

SENATE No. 2625

The Commonwealth of Massachusetts

—————
the One Hundred and Ninetieth General Court
(2017-2018)
—————

SENATE, July 23, 2018

The committee on Ways and Means, to whom was referred the House Bill relative to economic development in the commonwealth (House, No. 4732, published as amended) (the committee on Bonding, Capital Expenditures and State Assets having recommended that the bill be amended by striking out all after the enacting clause and inserting in place there of the text of Senate document numbered 2622); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2625.

[Bond authorization: \$601,450,000]

For the committee,
Karen E. Spilka

The Commonwealth of Massachusetts

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1 SECTION 1. To provide for a program of economic development and job creation, the
2 sums set forth in sections 2A and 2B, for the several purposes and subject to the conditions
3 specified in this act, are hereby made available, subject to the laws regulating the disbursement
4 of public funds; provided, however, that the amounts specified in an item or for a particular
5 project may be adjusted to facilitate projects authorized in this act. These sums shall be in
6 addition to any amounts previously authorized and made available for these purposes.

7 SECTION 2A.

8 EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT

9 Office of the Secretary

10 6720-1351 For a grant program to coastal communities to be administered by the
11 seaport economic council; provided, that funding shall be used for community planning and
12 investment activities that stimulate economic development and create jobs in the maritime
13 economy sector, and to construct, improve, repair, maintain and protect coastal assets that are
14 vital to achieving these goals; and provided further, that the planning, prioritization, selection
15 and implementation of projects shall consider climate change impacts in furtherance of the goals

16 of climate change mitigation and adaptation and consistent with the integrated state hazard
17 mitigation and climate change adaptation plan..... \$55,000,000

18 7002-1120 For grants to municipalities and other public instrumentalities for design,
19 construction, building, land acquisition, rehabilitation, repair and other improvements to
20 publicly-owned infrastructure, or those owned or operated by nonprofit organizations; provided,
21 that not less than \$3,000,000 shall be expended for the development of land for housing,
22 community and commercial use in the Rail Transit District of the town of Ashland; provided
23 further, that not less than \$3,000,000 shall be expended for the costs associated with the
24 replacement of the Saxonville fire station in the city of Framingham; provided further, that not
25 less than \$3,000,000 shall be expended for the site study, acquisition and improvements related
26 to the Axton-Crossing land in the town of Holliston; provided further, that not less than
27 \$2,500,000 shall be expended for improvements to the Grove Street Business Corridor in the city
28 known as the town of Franklin; provided further, that not less than \$2,000,000 shall be expended
29 for the design and construction of a high pressure water service system in the town of Hopkinton;
30 provided further, that not less than \$1,200,000 shall be expended for the costs associated with a
31 new public service facility in the town of Medway; provided further, that not less than
32 \$1,500,000 shall be expended for the costs associated with the development of a parking garage
33 in the downtown area of the town of Natick; provided further, that not less than \$10,000,000
34 shall be expended to Massachusetts Bay Community College to support workforce development
35 for the early education and care and allied health professions; provided further, that not less than
36 \$2,000,000 shall be expended for the façade improvement program and streetscape
37 improvements in neighborhood business districts in the city of Worcester; provided further, that
38 not less than \$1,000,000 shall be expended to support the growth of the startup and small

39 business ecosystem, including the operation of incubators, accelerators and other new ventures,
40 in the city of Worcester; provided further, that not less than \$1,000,000 shall be expended for
41 business development along Pleasant street in the city of Worcester; provided further, that not
42 less than \$500,000 shall be expended for the fit-out of the ground floor of the Union Station
43 garage for commercial use in the city of Worcester; provided further, that not less than
44 \$1,000,000 shall be expended for the Black Box Theater at the Worcester PopUp in the city of
45 Worcester; and provided further, that not less than \$1,000,000 shall be expended for the business
46 development in Webster square in the city of Worcester\$32,700,000

47 7002-1501 For grants administered by Massachusetts Technology Development
48 Corporation established in section 2 of chapter 40G of the General Laws, and doing business as
49 MassVentures; provided, that such grants shall be made on a competitive basis to growing
50 Massachusetts-based companies commercializing technologies developed with assistance of a
51 small business innovation research or small business technology transfer grant from a federal
52 agency including, but not limited to, the United States Department of Defense, the United States
53 Department of Energy or the National Science Foundation..... \$12,500,000

54 7002-8006 For the MassWorks infrastructure program established in section 63 of
55 chapter 23A of the General Laws.....\$200,000,000

56 7002-8007 For matching grants to enable institutions of higher education, including
57 state and municipal colleges and universities, to participate in and receive federal funding
58 through Manufacturing USA, formerly known as the National Network for Manufacturing
59 Innovation..... \$25,000,000

60 7002-8019 For the Massachusetts Growth Capital Corporation established in section 2
61 of chapter 40W of the General Laws, for a program to provide matching grants to community
62 development financial institutions certified by the United States Treasury or community
63 development corporations certified under chapter 40H of the General Laws to enable the
64 community development financial institution or community development corporation to leverage
65 federal or private investments for the purpose of making loans to small
66 businesses..... \$1,250,000

67 7002-8023 For grants to coastal communities to undertake dredging projects that will
68 promote job creation, increase commercial activity, contribute to downtown revitalization or
69 advance other local economic development goals; provided, that all grants shall be matched on a
70 1 to 1 basis by the grantee..... \$50,000,000

71 SECTION 2B.

72 EXECUTIVE OFFICE OF EDUCATION

73 Office of the Secretary

74 7009-2005 For a competitive grant program to be administered by the executive
75 office of education, in consultation with the executive office of housing and economic
76 development and the executive office of labor and workforce development, to provide funding
77 for the purchase and installation of equipment and related improvements and renovations to
78 facilities necessary for the installation and use of such equipment, to establish, upgrade and
79 expand career technical education and training programs that are aligned to regional economic
80 and workforce development priorities; provided, that grant applications may facilitate
81 collaboration to provide students enrolled in eligible vocational technical schools with

82 postsecondary opportunities consistent with clause (o) of the first paragraph of section 22 of
83 chapter 15A of the General Laws and section 37A of chapter 74 of the General Laws; provided
84 further, that community colleges and innovation centers that receive funds from the
85 Massachusetts Life Sciences Center shall also be eligible for funds from this program; provided
86 further, that the executive office of education, in consultation with the executive office of
87 housing and economic development and the executive office of labor and workforce
88 development, shall adopt additional guidelines as necessary for the administration of the
89 program; and provided further, that awards may be made to community-based organizations with
90 recognized success in training adults with barriers to employment..... \$75,000,000

91 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

92 Office of the Secretary

93 6720-1341 For the mitigation of or contribution toward costs associated with or
94 arising out of the design, construction or infrastructure improvements to the Raymond L. Flynn
95 Cruiseport in the South Boston section of the city of Boston to accommodate large cruise ships
96 and increasing passenger demand, for the continued competitiveness of the terminal; provided,
97 that the secretary, in coordination with the chief executive officer of the Massachusetts Port
98 Authority, shall seek to maximize federal and private funds and reimbursement to offset, to the
99 extent feasible, costs incurred under this item; provided further, that the Massachusetts Port
100 Authority shall implement a program that reduces emissions associated with cruise ship
101 operations while said ships are at berth not later than July 1, 2024; provided further, that said
102 program to reduce emissions shall include ship-to-shore capabilities or other advanced emission
103 reduction technology; and provided further, that the Massachusetts Port Authority shall publish

104 an annual report concerning environmental impacts of cruise ship operations at the Conley
105 Terminal and Flynn Cruiseport, including but not limited to, air quality, emissions and noise
106 pollution.....\$100,000,000

107 EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

108 Office of the Secretary

109 0640-0302 For the Massachusetts Cultural Facilities Fund established in section 42 of
110 chapter 23G of the General Laws for the acquisition, design, construction, repair, renovation,
111 rehabilitation or other capital improvement or deferred maintenance to a cultural facility to
112 advance and promote tourism through the preservation of the state's cultural
113 resources.....\$50,000,000

114 SECTION 3. Section 16 of chapter 6D of the General Laws, as appearing in the 2016
115 Official Edition, is hereby amended by striking out subsection (c).

116 SECTION 4. Section 3C of chapter 23A of the General Laws, as so appearing, is hereby
117 amended by adding the following 2 subsections:-

118 (d) Notwithstanding subsections (b) and (c), the EACC may, by guideline or regulation,
119 establish a program to incentivize businesses to occupy vacant storefronts in downtown areas.
120 The EACC may award EDIP tax credits to storefront tenants on a competitive basis, taking into
121 account factors including, but not limited to: (i) the number of jobs to be created; (ii) the volume
122 of pedestrian traffic to be generated; (iii) potential synergy with other downtown businesses; (iv)
123 whether there is a matching contribution from the municipality or the landlord; (v) commitment
124 to storefront improvements; and (vi) whether the municipality has made local plans or

125 investments to revitalize the downtown. Certification of such a project shall require that a
126 business commit to occupying the vacant storefront for a period of not less than 1 year, but the
127 business shall not be required to invest in improvements or create new jobs. The EACC shall not
128 award more than \$500,000 in EDIP tax credits in a calendar year to projects certified pursuant to
129 this subsection.

130 SECTION 5. Chapter 23A of the General Laws is hereby amended by adding the
131 following section:-

132 Section 68. (a) As used in this section, the following words shall have the following
133 meanings, unless the context clearly requires otherwise:

134 “Participant”, a municipality seeking to utilize an innovative technology solution or a
135 startup.

136 “Startup”, a corporation, partnership, limited liability company, sole proprietorship or
137 organization seeking to bring innovative technology to the market including, but not limited to, a
138 company that is seeking a first or early-customer to validate the commercial readiness of the
139 company’s technology.

140 (b) There shall be within the executive office of housing and economic development an
141 innovative communities office to serve as a common place of access, education and point of
142 connection for startups and municipalities seeking innovative technology solutions. The office
143 shall implement an innovative communities program to support the introduction of cutting-edge
144 technologies into the marketplace and incentivize the adoption of these technologies by
145 municipalities.

146 The office shall be under the supervision and control of an executive director, appointed
147 by the secretary of housing and economic development, who shall have experience in business,
148 including experience with companies specializing in new and innovative technologies. The
149 executive director may appoint and remove, subject to appropriation, agents and subordinate
150 officers and employees as the executive director considers necessary and may establish
151 subdivisions as the executive director considers appropriate to carry out the objectives of the
152 office. The executive director may, subject to appropriation and the laws and regulations relating
153 to the employment of consultants, employ consultants as the executive director considers
154 necessary.

155 To implement the innovative communities program, the executive director shall enter into
156 interagency service agreements or other contracts with state agencies, state authorities, business
157 associations and other entities including, but not limited to, the Massachusetts office of
158 information technology, the operational services division, the Massachusetts clean energy
159 technology center, the office of inspector general and regional planning organizations. The
160 interagency service agreements and contracts shall be designed to support municipalities seeking
161 to utilize innovative technology and startups.

162 (c) The executive director shall establish a process to certify innovative communities. To
163 qualify as an innovative community, a municipality shall: (i) pass a resolution, upon the vote of
164 the local governmental body, which accepts the principles described in this section; (ii) make
165 electronically available to the public municipal data sets maintained by the municipality,
166 excluding data sets containing information that identifies individual persons or is protected by
167 law; (iii) attend not less than 1 technology marketing event or exposition organized by the
168 executive director; (iv) conduct beta testing on not less than 1 technology annually that has been

169 vetted and approved by the executive director; and (v) share the results of the trial with other
170 municipalities participating in the innovative communities program. A municipality that meets
171 the requirements of this subsection shall be designated by the executive director as an innovative
172 community and shall be eligible for grants under clause (vii) of subsection (d).

173 (d) In addition to certifying innovative communities under subsection (c), the executive
174 director shall:

175 (i) develop, in consultation with the inspector general, an education program for
176 municipalities regarding purchasing innovative technology from startups under chapter 7 and
177 chapter 30B, including purchasing under subsection (c) of section 4 of said chapter 30B;

178 (ii) develop, in consultation with the inspector general, an education program for
179 startups that includes methods to understand the municipal purchasing process and the
180 requirements and standards that shall be fulfilled by startups in order to sell to municipalities,
181 including opportunities to participate in the commonwealth's efforts to coordinate purchasing for
182 government entities;

183 (iii) create, in consultation with the inspector general, a plain language summary
184 and other standardized informational materials to explain how the procurement process operates
185 for contracts negotiated by municipalities under sections 22A and 22B of said chapter 7 and
186 chapter 30B, to ensure uniform practices in the commonwealth;

187 (iv) organize marketing events and expositions for: (1) startups, to showcase their
188 technology, and conduct statewide innovation competitions to solicit proposals for innovative
189 uses of technology that allow municipalities to better serve their residents or promote efficient
190 use of resources; and (2) participating municipalities, to make municipal technology needs

191 known to startups and to share the results of the beta test required under clause (iv) of subsection
192 (c);

193 (v) engage municipalities and startups, through marketing and outreach, to
194 promote the benefits of participating in the innovative communities program, including soliciting
195 entrepreneurial proposals for reshaping government services through various platforms and
196 encouraging participation from women-owned and minority-owned businesses;

197 (vi) implement pilot programs in innovative communities annually, subject to
198 appropriation, for the most market-ready technologies presented at the technology marketing
199 events, expositions and innovation competitions;

200 (vii) establish a grant program, subject to appropriation, for innovative
201 communities to finance all or a portion of the costs associated with the adoption of a innovative
202 technology approved by the innovative communities program;

203 (viii) provide municipalities and startups with technical assistance to enter into
204 agreements under said chapter 7 and said chapter 30B that assess the need for and the cost and
205 feasibility of employing the chosen technology;

206 (ix) develop a pre-qualification process for participating startups to expedite the
207 purchase of innovative technologies;

208 (x) establish collective purchasing under section 22A of said chapter 7 to be
209 updated on a regular basis, but not less often than annually, where municipalities may make
210 purchases of innovative technologies approved by the executive director under this section;

211 (xi) establish evaluation, audit and compliance procedures for participating
212 startups, including a technology readiness assessment, self-audit and standardized due diligence
213 investigation of participating startup business profiles; and

214 (xii) establish a publicly-available website to publish and regularly update
215 information, events and materials created under this subsection.

216 (e) There shall be an innovative communities advisory board to: (i) build and maintain
217 relationships between startups and municipalities; and (ii) improve the innovative communities
218 program. The advisory board shall be within, but not subject to the control of, the executive
219 office of housing and economic development.

220 The advisory board shall consist of: the chief information officer of the Massachusetts
221 office of information technology or a designee; the executive director of the Massachusetts
222 Municipal Association, Inc. or a designee; 1 representative of the Massachusetts Association of
223 Public Purchasing Officials; and 9 members to be appointed by the governor, 1 of whom shall be
224 a chief executive officer of a clean energy company or a designee, 1 of whom shall be a chief
225 executive officer of an innovative information technology company or a designee, 1 of whom
226 shall be a chief executive officer of an innovative startup company or a designee, 1 of whom
227 shall be an investor in new technology companies, 2 of whom shall be chief executive officers of
228 associations representing emerging technology industries, 2 of whom shall be individuals who
229 have experience with business incubators or shared workspaces and 1 of whom shall be a
230 representative of a regional planning organization. The governor shall fill any vacancy. The
231 advisory board shall elect a chair. The advisory board shall file a report on the activities of the
232 board and any recommendations annually, not later than March 1, with the secretary of housing

233 and economic development and the joint committee on economic development and emerging
234 technologies.

235 SECTION 6. Subsection (b) of section 2RR of chapter 29 of the General Laws, as so
236 appearing, is hereby amended by adding the following paragraph:-

237 (3) To provide grants for pipeline training for unemployed persons by an employer with a
238 job vacancy; provided, however, that the director shall not allocate more than 5 per cent of the
239 annual capitalization of the fund to provide for such grants. In determining grant recipients, the
240 director shall contract with the commonwealth corporation to distribute the grants in a need
241 based, competitive process in accordance with the rules and parameters outlined in section
242 2WWW. The grants shall be performance-based and 50 per cent funded upon enrollment in the
243 program, with the balance to be paid contingent upon job placement and retention outcomes that
244 demonstrate placement of a participant in a training-related position requiring not less than 30
245 hours per week for not less than 2 months. To further support pipeline training and to match the
246 substantial contributions made from employers to the fund, the commonwealth shall match,
247 subject to appropriation, money used for grants pursuant to this paragraph.

248 SECTION 7. Paragraph (a) of part B of section 3 of chapter 62 of the General Laws, as so
249 appearing, is hereby amended by striking out subparagraph (10) and inserting in place thereof the
250 following subparagraph:- (10) An amount equal to 10 per cent of the cost of renovating any
251 abandoned building that is part of a certified project as defined in section 3A of chapter 23A.

252 SECTION 8. Section 6 of said chapter 62 is hereby amended by striking out, in lines
253 1052 and 1053, as so appearing, the words “who is not the principal owner of the qualifying

254 business and who is” and inserting in place thereof the following words:- , who is not: (i) the
255 principal owner of the qualifying business; or (ii).

256 SECTION 9. Section 38O of said chapter 63, as so appearing, is hereby amended by
257 striking out, in lines 4 and 5, the words “either located within an economic target area designated
258 under section 3G of chapter 23A, or”.

259 SECTION 10. Sections 42 and 42A of chapter 93 of the General Laws are hereby
260 repealed.

261 SECTION 11. The General Laws are hereby amended by inserting after chapter 93K the
262 following 2 chapters:-

263 CHAPTER 93L.

264 UNIFORM TRADE SECRETS ACT.

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

267 “Improper means”, without limitation, theft, bribery, misrepresentation, unreasonable
268 intrusion into private physical or electronic space or breach or inducement of a breach of a
269 confidential relationship or other duty to limit acquisition, disclosure or use of information;
270 provided, however, that “improper means” shall not include reverse engineering from properly
271 accessed materials or information.

272 “Misappropriation”, (i) the acquisition of a trade secret of another by a person who
273 knows, or who has reason to know, that the trade secret was acquired by improper means; or (ii)
274 the disclosure or use of a trade secret of another without that person’s express or implied consent

275 by a person who: (A) used improper means to acquire the trade secret; or (B) at the time of the
276 disclosure or use, knew or had reason to know that the trade secret was acquired: (1) through a
277 person who had utilized improper means to acquire it; (2) under circumstances giving rise to a
278 duty to limit its acquisition, disclosure or use; or (3) through a person who owed a duty to the
279 person seeking relief to limit its acquisition, disclosure, or use; or (C) before a material change of
280 such person's position, knew or had reason to know that what was disclosed was a trade secret
281 and that such person's knowledge of the trade secret had been acquired by accident, mistake or
282 through another person's act described in subclause (A) of clause (ii) or subclauses (1) or (2) of
283 subclause (B) of said clause (ii).

284 "Person", a natural person, corporation, business trust, estate, trust, partnership,
285 association, joint venture, government, governmental subdivision or agency or any other legal or
286 commercial entity.

287 "Trade secret", specified or specifiable information, whether or not fixed in tangible form
288 or embodied in any tangible thing, including, but not limited to, a formula, pattern, compilation,
289 program, device, method, technique, process, business strategy, customer list, invention or
290 scientific, technical, financial or customer data that, at the time of the alleged misappropriation:
291 (i) provided an economic advantage, actual or potential, from not being generally known to, and
292 not being readily ascertainable by proper means by, others who might obtain economic
293 advantage from its acquisition, disclosure or use; and (ii) was the subject of efforts that were
294 reasonable under the circumstances to protect against the acquisition, disclosure or use of such
295 information without the consent of the person properly asserting rights therein or such person's
296 predecessor in interest including, but not limited to, reasonable notice.

297 Section 2. (a) Actual or threatened misappropriation may be enjoined upon principles of
298 equity including, but not limited to, consideration of prior conduct and the circumstances of
299 potential use, upon a showing that information qualifying as a trade secret has been or is
300 threatened to be misappropriated. Upon application to the court, an injunction shall be terminated
301 when the trade secret has ceased to exist; provided, however, that the injunction may be
302 continued for an additional reasonable period of time if necessary to eliminate any economic
303 advantage that otherwise would be derived from such misappropriation.

304 (b) In exceptional circumstances, an injunction may condition future use upon payment
305 of a reasonable royalty for no longer than the period of time for which use could have been
306 prohibited. For the purposes of this subsection, “exceptional circumstances” shall include, but
307 are not limited to, a material and prejudicial change of position prior to acquiring the knowledge
308 or reason to know of misappropriation that renders a prohibitive injunction inequitable.

309 (c) In appropriate circumstances, affirmative acts to protect a trade secret may be
310 compelled by court order.

311 Section 3. (a) Except to the extent that a material and prejudicial change of position prior
312 to acquiring the knowledge or reason to know of misappropriation renders a monetary recovery
313 inequitable, a complainant is entitled to recover damages for misappropriation. Damages can
314 include both the actual loss caused by misappropriation and the unjust enrichment caused by
315 misappropriation that is not taken into account in computing actual loss. In lieu of damages
316 measured by any other methods, the damages caused by misappropriation may be measured by
317 the imposition of liability for a reasonable royalty for the unauthorized disclosure or use of a
318 trade secret.

319 (b) If willful and malicious misappropriation exists, the court may award exemplary
320 damages in an amount not exceeding twice any award made under subsection (a).

321 Section 4. The court may award reasonable attorney's fees and costs to the prevailing
322 party if: (i) a claim of misappropriation is made or defended in bad faith; (ii) a motion to enter or
323 to terminate an injunction is made or resisted in bad faith; or (iii) willful and malicious
324 misappropriation exists. In considering such an award, the court may take into account the
325 claimant's specification of trade secrets and the proof that such alleged trade secrets were
326 misappropriated.

327 Section 5. (a) In an action under this chapter, a court shall preserve the secrecy of an
328 alleged trade secret by reasonable means, which may include granting protective orders in
329 connection with discovery proceedings, holding in-camera hearings, sealing the records of the
330 action or ordering any person involved in the litigation not to disclose an alleged trade secret
331 without prior court approval.

332 (b) In an action alleging misappropriation, a party shall state with reasonable particularity
333 the circumstances thereof, including the nature of the trade secret and the basis for its protection.
334 Before commencing discovery relating to an alleged trade secret, the party alleging
335 misappropriation shall identify the trade secret with sufficient particularity under the
336 circumstances of the case to allow the court to determine the appropriate parameters of discovery
337 and to reasonably enable other parties to prepare their defense.

338 Section 6. An action alleging misappropriation must be brought not more than 3 years
339 after the misappropriation was discovered or should have been discovered by the exercise of

340 reasonable diligence. For the purposes of this chapter, a continuing disclosure or use constitutes a
341 single claim.

342 Section 7. (a) Except as provided in subsection (b), this chapter shall supersede any
343 conflicting laws of the commonwealth that provide civil remedies for misappropriation.

344 (b) This chapter shall not affect: (i) contractual remedies; provided, however, that, to the
345 extent such remedies are based on an interest in the economic advantage of information claimed
346 to be confidential, such confidentiality shall be determined according to the definition of trade
347 secret in section 1 and the terms and circumstances of the underlying contract shall be considered
348 in such determination; (ii) remedies based on submissions to governmental units; (iii) other civil
349 remedies to the extent that they are not based upon misappropriation; or (iv) criminal remedies,
350 whether or not based upon misappropriation.

351 Section 8. This chapter shall be applied and construed to effectuate its general purpose of
352 making uniform the law with respect to the subject of this chapter among states enacting it.

353 CHAPTER 93M

354 BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

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

357 “Assertion of patent infringement”, (i) the sending or delivering of a demand letter to a
358 target; (ii) the threatening of a target with litigation and asserting, alleging or claiming that the
359 target has engaged in patent infringement; (iii) the sending or delivering of a demand letter to the
360 customers of a target; or (iv) a claim or allegation, other than those made in litigation against a

361 target, that a target has engaged in patent infringement or that a target should obtain a license to a
362 patent in order to avoid litigation.

363 “Demand letter”, a letter, e-mail or other communication asserting, alleging or claiming
364 that the target has engaged in patent infringement or that a target should obtain a license to a
365 patent in order to avoid litigation, or any similar assertion.

366 “Target”, a person residing in, conducting substantial business in or having its principal
367 place of business in Massachusetts against whom an assertion of patent infringement is made.

368 Section 2. (a) A person shall not make an assertion of patent infringement in bad faith. In
369 determining whether a person has made an assertion of patent infringement in bad faith, and in
370 addition to any other factor the court finds relevant, a court may consider whether:

371 (i) the demand letter failed to contain the following information: (A) the patent
372 number; (B) the name and address of the patent owner or owners and assignee or assignees, if
373 any; and (C) factual allegations concerning the specific areas in which the target’s products,
374 services and technology infringe the patent or are covered by the claims in the patent;

375 (ii) prior to sending the demand letter, the person failed to conduct an analysis
376 comparing the claims in the patent to the target’s products, services and technology, or whether
377 such an analysis failed to identify specific areas in which the products, services and technology
378 are covered by the claims in the patent;

379 (iii) the target requested information described in clause (i) that was not included
380 in the demand letter and the person failed to provide the information within a reasonable period
381 of time;

382 (iv) the demand letter demanded payment of a license fee or response within an
383 unreasonably short period of time;

384 (v) the person offered to license the patent for an amount that is not based on a
385 reasonable estimate of the value of the license;

386 (vi) the claim or assertion of patent infringement was meritless and the person
387 knew, or should have known, that the claim or assertion was meritless;

388 (vii) the claim or assertion of patent infringement was deceptive;

389 (viii) the person or its subsidiaries or affiliates have previously filed or threatened
390 to file one or more lawsuits based on the same or similar claim of patent infringement and: (A)
391 those threats or lawsuits lacked the information described in clause (i); or (B) the person
392 attempted to enforce the claim of patent infringement in litigation and a court found the claim to
393 be meritless; and

394 (ix) the patent has been held invalid or unenforceable in a final judgment or
395 administrative decision.

396 (b) A court may consider the following factors as evidence that a person has not made an
397 assertion of patent infringement in bad faith: (i) the demand letter contained the information
398 described in clause (i) of subsection (a); (ii) the target requested such information described in
399 clause (i) of subsection (a) that was not included in the demand letter and the person provided the
400 information within a reasonable period of time; (iii) the person engaged in a good faith effort to
401 establish that the target has infringed the patent and to negotiate an appropriate remedy; (iv) the
402 person made a substantial investment in the use of the patent or in the production or sale of a

403 product or item covered by the patent; (v) the person is: (A) the inventor or joint inventor of the
404 patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or
405 joint inventor, is the original assignee; (B) an institution of higher education or a technology
406 transfer organization owned or affiliated with an institution of higher education; or (C) a non-
407 profit research institute or organization which has as one of its primary functions the
408 management of inventions on behalf of an institute of higher education or a non-profit research
409 institute or organization; (vi) the person makes significant investments in: (A) research and
410 development in connection with the patented technology, where development means technical or
411 experimental work to create, test, qualify, modify or validate technologies or processes for
412 commercialization of goods or services; (B) manufacturing; or (C) the delivery or provision of
413 goods or commercial services using the patented technology; and (vii) the person's business is
414 the licensing of patents as a wholly-owned subsidiary of a person described in clause (vi).

415 Section 3. (a) A target or a person aggrieved by a violation of this chapter or by a
416 violation of rules adopted under this chapter may bring an action in superior court against a
417 person who has made a bad-faith assertion of patent infringement. The court may award to a
418 plaintiff who prevails in an action brought pursuant to this subsection one or more of the
419 following remedies: (i) equitable relief; (ii) damages; (iii) costs and fees, including reasonable
420 attorneys' fees; and (iv) exemplary damages in an amount equal to \$50,000 or three times the
421 total of damages, costs, and fees, whichever is greater; provided, however, that exemplary
422 damages shall not be awarded against a person described in subclause (B) or (C) of clause (v) of
423 section 2 or clause (vi) of subsection (b) of said section 2 .

424 (b) Any person who by contract, agreement, or otherwise, directly or indirectly, arranged
425 for the bad faith assertion of patent infringement and any person who otherwise caused or is

426 legally responsible for such bad faith assertion of patent infringement under the principles of the
427 common law shall be liable to a prevailing plaintiff for all damages, costs and fees. Such
428 liability shall be joint and several.

429 (c) A court may award to a defendant who prevails in an action brought pursuant to this
430 section costs and fees, including reasonable attorneys' fees, if the court finds the action was not
431 well-grounded in fact and warranted by existing law or was interposed for any improper purpose,
432 such as to harass or to cause unnecessary delay or needless increase in the cost of litigation

433 (d) This chapter shall not be construed to limit rights and remedies otherwise available
434 under law to the commonwealth or to any person.

435 Section 4. The attorney general shall have the same authority under this chapter to make
436 rules, conduct civil investigations, bring civil actions and enter into assurances of discontinuance
437 as provided under chapter 93A. In an action brought by the attorney general pursuant to this
438 section, the court may award or impose any relief available under this chapter.

439 SECTION 12. Chapter 149 of the General Laws, as appearing in the 2016 Official
440 Edition, is hereby amended by inserting after section 24K the following section:-

441 Section 24L. (a) As used in this section, the following words shall have the following
442 meanings, unless the context clearly requires otherwise:

443 “Business entity”, a person or group of persons performing or engaging in an activity,
444 enterprise, profession or occupation for gain, benefit, advantage or livelihood, whether for profit
445 or not for profit, including, but not limited to, corporations, limited liability companies, limited
446 partnerships or limited liability partnerships.

447 “Employee”, an individual who is considered an employee under section 148B; provided,
448 however, that the term “employee” shall also include independent contractors.

449 “Forfeiture agreement”, an agreement that imposes adverse financial consequences on a
450 former employee as a result of the termination of an employment relationship, regardless of
451 whether the employee engages in competitive activities following cessation of the employment
452 relationship. Forfeiture agreements do not include forfeiture for competition agreements.

453 “Forfeiture for competition agreement”, an agreement that, by its terms or through the
454 manner in which it is enforced, imposes adverse financial consequences on a former employee as
455 a result of the termination of an employment relationship if the employee engages in competitive
456 activities.

457 “Garden leave clause”, a provision within a noncompetition agreement by which an
458 employer agrees to pay the employee during the restricted period and which shall become
459 effective upon termination of employment unless the restriction upon post-employment activities
460 are waived by the employer or ineffective under clause (iii) of subsection (c).

461 “Noncompetition agreement”, an agreement between an employer and an employee, or
462 otherwise arising out of an existing or anticipated employment relationship, under which the
463 employee or expected employee agrees that the employee will not engage in certain specified
464 activities competitive with the employee’s employer after the employment relationship has
465 ended, including, but not limited to, a forfeiture for competition agreement; provided, however,
466 that “noncompetition agreement” shall not include: (i) a covenant not to solicit or hire employees
467 of the employer; (ii) a covenant not to solicit or transact business with customers, clients or
468 vendors of the employer; (iii) an agreement made in connection with the sale of a business entity

469 or substantially all of the operating assets of a business entity or partnership, or otherwise
470 disposing of the ownership interest of a business entity, partnership or division or subsidiary of a
471 business entity or partnership, when the party restricted by the noncompetition agreement is a
472 significant owner of, or member or partner in, the business entity who will receive significant
473 consideration or benefit from the sale or disposal; (iv) an agreement outside of an employment
474 relationship; (v) a forfeiture agreement; (vi) a nondisclosure or confidentiality agreement; (vii)
475 an invention assignment agreement; (viii) a garden leave clause; (ix) an agreement made in
476 connection with the cessation of or separation from employment if the employee is expressly
477 given 7 business days to rescind acceptance; or (x) an agreement by which an employee agrees to
478 not reapply for employment to the same employer after termination of the employee.

479 “Restricted period”, the period of time after the date of cessation of employment during
480 which an employee is restricted by a noncompetition agreement from engaging in activities
481 competitive with the employee’s employer.

482 (b) A noncompetition agreement shall not be valid or enforceable unless:

483 (i) in the case of an agreement that was entered into in connection with the
484 commencement of employment, the agreement: (A) is in writing signed by both the employer
485 and employee; (B) expressly states that the employee has the right to consult with counsel prior
486 to signing; and (C) is provided to the employee before a formal offer of employment is made or
487 10 business days before the commencement of the employee’s employment, whichever comes
488 first;

489 (ii) in the case of an agreement that was entered into after commencement of
490 employment but not in connection with the separation from employment: (A) the agreement is

491 supported by fair and reasonable consideration independent from the continuation of
492 employment; (B) notice of the agreement was provided not less than 10 business days before the
493 effective date of the agreement; (C) the agreement was in writing; (D) the agreement was signed
494 by both the employer and employee; and (E) the agreement expressly states that the employee
495 has the right to consult with counsel prior to signing;

496 (iii) the agreement is no broader than necessary to protect one or more of the
497 following legitimate business interests of the employer: (A) the employer's trade secrets, as
498 defined in section 1 of chapter 93L; (B) the employer's confidential information that otherwise
499 would not qualify as a trade secret; or (C) the employer's goodwill; provided, however, that the
500 agreement may be presumed necessary where the legitimate business interest cannot be
501 adequately protected through an alternative restrictive covenant, including but not limited to a
502 non-solicitation agreement, a non-disclosure agreement or a confidentiality agreement;

503 (iv) the stated restricted period within the agreement does not exceed 1 year from
504 the date of cessation of employment; provided, however, that if the employee has breached the
505 employee's fiduciary duty to the employer or the employee has unlawfully taken, physically or
506 electronically, property belonging to the employer, the restricted period may be not more than 2
507 years from the date of cessation of employment;

508 (v) the agreement is reasonable in geographic reach in relation to the interests
509 protected; provided, however, that a geographic reach that is limited to only the geographic areas
510 in which the employee, during any time within the last 2 years of employment, provided services
511 or had a material presence or influence shall be presumptively reasonable;

512 (vi) the agreement is reasonable in the scope of proscribed activities in relation to
513 the interests protected; provided, however, that a proscription on activities that protects a
514 legitimate business interest and is limited to only the specific types of services provided by the
515 employee at any time during the last 2 years of employment shall be presumptively reasonable;

516 (vii) the agreement includes a garden leave clause or other mutually-agreed upon
517 consideration between the employer and the employee; provided, however, that such
518 consideration shall be specified in the agreement; provided further, that a garden leave clause
519 within the meaning of this clause shall: (A) provide for the payment, consistent with the
520 requirements for the payment of wages under section 148 of chapter 149, on a pro-rata basis
521 during the entirety of the restricted period of at least 50 per cent of the employee's highest
522 annualized base salary paid by the employer within the 2 years preceding the employee's
523 termination; and (B) except in the event of a breach by the employee, not permit an employer to
524 unilaterally discontinue or otherwise fail or refuse to make the payments; provided, however, if
525 the restricted period has been increased beyond 1 year as a result of the employee's breach of a
526 fiduciary duty to the employer or the employee has unlawfully taken, physically or
527 electronically, property belonging to the employer, the employer shall not be required to provide
528 payments to the employee during the extension of the restricted period; and

529 (viii) the agreement is consistent with public policy.

530 (c) A noncompetition agreement shall not be enforceable against: (i) an employee who is
531 classified as nonexempt under the Fair Labor Standards Act, 29 U.S.C. 201-219, inclusive; (ii)
532 an undergraduate or graduate student that partakes in an internship or otherwise enters a short-
533 term employment relationship with an employer, whether paid or unpaid, while enrolled in a full-

534 time or part-time undergraduate or graduate educational institution; (iii) an employee that has
535 been terminated without cause or laid off; or (iv) an employee that is 18 years old or younger.

536 (d) Nothing in this section shall render void or unenforceable the remainder of a contract
537 or agreement containing an unenforceable noncompetition agreement or preclude the imposition
538 of a noncompetition restriction by a court, whether through preliminary or permanent injunctive
539 relief or otherwise, as a remedy for a breach of another agreement or a statutory or common law
540 duty.

541 (e) A court may, in its discretion, reform or otherwise revise a noncompetition agreement
542 so as to render it valid and enforceable to the extent necessary to protect the applicable legitimate
543 business interests.

544 (f) No choice of law provision that would have the effect of avoiding the requirements of
545 this section shall be enforceable if the employee is, and has been for at least 30 days immediately
546 preceding the employee's cessation of employment, a resident of or employed in the
547 commonwealth at the time of the employee's termination of employment.

548 (g) All civil actions relating to noncompetition agreements subject to this section shall be
549 brought in the county wherein the employee resides or, if mutually agreed upon by the employer
550 and the employee, in the county of Suffolk; provided, however, that in any such action brought
551 in the county of Suffolk, the superior court or the business litigation session of the superior court
552 shall have exclusive jurisdiction.

553 SECTION 13. Section 14L of chapter 151A of the General Laws, as so appearing, is
554 hereby amended by adding the following subsection:-

555 (c) Annually, not later than September 1, the director of career services shall file a report
556 with the joint committee on labor and workforce development and the house and senate
557 committees on ways and means concerning the collection of the workforce training contributions
558 pursuant to subsection (a) for the calendar year ending on the preceding December 31. The report
559 shall include, but not be limited to: (i) the amount collected in each quarter and the total amount
560 collected for the calendar year; (ii) the total number of employers that contributed to the fund and
561 the total number of employees employed by that group of employers; and (iii) the contribution
562 rate, to the extent it differs from 0.056 per cent.

563 SECTION 14. Chapter 166A of the General Laws is hereby amended by adding
564 following section:-

565 Section 23. (a) A cable television operator shall provide a public, educational or
566 governmental access channel and connection so that the channel is delivered, and subscribers
567 receive, the public, educational or governmental access channel with a good quality signal and in
568 the same format as the primary local broadcast signals, including a high definition format and a
569 standard digital format if such formats are delivered and received by subscribers for the primary
570 local broadcast signals; provided, however, that a cable television operator shall not be required
571 to provide the signal of a public, educational or governmental access channel to a subscriber on
572 any particular channel number or to provide such signals in any particular order.

573 (b) A cable television operator shall provide a public, educational or governmental access
574 channel in a nondiscriminatory manner on any navigational device, on-screen program guide or
575 menu such that a subscriber may access the public, educational or governmental access channel
576 in the same manner as local broadcast channels.

577 (c) For the purposes of this section, a cable television operator shall include a cable
578 operator and a multichannel video programming distributor as defined in 47 U.S.C. 522.

579 (d) Nothing in this section shall prohibit, condition or restrict a cable television operator's
580 use of any type of subscriber equipment or any transmission technology.

581 SECTION 15. Section 168 of said chapter 175 of the General Laws, as so appearing, is
582 hereby amended by striking out subsection (d) and inserting in place thereof the following
583 subsection:-

584 (d) (1) Each person so licensed shall keep a separate account of the business done
585 under the license and shall file forthwith a certified copy of each such account with the
586 commissioner. Each account so filed shall include, but not be limited to: (i) the exact amount of
587 such insurance placed for each person whose home state is the commonwealth; (ii) the gross
588 premium charged for such insurance; (iii) the company that issued the insurance policy; (iv) the
589 date and term of each policy; and (v) a report in the same detail of each cancelled policy, with
590 the gross return premiums thereon.

591 (2) Each person so licensed shall, annually, not later than January 31, file a sworn
592 statement with the state treasurer providing the gross premiums charged for insurance procured
593 or placed and the gross return premiums on such insurance cancelled under the license during the
594 year ending on December 31 last preceding. At the time of filing such statement, each person
595 licensed as a special insurance broker shall pay a fee to the commonwealth in an amount equal to
596 4 per cent of such gross premiums, less such gross return premiums, on properties, risks or
597 exposures located or to be performed in the commonwealth or any other state if the insured's
598 home state is the commonwealth.

599 SECTION 16. Said section 168 of said chapter 175 of the General Laws, as so appearing,
600 is hereby further amended by striking out, in line 161, the words “collected pursuant to clause (3)
601 of subsection (d).

602 SECTION 17. Chapter 47 of the acts of 1997 is hereby amended by striking out section
603 22, as appearing in section 86 of chapter 287 of the acts of 2014, and inserting in place thereof
604 the following section:-

605 Section 22. Notwithstanding any general or special law to the contrary, in fiscal years
606 2019 to 2025, inclusive, the office of Medicaid shall allocate \$2,000,000 annually for a Fishing
607 Partnership Health Plan Corporation project that shall provide services to fishermen and fishing
608 families; provided, however, that such services shall include, but not be limited to, assisting
609 fishermen and fishing families in obtaining health insurance coverage.

610 SECTION 18. Notwithstanding any general or special law to the contrary, to meet the
611 expenditures necessary in carrying out section 2A, the state treasurer shall, upon receipt of a
612 request by the governor, issue and sell bonds of the commonwealth in an amount to be specified
613 by the governor from time to time but not exceeding, in the aggregate, \$376,450,000. All bonds
614 issued by the commonwealth, as aforesaid, shall be designated on their face “Commonwealth
615 Economic Development Act of 2018” and shall be issued for a maximum term of years, not
616 exceeding 30 years, as recommended by the governor in a message to the General court dated
617 March 9,2018 pursuant to section 3 of Article LXII of the Amendments to the Constitution;
618 provided, however, that all such bonds shall be payable not later than June 30, 2053. All interest
619 and payments on account of principal on such obligations shall be payable from the General

620 Fund. Notwithstanding any other provision of this act, bonds and interest thereon issued under
621 this section shall be general obligations of the commonwealth.

622 SECTION 19. Notwithstanding any general or special law to the contrary, to meet the
623 expenditures necessary in carrying out section 2B, the state treasurer shall, upon receipt of a
624 request by the governor, issue and sell bonds of the commonwealth in an amount to be specified
625 by the governor from time to time but not exceeding, in the aggregate, \$225,000,000. All bonds
626 issued by the commonwealth, as aforesaid, shall be designated on their face “Commonwealth
627 Economic Development Act of 2018” and shall be issued for a maximum term of years, not
628 exceeding 30 years, as recommended by the governor in a message to the general court dated
629 March 9, 2018 pursuant to section 3 of Article LXII of the Amendments to the Constitution;
630 provided, however, that all such bonds shall be payable not later than June 30, 2053. All interest
631 and payments on account of principal on such obligations shall be payable from the General
632 Fund. Notwithstanding any other provision of this act, bonds and interest thereon issued under
633 this section shall be general obligations of the commonwealth.

634 SECTION 20. Section 4 shall take effect on January 1, 2019 and shall apply to tax years
635 beginning on or after January 1, 2019.

636 SECTION 21. Chapter 93L of the General Laws shall take effect on October 1, 2018 and
637 shall not apply to misappropriation commencing prior to the October 1, 2018, regardless of
638 whether such misappropriation continues after that date.

639 SECTION 22. Section 24L of chapter 149 of the General Laws shall apply to employee
640 noncompetition agreements entered into on or after October 1, 2018.