SENATE DOCKET, NO. 1790 FILED ON: 1/21/2011

SENATE . . . . . No. 1505

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act encouraging a better business climate and job creation in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael J. Rodrigues	☐ *[District]* ☐
Patricia A. Haddad	*5th Bristol*
Barry R. Finegold	☐ *[District]* ☐
Thomas P. Kennedy	☐ *[District]* ☐
Bradley H. Jones, Jr.	*20th Middlesex*
David B. Sullivan	*6th Bristol*
Stephen R. Canessa	*12th Bristol*
Stephen L. DiNatale	*3rd Worcester*
Anne M. Gobi	*5th Worcester*
Paul McMurtry	*11th Norfolk*
Kevin Aguiar	*7th Bristol*
Steven S. Howitt	*4th Bristol*

George T. Ross	*2nd Bristol*
David M. Torrisi	*14th Essex*
Bruce J. Ayers	*1st Norfolk*
Randy Hunt	*5th Barnstable*
Paul A. Schmid, III	*8th Bristol*

SENATE DOCKET, NO. 1790 FILED ON: 1/21/2011

SENATE . . . . . No. 1505

By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 1505) of Michael J. Rodrigues, Patricia A. Haddad, Barry R. Finegold, Thomas P. Kennedy and other members of the General Court for legislation to encourage a better business climate and job creation in the Commonwealth. Revenue.

The Commonwealth of Massachusetts

An Act encouraging a better business climate and job creation in the Commonwealth.

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

SECTION 1. Subsection (a) of section 2RR of chapter 29 of the General Laws, as appearing in the 2008 Official Edition is hereby amended by inserting after the word "Training" the following word:- Trust.

SECTION 2. Said section 2RR of chapter 29, as so appearing, is hereby further amended by striking out, in lines 6 and 7, the words "Subject to appropriation, the commissioner, which in this section shall have the meaning assigned by SECTION 1 of chapter 151A" and inserting in place thereof the following words:- The commissioner, which in this section shall have the meaning assigned by SECTION 1 of chapter 151A, shall be the trustee of the Fund and, without further appropriation.

SECTION 3. Section 2A of chapter 63, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the following new subsection:-

(b)(1) Except as provided by subsection (b)(2), if the financial institution has income from business activity which is taxable both within and without this commonwealth, its net income shall be apportioned to this commonwealth by multiplying its net income by the applicable apportionment percentage. For purposes of subsection (b)(1), the applicable apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor together and dividing the sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. If all three factors are missing, the whole of the financial institution's net income shall be taxable under section two. A factor is missing if

22 both its numerator and denominator are zero, but it is not missing merely because its numerator
23 is zero.

24 (b)(2), Notwithstanding subsection (b)(1), a financial institution that has income from
25 business activity which is taxable both within and without this commonwealth, may elect to have
26 its net income apportioned to this commonwealth by multiplying said taxable net income by the
27 resulting percentage as determined in the following formulas:

28 (i) For taxable years beginning on or after January 1, 2012 but before January 1, 2013,
29 20 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the
30 receipts factor.

31 (ii) For taxable years beginning on or after January 1, 2013 but before January 1, 2014,
32 15 percent of the property factor plus 15 percent of the payroll factor plus 70 percent of the
33 receipts factor.

34 (iii) For taxable years beginning on or after January 1, 2014 but before January 1,
35 2015, 10 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the
36 receipts factor.

37 (iv) For taxable years beginning on or after January 1, 2015 but before January 1,
38 2016, 5 percent of the property factor plus 5 percent of the payroll factor plus 90 percent of the
39 receipts factor.

40 (v) For taxable years beginning on or after January 1, 2016, 100 percent of the receipts
41 factor.

42 SECTION 4. Subsection (d) of section 2A of chapter 63, as appearing in the 2008
43 Official Edition, is hereby amended by inserting after paragraph (xiii) the following new
44 paragraph:-

45 (xiv) Notwithstanding the foregoing, a financial institution that elects to apportion its
46 taxable net income pursuant to subsection (b)(2) of this section shall apply the rules applicable to
47 the receipts factor as set forth in this section, with the following exceptions:

48 (A) In lieu of sourcing receipts pursuant to paragraph (xi), receipts from services not
49 otherwise apportioned under this section are sourced to this commonwealth if the gross receipts
50 are derived from customers in this commonwealth or otherwise attributable to this
51 commonwealth's marketplace.

52 (B) In lieu of sourcing receipts pursuant to paragraph (xii), the numerator of the receipts
53 factor includes the income described in paragraph (xii)(A) multiplied by a fraction, the
54 numerator of which is the total amount included in the numerator of the receipts factor pursuant
55 to paragraphs (iii), (iv), (vi) and (xiv)(A) and the denominator of which is the taxpayer's total

56 amount of (1) interest and fees or penalties in the nature of interest from loans, (2) interest and
57 fees or penalties in the nature of interest from credit card receivables and receipts from fees
58 charged to card holders, such as annual fees, and (3) receipts from services subject to
59 apportionment pursuant to (xiv)(A).

60 SECTION 5. Subsection (i) of section 31A of Chapter 63 of the General Laws is hereby
61 amended by striking out “three” and inserting in place thereof, in each instance, the following
62 word:- five

63 SECTION 6. Subsection (j) of section 31A of said Chapter 63 is hereby amended by
64 striking out “three” and inserting in place thereof the following word:- five

65 SECTION 7. Subsection (l) of Section 31A of said Chapter 63 is hereby amended by
66 striking out said subsection and inserting in place thereof the following section:

67 (l) Paragraphs (i) and (j), as amended, shall be available only for the taxable years ending
68 on or after December 31, 2011.

69 SECTION 8. Chapter 63 of the General Laws is hereby amended by inserting the
70 following section:-

71 Section 31N: A manufacturing corporation, or a business corporation engaged primarily
72 in research and development that is a certified project, enhanced expansion project or a
73 manufacturing retention and job growth project, as the terms are defined in section 3A of
74 Chapter 23A of the general laws, which is located in a gateway municipality, as defined in
75 section 3A of said Chapter 23A, shall be entitled a credit as hereinafter provided against its
76 excise due pursuant to the section 39 of this chapter. The amount of such credit available shall be
77 up to $2500 per new, full-time employee as the term is defined in section 31C of chapter 63.

78 The credit allowed under this section for any taxable year shall not reduce the excise to
79 less than the amount due under section thirty-two (b), thirty-nine (b) or sixty-seven and under
80 any act in addition thereto.

81 Any corporation entitled to a credit for any taxable year in accordance with the provisions
82 of this section may carry over and apply to its excise for any one or more of the next succeeding
83 three taxable years, the portion, as reduced from year to year, of its credit which exceeds its
84 excise for the taxable year.

85 SECTION 9. Said chapter 63 of the General Laws is hereby amended by inserting the
86 following section:-

87 Section 31O: For the purposes of this section, the following words shall have the
88 following meanings:

89 ‘Application year’, the calendar year for which a qualifying small business submits the
90 information required for a determination as to a jobs incentive payment.

91 ‘Commissioner’, the commissioner of revenue.

92 ‘Eligible jobs’, a number determined by first multiplying each of the local jobs created by
93 a small business during a single calendar year by the job qualifier for that job, and then totaling
94 the number for all the local jobs created.

95 ‘Full time employee’, a person who is employed for consideration for at least 35 hours
96 per week and whose salary is subject to withholding as provided in chapter 62B.

97 ‘Job qualifier fraction’, in the case of either a full-time employee or a part-time employee
98 of a small business, the figure that determines the extent to which that employee is employed in
99 the commonwealth during a single calendar year. The job qualifier fraction for each employer
100 shall be determined by multiplying the following percentages together: (i) the percentage of time
101 that an employee worked while employed by the company expressed as average hours worked
102 per week out of 35 hours, not to exceed 100 per cent; (ii) that employee’s time attributable to
103 work in the commonwealth, as a portion of that employee’s total work for the company; and (iii)
104 the portion of the year the employee worked for the company.

105 ‘Local jobs created’, the total number of direct jobs created by a small business during a
106 single calendar year in which the new employees perform their duties in at least 1 in-state
107 location, including jobs performed by persons that are transferred within the company to work at
108 an in-state location from a location based outside the state.

109 ‘Part-time employee’, a person who is employed for consideration for less than 35 hours
110 a week and whose salary is subject to withholding as provided in chapter 62B.

111 ‘Payment years’, in the case of a small business that is determined to be eligible for a jobs
112 incentive payment, the 3 calendar years following the application year.

113 ‘Small business’, a business that had total annual sales in its most recently completed
114 fiscal year of less than five million dollars, or has less than 100 employees, and has a principal
115 place of business in the commonwealth.

116 ‘Small business jobs incentive payment’, a business employment incentive payment for
117 qualifying small businesses as provided for in this section.

118 ‘Weighted average employment’, for a calendar year, the total number of jobs maintained
119 by a small business in which the employees performed employment services at least 1 in-state
120 location. The number is to be determined by first multiplying each of the individual jobs
121 maintained by the company for that year by the job qualifier fraction for that job and then
122 totaling the number for all of these jobs.

123 (b) A small business that creates 5 or more eligible jobs in the commonwealth during a
124 single calendar year shall be entitled to a small business jobs incentive payment if its weighted
125 average employment for such year reflects a net increase of at least 5 jobs over the company's
126 weighted average employment for the previous calendar year. The jobs incentive payment shall
127 be equal to 25 per cent of the amount paid by the company as salary attributable to eligible jobs
128 created by the company in such year to the extent that the salary was subject to Massachusetts
129 withholding pursuant to chapter 62B for such year, multiple by the applicable Massachusetts
130 income tax rate for such salary. For the purposes of this provision, an eligible job shall be
131 deemed created in the commonwealth on the first day for which Massachusetts withholding is
132 required in connection with the compensation paid to the employee.

133 (c) The small business jobs incentive payment shall be paid to the small business in 3
134 equal installments in each of the three calendar years commencing with the calendar year
135 subsequent to the application year. If, for the first or second payment year, the company's
136 weighted average employment falls below its weighted average for the application year, the
137 company shall be disqualified from receiving its second installment payment. It may still receive
138 its third installment payment if its weighted average employment for its second payment year is
139 above its weighted average employment for its application year.

140 (d) A small business that seeks a small business jobs incentive payment shall apply to the
141 commissioner to receive such payment on a form to be prescribed by the commissioner. This
142 form shall reference the necessary information concerning the eligible jobs created by the
143 company in the commonwealth during the application year and also the company's weighted
144 average employment for such year and the previous calendar year. The commissioner shall
145 advise the company of his determination in writing.

146 (e) Not later than March 1 of each calendar year for which a small business has been
147 approved to receive a small business jobs incentive payment, the company shall submit to the
148 commissioner the information necessary to evaluate the company's previous year weighted
149 employment average.

150 (f) A small business previously approved to receive a small business jobs incentive
151 payment is entitled to re-apply for an additional payment for a second or third application year.
152 In such cases, the company may be entitled to receive a small business jobs incentive payment
153 that relates to a different application in the same calendar year. When a company had previously
154 been granted a jobs incentive payment for 3 application years, it shall not request an additional
155 small business jobs incentive payment.

156 (g) The commissioner shall issue payments, as authorized in subsection (b), without
157 further appropriation. The commissioner may issue rules and regulations as necessary or helpful
158 to implement this section, including rules and regulations to ensure compliance with this section.

159 SECTION 10. Said chapter 63 of the General Laws is hereby amended by inserting the
160 following section: -

161 Section 31P: (a) As used in this section, the following words shall, unless the context
162 otherwise requires, have the following meanings:

163 'Qualified veterans', a Massachusetts resident who: (i) was a member of the
164 Armed Forces of the United States, a member of the Massachusetts National Guard, or a member
165 of any reserve component of the Armed Forces of the United States; (ii) served on active
166 duty in connection with the Vietnam Conflict, Operation Desert Storm, Operation Enduring
167 Freedom, or Operation Iraqi Freedom; (iii) who has provided the taxpayer with documentation
168 showing honorable discharge; and (iv) was initially hired by the taxpayer on or after January 1,
169 2010.

170 'Sustained employment', a period of employment that is at least 185 days during a
171 taxable year.

172 (b) For each taxable year on or after January 1, 2010, each taxpayer is entitled to a credit
173 against the excise due under this chapter in an amount equal to 5%, but in no event to exceed
174 $600, of the gross wages paid by the taxpayer to a qualified veteran in the course of that
175 veteran's sustained employment during the taxable year.

176 (c) If a taxpayer is subject to a minimum excise under this chapter, the amount of credit
177 allowed shall not reduce the excise to an amount less than the minimum excise.

178 (d) A taxpayer entitled to a credit under this section for any taxable year may carry over
179 and apply to its excise for any 1 or more of the next succeeding 5 taxable years, the portion, as
180 reduced from year to year, of those credits which exceed the excise for the taxable year. The tax
181 credit shall be applied to the earliest year for which there is a tax liability. If there are credits for
182 more than one year that are available to offset a liability, the earlier credit shall be applied first.

183 (e) A taxpayer that has previously been approved to receive a credit under this section
184 shall not be eligible to receive said payment for more than one calendar year. A taxpayer may
185 apply to receive a credit under this section that relates to a different application in the same
186 calendar year or a different application in a different calendar year.

187 SECTION 11. Section 38 of said chapter 63, as appearing in the 2008 Official Edition, is
188 hereby amended by striking out subsection (c) and inserting in place thereof the following new
189 subsection:-

190 (c)(1) Except as provided by subsection (c)(2), if a business corporation, other than a
191 defense corporation as described in subsection (k), a manufacturing corporation as described in
192 subsection (l), or a mutual fund service corporation to the extent of its mutual fund sales as
193 described in subsection (m), has income from business activity which is taxable both within and

194 without this commonwealth, its taxable net income, as determined under the provisions of
195 subsection (a), shall be apportioned to this commonwealth by multiplying said taxable net
196 income by a fraction, the numerator of which is the property factor plus the payroll factor plus
197 twice times the sales factor, and the denominator of which is four.

198 (2) Notwithstanding subsection (c)(1), any business corporation, including a defense
199 corporation as described in subsection (k), a manufacturing corporation as described in
200 subsection (l), or a mutual fund service corporation, as described in subsection (m), to the extent
201 of its non-mutual fund sales, that has income from business activity which is taxable both within
202 and without this commonwealth, may elect to have its taxable net income, as determined under
203 the provisions of subsection (a), apportioned to this commonwealth by multiplying said taxable
204 net income by the resulting percentage as determined in the following formulas:

205 (i) For taxable years beginning on or after January 1, 2012 but before January 1, 2013,
206 20 percent of the property factor plus 20 percent of the payroll factor plus 60 percent of the sales
207 factor.

208 (ii) For taxable years beginning on or after January 1, 2013 but before January 1, 2014,
209 15 percent of the property factor plus 15 percent of the payroll factor plus 70 percent of the sales
210 factor.

211 (iii) For taxable years beginning on or after January 1, 2014 but before January 1,
212 2015, 10 percent of the property factor plus 10 percent of the payroll factor plus 80 percent of the
213 sales factor.

214 (iv) For taxable years beginning on or after January 1, 2015 but before January 1,
215 2016, 5 percent of the property factor plus 5 percent of the payroll factor plus 90 percent of the
216 sales factor.

217 (v) For taxable years beginning on or after January 1, 2016, 100 percent of the sales
218 factor.

219 SECTION 12. Subsection (f) of section 38 of said chapter 63, as appearing in the 2008
220 Official Edition, is hereby amended by inserting after the third paragraph the following new
221 paragraph:-

222 Notwithstanding the foregoing, a business corporation that elects to apportion its taxable
223 net income pursuant to subsection (c)(2) of this section shall apportion such income using the
224 sales factor rules set forth in this subsection, with the exception that (i) sales other than sales of
225 tangible personal property are sourced to this commonwealth if the gross receipts are derived
226 from customers in this commonwealth or otherwise attributable to this commonwealth's
227 marketplace; and (ii) gross receipts from the licensing of intangible property are sourced to this
228 commonwealth to the extent that the intangible property is used in the commonwealth.

229 SECTION 13. Section 38N(a) of said Chapter 63 of the General Laws is hereby
230 amended by inserting after the words "taken by such corporation" the following words:- except
231 that the corporation shall also be entitled to any credits earned pursuant to section thirty-one A of
232 chapter sixty-three if the property were purchased by a manufacturing corporation or a business
233 corporation engaged primarily in research and development and used exclusively in a certified
234 project located in a Gateway City, as defined in Chapter 23A. Corporations leasing property
235 located in a Gateway City to unrelated parties shall be entitled to the tax credit provided that the
236 property is used exclusively in a certified project.

237 SECTION 14. Section 52A of said chapter 63, as appearing in the 2008 Official Edition,
238 is hereby amended by striking out subdivision (3) and inserting in place thereof the following
239 new subdivision:-

240 (3)(a) The portion of net income derived from business carried on within the
241 commonwealth by a corporation subject to tax under this section shall be determined under the
242 provisions of sections thirty-eight and forty-two; provided, however, that under subsection (c)(1)
243 of section 38 its taxable net income shall be multiplied by a fraction, the numerator of which is
244 the property factor plus the payroll factor plus the sales factor, and the denominator is three.

245 (b) Notwithstanding subdivision(3)(a), any corporation subject to tax under this section
246 that has net income derived from business carried on within the commonwealth may elect to
247 determine the portion of such net income subject to tax in accordance with subsection (c)(2) of
248 section 38.

249 SECTION 15. Subsection (c) of Section 3 of Chapter 63B of the General Laws, as
250 appearing in the 2008 Official Edition, is hereby amended by striking said subsection and
251 inserting in place thereof the following section:-

252 (c) For purposes of this chapter, there shall be four required installments for each taxable
253 year, except as otherwise provided by this chapter. The first installment shall be paid on or
254 before the fifteenth day of the third month of the taxable year; the second installment shall be
255 paid on or before the fifteenth day of the sixth month of the taxable year; the third installment
256 shall be paid on or before the fifteenth day of the ninth month of the taxable year; and the fourth
257 installment shall be paid on or before the fifteenth day of twelfth month of the calendar year. The
258 amount of any installment shall be twenty-five per cent of the required annual payment.

259 The term "required annual payment" means the lesser of (i) ninety percent of the tax
260 shown on the return for the taxable year or, if no return is filed, ninety percent of the tax for such
261 year, or (ii) one hundred percent of the tax shown on the return of the corporation for the
262 preceding taxable year, or (iii) ninety percent of the tax for the taxable year or, if no return is
263 filed, ninety percent of tax for such year determined by using the income apportionment
264 percentage, if any, applicable for the preceding taxable year in computing its net income subject
265 to tax under chapter sixty-three.

266 Clause (ii) shall not apply if the preceding taxable year was not a taxable year of twelve
267 months or the corporation did not file a return for such preceding taxable year showing a liability
268 for tax.

269 Clause (ii) shall not apply in the case of a large corporation, as defined in section sixty-
270 six hundred and fifty-five (g) of the Internal Revenue Code of the United States, as amended on
271 January first, nineteen hundred and eighty-nine and in effect for the taxable year except for
272 purposes of determining the amount of the first required installment for any taxable year;
273 provided, however that any reduction in such first installment by reason of this provision shall be
274 recaptured by increasing the amount of the next required installment by the amount of such
275 reduction.

276 SECTION 16. Section 4A of Chapter 63B of the General Laws, as so appearing, is
277 hereby amended by striking the word "sixty-five" in line 4 and inserting in place thereof the
278 following:- fifty.

279 SECTION 17. Section 4A of Chapter 63B of the General Laws, as so appearing, is
280 hereby amended by striking the word "ten" in line 9 and inserting in place thereof the following:-
281 twenty-five.

282 SECTION 18. Section 4A of Chapter 63B of the General Laws, as so appearing, is
283 hereby amended by striking the word "ninety" in line 14 and inserting in place thereof the
284 following:- twenty-five.

285 SECTION 19. Section 4A of Chapter 63B of the General Laws, as so appearing, is
286 hereby amended by striking the word "ten" in line 16 and inserting in place thereof the
287 following:- twenty-five.

288 SECTION 20. Section 148B of Chapter 149 of the General Laws, as appearing in the
289 2008 Official Edition, is hereby amended by striking out the word "and," in line 8, and inserting
290 in place thereof the following word:- or.

291 SECTION 21. Section 188 of Chapter 149 of the General Laws, as appearing in the 2006
292 Official Edition, is hereby amended by striking out, in line 18, the word "equivalent".

293 SECTION 22. Section 188 of Chapter 149 of the General Laws, as appearing in the 2006
294 Official Edition, is hereby amended by inserting under subsection (c) the following paragraph:

295 (11) For the purpose of the fair share contribution compliance test, an employer may
296 count employees that have qualifying health insurance coverage from a spouse, a parent, a
297 veteran's plan, Medicare, Medicaid, or a plan or plans due to a disability or retirement towards
298 their qualifying take-up rate as a "contributing employer", as defined by the Division of Health
299 Care Finance and Policy. The employer is still required to offer group medical insurance and
300 must keep and maintain proof of their employee's insurance status.

301 SECTION 23. Subsection (2) of paragraph (a) of section 14 of Chapter 151A, as so
302 appearing, is hereby amended by striking the words "employer's total taxable payroll for the
303 period of twelve consecutive months ending on" and inserting in place thereof the following
304 words:- average of the employer's total taxable payroll for the three years prior to

305 SECTION 24. Said subsection is hereby further amended by striking the words "total
306 taxable payrolls reported by all employers whose experience rate is determined under paragraph
307 (1) of subsection (i), for the period of twelve consecutive months ending on" and inserting in
308 place thereof the following words:- average of the total taxable payrolls reported by all
309 employers whose experience rate is determined under paragraph (1) of subsection (i), for the
310 three years preceding

311 SECTION 25. Said subsection is hereby further amended by striking the words "total
312 payrolls reported by all employers liable for contributions under section fourteen for the calendar
313 year" and inserting in place thereof the following words:-the average of the total payrolls
314 reported by all employers liable for contributions under section fourteen for the three years

315 SECTION 26. Subsection (1) of paragraph (h) of said section 14 is hereby amended by
316 striking the words "The commissioner shall determine each employer's total taxable wages for
317 the twelve months" and inserting in place thereof the following words:- The commissioner shall
318 determine the average of each employer's total taxable wages for the three-year

319 SECTION 27. Subsection (2) of paragraph (h) of section 14 of said chapter 151A of the
320 General Laws, as so appearing, is hereby amended by striking the words "commissioner shall
321 determine the total taxable wages of all employers in the commonwealth, whose experience rate
322 is determined under paragraph (1) of subsection (i) during the calendar year" and inserting in
323 place thereof the following words:- commissioner shall determine the average of the total
324 taxable wages of all employers in the commonwealth, whose experience rate is determined under
325 paragraph (1) of subsection (i) for the three-year period

326 SECTION 28. Section 24 of said chapter 151A, as so appearing, is hereby amended in
327 subparagraph (a) by striking the words "Have been paid wages in the base period amounting to at
328 least thirty times the weekly benefit rate" and inserting in place thereof the following words:-
329 Have been paid wages in at least two quarters of the base period amounting to at least thirty
330 times the weekly benefit rate.

331 SECTION 29. Subsection (i) of section 14 of said chapter 151A, as appearing in the
332 2006 Official Edition, is hereby amended by striking out paragraph (1) and inserting in place
333 thereof the following:-

334 With respect to calendar years beginning on or after January 1, 2011, the experience rate
335 of an employer qualifying therefor under subsection (b) shall be the rate which appears in the
336 column headed by the unemployment compensation reserve percentage as of the applicable

337 computation date and on the line with the applicable employer account reserve percentage as set
338 forth in the experience rate table:

339 SECTION 30. Paragraph (2) of subsection (i) of section 14 of said chapter 151A of the
340 General Laws, as so appearing, is hereby repealed.

341 SECTION 31. Said chapter 151A of the General Laws, as appearing in the 2006 Official
342 Edition, is hereby amended by deleting Section 14G.

343 SECTION 32. All proceeds accumulated in the Medical Security Trust Fund on the date
344 of dissolution shall be deposited in the unemployment insurance trust fund.

345 SECTION 33. Chapter 231 of the General Laws, as appearing in the 2008 Official
346 Edition, is hereby amended by inserting after section 85Z the following new section:-

347 Section 85AA. A product supplier shall not be liable in any product liability action for
348 harm caused by failure to provide adequate warning or instruction, unless the plaintiff proves by
349 a preponderance of the evidence that, at the time the product left the control of the supplier, and
350 in light of the technical, medical, and scientific knowledge available at the time the product left
351 the control of the supplier, the supplier knew or reasonably should have known of the danger that
352 caused the plaintiff's harm and failed to provide adequate warning or instruction concerning such
353 danger.

354 A product supplier shall not be liable in any product liability action for harm caused by
355 the design or formulation of a product, unless the plaintiff proves by a preponderance of the
356 evidence that, at the time the product left the control of the supplier, an alternative design or
357 formulation was commercially and technically feasible that would have prevented the harm for
358 which the claimant seeks to recover compensatory damages without substantially impairing the
359 utility of the product.

360 For purposes of this section the term "product liability action" shall mean any action
361 brought for, or on account of, death, personal injury or injury to property caused by a product
362 which is claimed to be defectively designed, or for which it is claimed that an adequate warning
363 or instruction was not provided, irrespective of whether such action is based on negligence, strict
364 liability, breach of warranty, or any other legal theory.

365 This section applies to all causes of action pending on or commenced on or after the date
366 of the enactment. This section shall take effect upon enactment.

367 SECTION 34. Chapter 231B of the General Laws, as appearing in the 2008 Official
368 Edition, is hereby amended by inserting the following new section:-

369 Section 5. (a) In any civil action, the court, unless otherwise agreed by all parties to the
370 action, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make

371 findings indicating both (1) the total amount of each plaintiff's damages, and (2) the percentage
372 of the total fault of all persons that contributed to the plaintiff's damages, including any plaintiff,
373 defendant or other person not named as a party to the action.

374 (b) In determining the percentages of fault under subsection (a), the trier of fact shall
375 consider both the nature of the conduct of each person at fault and the extent of the causal
376 relation between the conduct and the damages. (c) The court shall determine the award of
377 damages to each plaintiff in accordance with the findings under subsection (a), and shall enter
378 judgment against each party, including any third-party defendant, except that a person shall not
379 be required to pay non-economic damages in an amount greater than his or her percentage of
380 fault as found under subsection (a) (2). (d) The term "non-economic damages" means
381 subjective, non-monetary loss resulting from harm, including pain, suffering, inconvenience,
382 mental suffering, emotional distress, loss of society or companionship, loss of consortium, injury
383 to reputation, and humiliation. (e) This section shall not apply to actions for intentional torts, or
384 to judgments against two or more defendants who are found to have consciously acted in a
385 concerted effort.

386 SECTION 35. Chapter 260 of the General Laws, as appearing in the 2008 Official
387 Edition, is hereby amended by inserting the following new section:-

388 Section 20A. (a) A products liability action shall not be commenced more than ten years
389 after the initial date of sale or lease of the product for use or consumption.

390 (b) The limitation provided for in subsection (a) shall not apply to the following
391 situations:

392 (1) where a manufacturer or seller of a product provides any express written warranty
393 that the product can be used for a period longer than ten years. In such case the limitation shall
394 be extended pursuant to the terms of the express written warranty.

395 (2) if the harm, caused within ten years after the time of delivery, did not manifest
396 itself until after that time.

397 SECTION 36. Sections 3A, 20A and 25 of chapter 175 of the acts of 1998 are hereby
398 repealed.

399 SECTION 37. Notwithstanding any general or special law to the contrary, subsection (b)
400 of section 39 of chapter 7 of the General Laws, as appearing in the 2008 Official Edition, is
401 hereby suspended, beginning January 1, 2012, and ending December 31, 2014.

402 SECTION 38. Notwithstanding any general or special act to the contrary, the operational
403 services division within the executive office for administration and finance shall endeavor to
404 ensure that in any fiscal year no less than 15% of statewide procurement contracts are entered
405 into with small businesses. For the purposes of this section, small business shall mean a business

406 entity, including its affiliates, that (i) is independently owned and operated; (ii) has a principal
407 place of business in the commonwealth; and (iii) would be defined as a small business under
408 applicable federal law.

409 SECTION 39. Sections 3, 4, 11, 12, 14 and sections 15 to 19, inclusive, shall be effective
410 for tax years beginning on or after January 1, 2012.

411 SECTION 40. Section 9 shall be effective for calendar years 2011 to 2015, inclusive.

412 SECTION 41. Sections 23 through 30, inclusive, shall take effect January 1, 2012.