

# MASSACHUSETTS GENERAL LAWS and the EQUINE INDUSTRY

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## **Introduction**

There are several laws and regulations that provide protections for the equine industry. The relevant sections of Massachusetts law are included in this booklet. Whenever a specific statute or regulation contains its own definition of agriculture or farming, that definition applies. If there is no definition, then generally the definition in Massachusetts General Law Chapter 128 § 1A applies. The Department of Agricultural Resources oversees the care and keeping of horses. These regulations are found in 330 CMR 16.00: HORSES. A copy of these regulations has been included at the end of this booklet.

The information contained in this booklet is an effort to provide basic information regarding laws that affect the equine industry in Massachusetts. It is based on current laws and regulations, which are subject to change. Massachusetts Farm Bureau does not provide legal counsel or advice and is not liable for any outdated, erroneous or misinterpreted information contained herein.

## **Definition of Agriculture**

### **Chapter 128: Section 1A. Farming, agriculture, farmer; definitions**

Section 1A. "Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

## **Landowner Liability**

MGL Chapter 21, Section 17C provides limited protection for landowners who open their land for recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes without imposing a fee. The landowner or his agent are not held liable for personal injury or property damage in the absence of willful, wanton, or reckless conduct by the landowner.

The law states:

### **Chapter 21: Section 17C. Public use of land for recreational, conservation, scientific educational and other purposes; landowner's liability limited; exception**

Section 17C. (a) Any person having an interest in land including the structures, buildings, and equipment attached to the land, including without limitation, railroad and utility corridors, easements and rights of way, wetlands, rivers, streams, ponds, lakes, and other bodies of water, who lawfully permits the public to use such land for recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes without imposing a charge or fee therefor, or who leases such land for said purposes to the commonwealth or any political subdivision thereof or to any nonprofit corporation, trust or association, shall not be liable for personal injuries or property damage sustained by such members of the public, including without limitation a minor, while on said land in the absence of wilful, wanton, or reckless conduct by such person. Such permission shall not confer upon any member of the

public using said land, including without limitation a minor, the status of an invitee or licensee to whom any duty would be owed by said person.

(b) The liability of any person who imposes a charge or fee for the use of his land by the public for the purposes described in subsection (a) shall not be limited by any provision of this section. For the purposes of this section, "person" shall include the person having any interest in the land, his agent, manager or licensee and shall include, without limitation, any governmental body, agency or instrumentality, a nonprofit corporation, trust, association, corporation, company or other business organization and any director, officer, trustee, member, employee, authorized volunteer or agent thereof. For the purposes of this section, "structures, buildings and equipment" shall include any structure, building or equipment used by an electric company, transmission company, distribution company, gas company or railroad in the operation of its business. A contribution or other voluntary payment not required to be made to use such land shall not be considered a charge or fee within the meaning of this section.

## **Zoning Act**

Chapter 40A Section 3 provides protection from over-regulation by town zoning bylaws for commercial agriculture, etc. This law uses the definition of agriculture that is in Chapter 128 Section 1A, which includes both the "raising of horses" (i.e. breeding) and "keeping of horses as a commercial enterprise" (i.e. boarding, lessons, etc.) The law is:

### **Chapter 40A: Section 3. Subjects which zoning may not regulate; exemptions; public hearings; temporary manufactured home residences**

No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to

be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.

### **Excise Tax**

Farm animals, machinery, and equipment are exempt from personal property tax if the owner is not incorporated and “engaged principally in agriculture”. Such animals, machinery and equipment are then subject to the Farm Machinery & Animal Excise Tax, at a rate of \$5 per thousand valuation. The Department of Revenue establishes annual values. These valuations are available online at <http://www.mass.gov/Ador/docs/dls/bla/farmland/fy12/fy2012animalexexcise.pdf> or by calling our office. The reduced rate of \$5 per thousand only applies to breeding or working horses. Horses not used for breeding or working are subject to the personal property tax. The form used is Application for Excise on Farm Animals Machinery and Equipment (State Tax Form F.A.E-M.E). This is filed annually before March 1 with your town’s Board of Assessors. The law is in Chapter 59 Section 8A and states:

### **Chapter 59: Section 8A. Assessments; abatement; collection; voter approval to not impose excise**

Section 8A. Any person, not including a corporation, engaged principally in agriculture, who owns farm machinery and equipment, other than motor vehicles and trailers which are exempt under clause Thirty-fifth of section five, or mules, horses, neat cattle, swine, sheep, goats, domestic fowl or mink, which are not exempt under clause Twenty-first of section five, and any individual under eighteen years of age who owns and raises any such animals or fowl in connection with an agricultural youth program, including but not limited to the 4H Clubs and Future Farmers of America, which are not exempt under said clause Twenty-first of section five, shall annually, on or before March first, make a return on oath to the assessors of the town where such machinery and equipment or such animals and fowl are located, setting forth the make, age, model, if any, and purchase price of such machinery and equipment and the number and kind of each class of such animals and fowl owned by him on the next preceding January first. For the purposes of this section the term “equipment” shall include plastic covered greenhouses used for agricultural, horticultural or floricultural purposes, which are not constructed upon a concrete foundation. If the assessors are satisfied of the truth of the return they shall assess such machinery and equipment and such animals and fowl at the rate of five dollars per one thousand dollars of valuation, as determined by the commissioner of revenue, of such machinery and equipment and of each class and kind of such animals and fowl, and such persons shall be otherwise exempt from taxation on these classes of property under this chapter.

If an owner, as described in the first paragraph, fails to make a return within the time provided therein, the assessors may abate a tax otherwise imposed by this chapter if he provides the assessors with a reasonable excuse for failure to file such return as aforesaid, and if a return is filed on or before October thirty-first of the year to which the tax relates; but no abatement hereunder shall reduce the tax otherwise imposed to an amount less than the sum of the excise imposed by this chapter plus fifty per cent thereof. No tax shall be due if the actual tax due is less than ten dollars.

The excise imposed hereunder shall be committed by the board of assessors to the collector of taxes together with their warrant for the collection thereof in the same manner as real and personal property taxes assessed under this chapter. The collector shall notify the person assessed of the amount of the excise in the manner provided in section three of chapter sixty. For the collection of the excise assessed under this section the collector shall have all the remedies provided by chapter sixty. The excise assessed shall be due and payable on October first of the year assessed, and if not paid on or before November first

of the year of assessment, or within thirty days after notification of said excise if said notice is given after October first, shall bear interest as provided in section fifty-seven of chapter fifty-nine.

The local appropriating authority, as defined in section 21C, may, by a two-thirds vote, seek voter approval to not impose the excise established by this section.

## **Farmland Assessment**

Horse owners may be eligible for a reduction in real estate taxes on their property under either Chapter 61A or 61B. To qualify for Chapter 61A, a farm or stable must be on at least a 5 acre parcel, meet income thresholds, and must be engaged in “raising” (i.e. breeding) of horses. Horse stables not meeting these criteria may qualify for Chapter 61B relating to recreational lands. To qualify for Chapter 61B, the 5 acre requirement must be met and the land must be used for recreational purposes, including horseback riding. The land may be made available to the general public or members of a non-profit organization.

The laws are:

### **Chapter 61A: Section 1. Land in agricultural use defined**

Section 1. Land shall be deemed to be in agricultural use when primarily and directly used in raising animals, including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market.

### **Chapter 61B: Section 1. Recreational land and uses**

Section 1. Land not less than five acres in area shall be deemed to be recreational land if it is retained in substantially a natural, wild, or open condition or in a landscaped or pasture condition or in a managed forest condition under a certified forest management plan approved by and subject to procedures established by the state forester in such a manner as to allow to a significant extent the preservation of wildlife and other natural resources, including but not limited to, ground or surface water resources, clean air, vegetation, rare or endangered species, geologic features, high quality soils, and scenic resources. Land not less than five acres in area shall also be deemed to be recreational land which is devoted primarily to recreational use and which does not materially interfere with the environmental benefits which are derived from said land, and is available to the general public or to members of a non-profit organization including a corporation organized under chapter one hundred and eighty.

For the purpose of this chapter, the term recreational use shall be limited to the following: hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang gliding, archery, target shooting and commercial horseback riding and equine boarding.

Such recreational use shall not include horse racing, dog racing, or any sport normally undertaken in a stadium, gymnasium or similar structure.

## Sales Tax

Chapter 64H exempts from the sales tax livestock and poultry of a kind which is food for human consumption, feed, bags to contain the feed, fertilizer, insecticides, fungicides, seed inoculants, seed disinfectants and plant hormones. The law also exempts plants that are suitable for planting to produce food for human consumption, materials, tools and fuel, which are consumed and used directly and exclusively in agricultural production, and machinery that is used directly and exclusively in agricultural production. The law is available at: [www.mass.gov/legis/laws/mgl/64h-6.htm](http://www.mass.gov/legis/laws/mgl/64h-6.htm).

The Massachusetts Department of Revenue has issued Directives 92-2 and 99-8, which explain their interpretation of the phrase “directly and exclusively in agricultural production” and offers examples of when this exemption applies. Copies are available online at: [www.mass.gov/dor](http://www.mass.gov/dor). Search for Directives, then for the one you want by decade. Copies are also available from our office.

The relevant sections of Chapter 64H for agriculture are:

### Chapter 64H: Section 6 Exemptions

Section 6. The following sales and the gross receipts therefrom shall be exempt from the tax imposed by this chapter:--

**(p)** (1) Sales of livestock and poultry of a kind which ordinarily constitute food for human consumption;

(2) sales of feed, including the bags in which the feed is customarily contained, for livestock and poultry of a kind which ordinarily constitute food for human consumption or are to be sold in the regular course of business or for animals produced for research, testing, or other purposes relating to the promotion or maintenance of the health, safety or well being of human beings or animals or for fur-bearing animals, the pelts of which are sold in the regular course of business;

(3) sales of fertilizer, including ground limestone, hydrated lime, seed inoculants and plant hormones, as well as other substances commonly regarded in the same category and for the same use, but not including any sales of pesticides, including insecticides, herbicides, fungicides, miticides and all materials registered with the Environmental Protection Agency as pesticides under the Federal Insecticide, Fungicide and Rodenticide Act and other pesticides commonly regarded in the same category and for the same purpose, except when purchased by a person licensed under chapter 132B or otherwise exempt under paragraph (r); and

**(r)** Sales of materials, tools and fuel, or any substitute therefor, which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly and exclusively in agricultural production; in commercial fishing; ...in the production of animals for research, testing, or other purposes relating to the promotion or maintenance of the health, safety or well being of human beings or animals...

(i). For the purpose of this paragraph, the raising of poultry and livestock shall be construed to be included in the term "agricultural production"; any material, tool or fuel shall be construed to be consumed and used only if its normal useful life is less than one year or if its cost is allowable as an ordinary and necessary business expense for federal income tax purposes...

**(s)** Sales of machinery, or replacement parts thereof, used directly and exclusively in agricultural production; in commercial fishing; ... in the production of animals for research, testing, or other purposes

relating to the promotion or maintenance of the health, safety or well being of human beings or animals... For the purpose of this paragraph, the raising of poultry and livestock shall be construed to be included in the term "agricultural production";

The Massachusetts Department of Revenue has issued Directives 92-2 and 99-8, which explain their interpretation of the phrase "directly and exclusively in agricultural production" and offers examples of when this exemption applies.

**Directive 92-2** explains that the "sales of farm machinery, including sales of tractors, plows, backhoes, balers, harrowers, harvesters, manure spreaders, seeders, and similar machinery used directly and exclusively in agricultural production, as defined below, are exempt from sales tax."

The directive explains the meaning of the phrase "directly and exclusively in agricultural production" for purposes of the sales tax exemption under G.L. c. 64H, § 6(s):

The phrase "directly and exclusively in agricultural production" means the preparation for and the activities of cultivation, growing, harvesting, and storage of any agricultural, floricultural, or horticultural commodity; dairying; the raising of livestock including horses, swine, cattle, or other domesticated animals used for food purposes; the raising of fur-bearing animals for the purpose of selling the pelts or furs in the regular course of business; the growing and harvesting of forest products on forest land; forestry or lumbering operations performed by a farmer; and beekeeping. Agricultural production also encompasses certain incidental agricultural operations, including the storage of crops and preparation for market, to the extent that such storage and preparation activities occur on the agricultural premises. For example, the use of a farm tractor for purposes of hauling produce to a farm stand located on the farmer's agricultural premises falls within the meaning of agricultural production. However, the use of a farm tractor to haul produce to a farm stand or market that is not located on the farmer's agricultural premises is

**Directive 99-8** explains exemptions for cranberry growers. It is however relative to all of agriculture as it references the same law. In the directive, it explains that the exemption for materials, tools and fuels "only applies when the exempted material or fuel has a normal useful life of less than one year, or if its cost is allowable as an ordinary and necessary business expense for federal income tax purposes. A material or tool that cannot be expensed, or is capitalized and depreciated is not eligible for the exemption, unless exempt under some other provision of G.L. c. 64H, § 6. The 6(s) exemption for machinery is not limited by the federal tax code." The directive includes a long list of machinery used in cranberry production exempt from sales tax as long as it is used directly and exclusively in agricultural production. 10

The directives are available at our office or online at the Department of Revenue's Website at: [www.mass.gov/dor](http://www.mass.gov/dor). Use the search button to look for the directives (Directive 92-2 etc.).

## **Eminent Domain**

Chapter 79 Section 5B provides recourse for agricultural landowners whose land is proposed to be taken by eminent domain by governmental units other than the state, for highway purposes, or a taking authorized by the DPU. The chapter refers to the definition of agriculture found in Chapter 128 Section 1A. The law states:

### **Chapter 79: Section 5B. Agricultural land**

Section 5B. No property used for agriculture or farming as defined in section one A of chapter one hundred and twenty-eight shall be taken without the consent of the owner thereof, nor shall an easement be taken on such property without such consent, except after a hearing by the board at which such owner shall be entitled to be heard and allowed to introduce evidence that other land not used for agriculture or

farming, as so defined, and without occupied buildings situated thereon is available for the public use for which it is intended to take his property. If such evidence is introduced and accepted by the board as valid, the board shall exempt said property from the taking. The provisions of this section shall not apply to takings in behalf of the commonwealth, takings for highway purposes, nor to takings authorized by the department of telecommunications and energy, except that in such takings notices of hearings required by section seventy-two of chapter one hundred and sixty-four shall be sent to all interested parties.

## **Motor Vehicles**

Chapter 90 Section 1 includes the raising of livestock including horses (breeding) and the keeping of horses as a commercial enterprise (boarding). Thus to qualify for farm plates or other provisions for agriculture under Chapter 90, a horse operation must be substantially engaged in breeding or boarding. The law is:

### **Chapter 90: Section 1. Definitions**

"Farmer", a person substantially engaged in the occupation of farming which shall include, but not be limited to, farming in all its branches, the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations including, but not limited to, preparations for market, delivery to storage or to market or to carriers for transportation to market.

"Farming", the tillage or use of the soil to raise food for man or beast, the raising of tobacco, or the propagation and growing of trees, shrubs, vines and plants for transplanting and sale.

## **Public Health**

Chapter 111 covers laws concerning public health, including odor and horse stables. Section 1 defines farming or agriculture to include the raising of horses and keeping of horses for a commercial basis.

Section 125A provides that odor from normal maintenance of livestock or spreading of manure on agricultural land or noise from livestock or equipment used in normal, generally accepted farming procedures can not be deemed a nuisance by boards of health.

Sections 155 gives boards of health in towns of more than 5000 people the authority to require stable licenses and to implement by-laws and ordinances governing stables, including regulations relative to drainage, ventilation, size and character of stalls, bedding, number of animals and manure handling and storage.

Section 156 prohibits the operation of a stable within 200' of a church without written permission.

Section 157 establishes fines for violations of the sections 155 or 156.

Section 158 grants board of selectmen in towns of less than 5000 people the right to license stables with more than 4 horses and to establish fines for failure to be licensed.

The laws are:

### **Chapter 111: Section 1. Definitions**

“Farming” or “agriculture”, farming in all of its branches and cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any practices, including any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agricultural or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

### **Chapter 111: Section 125A. Review of order adjudging the operation of a farm to be a nuisance**

Section 125A. If, in the opinion of the board of health, a farm or the operation thereof constitutes a nuisance, any action taken by said board to abate or cause to be abated said nuisance under sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five shall, notwithstanding any provisions thereof to the contrary, be subject to the provisions of this section; provided, however, that the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally acceptable farming procedures or from plowing or cultivation operations upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance.

In the case of any such nuisance a written notice of an order to abate the same within ten days after receipt of such notice shall first be given as provided in section one hundred and twenty-four. If no petition for review is filed as herein provided, or upon final order of the court, said board may then proceed as provided in said sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five, or in the order of the court. If the owner or operator of said farm within said ten days shall file a petition for a review of such order in the district court for the district in which the farm lies, the operation of said order shall be suspended, pending the order of the court. Upon the filing of such petition the court shall give notice thereof to said board, shall hear all pertinent evidence and determine the facts, and upon the facts as so determined review said order and affirm, annul, alter or modify the same as justice may require. The parties shall have the same rights of appeal on questions of law as in other civil cases in the district courts.

### **Chapter 111: Section 155. Licensing of stables in cities and large towns; fees**

Section 155. No person shall erect, occupy or use for a stable any building in a city, or in a town having more than five thousand inhabitants, unless such use is licensed by the board of health, and, in such case, only to the extent so licensed. The fee for such licenses shall be established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, but in no event shall any such fee be greater than forty dollars. This section shall not prevent any such occupation and use authorized by law on May fourth, eighteen hundred and ninety-five, to the extent and by the person so authorized, but the board of health of such a city or town may make such regulations or orders as, in its judgment, the public health

requires relative to drainage, ventilation, size and character of stalls, bedding, number of animals and storage and handling of manure in any stable in its city or town.

**Chapter 111: Section 156. Stables in vicinity of churches**

Section 156. No person shall in a city occupy or use a building for a livery stable, or a stable for taking or keeping horses and carriages for hire or to let, within two hundred feet of a church or meeting house erected and used for the public worship of God, without the written consent of the religious society or parish worshipping therein; but this section shall not prevent such occupation and use if authorized by law on May seventeenth, eighteen hundred and ninety-one, to the extent then authorized.

**Chapter 111: Section 157. Penalty for violation of Secs. 155 and 156**

Section 157. Whoever violates any provision of the two preceding sections or of a regulation or order made thereunder shall be punished by a fine of five dollars for each day such violation continues.

**Chapter 111: Section 158. Licensing of stables in small towns; fees; restraint of erection, occupancy or use of stables**

Section 158. The selectmen of towns having a population of five thousand or less may license suitable persons to keep more than four horses in specified buildings or places within their respective towns, and may revoke such licenses at pleasure. The fee for such licenses shall be established by said selectmen, but in no event shall any such fee be greater than twenty dollars. Whoever, not being licensed as aforesaid, occupies or uses a building or place for a stable for more than four horses shall forfeit not more than fifty dollars for every month he so occupies or uses such building or place, and in like proportion for a shorter time. The superior court may restrain the erection, occupancy or use of stables contrary to this section or section one hundred and fifty-five or one hundred and fifty-six.

**Riding Instructors and Riding Schools**

Horse riding instructors and persons engaged in operating a riding school or a stable where horses are kept for hire must be licensed. The licenses come under the jurisdiction of the commissioner. The laws are:

**Chapter 128: Section 2A. Horse riding instructors; licenses; fees; validity of license; duplicate licenses; rules and regulations**

Section 2A. No person shall hold himself out to be a horse riding instructor for hire without being licensed for such purpose by the commissioner. Application for a license under this section may be filed with the commissioner and shall contain such information as he shall prescribe. Every such application shall be accompanied by a registration fee of 20 dollars, which shall in no event be refunded. If an application is approved by the commissioner, the applicant upon the payment of an additional fee of 30 dollars shall be granted a license, which shall expire on March thirty-first following the date of issue, unless sooner revoked. The annual fee for renewal thereafter shall be 30 dollars.

Every person licensed as aforesaid shall endorse his usual signature on the margin of the license in the space provided for such purpose immediately upon the receipt of said license, and such license shall not be valid until so endorsed. In case of loss, mutilation, or destruction of a license, the commissioner shall issue a duplicate upon proper proof thereof and payment of a fee of 4 dollars.

The commissioner shall make rules and regulations governing the issuance and revocation of said license, and shall establish the minimum qualifications for the issuance thereof. If the qualifications of an applicant meet or exceed the minimum qualifications established by the commissioner he shall be issued such license.

#### **Chapter 128: Section 2B. Riding schools or stables; license; fee; rules and regulations; penalties**

Section 2B. Every person engaged in the business of operating a riding school or a stable where horses are kept for hire, shall obtain a license therefor from the commissioner, the fee for which shall be \$100, and such license shall expire on March thirty-first following the date of issuance, unless sooner revoked. The commissioner, subject to the approval of the governor may make rules and regulations governing the issuance and revocation of such licenses and the conducting of the businesses so licensed and relative to the maintenance of the premises, buildings and conveyances, the health of the horses or other equine animals, and the method and time of inspection and checking of said animals. Whoever violates any provision of this section or of any rule or regulation made thereunder shall be punished for a first offence by a fine of not more than one hundred dollars and for any subsequent offence by a fine of not more than five hundred dollars, or by imprisonment for not more than two and one half years, or both.

#### **Horses in Agricultural Fairs**

There is a law against administering any drug to either retard or stimulate the performance of a horse in an agricultural fair. The law states:

#### **Chapter 128: Section 2C. Horses participating in contests at agricultural fairs; administering of drugs prohibited; testing, prima facie evidence; eligibility restricted; rules and regulations**

Section 2C. No person shall administer or cause to be administered any drug, internally or externally by injection, drench or otherwise, to any animal for the purpose of retarding, stimulating or in any other manner affecting the performance of such animal in or in connection with a contest conducted under the provisions of paragraph (f) of section two.

The commissioner is hereby authorized to make such tests of saliva, blood and urine of any animal entered into a pulling contest as he may deem necessary. If a drug is found in the chemical analysis of said saliva, blood or urine, it shall be prima facie evidence that a drug has been administered.

The owner of any animal which has been tested and in which a drug has been found, his representative, and any animals owned by or leased to such person shall be ineligible to participate in or receive premiums offered at any agricultural fair or any pulling contest in the commonwealth pending an investigation, finding, and order of the commissioner.

The commissioner may make rules and regulations necessary to carry out the provisions of this section.

#### **Liability in Equine Activities**

There is some protection from liability for equine professionals. The law refers to the inherent risks of equine activities. Signs must adhere to the requirements of the law and be prominently posted to take advantage of the law. Farm Bureau offers these signs for sale; call the office at 509-481-4766 for current prices.

The law is:

**Chapter 128: Section 2D. Liability of persons involved in equine activities**

Section 2D. (a) For the purposes of this section, the following words shall have the following meanings:—

“Engage in an equine activity”, riding, training, assisting in veterinary treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted, visiting or touring or utilizing an equine facility as part of an organized event or activity, or assisting a participant or show management. The term “engage in an equine activity” shall not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area or in immediate proximity to the equine activity.

“Equine”, a horse, pony, mule, or donkey.

“Equine activity” (1) equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, riding, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding, gymkhana games, and hunting; (2) equine training or teaching activities or both; (3) boarding equines; including normal daily care thereof; (4) riding, inspecting, or evaluating by a purchaser or an agent an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine; (5) rides, trips, hunts or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor; (6) placing or replacing horseshoes or hoof trimming on an equine; and (7) providing or assisting in veterinary treatment.

“Equine activity sponsor”, an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for, an equine activity, including but not limited to: pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college-sponsored classes, programs and activities, therapeutic riding programs, stable and farm owners and operators, instructors, and promoters of equine facilities, including but not limited to farms, stables, clubhouses, pony ride strings, fairs, and arenas at which the activity is held.

“Equine professional”, a person engaged for compensation:

(1) in instructing a participant or renting to a participant an equine for the purpose of riding, driving or being a passenger upon the equine; (2) in renting equipment or tack to a participant; (3) to provide daily care of horses boarded at an equine facility; or (4) to train an equine.

“Inherent risks of equine activities”, dangers or conditions which are an integral part of equine activities, including but not limited to:

(1) The propensity of equines to behave in ways that may result in injury, harm, or death to persons on or around them; (2) the unpredictability of an equine’s reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals; (3) certain hazards such as surface and subsurface conditions; (4) collisions with other equines or objects; (5) the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his ability.

“Participant”, any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in such equine activity.

(b) Except as provided in subsection (c), an equine activity sponsor, an equine professional, or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and, except as provided in said subsection (c), no participant nor participant’s representative shall make any claim against, maintain an action against, or recover from an equine activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.

(c) This section shall not apply to the racing meetings as defined by section one of chapter one hundred and twenty-eight A.

Nothing in subsection (b) shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person if the equine activity sponsor, equine professional, or person:

(1) (i) provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; or (ii) provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity, and determine the ability of the participant to safely manage the particular equine based on the participant’s representations of his ability;

(2) owns, leases, rents, has authorized use of, or is otherwise in lawful possession and control of the land, or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known to the equine activity sponsor, equine professional, or person and for which warning signs, pursuant to subsection (d), have not been conspicuously posted;

(3) commits an act of omission that constitutes willful or wanton disregard for the safety of the participant, and that act of omission caused the injury; or

(4) intentionally injures the participant.

(d)(1) Every equine professional shall post and maintain signs which contain the warning notice specified in paragraph (2). Such signs shall be placed in a clearly visible location in the proximity of the equine activity. The warning notice specified in said paragraph (2) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional’s business, shall contain in clearly readable print the warning notice specified in said paragraph (2).

(2) The signs and contracts described in paragraph (1) shall contain the following notice:

#### WARNING

Under Massachusetts law, an equine professional is not liable for an injury to, or the death of, a participant in equine activities resulting from the inherent risks of equine activities, pursuant to section 2D of chapter 128 of the General Laws.

## **Fire Prevention**

There is an exemption from fire sprinkler regulations for “buildings used for agricultural purposes”. This statute refers to the definition of agriculture found in Chapter 128 Section 1A. However, if people will be congregating in the building, the exemption may not apply.

### **Chapter 148: Section 26G. Nonresidential buildings or additions; automatic suppressant or sprinkler systems**

Section 26G. Every building or structure, including any additions or major alterations thereto, which totals, in the aggregate, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. No such sprinkler system shall be required unless sufficient water and water pressure exists. For purposes of this section, the gross square footage of a building or structure shall include the sum total of the combined floor areas for all floor levels, basements, sub-basements and additions, in the aggregate, measured from the outside walls, irrespective of the existence of interior fire resistive walls, floors and ceilings. This section shall not apply to buildings used for agricultural purposes as defined in section 1A of chapter 128.

In such buildings or structures, or in certain areas of such buildings or structures, where the discharge of water would be an actual danger in the event of fire, the head of the fire department shall permit the installation of such other fire suppressant systems as are prescribed by the state building code in lieu of automatic sprinklers...This section shall not apply to buildings or additions used for residential purposes.

The head of the fire department shall enforce the provisions of this section.

Whoever is aggrieved by the head of the fire department’s interpretation, order, requirement, direction or failure to act under the provisions of this section, may, within forty-five days after the service of notice thereof, appeal from such interpretation, order, requirement, direction or failure to act to the automatic sprinkler appeals board as provided in section two hundred and one of chapter six. The board may grant a reasonable waiver from the provisions of this section, or may allow the installation of a reasonable alternative or modified system of automatic sprinklers upon reviewing the characteristics of buildings that have architectural or historical significance.

## **Actions for Private Nuisances**

Chapter 243 Section 6 provides that farms in existence for at least 1 year, and following generally accepted agricultural practices cannot be found to be a civil nuisance. This statute uses the definition of agriculture found in Chapter 128 Section 1A. The law is:

### **Chapter 243: Section 6. Actions against farming operations; limitations**

Section 6. No action in nuisance may be maintained against any person or entity resulting from the operation of a farm or any ancillary or related activities thereof, if said operation is an ordinary aspect of said farming operation or ancillary or related activity; provided, however, that said farm shall have been in operation for more than one year. This section shall not apply if the nuisance is determined to exist as the result of negligent conduct or actions inconsistent with generally accepted agricultural practices. For the purposes of this section, “agriculture” and “farming” shall be as defined in section one A of chapter one hundred and twenty-eight.

## **State Regulations for the Care of Horses**

The regulations for the care of horses are found in 330 CMR Department of Food & Agriculture. The regulations are:

### **330 CMR: DEPARTMENT OF FOOD & AGRICULTURE**

#### **330 CMR 16.00: Horses**

Section

16.01: Definitions

16.02: Licensing of Horse Riding Instructors

16.03: Licensing and Operation of Riding Schools and Stables

16.04: Dealing in and the Transportation of Equine Animals

16.05: Prevention and Suppression of Equine Infectious Anemia

16:01: Definitions

For the purposes of 330 CMR 16.00, the terms below shall have the following meanings:

Department. The Department of Food and Agriculture.

Person. Any individual, corporation, partnership, association or other business organization.

Reactor. Any equine which is subject to a test for equine infectious anemia and found positive.

Regular business of selling, dealing, auctioning or transporting equine animals. Shall mean selling, dealing, auctioning or transporting more than 20 equine animals per year.

Stable where horses are kept for hire. Shall include the renting of horses for rides, drives, or trail rides including their use as part of camp or ranch activities, and the use of horses for hay rides or pony rides.

#### **16:02: Licensing of Horse Riding Instructors**

License Required.

(1) No person shall hold himself or herself out as a horse riding instructor for hire unless licensed by the Department.

(2) Any person desiring to apply for a riding instructor license shall submit, on a form provided by the Department, an application and the appropriate fee.

(3) The Department may license any applicant who meets the following minimum requirements:

(a) The applicant must be 18 years of age as of the date of application;

(b) The applicant must have completed a six month apprenticeship with a licensed riding instructor, including at least 60 hours of directly supervised instruction to mounted students or must be licensed as a horse riding instructor by another governmental entity;

(c) The applicant must have received a satisfactory score on a written exam administered by the Department. The exam will evaluate an applicant's knowledge relative to the following:

1. riding theory;
2. safety;
3. laws and regulations pertaining to horses including M.G.L. c. 128, §§ 2A and 2B; M.G.L. c. 129, §§ 9 and 44; M.G.L. c. 272, § 77 and 330 CMR 16.00; and
4. horse anatomy, physiology and general health issues.

(4) All riding instructor licenses shall expire on March 31st following the date of issuance.

(5) Upon submission of an application and the appropriate fee, the Department may renew a license of any applicant who provided 60 hours of horse riding instruction during the preceding licensing year.

(6) The Department may revoke or suspend any license after a M.G.L. 30A hearing and upon a finding that the licensee:

- (a) Is not competent to provide horseback riding instructions;
- (b) Provided instructions in a manner unsafe to either the student or the horse;
- (c) Allowed an issued license to be used by an unlicensed person;
- (d) Violated M.G.L. 129, §9, M.G.L. c. 272, §§ 77 through 79B;
- (e) Violated a quarantine order issued by the Department; or
- (f) Made a material misstatement on the license application.

### **16.03: Licensing and Operation of Riding Schools and Stables**

(1) License Required.

- (a) No person shall engage in the business of operating a riding school or a stable where horses are kept for hire in the Commonwealth unless licensed by the Department.
- (b) Any person desiring to apply for a Riding School and Stable license shall submit, on a form provided by the Department, an application and the appropriate fee.
- (c) Upon receipt of a completed application for a license, the Department shall inspect the applicant's facilities. If the Department finds the facilities and equipment in compliance with 330 CMR 16.03(2)(a) through (g), the Department may issue a license.
- (d) All Riding School and Stable licenses shall expire on March 31st following the date of issuance.
- (e) All licensees shall post their license on their premises in a place prominently visible to the public.
- (f) The Department may deny a license to any applicant whose facilities and equipment fail to comply with 330 CMR 16.03(2)(a) through (g). Any applicant whose license has been denied may submit a written request for a hearing within fourteen days following receipt of the Department's decision to deny the license.
- (g) The Department may revoke or suspend a license after a M.G.L. c. 30A hearing and upon finding that the licensee has:
  1. Violated M.G. L. c. 129, §§ 9, 44, 44A, 45 or 46, or M.G.L. c. 128, § 2A or 2B, or any provision in 330 CMR 16.00 or M.G.L. c. 272, §§ 77 through 79B;
  2. Allowed an issued license to be used by an unlicensed person;
  3. Violated a quarantine order issued by the Department; or
  4. Made a material misstatement in the application for a license.

(2) Facilities and Equipment. All licensees shall:

- (a) Maintain all areas where horses are kept:
  1. In a safe and sanitary condition, and in good repair;

2. Free of glass, wire or other material which may cause injury to horses; and
3. In such a manner as to prevent the infestation of the horses and the premises with external parasites or vermin; and
4. In such a manner as to prevent the spread of infectious or contagious disease.
  - (b) Clean all areas where horses are kept as frequently as necessary to ensure their sanitary condition;
  - (c) Provide an adequate, dry shelter for the horses maintained on the premises;
  - (d) Ensure that if box stalls are utilized, they are large enough to enable any horse to stand up and lie down;
  - (e) Provide shelter in outdoor holding and grazing areas if any horse is kept outdoors for more than eight hours and no natural shelter exists;
  - (f) Provide equipment for any necessary storage or disposal of waste material to control vermin, insects, disease, and obnoxious odors; and
  - (g) Ensure that all saddle packs and tack are clean, supple and in safe working condition.

(3) General Care of Horses and Equipment. All licensees shall ensure that:

- (a) Sufficient fresh food of a type and amount consistent with the dietary requirements and age of the horse is offered at least twice daily;
- (b) Sufficient fresh and clean water is available;
- (c) Containers used for the feeding and watering of horses are cleaned regularly in order that they remain free from debris and contamination;
- (d) All horses are properly shod or their feet are appropriately trimmed at all times;

#### REGULATORY AUTHORITY

330 CMR 16.00 M.G.L. c. 128, §§ 2A & 2B and M.G.L. c. 129, §§ 2, 9, 44, 44A, 45, 46, & 47.

#### **State Building Code**

Agricultural buildings are classified under Group U in the state building code:

780 CMR 120.C GROUP U AGRICULTURAL BUILDINGS

780 CMR 120.C101 GENERAL

120.C101.1 Scope. The provisions of 780 CMR 120.C shall apply exclusively to agricultural buildings. Such buildings shall be classified as Group U and shall include the following uses:

1. Livestock shelters or buildings, including shade structures and milking barns.
2. Poultry buildings or shelters.
3. Barns.
4. Storage of equipment and machinery used exclusively in agriculture.
5. Horticultural structures, including detached production greenhouses and crop protection shelters.
6. Sheds.
7. Grain silos.
8. Stables.

120.C101.2 Occupancy Thresholds. Buildings that exceed an occupancy load of 100, that would otherwise be classified as Group U Agricultural, shall be classified per their intended use.

Exception. Riding arenas shall have an occupancy load limit of 100.

120.C101.3 H-use. Agricultural buildings used to store commercial fertilizers, herbicides, or pesticides shall comply with 527 CMR, 780 CMR, and M.G.L. c. 132B and the associated regulations as applicable.