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SENATE . . . . . No. 1699

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the protection of motorists and residential neighborhoods..

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. The General Laws are hereby amended by inserting after chapter 21M the following chapter:-

CHAPTER 21NTHE TRANSPORTATION OF EXPLOSIVE AND INFLAMMABLE MATERIALS AND STRICT LIABILITY

Section 1. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:-

“Motor vehicle,” as defined in section 1 of chapter 90.

“Passenger vehicle,” any motor vehicle that is used or maintained primarily for the transportation of persons and not for the commercial transportation of any hazardous article or material identified in section 9 of chapter 148 of the General Laws.

“Person,” any individual, corporation, affiliate or subsidiary, partnership, association, cooperative or otherwise, trust or estate, governmental agency, authority, municipality or agency thereof, board or commission, or other public or private legal entity.

Section 2. Notwithstanding any general or special law to the contrary, whoever owns or operates a motor vehicle transporting any hazardous article or material identified in section 9 of chapter 148, shall be strictly liable for damages to the person or property of another caused by the release of any such hazardous article or material, including, but not limited to, damage caused by fire or explosion without proof of negligence. The exercise of due care shall not excuse any owner or operator from strict liability for personal injuries or real or personal property damage caused thereby.

Section 2 of chapter 258, not this chapter, shall apply to any claim against a public employer.

Nothing in this chapter shall be construed to impose strict liability on a person that owns or operates a passenger vehicle or to preclude the right to bring a claim for contributory negligence under chapter 231B.

SECTION 2. Section 35 of chapter 85 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 28 and 29, the words "two hundred dollars" and inserting in place thereof the following figure:- $500.

SECTION 3. Chapter 10 of the General Laws is hereby amended by adding the following section:--

Section 75. There shall be established and set up on the books of the commonwealth a separate fund to be known as the HazMat Response Fund. There shall be credited to the fund all penalties and fines due the commonwealth collected under the second paragraph in section 35 of chapter 85 and the fourth paragraph in section 20 of chapter 90 and any income derived from investment of amounts credited to the fund. Amounts credited to the fund shall be received and

held in trust solely for hazardous materials training and equipment procurement. The state treasurer shall be the custodian of the fund and shall receive, deposit and invest all monies transmitted to him under this section in accordance with sections 34, 34A and 38 of chapter 29, and all other applicable statues, in such a manner as to secure the highest rate of return available consistent with the safety of the fund, and shall credit interest and earnings on the trust fund corpus to the trust fund. The secretary of the executive office of public safety shall award and administer grants from the fund, without further appropriation, to municipalities in the commonwealth. The secretary of the executive office of public safety shall develop written criteria for awarding grants, which shall be evaluated and, if necessary, revised on an annual basis. The secretary of the executive office of public safety shall file a report detailing the amount of funds collected and expended from the fund along with a copy of the written criteria used to expend the funds to the house and senate committees on ways and means not later than August 15 of each calendar year. Any unexpended balance of monies in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure from such fund in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

SECTION 4. Said section 35 of said chapter 85, as so appearing, is hereby amended by adding the following 2 paragraphs:-

Any person that operates a vehicle carrying any article or material identified in section 9 of chapter 148, the weight of which, with its load, exceeds the maximum weight authorized under this section or section 34, unless such vehicle is being operated in accordance with the terms of a special permit issued under section 30 or 30A, shall be punished by a fine of not more than $1000.

Any person that violates this section or section 34 shall be deemed to have committed a moving violation for the purposes of determining surcharges on motor vehicle premiums under section 113B of chapter 175.

SECTION 5. Section 20 of chapter 90 of the General Laws, as so appearing, is hereby amended by inserting, after the third paragraph, the following paragraph:-

Any person who violates section 17 while operating a commercial motor vehicle, as defined in section 1 of chapter 90F, while such vehicle is transporting any article or material identified in section 9 of chapter 148, shall be punished by a fine of not more than $1,000 for the first offense, not less than $1,000 nor more than $2,000 for a second offense committed in any 12 month period, and not less than $2,000 nor more than $3,000 for a third or subsequent offense committed in any 12 month period. Prosecutions commenced under this paragraph shall not be placed on file nor continued without a finding.