

# SENATE, No. 2468

[Senate, June 2, 2010 – New draft (Senators Baddour) the Senate Bill relative to the enhancement of public safety, S911.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT STRENGTHENING THE LAWS RELATED TO THE REGULATION OF EXPLOSIVES.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith certain possession and use of electronic weapons, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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.** Section 162A of chapter 127 of the General Laws, as appearing in the  
2   2008 Official Edition, is hereby amended by inserting after the word “arson”, in line 3, the  
3   following words:- or a violation of sections 102 to 102C, inclusive, of chapter 266.

4           **SECTION 2.** Section 20B of chapter 148, as so appearing, is hereby amended by  
5   adding the following paragraph: - The marshal shall not issue or renew a certificate of  
6   competency or suspend the certificate of competency of any person who is the subject of a  
7   restraining order issued pursuant to chapter 209A while said order is in effect.

8           **SECTION 3.** Section 35 of chapter 148 of the General Laws is hereby repealed.

9           **SECTION 4.** Section 36 of chapter 148 of the General Laws is hereby repealed.

10          **SECTION 5.** Section 13 of chapter 265 as so appearing in the 2008 official edition, is  
11 hereby amended by striking out, in lines 6 and 7, the words “one hundred and one to one hundred  
12 and two B, inclusive, of chapter two hundred and sixty-six” and inserting in place thereof, the  
13 following words:- 102 to 102C, inclusive, of chapter 266.

14          **SECTION 6.** Chapter 266 of the General Laws is hereby amended by striking out  
15 sections 101 to 102C, inclusive, as so appearing, and inserting in place thereof the following 6  
16 sections:--

17          **Section 101.** For the purposes of sections 101 to 102D, inclusive, the following terms  
18 shall have the following meanings, unless otherwise clearly required:-

19           **“Ammunition”**, cartridges or cartridge cases, primers (igniter), bullets or propellant  
20 powder designed for use in any weapon utilizing a propellant including, but not limited to,  
21 ammunition produced by or for the military for national defense and security.

22           **“Biological weapon”**, any microorganism, virus, infectious substance or biological  
23 product that may be engineered as a result of biotechnology, or any naturally occurring or  
24 bioengineered component of any such microorganism, virus, infectious substance or biological  
25 product, except if intended for a purpose not prohibited under this chapter or chapter 265,  
26 specifically prepared in a manner to cause death, disease or other biological malfunction in a

27 human, animal, plant or another living organism, deterioration of food, water, equipment  
28 supplies or material of any kind, or deleterious alteration of the environment.

29 **“Black powder”**, a compound or mixture of sulfur, charcoal and an alkali nitrate  
30 including, but not limited to, potassium or sodium nitrate.

31 **“Chemical weapon”**, (i) a toxic chemical or substance, including the precursors to any  
32 toxic chemical or substance; and (ii) ammunition or a device designed to cause death or bodily  
33 harm by means of the release of a toxic chemical or substance.

34 **“Delivery system”**, any equipment designed or adapted for use in connection with the  
35 deployment of chemical, biological or nuclear weapons.

36 **“Denial of access”**, contamination to an area, including any structures thereon, which  
37 poses a health risk to humans, animals or plants and which precludes the safe use of such area  
38 until the contaminant becomes inactive, decays or is removed.

39 **“Destructive or incendiary device or substance”**, an explosive, article or device  
40 designed or adapted to cause physical harm to persons or property by means of fire, explosion,  
41 deflagration or detonation and consisting of substance capable of being ignited, whether or not  
42 contrived to ignite or explode automatically.

43 **“Element”**, a substance that is made entirely from a one type of atom.

44 **“Explosive”**, any element, compound or mixture that is manufactured, designed or used  
45 to produce an explosion and that contains an oxidizer, fuel or other ingredient, in such  
46 proportion, quantity or packing that an ignition by fire, friction, concussion, percussion or

47 detonation of the element or of any part of the compound or mixture may cause such a sudden  
48 generation of highly heated gases that the resultant gaseous pressures, release of heat or  
49 fragmentation is capable of producing destructive effects on contiguous objects or of destroying  
50 life or causing bodily harm including, but not limited to, all material which is classified as  
51 division 1.1, 1.2, 1.3, 1.4, 1.5 or 1.6 explosives by the United States department of transportation  
52 or listed pursuant to 18 USC 841(d) and 27 CFR 555.23. Explosive shall not include a  
53 pyrotechnic, small arms ammunition, small arms ammunition primers, smokeless powder  
54 weighing less than 50 pounds and black powder weighing less than 5 pounds, unless possessed  
55 or used for in illegal purpose.

56 **"Hoax explosive", "hoax destructive or incendiary device or substance" or "hoax**  
57 **chemical, biological or nuclear weapon"**, any device, article or substance that would cause a  
58 person to reasonably believe that such device, article or substance is: (i) an explosive; (ii) a  
59 destructive or incendiary device or substance; or (iii) a chemical, biological or nuclear weapon,  
60 harmful radioactive substance or poison capable of causing bodily injury which is actually an  
61 inoperable facsimile.

62 **"Nuclear weapon"**, a device designed for the purpose of causing bodily injury, death or  
63 denial of access through the release of radiation or radiological material either by propagation of  
64 nuclear fission or by means of any other energy source.

65 **"Oxidizer"**, a substance that yields oxygen readily to stimulate the combustion of  
66 organic matter or other fuel.

67 **"Pyrotechnic"**, any commercially manufactured combustible or explosive composition  
68 or manufactured article designed and prepared for the purpose of producing an audible effect or a

69 visible display and regulated by chapter 148 including, but not limited to: (i) fireworks,  
70 firecrackers; (ii) flares, fuses and torpedoes, so-called, and similar signaling devices.

71 **“Small arms ammunition”**, any shotgun, rifle, pistol, or revolver cartridge, and  
72 cartridges for propellant-actuated power devices and industrial guns.

73 **“Smokeless powder”**, a rapid-burning solid material containing nitrocellulose used as a  
74 propellant.

75 **Section 102.** (a) Whoever, without lawful authority, has in his possession or under his  
76 control:

77 (i) any substance, material, article, explosive or ingredient which, alone or in  
78 combination, could be used to make a destructive or incendiary device or substance and who  
79 intends to make a destructive or incendiary device or substance; or

80 (ii) any substance, material, article, explosive or ingredient which, alone or in  
81 combination, could be used to make a chemical, biological or nuclear weapon and who intends to  
82 make a chemical, biological or nuclear weapon, shall be punished by imprisonment in the house  
83 of correction for not more than 2½ years or in state prison for not less than 5 years nor more than  
84 10 years or by a fine of not more than \$25,000, or by both such fine and imprisonment. It shall  
85 not be a defense to a violation of this subsection that the defendant did not possess or have under  
86 his control every substance, material, article, explosive or ingredient, or combination thereof,  
87 required to make a complete and functional destructive or incendiary device or substance or  
88 chemical, biological or nuclear weapon.

89 (b) Whoever, without lawful authority, has in his possession or uses or places, or causes  
90 another to knowingly or unknowingly possess, use or place, any hoax explosive, hoax destructive  
91 or incendiary device or substance or any hoax chemical, biological or nuclear weapon, with the  
92 intent that such hoax explosive, device or substance or weapon be used to cause anxiety, unrest,  
93 fear or personal discomfort to any person or group of persons, shall be punished by  
94 imprisonment in the house of correction for not more than 2½ years or by imprisonment in the  
95 state prison for not more than 5 years or by a fine of not more than \$10,000, or by both such fine  
96 and imprisonment.

97 (c) Whoever, without lawful authority, has in his possession or under his control any  
98 explosive or any destructive or incendiary device or substance shall be punished by  
99 imprisonment for not more than 2½ years in the house of correction or for not less than 10 years  
100 nor more than 20 years in the state prison or by a fine of not more than \$25,000, or by both such  
101 fine and imprisonment.

102 **Section 102A.** Whoever, without lawful authority, secretes, throws, launches or  
103 otherwise places an explosive or a destructive or incendiary device or substance with the intent:  
104 (i) to cause fear, panic or apprehension in any person; or (ii) to ignite, explode or discharge such  
105 explosive or such destructive or incendiary device or substance; or (iii) to release or discharge  
106 any chemical, biological or nuclear weapon, shall be punished by imprisonment for not more  
107 than 2½ years in the house of correction or for not less than 10 years nor more than 25 years in  
108 the state prison or by a fine of not more than \$25,000, or by both such fine and imprisonment.

109 **Section 102B.** Whoever, without lawful authority, willfully discharges, ignites or  
110 explodes any destructive or incendiary device or substance shall be punished by imprisonment in

111 the state prison by not less than 15 years nor more than 25 years or by a fine of \$ 50,000 or by  
112 both such fine and imprisonment.

113         **Section 102C.** Whoever, without lawful authority, knowingly develops, produces,  
114 stockpiles, acquires, transports, possesses, controls, places or secrets uses any biological,  
115 chemical or nuclear weapon or delivery system, with the intent to cause death, bodily injury or  
116 property damage, shall be punished by imprisonment in the house of correction for not more than  
117 2½ years or by imprisonment in the state prison for not more than 25 years or by a fine of not  
118 more than \$ 50,000, or by both such fine and imprisonment.

119         **Section 102D.** (a) Notice of the seizure of an explosive, destructive or incendiary device  
120 or substance, any weapon or the component parts thereof, in violation of any provision of section  
121 102 to 102C, inclusive, shall be sent forthwith to the state fire marshal by the officer who made  
122 such seizure. The marshal may, in his sole discretion, render safe or direct any other official to  
123 assist him in rendering safe any item so seized, if such item cannot be safely kept pending trial.  
124 Upon final conviction of such person, such explosive, device, substance or weapon, or  
125 component parts thereof, shall be adjudged forfeited to the commonwealth and be disposed of by  
126 the marshal or his authorized representative.

127         (b) Upon conviction for a violation of any provision of section 102 to 102C, inclusive,  
128 the court shall conduct a hearing to ascertain the extent of costs incurred, damages and financial  
129 loss suffered by local, county or state public safety agencies and the amount of property damage  
130 caused as a result of the violation of this section, if any. A person found guilty of violating any  
131 provision of section 102 to 102C, inclusive, shall, in all cases, in addition to any other  
132 punishment, be ordered to make restitution to the local, county or state government for any costs

133 incurred, damages and financial loss sustained as a result of the commission of such offense.  
134 Restitution shall be imposed in addition to incarceration or fine; provided, however, that the  
135 court shall consider the defendant's present and future ability to pay in its determinations  
136 regarding a fine. In determining the amount, time and method of payment of restitution, the court  
137 shall consider the financial resources of the defendant and the burden restitution will impose on  
138 the defendant.”