

HOUSE No. 4172

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act SAFEGUARDING OUR NATURAL RESOURCES..

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

1 SECTION 1. Chapter 131 of the Massachusetts General Laws is hereby amended by
2 striking Section 80A in its entirety and inserting in place thereof the following:-

3 Section 80A. Notwithstanding any other provision of this chapter, a person shall not use,
4 set, place, maintain, manufacture or possess any trap for the purpose of capturing furbearing
5 mammals, except for common type mouse and rat traps, nets, and box or cage type traps, as
6 otherwise permitted by law. A box or cage type trap is one that confines the whole animal
7 without grasping any part of the animal, including Hancock or Bailey’s type live trap for
8 beavers. Other than nets and common type mouse or rat traps, traps designed to capture and hold
9 a furbearing mammal by gripping the mammal’s body, or body part are prohibited, including
10 steel jaw leghold traps, padded leghold traps, and snares.

11 The above provision shall not apply to the use of prohibited devices by federal and state
12 departments of health or municipal boards of health for the purpose of protection from threats to
13 human health and safety. A threat to human health and safety may include, but shall not be
14 limited to:

- 15 (a) beaver or muskrat occupancy of a public water supply;
- 16 (b) beaver or muskrat-caused flooding of drinking water wells, well fields or water
17 pumping stations;
- 18 (c) beaver or muskrat-caused flooding of sewage beds, septic systems or sewage pumping
19 stations;
- 20 (d) beaver or muskrat-caused flooding of a public or private way, driveway, railway or
21 airport runway or taxi-way;
- 22 (e) beaver or muskrat-caused flooding of electrical or gas generation plants or
23 transmission or distribution structures or facilities, telephone or other communications facilities
24 or other public utilities;
- 25 (f) beaver or muskrat-caused flooding affecting the public use of hospitals, emergency
26 clinics, nursing homes, homes for the elderly or fire stations;
- 27 (g) beaver or muskrat-caused flooding affecting hazardous waste sites or facilities,
28 incineration or resource recovery plants or other structures or facilities whereby flooding may
29 result in the release or escape of hazardous or noxious materials or substances;
- 30 (h) the gnawing, chewing, entering, or damage to electrical or gas generation,
31 transmission or distribution equipment, cables, alarm systems or facilities by any beaver or
32 muskrat;
- 33 (i) beaver or muskrat-caused flooding or structural instability on property owned by the
34 applicant if such animal problem poses an imminent threat of substantial property damage or
35 income loss, which shall be limited to: (1) flooding of residential, commercial, industrial or

36 commercial buildings or facilities; (2) flooding of or access to commercial agricultural lands
37 which prevents normal agricultural practices from being conducted on such lands; (3) reduction
38 in the production of an agricultural crop caused by flooding or compromised structural stability
39 of commercial agricultural lands; (4) flooding of residential lands in which the municipal board
40 of health, its chair or agent or the state or federal department of health has determined a threat to
41 human health and safety exists. The department of environmental protection shall make any
42 determination of a threat to a public water supply.

43 An applicant or his duly authorized agent may apply to the municipal board of health for
44 an emergency permit to immediately alleviate a threat to human health and safety, as defined in
45 the previous paragraph. If the municipal board of health determines that such a threat exists, it
46 shall immediately issue said emergency permit to alleviate the existing threat to human health
47 and safety, for a period not exceeding ten days. If no response is provided by the municipal
48 board of health within ten calendar days or the application is denied, the applicant or his duly
49 authorized agent may transfer the application for said emergency permit application to the
50 Division of Fisheries and Wildlife or director. If the Division of Fisheries and Wildlife or
51 director determines that such a threat exists, it shall immediately issue said emergency permit to
52 alleviate the existing threat to human health and safety, for a period not exceeding ten days.

53 The aforementioned emergency permit authorizes the applicant or his duly authorized
54 agent to immediately remedy the threat to human health and safety by one or more of the
55 following options: (a) the use of conibear or box or cage-type traps, subject to the regulations
56 promulgated by the Division of Fisheries and Wildlife; (b) the breaching of dams, dikes, bogs or
57 berms, so-called, subject to determinations and conditions of municipal conservation
58 commissions under section 40; and (c) employing any nonlethal management or water-flow

59 devices, subject to determinations and conditions of municipal conservation commissions under
60 section 40.

61 If said threat to human health and safety has not been alleviated within said ten days, the
62 applicant or his duly authorized agent shall apply to the granting authority for an extension
63 permit to continue the use of alleviation techniques, specified in this section, for a period not
64 exceeding 30 days. If the granting authority determines that such a threat to human health or
65 safety exists, as defined in this section, the authority shall immediately issue an extension permit.

66 If the Division of Fisheries and Wildlife determines that said extension permit should be
67 continued for 30 days, the Division of Fisheries and Wildlife shall within 30 days of such
68 decision develop, with the assistance of the applicant or his duly authorized agent, municipal
69 board of health and municipal conservation commission, a plan to abate the beaver or muskrat
70 problem using alternative, nonlethal management techniques in combination with water-flow
71 devices, where possible, subject to the determinations and conditions of municipal conservation
72 commissions under section 40, and if necessary, box and cage type-traps in order to provide a
73 long-term solution. The director shall take reasonable steps to implement the plan within this 30-
74 day period.

75 Compliance with the provisions of any or all of this section shall not preclude the
76 applicant or his duly authorized agent from applying to the municipal board of health or Division
77 of Fisheries and Wildlife for an additional emergency permit, provided the applicant (a) states in
78 writing that there exists on the property an animal problem which poses a threat to human health
79 and safety, as defined in this section, which cannot reasonably be abated by the use of
80 alternative, nonlethal management techniques or box or cage traps, and that the applicant has

81 attempted to abate the animal problem using alternative, nonlethal management techniques or
82 box or cage traps, or (b) is awaiting the Division of Fisheries and Wildlife's approval for an
83 extension permit.

84 Each and every board of health within the Commonwealth which issues an emergency
85 permit pursuant to this section shall report annually to the Division of Fisheries and Wildlife the
86 number of permit applications, the number of permits granted, location for which the emergency
87 permits were authorized, results from the emergency permits, and other information which may
88 be required by the Division of Fisheries and Wildlife. The Division of Fisheries and Wildlife
89 shall provide a report annually to the joint committee on environment, natural resources, and
90 agriculture on the aggregation of boards of health reports, the number of permit applications it
91 received, the number of permits it granted, location for which the emergency permits were
92 authorized, results from the emergency permits, and recommendations regarding wildlife
93 management pursuant to this section.

94 A person or his duly authorized agent may apply to the director of the Division of
95 Fisheries and Wildlife for a special permit to use otherwise prohibited traps on property owned
96 by such person. Issuance of such special permits shall be governed by rules and regulations
97 adopted by the director pursuant to chapter 30A. Such rules and regulations shall include, but not
98 be limited to, provisions relative to the following:

99 The applicant shall apply to the director in writing and shall state that there exists on the
100 property an animal problem which cannot be reasonably abated by the use of traps other than
101 those prohibited by this section, and that the applicant has attempted to abate the problem using
102 traps permitted under this section. If the director determines that the applicant has complied with

103 sections 37 and 80, if required to do so, and any other laws regarding trapping, and that such an
104 animal problem exists which cannot reasonably be abated by the use of alternative, nonlethal
105 management techniques or traps other than those prohibited by this section, the director may
106 authorize the use, setting, placing or maintenance of such traps, not including leghold traps, for a
107 period not exceeding 30 days during which time the applicant shall remain in compliance with
108 the procedures for obtaining a special permit as set forth in regulations adopted pursuant to this
109 section.

110 Whoever violates any provisions of this section, or any rule or regulation made under the
111 authority thereof, shall be punished by a fine of not less than \$300 nor more than \$1,000, or by
112 imprisonment for not more than six months, or by both such fine and imprisonment for each trap
113 possessed, used, set, placed, maintained, or manufactured. Each day of violation shall constitute
114 a separate offense. A person found guilty of, or convicted of, or assessed in any manner after a
115 plea of nolo contendere, or penalized for, a second violation of this section shall surrender to an
116 officer authorized to enforce this chapter any trapping license and problem animal control permit
117 issued to such person and shall be barred forever from obtaining a trapping license and a problem
118 animal control permit.