency and remain in a specified institution if required for that purpose;
- (xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require;
- (xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;
- (xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and
- (xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

The judicial officer may at any time amend the order to impose additional or different conditions of release.

(3) If, after a hearing pursuant to the provisions of subsection (4), the district or superior court justice finds by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community, said justice shall order the detention of the person prior to trial. A person detained under this subsection shall be brought to a trial as soon as reasonably possible, but in absence of good cause, the person so held shall not be detained for a period exceeding ninety days excluding any period of delay as defined in Massachusetts Rules of Criminal Procedure Rule 36(b)(2). A justice may not impose a financial condition under this section that results in the pretrial detention of the person. Nothing in this section shall be interpreted as limiting the imposition of a financial condition upon the person to reasonably assure his appearance before the courts.

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(4) When a person is held under arrest for an offense listed in subsection (1) and upon a motion by the commonwealth, the judge shall hold a hearing to determine whether conditions of release will reasonably assure the safety of any other person or the community.

The hearing shall be held immediately upon the person's first appearance before the court unless that person, or the attorney for the commonwealth, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed seven days, and a continuance on motion of the attorney for the commonwealth may not exceed three business days. During a continuance, the individual shall be detained upon a showing that there existed probable cause to arrest the person. At the hearing, such person shall have the right to be represented by counsel, and, if financially unable to retain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information. The rules concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing. The facts the judge uses to support findings pursuant to subsection (3), that no conditions will reasonably assure the safety of any other person or the community, shall be supported by clear and convincing evidence. In a detention order issued pursuant to the provisions of said subsection (3) the judge shall (a) include written findings of fact and a written statement of the reasons for the detention; (b) direct that the person be committed to custody or confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentence or being held in custody pending appeal; and (c) direct that the person be afforded reasonable opportunity for private consultation with his counsel. The person may be detained pending completion of the hearing. The hearing may be reopened before or after a determination by the justice, at any time before trial if the justice finds that information exists that was not known at the time of the hearing and that has a material bearing on the issue and whether there are conditions of release that will reasonably assure the safety of any other person and the community.

(5) In his determination as to whether there are conditions of release that will reasonably assure the safety of any other individual or the community, said justice, shall, on the basis of any information which he can reasonably obtain, take into account the nature and seriousness of the danger posed to any person or the community that would result by the person's release, the nature and circumstances of the offense charged, the potential penalty the person faces, the person's family ties, employment record and history of mental illness, his reputation, the risk that the person will obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness or juror, his record of convictions, if any, any illegal drug distribution or present drug dependency, whether the person is on bail pending adjudication of a prior charge, whether the acts alleged involve abuse as defined in section one of chapter two hundred and nine A, or violation of a temporary or permanent order issued pursuant to section eighteen or thirty-four B of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four or five of chapter two hundred and nine A, or sections fifteen or twenty of chapter two hundred and nine C, whether the

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person has any history of orders issued against him pursuant to the aforesaid sections, whether he is on probation, parole or other release pending completion of sentence for any conviction and whether he is on release pending sentence or appeal for any conviction.

(6) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(7) A person aggrieved by the denial of a district court justice to admit him to bail on his personal recognizance with or without surety may petition the superior court for a review of the order of the recognizance and the justice of the district court shall thereupon immediately notify such person of his right to file a petition for review in the superior court. When a petition for review is filed in the district court or with the detaining authority subsequent to petitioner's district court appearance, the clerk of the district court or the detaining authority, as the case may be, shall immediately notify by telephone, the clerk and probation officer of the district court, the district attorney for the district in which the district court is located, the prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for review, either in the district court or with the detaining authority, shall forthwith transmit the petition for review, a copy of the complaint and the record of the court, including the appearance of the attorney, if any is entered, and a summary of the court's reasons for denying the release of the defendant on his personal recognizance with or without surety to the superior court for the county in which the district court is located, if a justice thereof is then sitting, or to the superior court of the nearest county in which a justice is then sitting; the probation officer of the district court shall transmit forthwith to the probation officer of the superior court, copies of all records of the probation office of said district court pertaining to the petitioner, including the petitioner's record of prior convictions, if any, as currently verified by inquiry of the commissioner of probation. The district court or the detaining authority, as the case may be, shall cause any petitioner in its custody to be brought before the said superior court within two business days of the petition having been filed. The district court is authorized to order any officer authorized to execute criminal process to transfer the petitioner and any papers herein above described from the district court or the detaining authority to the superior court, and to coordinate the transfer of the petitioner and the papers by such officer. The petition for review shall constitute authority in the person or officer having custody of the petitioner to transport the petitioner to said superior court without the issuance of any writ or other legal process; provided, however, that any district or superior court is authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before the superior court.

The superior court shall in accordance with the standards set forth in section fifty-eight A, hear the petition for review under section fifty-eight A as speedily as practicable and in any event within five business days of the filing of the petition. The justice of the superior court hearing the review may consider the record below which the commonwealth and the person may supplement. The justice of the superior court may, after a hearing on the petition for review, order that the petitioner be released on bail on

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his personal recognizance without surety, or, in his discretion, to reasonably assure the effective administration of justice, make any other order of bail or recognizance or remand the petitioner in accordance with the terms of the process by which he was ordered committed by the district court.

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Section 25

Punishment of habitual criminals

Section 25. (a) Whoever is convicted of a felony and has been previously twice convicted and sentenced to state prison or state correctional facility or a federal corrections facility for a term not less than 3 years by the commonwealth, another state or the United States, and who does not show that the person has been pardoned for either crime on the ground that the person was innocent, shall be considered a habitual criminal and shall be punished by imprisonment in state prison or state correctional facility for such felony for the maximum term provided by law.

(b) Whoever: (i) has been convicted 2 times previously of 1 or more of the following offenses: section 1, section 13, section 131/2, clause (i) of subsection (b) of section 13A, section 13B, subsection (a) of section 13B 1/2, section 13B 3/4, section 13F, committing an assault and battery upon a child and by such assault and battery causing bodily injury or substantial bodily injury under subsection (b) of section 13J, section 14, section 15, clause (i) of subsection (c) of section 15A, section 16, sections 17 and 18 if armed with a firearm, shotgun, rifle, machine gun, or assault weapon, section 18A, section 18B, section 18C, section 21, section 22, section 22A, section 22B, section 22C, section 23A, section 23B, section 24, section 24B, section 26, section 26B, section 26C, section 28, and subsection (b) of section 39 of chapter 265, section 14 or section 102C of chapter 266, section 4A, section 17, subsection (b) of section 29A, subsection (b) of section 29B, section 29C, section 35A and subsection (b) of section 53A of chapter 272, or has been convicted 2 times previously of a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, arising out of charges separately brought and tried, and arising out of separate and distinct incidents that occurred at different times, where the second offense occurred subsequent to the first conviction; (ii) has been sentenced to incarceration at a state prison or state correctional facility or federal correction facility for at least 3 years to be served for each of the prior 2 convictions; and (iii) does not show that he has been pardoned for either prior offense on the ground that he was innocent shall, upon conviction of 1 of the enumerated offenses in clause (i), where the offense occurred subsequent to the second conviction, shall be considered a habitual offender and shall be imprisoned in the state prison or state correctional facility for the maximum term provided by law for the offense enumerated in clause (i). No sentence imposed under this subsection shall be reduced or suspended nor shall such person so sentenced be eligible for probation, parole, work release or furlough or receive any deduction from such person's sentence for good conduct. A sentence imposed on a habitual offender under this subsection, if such habitual offender is

incarcerated at a state prison or state correctional facility, shall commence upon the conclusion of the sentence such habitual offender is serving at the time of sentencing.

(c) No person shall be considered a habitual offender under subsection (b) based upon any offense for which such person was adjudicated a youthful offender, a delinquent child, or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority for which a person was treated as a juvenile.

(d) Upon sentencing a defendant to a qualifying term of incarceration, or prior to accepting a guilty plea for any qualifying offense listed in subsection (b), the court shall inform the defendant that a conviction or plea of guilty for such an offense implicates the habitual offender statute and that upon conviction or plea of guilty for the third or subsequent of said offenses: (1) the defendant may be imprisoned in the state prison for the maximum term provided by law for such third or subsequent offense; (2) no sentence may be reduced or suspended; and (3) the defendant may be ineligible for probation, parole, work release or furlough, or to receive any deduction in sentence for good conduct. No otherwise valid plea or conviction shall be vacated based upon the failure to give such warnings.

Section 69

Aggravating and mitigating circumstances in death penalty cases

Section 69. (a) In all cases in which the death penalty may be authorized, the statutory aggravating circumstances are:

(1) the murder was committed on a victim who was killed while serving in the performance of his official duties as one or more of the following: police officer, special police officer, state or federal law enforcement officer, firefighter, officer or employee of the department of correction, officer or employee of a sheriff's department, officer or employee of a jail or officer or employee of a house of correction;

(2) the murder was committed by a defendant who was at the time incarcerated in a jail, house of correction, prison, state prison or a correctional or penal institution or a facility used for the housing or treatment or housing and treatment of prisoners;

(3) the murder was committed on a victim who was killed while engaged in the performance of his official duties as a judge, prosecuting attorney, juror, or witness;

(4) the murder was committed by a defendant who had previously been convicted of murder in the first degree, or of an offense in any other federal, state or territorial jurisdiction of the United States which is the same as or necessarily includes the elements of the offense of murder in the first degree;

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(5) the murder was committed by the defendant pursuant to a contract, agreement or understanding by which he was to receive money or anything of value in return for committing the murder;

(6) the murder was committed by the defendant for the purpose of avoiding, interfering with, or preventing a lawful arrest of the defendant or another, or the murder was committed by the defendant for the purpose of effectuating an escape or attempting to effectuate an escape of the defendant or another from custody in a place of lawful confinement;

(7) the murder involved torture to the victim or the intentional infliction of extreme pain prior to death demonstrating a total disregard to the suffering of the victim;

(8) the murder was committed as part of a course of conduct involving the killing of or causing serious bodily injury to or the attempted killing of or the attempted causing of serious bodily injury to more than one person by the defendant;

(9) the murder was committed by means of a destructive device, bomb, or explosive planted, hidden, mailed, delivered, or concealed in any place, area, dwelling, building, or structure by the defendant or the murder was committed by means such that the defendant knew or reasonably should have known that his act or acts would create a grave risk of death or serious bodily injury to more than one person; or

(10) the murder was committed by the defendant and occurred during the commission or attempted commission or flight after committing or flight after attempting to commit aggravated rape, rape, rape of a child, indecent assault and battery on a child under fourteen, assault with intent to rape, assault on a child under sixteen years of age with intent to rape, kidnapping for ransom, kidnapping, armed robbery, unarmed robbery, breaking and entering with intent to commit a felony, armed assault in a dwelling, arson, confining or putting in fear or otherwise harming another for the purpose of stealing from depositories, or the murder occurred while the defendant was in possession of a sawed-off shotgun or a machine gun.

(b) In all cases in which the death penalty may be authorized, the mitigating circumstances shall be any factors proffered by the defendant or the commonwealth which are relevant in determining whether to impose a sentence less than death, including, but not limited to, any aspect of the defendant's character, propensities, or record and any of the circumstances of the murder, including but not limited to the following:

(1) the defendant has no significant history of prior criminal convictions;

(2) the victim was a participant in the defendant's conduct or had consented to it;

(3) the murder was committed while the defendant was under extreme duress or under the domination or control of another;

(4) the offense was committed while the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was impaired as a result of a mental disease or defect, organic brain damage, emotional illness brought on by stress or prescribed medication, intoxication, or legal or illegal drug use by the defendant which was insufficient to establish a defense to the murder but which substantially affected his judgment;

(5) the defendant was over the age of seventy-five at the time of the murder, or any other relevant consideration regarding the age of the defendant at the time of the murder;

(6) the defendant was battered or otherwise physically, sexually, or mentally abused by the victim in connection with or immediately prior to the murder for which the defendant was convicted;

(7) the defendant was experiencing post-traumatic stress syndrome caused by military service during a declared or undeclared war.