

.G.L.A. Pt. IV, T. I, Ch. 270, Refs & Annos

M.G.L.A. 270 § 1

§ 1. Adulterating liquor; sale; forfeiture

Whoever, for the purpose of sale, adulterates any liquor used or intended for drink with Indian cockle, vitriol, grains of paradise, opium, alum, cochineal, capsicum, copperas, laurel water, logwood, Brazil wood, sugar of lead or any other substance poisonous or injurious to health, and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison for not more than three years; and the articles so adulterated shall be forfeited.

M.G.L.A. 270 § 1A

§ 1A. Eyeglasses or sunglasses; specifications; flammable frames; sales

No person shall distribute, sell or deliver any eyeglasses or sunglasses unless said eyeglasses or sunglasses are fitted with plastic lenses, laminated lenses, heat-treated glass lenses or lenses made impact-resistant by other methods. The provisions of this paragraph shall not apply if a physician or optometrist, having found that such lenses will not fulfill the visual requirements of a particular patient, directs in writing the use of other lenses and gives written notification thereof to the patient. Before they are mounted in frames, all impact-resistant eyeglass and sunglass lenses shall be capable of withstanding an impact test of a steel ball five-eighths of an inch in diameter weighing approximately fifty-six hundredths of an ounce dropped from a height of fifty inches. Raised ledge multifocal lenses shall be capable of withstanding said impact test but need not be tested beyond initial design testing. All prescription glass lenses shall withstand said impact test. To demonstrate that all nonprescription glass lenses, plastic lenses and laminated lenses are capable of withstanding said impact test, the manufacturer of such lenses shall subject to said impact test a statistically significant sampling of lenses from each production batch, and the lenses so tested shall be representative of the finished forms as worn by the wearer. Plastic prescription and plastic nonprescription lenses, tested on the basis of statistical significance, may be tested in uncut finished or semifinished form at the point of original manufacture.

No person shall distribute, sell, exchange or deliver or have in his possession with intent to distribute, sell, exchange or deliver any eyeglass or sunglass frame containing any form of cellulose nitrate or other highly flammable material.

Whoever violates any provision of this section shall be punished by a fine of not more than five hundred dollars for each violation.

M.G.L.A. 270 § 3

§ 3. Drugs or other substance injurious to users; distribution

Whoever distributes, delivers or gives away in any public way or from house to house or place to place, any bottle, box, envelope or package containing any liquid, medicine, pill, powder, tablet or other article composed of any drug, poison or other ingredient or substance which may be in any way injurious or harmful to any person who may taste, eat, drink or otherwise use the same, shall be punished by a fine of not less than fifty nor more than one hundred dollars.

M.G.L.A. 270 § 3A

§ 3A. Poison for rodents; placement where it may cause injury

Whoever negligently or maliciously places any poison or poisoned food for the control of rats, mice or other rodents in any place where it may cause injury to any human being or domestic animal shall be punished by a fine of twenty-five dollars. The officers charged with the enforcement of the laws relating to fish, birds and mammals under chapter one hundred and thirty-one shall take cognizance of violations of this section and enforce the provisions thereof, and they shall have all powers necessary therefor.

M.G.L.A. 270 § 4

§ 4. Wood alcohol contained in food or drink; sale or possession

Whoever, himself, or by his servant or agent, or as the servant or agent of another, sells or exchanges, or has in his possession with intent to sell or exchange, or knowingly delivers or has in his possession with intent to deliver, any article of food or drink, or any drug intended for internal use, containing any wood alcohol, otherwise known as methyl alcohol, either crude or refined, under or by whatever name or trade mark the same may be called or known, shall be punished by a fine of not more than five thousand dollars or by imprisonment in a jail or house of correction for not more than two and one half years or in the state prison for not more than five years, or by both such fine and imprisonment.

M.G.L.A. 270 § 5

§ 5. Alcoholic beverages or drugs; sale or delivery to hospital patients

Whoever, except under the direction of a physician, gives, sells or delivers alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, or a narcotic drug to a patient in any hospital who is suffering from inebriety or from the effect of inebriety, or from excessive use of narcotic drugs or from the effect of such use, and whoever has in his possession within the precincts of any hospital any such beverage or drug with intent to convey or deliver it to any such patient, except under direction as aforesaid, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than two months.

M.G.L.A. 270 § 6

§ 6. Tobacco; sale or gift to minors

Whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of eighteen or, not being his parent or guardian, gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of eighteen shall be punished by a fine of not less than one hundred dollars for the first offense, not less than two hundred dollars for a second offense and not less than three hundred dollars for any third or subsequent offense.

M.G.L.A. 270 § 6A

§ 6A. Sale of cigarette rolling papers to minors

Whoever sells cigarette rolling papers to any person under the age of eighteen shall be punished by a fine of not less than twenty-five dollars for the first offense, not less than fifty dollars for the second offense and not less than one

hundred dollars for a third or subsequent offense.

Notwithstanding the provisions of any civil ordinance or by-law or regulation to the contrary, which is in effect on the effective date of this section, no city, town, department, board or other political subdivision or agency of the commonwealth may impose any requirements, restrictions or prohibitions pertaining to the sale of cigarette rolling papers, in addition to those in this section.

M.G.L.A. 270 § 7

§ 7. Posting copy of Sec. 6; removing copy

A copy of the preceding section printed as therein specified shall be posted conspicuously by the owner or person in charge thereof in the shop or other place used to sell cigarettes at retail, and whoever violates this provision shall be punished by a fine of not more than fifty dollars. Any person unlawfully removing a copy so posted while said premises are used for the sale of cigarettes shall be punished by a fine of ten dollars.

M.G.L.A. 270 § 8

§ 8. Candy containing alcohol; sale

Whoever sells to a person any candy enclosing or containing liquid or syrup having more than one per cent of alcohol shall be punished by a fine of not more than one hundred dollars.

M.G.L.A. 270 § 8A

§ 8A. Foods containing foreign injury causing substances; distribution or sale

Whoever sells, gives, or distributes to anyone candy or other food or foodstuffs containing a foreign substance, which is intended or may reasonably be expected to cause injury to a person eating the same, shall be punished by imprisonment in the state prison for not more than five years.

M.G.L.A. 270 § 9

§ 9. Feeding garbage or refuse to animals

Whoever knowingly feeds or has in his possession with intent to feed to a milch cow any garbage, refuse or offal collected by a town, or by any person having authority therefrom, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than two months; and whoever knowingly feeds or has in his possession with intent to feed to any food animal, except swine, any garbage, refuse or offal collected by a city of

more than thirty thousand inhabitants shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than one month.

M.G.L.A. 270 § 10

§ 10. Toys or confectionery containing or coated with material containing arsenic

Whoever, himself, or by his agent or servant, or as the agent or servant of another, manufactures, sells or exchanges, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, any toys or confectionery, containing or coated wholly or in part with arsenic, shall be punished by a fine of not less than fifty nor more than one hundred dollars.

M.G.L.A. 270 § 11

§ 11. Arsenic; samples for analysis

Whoever offers or exposes for sale or exchange any paper, fabric or other article shall furnish a sample thereof sufficient to ascertain by analysis the existence of arsenic therein, if such sample can be obtained without damage to the remaining portion, to any inspector, chemist or other agent or officer of the department of public health who applies therefor and tenders the value thereof; and for a violation of this section shall be punished as provided in the preceding section.

M.G.L.A. 270 § 12

§ 12. Fabric or paper containing arsenic

Whoever, himself, or by his agent or servant, manufactures, sells or exchanges, or has in his custody or possession with intent to sell or exchange, any woven fabric or paper containing arsenic in any form, or any article of dress or household use composed wholly or in part of such woven fabric or paper, shall be punished by a fine of not less than fifty nor more than two hundred dollars; but this section shall not apply to articles intended for the destruction of insects, having the word "POISON" plainly printed in uncondensed gothic letters not less than one inch long on both sides of each sheet and square foot of the fabric, or to dress goods or articles of dress containing not more than one one-hundredth grain, or to other materials or articles containing not more than one tenth grain of arsenic for each square yard of the material. The department of public health shall make all necessary investigations as to the existence of arsenic in the aforesaid articles and materials, employ inspectors and chemists, and adopt such measures as are necessary to enforce this section.

M.G.L.A. 270 § 13

§ 13. Water; refusal or neglect to furnish

A corporation engaged in selling or distributing water, which refuses or neglects to furnish or supply water to or for any building or premises for the reason that a water bill remains unpaid by a previous owner or occupant of said building or premises shall, unless the person applying for water is in arrears to such corporation for water previously

furnished to or for any building or premises, be punished by a fine of not less than ten nor more than twenty dollars.

M.G.L.A. 270 § 14

§ 14. Spitting

Whoever expectorates or spits upon any public sidewalk, or upon any place used exclusively or principally by pedestrians, or, except in receptacles provided for the purpose, in or upon any part of any city or town hall, any court house or court room, any public library or museum, any church or theatre, any lecture or music hall, any mill or factory, any hall of any tenement building occupied by five or more families, any school building, any ferry boat or steamboat, any railroad car or elevated railroad car, except a smoking car, any street railway car, any railroad or railway station or waiting room, or on any track, platform or sidewalk connected therewith, and included within the limits thereof, shall be punished by a fine of not more than twenty dollars.

M.G.L.A. 270 § 15

§ 15. Arrest without warrant for spitting

Any person detected in the act of violating the preceding section may, if his name is unknown to the officer, be arrested without a warrant by any officer authorized to serve criminal process in the place where the offence is committed and kept in custody until he can be taken before a court having jurisdiction of such offence.

M.G.L.A. 270 § 16

§ 16. Disposal of rubbish, etc. on or near highways and coastal or inland waters; penalties; enforcement; park rangers

Effective: August 9, 2002

Whoever places, throws, deposits or discharges or whoever causes to be placed, thrown, deposited or discharged, trash, bottles or cans, refuse, rubbish, garbage, debris, scrap, waste or other material of any kind on a public highway or within 20 yards of a public highway, or on any other public land, or in or upon coastal or inland waters, as defined in section 1 of chapter 131, or within 20 yards of such waters, or on property of another, or on lands dedicated for open space purposes, including lands subject to conservation restrictions and agricultural preservation restrictions as defined in chapter 184, shall be punished by a fine of not more than \$5,500 for the first offense and a fine not to exceed \$15,000 for each subsequent offense; provided, however, that 50 per cent of the fine imposed shall be deposited in the conservation trust established in section 1 of chapter 132A and the court may also require that the violator remove, at his own expense, the trash, refuse, rubbish, debris or materials. The permission of the owner of land to place, throw, deposit or discharge trash, refuse, rubbish, garbage, debris, scrap, waste or other material on the owner's land shall constitute a defense in any trial for such offense.

If a motor vehicle is used in committing such an offense where the offense involves the unlawful disposal of more than seven cubic feet of trash, bottles or cans, refuse, rubbish, garbage, debris scrap, waste or any other materials and the motor vehicle is observed while the offense is in progress by an officer authorized to enforce this section, the

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officer may seize the vehicle and remove and store it or otherwise immobilize it by a mechanical device until (1) payment is made to the enforcing authority of a fine set by such enforcing authority up to the maximum fine which may be imposed under this section, (2) the illegally disposed of material is removed and legally disposed of, and (3) payment is made to the enforcing authority of its reasonable towing and storage charges, if any, for the seized vehicle. If, after payment of the above fine and towing and storage charges, the use of the seized vehicle is necessary to dispose of the material, the enforcing authority shall release the seized vehicle upon the posting of security sufficient to pay for the cost of legal disposal of the material. The security shall be returned to the person posting it upon proof of legal disposal of the material. Within five days of the payment of a fine to secure the release of a seized vehicle as provided for herein, the enforcing authority to whom the fine is paid shall deposit the fine in court along with an application for a criminal complaint regarding the offense, and the court shall hold the fine until judgment is entered on said complaint; provided, however, that at the discretion of the enforcing authority, the violation may be disposed of by the non-criminal disposition procedures pursuant to section twenty-one D of chapter forty, in which case the maximum fine shall be one thousand dollars. If a conviction is returned on the complaint the court shall award to any person or persons, other than an employee of the enforcing authority, whose information materially contributed to the identification of the convicted party, up to five hundred dollars, or forty percent of said fine, whichever is the greater, and the balance of the fine shall be equally divided between the enforcing authority and the court. If such violation is disposed of non-criminally, the balance of such fine, after payment of the award, if any, shall be deposited in the general fund of the enforcing authority. Vehicles seized under the provisions of this section which are not claimed or redeemed by their owners as provided for above within thirty days of the date of seizure, may after thirty days notice by certified mail to the vehicle's registered owner, be sold at auction and the proceeds be applied to the fines assessed herein, vehicle towing and storage costs and the costs for legal disposal of the material. Enforcing authorities shall adopt appropriate rules and regulations which provide for the orderly implementation of this section.

If a motor vehicle is used in committing such an offense, a conviction under this section shall forthwith be reported by the court to the registrar of motor vehicles, and the registrar may suspend the license of the operator of such vehicle for not more than thirty days, and if it appears from the records of the registrar of motor vehicles that the person so convicted is the owner of the motor vehicle so used, the registrar may suspend the certificate of registration of said vehicle for thirty days.

The provisions of this section shall not be applicable to any dumping ground approved under section one hundred and fifty A of chapter one hundred and eleven or by other appropriate public authority.

This section shall be enforced by natural resources officers, by the director of the division of motorboats or his authorized agents, by harbor masters and assistant harbor masters, by members of the state police and by city and town police officers. A city by majority vote of the city council, with the approval of the mayor, or in a town by a vote of its town meeting may enforce this section by designating its public health agents, health officers and health directors as enforcing officers. In the city of Boston this section shall also be enforced by the commissioner of health and hospitals, by the commissioner of housing inspection, and by the commissioner of public works, and their respective authorized agents, and in section sixteen A, the commissioner of health and hospitals, the commissioner of housing inspection, and the commissioner of public works shall be deemed to be the commanding officers of their respective authorized agents; provided, however, that any person observing a violation of this section may file a petition for issuance of a complaint pursuant to this section with the clerk of the district court having jurisdiction or, in the city of Boston, with the clerk of the Boston municipal court department, and upon determining that probable cause exists therefor, such clerk shall issue such complaint.

Chief park rangers and park rangers shall have the authority to enforce this section on state forests, reservations, parks, rinks, pools, piers and other facilities and properties under the jurisdiction of the department of environmental management. In addition to the fines imposed under this section, the violator may be held liable for costs associated with the identification, removal and disposal of said materials. The department of environmental management shall permanently post signs on all lands under its jurisdiction which identify: 1) the penalties applicable for the violations under this section; and 2) the proper authorities and contact information to report violations.

M.G.L.A. 270 § 16A

§ 16A. Alternative noncriminal disposition of violations of Sec. 16

If any officer empowered to enforce section sixteen takes cognizance of a violation thereof, he may request the offender to state his name and address. Whoever, upon such request, refuses to state his name and address, may be arrested without a warrant, or if he states a false name and address or a name and address which is not his name and address in ordinary use, he shall be punished by a fine of not less than fifty nor more than one hundred dollars. Such officer may, as an alternative to instituting criminal proceedings, forthwith give to the offender a written notice to appear before the clerk of the district court having jurisdiction at any time during office hours, not later than twenty-one days after the date of such violation. Such notice shall be made in triplicate, and shall contain the name and address of the offender and, if served with notice in hand at the time of such violation, the number of his license, if any, to operate motor vehicles; the registration number of the vehicle or motor boat involved, if any; the time and place of the violation; the specific offense charged; and the time and place for his required appearance. Such notice shall be signed by the officer, and shall be signed by the offender whenever practicable in acknowledgment that the notice has been received. The officer shall, if possible, deliver to the offender at the time and place of the violation a copy of said notice. Whenever it is not possible to deliver a copy of said notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the officer, or by his commanding officer or any person authorized by said commanding officer, to the offender's last known address, or in the case of a violation involving a motor vehicle or motor boat registered under the laws of this commonwealth, within five days of the offense, or in the case of any motor vehicle or motor boat registered under the laws of another state or country, within ten days thereof, exclusive, in either case, of Sundays and holidays, to the address of the registrant of the motor vehicle or motor boat involved, as appearing, in the case of a motor vehicle registered under the laws of this commonwealth, in the records of the registry of motor vehicles or the division of motor boats or, in the case of a motor vehicle or motor boat registered under the laws of another state or country in the records of the official in such state or country having charge of the registration of such motor vehicle or motor boat. Such notice mailed by the officer, his commanding officer, or the person so authorized to the last address of said registrant as appearing as aforesaid, shall be deemed a sufficient notice, and a certificate of the officer or person mailing such notice that it has been mailed in accordance with this section shall be deemed prima facie evidence thereof and shall be admissible in any court of the commonwealth as to the facts contained therein. At or before the completion of each tour of duty the officer shall give to his commanding officer those copies of each notice of such a violation he has taken cognizance of during such tour which have not already been delivered or mailed by him as aforesaid. Said commanding officer shall retain one of such copies and shall, at a time not later than the next court day after said delivery or mailing, deliver another copy to the clerk of the court before whom the offender has been notified to appear. The clerk of each district court shall maintain a separate docket of all such notices to appear.

Any person notified to appear before the clerk of a district court as hereinbefore provided may appear before such clerk and confess the offense charged, either personally or through an agent duly authorized in writing, or by mailing to such clerk, with the notice, the sum provided herein, such payment to be made only by postal note, money order or check. If it is the first, second or third offense subject to this section committed by such person within the jurisdiction of the court in the calendar year, payment to such clerk of the sum of twenty dollars shall operate as a final disposition of the case; if it is the fourth or subsequent such offense so committed in such calendar year, payment to such clerk of the sum of one hundred dollars shall operate as a final disposition of the case. Proceedings under this paragraph shall not be deemed criminal; and no person notified to appear before the clerk of a district court as provided herein shall be required to report to any probation officer, and no record of the case shall be entered in the probation records.

If any person notified to appear before the clerk of the district court fails to appear and pay the fine provided hereunder or, having appeared, desires not to avail himself of the procedure hereinbefore provided for the non-criminal disposition of the case, the clerk shall notify the officer concerned, who shall forthwith make application for a criminal complaint and follow the procedure established for criminal cases, and shall notify, if a motor vehicle is involved, the registrar of motor vehicles, or, if a motor boat is involved, the division of motor boats. If any person fails to appear in

accordance with the summons issued upon such complaint the clerk shall send such person by certified mail, return receipt requested, a notice that the complaint is pending and that, if the person fails to appear within twenty-one days from the sending of such notice, a warrant for his arrest will be issued. If any person fails to appear within twenty-one days from the sending of such notice, the court shall issue a warrant for his arrest.

The notice to appear, provided herein, shall be printed in such form as the chief justice for the district court department and the chief justice for the Boston municipal court department may prescribe for their respective departments; provided, however, that a notice prepared pursuant to section twenty A or section twenty C of chapter ninety may be so revised or adapted that said notice may also be used for the notice provided for in this section.

M.G.L.A. 270 § 17

§ 17. Garbage or refuse; disposal in containers placed along highways

Whoever disposes of household or commercial garbage or refuse by placing it in a trash barrel placed on a public highway by the commonwealth, or by any political subdivision thereof for the convenience of the traveling public shall be punished by a fine of not less than two hundred dollars. One-half of any fine paid into a court shall be paid over to the city or town where said offense occurred.

M.G.L.A. 270 § 18

§ 18. Substance having property of releasing toxic vapors

No person shall intentionally smell or inhale the fumes of any substance having the property of releasing toxic vapors, for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulled senses or nervous system, nor possess, buy or sell any such substance for the purpose of violating or aiding another to violate this section.

This section shall not apply to the inhalation of anesthesia for medical or dental purposes.

Whoever violates the provisions of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or both.

Any person who is discovered by a police officer or special police officer in the act of violating this section may be arrested without a warrant by such police officer or special police officer, and held in custody, in jail, or otherwise, until a complaint is made against him for such offense which complaint shall be made as soon as practicable and in any case within twenty-four hours, Sundays and legal holidays excepted.

M.G.L.A. 270 § 19

§ 19. Glue or cement; sale to minors; smelling deterrent ingredients

Any person who sells glue or cement to a minor shall require such minor to properly identify himself and write his name and address legibly in a permanently bound register. The seller shall keep such register available for police inspection for a period of six months after the last sale is recorded therein. No such glue or cement shall be sold to a minor unless it contains allyl isothiocyanate (oil of mustard) or some other equally effective and safe deterrent against smelling or inhaling the fumes of such glue or cement.

As used in this section, “glue” or “cement” shall mean any glue or cement that contains a solvent or chemical having the property of releasing toxic vapors.

Whoever violates the provisions of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or both.

M.G.L.A. 270 § 20

§ 20. Burning of refuse, etc. within marine or shoreline boundaries

No person shall burn refuse, rubbish or demolition debris within the marine boundaries of the commonwealth, or within twelve miles from the shoreline of the commonwealth, whichever is the shorter distance. Whoever violates any provision of this section shall be punished by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars.

M.G.L.A. 270 § 22

§ 22. Smoking in public places

Effective: July 31, 2008

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

“Business agent”, an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

“Compensation”, money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

“Customer service area”, an area of the workplace that a business invitee may access.

“Employee”, an individual or person who performs a service for compensation for an employer at the employer’s workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer’s workplace for more than a *de minimis* amount of time.

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“Employer”, an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of 1 or more employees at 1 or more workplaces, at any 1 time, including the commonwealth or its agencies, authorities or political subdivisions.

“Enclosed”, a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.

“Lodging home”, a dwelling or part thereof which contains 1 or more rooming units in which space is let or sublet for compensation by the owner or operator to 4 or more persons. The residential portion of boarding houses, rooming houses, dormitories, and other similar dwelling places are included in this definition. Hospitals, sanitariums, jails, houses of correction, homeless shelters, and assisted living homes are not included in this definition.

“Membership association”, a not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

(i) a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or

(ii) a corporation organized under chapter 180; or

(iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or

(iv) a veterans’ organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state.

Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

“Outdoor space”, an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

“Public building”, a building owned by the commonwealth or any political subdivision thereof, or in an enclosed indoor space occupied by a state agency or department of the commonwealth which is located in a building not owned by the commonwealth.

“Public transportation conveyance”, a vehicle or vessel used in mass public transportation or in the transportation of

the public, including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi, passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or operated under the authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, Massachusetts Port Authority; state transportation department; or a vehicle or vessel open to the public that is owned by, or operated under the authority of a business, including tour vehicles or vessels, enclosed ski lifts or trams, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle or vessel not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle, a private charter or rental of a limousine, bus or van or the private rental of a boat or other vessel, shall not be considered a public transportation conveyance.

"Residence", the part of a structure used as a dwelling including without limitation: a private home, townhouse, condominium, apartment, mobile home; vacation home, cabin or cottage; a residential unit in a governmental public housing facility; and the residential portions of a school, college or university dormitory or facility. A residential unit provided by an employer to an employee at a place of employment shall be considered to be a residence; if the unit is an enclosed indoor space used exclusively as a residence, and other employees, excluding family members of the employee, or the public has no right of access to the residence. For the purposes of this definition, a hotel, motel, inn, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a residence.

"Retail tobacco store", an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located.

"Smoking" or "smoke", the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

"Smoking bar", an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products; prohibits entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located; and, maintains a valid permit to operate a smoking bar issued by the department of revenue.

"Workplace", an indoor area, structure or facility or a portion thereof, at which 1 or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

"Work space or work spaces", an enclosed area occupied by an employee during the course of his employment.

(b) (1) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

(2) Smoking shall be prohibited in workplaces, work spaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants, cafes, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns, or in a place where food or drink is sold to the public and consumed on the premise as part of a business required to collect state meals tax on the purchase; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena, or stadium open to the public; or in a school, college, university, museum, library, health care facility as defined in section 9C of chapter 112, group child care center, school age child care center, family child care center, school age day or overnight camp building, or on premises where activities are licensed under section 38 of chapter 10 or in or upon any public transportation conveyance or in any airport, train station, bus station, transportation passenger terminal, or enclosed outdoor platform.

(3) A person shall not smoke in the state house or in a public building or in a vehicle or vessel, owned, leased, or otherwise operated by the commonwealth or a political subdivision thereof, or in a space occupied by a state agency or department of the commonwealth which is located in another building, including a private office in a building or space mentioned in this sentence, or at an open meeting of a governmental body as defined in section 11A of chapter 30A, section 23A of chapter 39 and section 9F of chapter 34, or in a courtroom or courthouse. This subsection shall not apply to a resident or patient of a state hospital, the Soldiers' Home in Massachusetts located in the city of Chelsea or the Soldiers' Home in Holyoke.

(c) Notwithstanding subsection (b), smoking may be permitted in the following places and circumstances:

(1) Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility;

(2)(i) premises occupied by a membership association, if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by the association during the time of the permitted activity if the premises are not located in a public building; but no smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:

(A) open to the public; or

(B) occupied by a non-member who is not an invited guest of a member or an employee of the association; or

(C) rented from the association for a fee or other agreement that compensates the association for the use of such space.

(ii) Smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association. A person who is a contract employee, temporary employee, or independent contractor shall not be considered an employee of a membership association under this subsection. A person who is a member

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of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system, and is visiting the affiliated association, shall be an invited guest for the purposes of this subsection.

(3) A guest room in a hotel, motel, inn, bed and breakfast or lodging home that is designed and normally used for sleeping and living purposes, that is rented to a guest and designated as a smoking room pursuant to paragraph (1) of subsection (g).

(4) A retail tobacco store, if the store maintains a valid permit for the sale of tobacco products issued by the appropriate authority in the city or town in which the retail tobacco store is located. All required permits shall be displayed in a conspicuous manner, visible at all times to patrons of the establishment.

(5) A smoking bar, if the smoking bar maintains a valid permit pursuant to this section. All required permits shall be displayed in a conspicuous manner, visible at all times to patrons of the establishment.

(6) By a theatrical performer upon a stage or in the course of a professional film production, if the smoking is part of a theatrical production, and if permission has been obtained from the appropriate local authority;

(7) By a person, organization or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university, or in a professional testing laboratory as defined by regulation of the department of public health;

(8) Religious ceremonies where smoking is part of the ritual; and

(9) A tobacco farmer, leaf dealer, manufacturer, importer, exporter, or wholesale distributor of tobacco products, may permit smoking in the workplace for the sole purpose of testing said tobacco for quality assurance purposes; if the smoking is necessary to conduct the test.

<[There is no subsection (d).]>

(e) If the outdoor space has a structure capable of being enclosed by walls or covers, regardless of the materials or the removable nature of the walls or covers, the space will be considered enclosed, when the walls or covers are in place. All outdoor spaces shall be physically separated from an enclosed work space. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, the openings shall be closed to prevent the migration of smoke into the enclosed work space. If the windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of smoke into the work space, the outdoor space shall be considered an extension of the enclosed work space and subject to this section.

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(f)(1) A nursing home, licensed pursuant to section 71 of chapter 111 and any acute care substance abuse treatment center under the jurisdiction of the commonwealth, may apply to the local board of health having jurisdiction over the facility for designation of part of the facility as a residence.

(2) All applications shall designate the residential area of the facility. The residential area shall not contain an employee workspace, such as offices, restrooms or other areas used primarily by employees.

(3) The entire facility may not be designated as a residence.

(4) The designated residential area must be for the sole use of permanent residents of the facility. No temporary or short-term resident may reside in the residential portion of the facility.

(5) All areas in the designated residential area in which smoking is allowed shall be conspicuously designated as smoking areas and be adequately ventilated to prevent the migration of smoke to nonsmoking areas.

(6) The facility shall provide suitable documentation, acceptable to the local board of health, that the facility is the permanent domicile of the residents residing in that portion of the facility, that information on the hazards of smoking and second hand smoke have been provided to all residences and that smoking cessation aids are available to all residents who use tobacco products.

(7) The designated residential area shall be in conformance with the smoking restriction requirements of section 72X of chapter 111 and 105 CMR 150.015 (D)(11)(b). All residential areas shall be clearly designated as such and shall not be altered or otherwise changed without the express approval of the local board of health.

(8) All areas of a nursing home not designated as a residence shall comply with this section.

(9) The nursing home shall make reasonable accommodations for an employee, resident or visitor who does not wish to be exposed to tobacco smoke.

(10) Upon compliance with this section, submission of the required documentation and satisfactory inspection, the local board of health shall certify the designated portion of the facility as a residence. The certification shall be valid for 1 year from the date of issuance. No fewer than 30 days before the expiration of the certification, the facility may apply for re-certification. If the local board of health does not renew the certification before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the certification shall be considered to continue until the time as the local board of health notifies the nursing home of its certification status.

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(g)(1) A designated smoking room in a hotel, motel, inn, bed and breakfast and lodging home shall be clearly marked as a designated smoking room on the exterior of all entrances from a public hallway and public spaces; and in the interior of the room. Instead of marking each room, an establishment may designate an entire floor of residential rooms as smoking. The floor shall be conspicuously designated as smoking at each entranceway on to the floor. Smoking shall not be allowed in the common areas of the floor, such as halls, vending areas, ice machine locations and exercise areas and shall comply with paragraph (4).

(2) A retail tobacco store that permits smoking on the premises shall, pursuant to paragraph (4), post in a clear and conspicuous manner, a sign at each entrance warning persons entering the establishment that smoking may be present on the premises; of the health risks associated from second hand smoke; and, that persons under the age of 18 years of age may not enter the premises.

(3) A smoking bar shall, pursuant to paragraph (4), post in a clear and conspicuous manner signs at all entrances which warn persons entering the establishment that smoking may be present on the premises; and, of the health risks associated from second hand smoke; and, that persons under the age of 18 years of age may not enter the premises.

(4) Every area in which smoking is prohibited by law shall have "no smoking" signs conspicuously posted so that the signs are clearly visible to all employees, customers, or visitors while in the workplace.

(5) Additional signs may be posted in public areas such as, the following areas: lobbies; hallways; cafeterias; kitchens; locker rooms; customer service areas; offices where the public is invited; conference rooms; lounges; waiting areas; and elevators.

(6) Approved signs and templates for signage design may be obtained from the department of public health or the local boards of health.

(7) It shall be the responsibility of the establishment to ensure that the appropriate signage is displayed and that an individual or group renting the space enforces the prohibition against smoking.

(h)(a)(1) A smoking bar operating in the commonwealth shall obtain a smoking bar permit from the department of revenue. A permit issued by the department shall be valid for a period of 2 years from date of issuance unless suspended or revoked. A valid permit that is not suspended at the time of its expiration may be renewed for consecutive 2-year periods.

(2) A non-refundable fee may be required with each permit and renewal application. Each permit issued by the department shall be non-transferable, for a specific location and business; and, only 1 permit may be issued to a business for a specific location during any permit period.

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(3) The department shall not issue or renew a smoking bar permit to any business that has not filed all tax returns and paid all taxes due the commonwealth; or is delinquent in filing all declaration statements in connection with the smoking bar permit as required by the department.

(4) The department shall notify the local board of health or municipal health department in the city or town where the establishment is located of any permits issued, renewed, suspended, revoked or reinstated to a business.

(b) A smoking bar shall demonstrate on a quarterly basis that revenue generated from the sale of tobacco products are equal to or greater than 51 per cent of the total combined revenue generated by the sale of tobacco products, food and beverages. The department shall require each business that has been issued a smoking bar permit to submit a quarterly declaration for each 3 month period that the business is in operation; notwithstanding, the first declaration may include a period of not to exceed 4 months. A declaration submitted to the department in connection with a smoking bar permit shall be signed by the owner or business agent under the pains and penalties of perjury. A declaration received by the department shall be confidential and the financial information contained therein shall not be disclosed to the public or any other state governmental agency or department except the attorney general. In the event a business has not filed a required declaration statement, the department shall give written notice to the business that the statement is delinquent and, shall suspend the permit of a business that does not submit the required report after 21 days of the date of notice; but the department shall reinstate the suspended permit within 5 days after receiving the delinquent report.

(c) The department of revenue shall promulgate regulations to implement this section.

(i) Companies which sell ownership rights to owners of time share properties shall distinguish between smoking and non-smoking time share properties. Companies shall disclose to potential buyers whether the unit they are purchasing is a smoking or non-smoking property and post signs accordingly.

(j) Nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or ordinance or by-law or any fire, health or safety regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or any department, agency or political subdivision of the commonwealth.

(k) An individual, person, entity or organization subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation, to a person, entity or organization or to an enforcement authority. Notwithstanding the foregoing, a person making a complaint or furnishing information during any period of work or time of employment, shall do so only at a time that will not pose an increased threat of harm to the safety of other persons in or about such place of work or to the public.

(l) An owner, manager or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of \$100 for the first violation; \$200 for a second violation occurring within 2 years of the date of the first offense; and \$300 for a third or subsequent violation within 2 years of the second violation. Each calendar day on which a violation occurs shall be considered a separate offense. If an owner, manager or other person in control of a building, vehicle or vessel violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the department of public health, the

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local board of health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the department of public health. The department of public health shall promulgate regulations to implement this section including, but not limited to notice, collection, and reporting of the fines or license action, and defining uniform standards that warrant license suspension or revocation.

(m)(1) The local board of health, the department of public health, the local inspection department or the equivalent, a municipal government or its agent, and the alcoholic beverages control commission shall enforce this section. In addition, in the city of Boston, the commissioner of health and his authorized agents shall enforce this section.

(2) An individual or person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation. As an alternative to criminal prosecution, a violation of subsection (1) may also be considered a civil violation. Each enforcing agency under paragraph (1) shall dispose of a civil violation of this section by the non-criminal method of disposition procedures contained in section 21D of chapter 40, without an enabling ordinance or by-law, or by the equivalent of these procedures by a state agency under regulations of the department of public health. The disposition of fines assessed under this section shall be subject to section 188 of chapter 111. Fines assessed by the commonwealth or its agents shall be subject to section 2 of chapter 29. In a city or town having an ordinance or by-law that imposes a fine greater than the fine imposed by this section, the ordinance or by-law shall prevail over this section.

(3) Any person may register a complaint to initiate an investigation and enforcement with the local board of health, the department of public health, or the local inspection department or the equivalent.

(4) The supreme judicial court or the superior court shall issue appropriate orders to enforce this section and any regulation under it, at the request of any agency mentioned in paragraph (1).

(5) A fine or fee collected by the commonwealth under this section shall be used for the enforcement or for educational programs on the harmful effects of tobacco.

(n) Each local board of health, each local inspection department or its equivalent, and the alcoholic beverages control commission shall report annually to the commissioner of public health, beginning January 1, 2006: the number of citations issued; the workplaces which have been issued citations and the number of citations issued to each workplace; the amount that each workplace has been fined; and the total amount collected in fines. The department of public health shall file a copy of the report with the clerks of the house of representatives and the senate.

(o) The department of public health may issue regulations to implement this section.

M.G.L.A. 270 § 23

§ 23. Flea markets; smoking prohibition; penalty

Effective: January 5, 2000

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(a) As used in this section, “flea market” shall mean that portion of a building then occupied by one or more vendors, other than retail stores, for sale to the public of new or used goods or products on a seasonal, limited or full schedule of operation. No person shall smoke in any building used for the purpose of operating a flea market, except as otherwise provided in this section. The owner, manager or other person in charge of such a building, shall post a notice in a conspicuous place at each entrance to such building indicating that smoking is prohibited therein, except in an area specifically designated as a smoking area. An area shall be designated as a smoking area only if nonsmoking areas of sufficient size and capacity are available to accommodate nonsmokers and if smoke from said smoking area is prevented from entering the no smoking area.

(b) Except as otherwise provided herein, no person shall smoke in any snack bar operated in conjunction with a flea market, except in such designated smoking area as may be provided. Said smoking area shall be physically separated from the no smoking area and separately ventilated to the outside to prevent smoke from entering the no smoking area. The owner, manager or other person in charge of a snack bar shall not permit the smoke from such smoking area to be vented to the no smoking area.

(c) The owner, manager or other person in charge of such snack bar shall post a notice or sign in a conspicuous place at each entrance to such snack bar indicating that smoking is prohibited therein except in specifically designated areas, shall post signs identifying the no smoking area and the smoking area, and shall make a reasonable effort to insure that no person shall smoke in a no smoking area. Said reasonable effort shall include, but not be limited to, requesting that a person smoking in a no smoking area to either extinguish his cigarette, cigar or pipe, or move to a designated smoking area.

(d) Any person aggrieved by the willful failure or refusal to comply with any of the provisions of this section may complain in writing to a local health officer in the case of a snack bar or to the local building inspector in the case of all other facilities described in this section. Said authority shall respond in writing within 15 days to the complainant that the area described in the complaint has been inspected and said authority has enforced the provisions of this section. Said authority shall file a copy of the original complaint and its response thereto with the department of public health.

(e) No employer shall terminate or otherwise discriminate against any employee, independent contractor, or other worker for refusing to work in a smoking area or for exercising his rights under this section.

(f) Any person who violates this section by smoking where smoking is prohibited shall be subject to a civil fine not exceeding \$25. Any person who violates this section in any way other than by smoking in an area where smoking is prohibited shall be subject to a civil fine of \$50. Each day during which a violation of this section occurs shall be considered a separate violation.

(g) Fines assessed pursuant to this section shall be payable to the city or town in which the violation of this section occurs. A local board of health or health department shall enforce this section through noncriminal disposition.

(h) A city or town may, by ordinance or by-laws, establish a fund for the disposition of revenues received from fines levied in accordance with the provisions of this section. Said fund shall be expended under the authority of the municipal health department or local board of health for the purpose of public education on the hazards posed by secondhand smoke, also known as environmental tobacco smoke.

(i) Nothing in this section shall be construed to permit smoking in any area in which smoking is prohibited by law, including, without limiting the generality of the foregoing, any other provision of the law or ordinance or any fire, health, or safety regulation. This section shall not pre-empt the authority of any city or town to enact any ordinance, by-law or any fire, health, or safety regulation that limits or prohibits smoking in any place.

M.G.L.A. 270 § 24

§ 24. Mercury thermometers; sale or supply; instructions regarding breakage

Effective: February 21, 2002

No person shall sell or supply, including online, retail mercury fever thermometers, except in the case of a medical necessity as determined by a licensed physician or by prescription. Manufacturers of mercury fever thermometers sold or supplied in the commonwealth in such cases of medical necessity shall furnish clear instructions on the careful handling of thermometers to avoid breakage and proper cleanup should a breakage occur. This section shall not apply to digital thermometers using mercury-added button cell batteries. A violation of this section shall be punished by a fine of not more than \$500.

M.G.L.A. 270 § 25

§ 25. Ice cream truck vending; permit requirements

Effective: May 4, 2012

(a) For the purposes of this section, the following words shall have the following meanings:--

“Ice cream”, any frozen dairy or frozen water-based food product.

“Ice cream truck”, any motor vehicle used for selling, displaying or offering to sell ice cream.

“Ice cream truck vending”, the selling, displaying or offering to sell ice cream or any other prepackaged food product from an ice cream truck.

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

(b) No person shall engage in ice cream truck vending unless he shall have been issued a valid permit to do so by the permitting authority within the municipality wherein the permit applicant lives or intends to operate an ice cream truck. Such permit shall be conspicuously displayed and clearly visible on the windshield of any ice cream truck

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operated or from which ice cream or any other prepackaged food product is sold. Whoever violates this section shall be assessed a fine of \$500. Each day that such person is in operation in violation of this section may be considered a separate violation.

(c) The department of public safety shall adopt regulations relative to the annual permitting of ice cream truck vendors. Such regulations shall include, but not be limited to:

(i) a requirement that all applications for an ice cream truck vending permit or applications for renewal thereof shall include the applicant's fingerprints and a current photo of the applicant;

(ii) adoption of a uniform permit application and permit form, to be used by all municipalities;

(iii) a requirement that a permitting authority conduct an investigation into the criminal history of a permit applicant to determine eligibility therefore; and

(iv) a provision restricting a permitting authority from issuing an ice cream truck vending permit to any sex offender, as defined by section 178C of chapter 6 of the General Laws.

M.G.L.A. 270 § 26

§ 26. Use of employee restroom by customer suffering from eligible medical condition or using ostomy device; non-liability; penalty for violation

Effective: October 30, 2012

(a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Customer”, an individual who is lawfully on the premises of a retail establishment.

“Eligible medical condition”, Crohn's disease, ulcerative colitis or any other medical condition that requires immediate access to a restroom facility.

“Retail establishment”, any business or place where members of the public have access as invitees or licensees.

(b) A retail establishment that has a restroom facility for its employees shall allow a customer to use that facility during normal business hours if the following conditions are met:

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(1) the customer requesting the use of the employee restroom facility suffers from an eligible medical condition or uses an ostomy device, provided that the existence of the condition or device is documented in writing by the customer's physician;

(2) three or more employees of the retail establishment are working at the time the customer requests to use the employee restroom facility;

(3) the retail establishment does not normally make a restroom available to the public;

(4) the employee restroom facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the establishment; and

(5) a public restroom is not immediately accessible to the customer.

(c) A retail establishment, or an employee of a retail establishment, shall not be civilly liable for an act or omission in allowing a customer who claims to have an eligible medical condition to use an employee restroom facility that is not a public restroom if the act or omission: (i) is not negligent and occurs in an area of the retail establishment that is not generally accessible to the public; and (ii) results in injury to or death of the customer or individual, other than an employee, accompanying the customer.

(d) This section shall not require a retail establishment to make any physical changes or improvements to an employee restroom facility located on the premises.

(e) A violation of this section shall for the first offense be punished by a fine of \$100. A second or subsequent offense shall be punished by a fine of not less than \$100 nor more than \$200.