

HOUSE No. 3254

The Commonwealth of Massachusetts

PRESENTED BY:

Brian R. Mannel

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the sale and possession of body armor.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Brian R. Mannel</i>	<i>2nd Barnstable</i>	
<i>Frank A. Moran</i>	<i>17th Essex</i>	
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>	
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	

HOUSE No. 3254

By Mr. Mannal of Barnstable, a petition (accompanied by bill, House, No. 3254) of Brian R. Mannal and others for legislation to further regulate the sale and possession of body armor. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the sale and possession of body armor.

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 121 of chapter 140 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by inserting after the definition of “assault weapon” the
3 following definition:-

4 "Body armor", means any product sold or offered for sale as personal protective body
5 covering intended to protect the wearer against gunfire, regardless of whether the product is to be
6 worn alone or is sold as a complement to another product or garment.

7 SECTION 2. Chapter 140 of the General Laws, as appearing in the 2010 Official
8 Edition, is hereby amended by adding the following section:-

9 Section 122C. No person shall sell body armor in the commonwealth unless duly
10 licensed. The chief of police or the board or officer having control of the police in a city or town,
11 or persons authorized by them, may, after an investigation into the criminal history of the
12 applicant to determine eligibility to be licensed under this section, grant a license to any person,
13 except an alien, a minor, a person who has been adjudicated a youthful offender, as defined in
14 section 52 of chapter 119, including those who have not received an adult sentence or a person
15 who has been convicted of a felony in any state or federal jurisdiction, or of the unlawful use,
16 possession or sale of narcotic or harmful drugs, to sell body armor. Every license shall specify
17 the street and number, if any, of the building where the business is to be carried on. The licensing
18 authority to whom such application is made shall cause 1 copy of the application to be forwarded
19 to the commissioner of the department of criminal justice information services, who shall within
20 a reasonable time thereafter advise such authority in writing of any criminal record disqualifying

the applicant. The fee for an application for a license to sell body armor shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. The licensing authority to whom such application is made shall cause one copy of any approved application to be forwarded to the commissioner of the department of criminal justice information services.

Any lawfully incorporated sporting or shooting club shall, upon application, be licensed to sell or supply body armor for regulated use on their premises, as for skeet, target or trap shooting; provided, however, that such club license shall, in behalf of said club, be issued to and exercised by an officer or duly authorized member of the club who himself possesses a firearm identification card or a license to carry a firearm and who would not be disqualified to receive a license to sell body armor in his own right. The licensing authority may revoke or suspend a license to sell body armor for violation of any provision of this chapter.

The secretary of the executive office of public safety may establish such rules and regulations as he may deem necessary to carry out the provisions of this section.

Any person refused a license under this section or any person whose license is suspended or revoked under this section may obtain a judicial review of such refusal, suspension or revocation by filing within 30 days of such refusal, suspension or revocation a petition for review thereof in the district court having jurisdiction in the city or town in which the applicant filed for such license. A justice of said court, after a hearing, may direct that a license be issued to the applicant if the court is satisfied that there was no reasonable ground for refusing such license and that the applicant was not prohibited by law from holding the license.

Whoever not being licensed sells body armor within the commonwealth shall be punished by a fine of not less than \$500 but not more than \$1000 or by imprisonment for not less than 6 months but not more than 2 years.

SECTION 3. Chapter 140 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out section 123 and inserting place thereof the following section:-

Section 123. A license granted under section 122 shall be expressed to be and shall be subject to the following conditions:— First, That the provisions in regard to the nature of the license and the building in which the business may be carried on under it shall be strictly adhered to. Second, That every licensee shall, before delivery of a firearm, body armor, rifle or shotgun, make or cause to be made a true, legible entry in a sales record book to be furnished by the commissioner of the department of criminal justice information services and to be kept for that purpose, specifying the complete description of the firearm, body armor, rifle or shotgun, including the make, serial number, if any, type of firearm, body armor, rifle or shotgun, and designation as a large capacity weapon, if applicable, whether sold, rented or leased, the date of

each sale, rental or lease, the license to carry firearms number or permit to purchase number and the identification card number in the case of a firearm or the identification card number or the license to carry firearms number in the case of body armor or a rifle or shotgun, the sex, residence and occupation of the purchaser, renter or lessee, and shall before delivery, as aforesaid, require the purchaser, renter or lessee personally to write in said sales record book his full name. Said book shall be open at all times to the inspection of the police. Third, That the license or a copy thereof, certified by the official issuing the same, shall be displayed on the premises in a position where it can easily be read. Fourth, That no body armor, firearm, rifle or shotgun, or machine gun shall be displayed in any outer window of said premises or in any other place where it can readily be seen from the outside. Fifth, That the licensee shall submit a record of all sales, rentals and leases forthwith at the time of such sale, rental or lease via electronic communication link to the commissioner of the department of criminal justice information services. Sixth, That every firearm, rifle or shotgun shall be unloaded when delivered. Seventh, That no delivery of a firearm or body armor shall be made to any person not having a license to carry firearms issued under the provisions of section 131 nor shall any delivery of body armor or a rifle or shotgun or ammunition be made to any minor nor to any person not having a license to carry firearms issued under the provisions of section 131 or a firearm identification card issued under the provisions of section 129 B nor shall any body armor or large capacity firearm or large capacity feeding device therefor be delivered to any person not having a Class A license to carry firearms issued under section 131 nor shall any body armor or large capacity rifle or shotgun or large capacity feeding device therefor be delivered to any person not having a Class A or Class B license to carry firearms issued under said section 131; provided, however, that delivery of a firearm or body armor by a licensee to a person possessing a valid permit to purchase said firearm issued under the provisions of section 131 A and a valid firearm identification card issued under section 129 B may be made by the licensee to the purchaser's residence or place of business, subject to the restrictions imposed upon such permits as provided under section 131A. Eighth, That no firearm shall be sold, rented or leased to a minor or a person who has not a permit then in force to purchase, rent or lease the same issued under section 131A, and a firearm identification card issued under the provisions of section 129B, or unless such person has a license to carry firearms issued under the provisions of section 131; nor shall any body armor or rifle or shotgun be sold, rented or leased to a person who has not a valid firearm identification card as provided for in section 129 B, or has a license to carry firearms as provided in section 131; that no body armor or large capacity firearm nor large capacity feeding device therefor shall be sold, rented, leased or transferred to any person not having (i) a Class A license to carry firearms issued under section 131 or (ii) a proper permit issued under section 131A and a firearm identification card issued under section 129B; that no body armor or large capacity rifle or shotgun nor large capacity feeding device therefor shall be sold to any person not having a Class A or Class B license to carry firearms issued under said section 131; and that no body armor or machine gun shall be sold, rented or leased to any person who has not a license to possess the same issued under section 131. Ninth, That upon the sale, rental or lease of body armor or a

firearm, subject to a permit to purchase issued under the provisions of section 131A, the licensee under section 122 shall take up such permit to purchase and shall endorse upon it the date and place of said sale, rental or lease, and shall transmit the same to the executive director of the criminal history systems board; and that upon the sale, rental or lease of body armor or a machine gun shall endorse upon the license to possess the same the date and place of said sale, rental or lease, and shall within 7 days transmit a notice thereof to said executive director. In case of a sale under the provisions of section 131 E the licensee under section 122 shall write in the sales record book the number of the license to carry firearms issued the purchaser under the provisions of section 131, or the number of the firearm identification card issued the purchaser under the provisions of section 129 B, whichever is applicable under the provisions of condition Eighth of this section. Tenth, That this license shall be subject to forfeiture as provided in section 125 for breach of any of its conditions, and that, if the licensee hereunder is convicted of a violation of any such conditions, this license shall thereupon become void. Eleventh, That the Second, Fifth, Eighth and Ninth conditions shall not apply to a gunsmith with regard to repair or remodeling or servicing of firearms, rifles or shotguns unless said gunsmith has manufactured a firearm, rifle or shotgun for the purchaser, but said gunsmith shall keep records of the work done by him together with the names and addresses of his customers. Such records shall be kept open for inspection by the police at all times. Twelfth, That any licensee shall keep records of each sale, rental or lease of body armor or a rifle or shotgun, specifying the description of said body armor, rifle or shotgun, together with the name and address of the purchaser, renter or lessee, and the date of such transaction. Thirteenth, That the current validity of any firearm identification card, license to carry firearms or permit to purchase, rent or lease firearms presented, and that the person presenting said card, license or permit is the lawful holder thereof, shall be verified by the licensee prior to any sale, rental or lease of body armor or a rifle, shotgun, firearm or large capacity feeding device; and, upon being presented with such card or license that is expired, suspended or revoked, the licensee shall notify the licensing authority of the presentment of such expired, suspended or revoked card, license or permit; and further, the licensee may take possession of such card or license provided that, in such case, such licensee shall: (i) issue a receipt, in a form provided by the commissioner of the department of criminal justice information services, to the holder thereof which shall state that the holder's card or license is expired, suspended or revoked, was taken by such licensee and forwarded to the licensing authority by whom it was issued and such receipt shall be valid for the date of issuance for the purpose of providing immunity from prosecution under section 10 of chapter 269 for unlawfully possessing a firearm, rifle or shotgun or large capacity weapon; (ii) notify the cardholder or licensee of his requirement to renew said card or license; and (iii) forward such expired card or license to the licensing authority forthwith; provided, however, that such licensee shall be immune from civil and criminal liability for good faith compliance with the provisions herein. Fourteenth, That the licensee shall conspicuously post at each purchase counter the following warning in bold type not less than one inch in height: "IT IS UNLAWFUL TO STORE OR KEEP A FIREARM, RIFLE, SHOTGUN OR MACHINE GUN IN ANY PLACE UNLESS

138 THAT WEAPON IS EQUIPPED WITH A TAMPER-RESISTANT SAFETY DEVICE OR IS
139 STORED OR KEPT IN A SECURELY LOCKED CONTAINER.”, and that such licensee shall
140 provide said warning, in writing, to the purchaser or transferee of any firearm, rifle, shotgun or
141 machine gun in bold type not less than one-quarter inch in height. Fifteenth, That all licensees
142 shall maintain a permanent place of business that is not a residence or dwelling wherein all
143 transactions described in this section shall be conducted and wherein all records required to be
144 kept under this section shall be so kept. Sixteenth, That no licensee shall sell, lease, rent, transfer
145 or deliver or offer for sale, lease, rent, transfer or delivery to any person any assault weapon or
146 large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994.
147 Seventeenth, That any licensee from whom body armor, a rifle, shotgun, firearm or machine gun
148 is lost or stolen shall report such loss or theft to the licensing authority and the executive director
149 of the criminal history systems board forthwith. Such report shall include a complete description
150 of the body armor or weapon, including the make, model, serial number and caliber and whether
151 such weapon is a large capacity weapon. Eighteenth, That no licensee shall sell, rent, lease,
152 transfer or deliver or offer for sale, lease, transfer or delivery any firearm, to any purchaser in the
153 commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler and
154 the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or
155 consumer in the commonwealth if such firearm has a frame, barrel, cylinder, slide or
156 breechblock that is composed of: (i) any metal having a melting point of less than 900 degrees
157 Fahrenheit; (ii) any metal having an ultimate tensile strength of less than 55,000 pounds per
158 square inch; or (iii) any powdered metal having a density of less than 7.5 grams per cubic
159 centimeter. This clause shall not apply to any make and model of firearm for which a sample of
160 three firearms in new condition all pass the following test: Each of the three samples shall fire
161 600 rounds, stopping every 100 rounds to tighten any loose screws and to clean the gun if
162 required by the cleaning schedule in the user manual, and as needed to refill the empty magazine
163 or cylinder to capacity before continuing. For any firearm that is loaded in a manner other than
164 via a detachable magazine, the tester shall also pause every 50 rounds for 10 minutes. The
165 ammunition used shall be the type recommended by the firearm manufacturer in its user manual
166 or, if none is recommended, any standard ammunition of the correct caliber in new condition. A
167 firearm shall pass this test if it fires the first 20 rounds without a malfunction, fires the full 600
168 rounds with not more than six malfunctions and completes the test without any crack or breakage
169 of an operating part of the firearm. The term “crack” or “breakage” shall not include a crack or
170 breakage that does not increase the danger of injury to the user. For purposes of evaluating the
171 results of this test, malfunction shall mean any failure to feed, chamber, fire, extract or eject a
172 round or any failure to accept or eject a magazine or any other failure which prevents the firearm,
173 without manual intervention beyond that needed for routine firing and periodic reloading, from
174 firing the chambered round or moving a new round into position so that the firearm is capable of
175 firing the new round properly. “Malfunction” shall not include a misfire caused by a faulty
176 cartridge the primer of which fails to detonate when properly struck by the firearm’s firing
177 mechanism. Nineteenth, That no licensee shall sell, rent, lease, transfer or deliver or offer for

sale, lease, transfer or delivery any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearms wholesaler, and the sale, by its terms, prohibits such purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm is prone to accidental discharge which, for purposes of this clause, shall mean any make and model of firearm for which a sample of 5 firearms in new condition all undergo, and none discharge during, the following test: Each of the five sample firearms shall be: (a) test loaded; (b) set so that the firearm is in a condition such that pulling the trigger and taking any action that must simultaneously accompany the pulling of the trigger as part of the firing procedure would fire the handgun; and (c) dropped onto a solid slab of concrete from a height of 1 meter from each of the following positions: (i) normal firing position; (ii) upside down; (iii) on grip; (iv) on the muzzle; (v) on either side; and (vi) on the exposed hammer or striker or, if there is no exposed hammer or striker, the rearmost part of the firearm. If the firearm is designed so that its hammer or striker may be set in other positions, each sample firearm shall be tested as above with the hammer or striker in each such position but otherwise in such condition that pulling the trigger, and taking any action that must simultaneously accompany the pulling of the trigger as part of the firing procedure, would fire the firearm. Alternatively, the tester may use additional sample firearms of the same make and model, in a similar condition, for the test of each of these hammer striker settings. Twentieth, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery, any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler, and the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm is prone to: (i) firing more than once per pull of the trigger; or (ii) explosion during firing. Twenty-first, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler and the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm has a barrel less than 3 inches in length, unless the licensee discloses in writing, prior to the transaction, to the prospective buyer, lessee, deliverer or transferee the limitations of the accuracy of the particular make and model of the subject firearm, by disclosing the make and model's average group diameter test result at 7 yards, average group diameter test result at 14 yards and average group diameter test result at 21 yards. For purposes of this clause, "average group diameter test result" shall mean the arithmetic mean of three separate trials, each performed as follows on a different sample firearm in new condition of the make and model at issue. Each firearm shall fire 5 rounds at a target from a set distance and the largest spread in inches between the centers of any of the holes made in a test target shall be measured and recorded. This procedure shall be repeated two more times on the firearm. The arithmetic mean of each of the three recorded results shall be deemed the result of the trial for that particular sample firearm. The ammunition used shall be the type recommended by the firearm manufacturer in its user manual or, if none is

recommended, any standard ammunition of the correct caliber in new condition. No licensee shall sell any rifle or shotgun, contrary to the provisions of section 130 or section 131E.

Clauses Eighteenth to Twenty-first, inclusive, of the first paragraph shall not apply to: (a) any firearm lawfully owned or possessed under a license issued under this chapter on or before October 21, 1998; or (b) any firearm designated by the secretary of public safety, with the advice of the gun control advisory board established pursuant to section 1311/2 of chapter 140, as a firearm solely designed and sold for formal target shooting competition. The secretary of public safety shall compile a list, on a bi-annual basis, of firearms designated as formal target shooting firearms in accordance with this paragraph. Such list shall be made available for distribution by the executive office of public safety.

No person licensed under the provisions of section 122 or section 122B shall sell, rent, lease, transfer or deliver any body armor, rifle, shotgun or firearm or ammunition or ammunition feeding device contrary to the provisions of section 130 or section 131E; and no such licensee shall sell, rent, lease, transfer or deliver any body armor, rifle, shotgun or firearm or ammunition or ammunition feeding device to any person who does not have in his possession the required firearm identification card or proof of exemption therefrom, license to carry firearms or permit to purchase, rent or lease firearms and who does not present such card, proof, license or permit to the licensee in person at the time of purchase, rental or lease. No person licensed under the provisions of section 122 or section 122B shall fill an order for such body armor, weapon, ammunition or ammunition feeding device that was received by mail, facsimile, telephone or other telecommunication unless such transaction or transfer includes the in-person presentation of the required card, proof, license or permit as required herein prior to any sale, delivery or any form of transfer of possession of the subject weapon, ammunition or ammunition feeding device. Transactions between persons licensed under section 122 or between federally licensed dealers shall be exempt from the provisions of this paragraph.

The licensing authority shall enter, 1 time per calendar year, during regular business hours, the commercial premises owned or leased by any licensee, wherein such records required to be maintained under this section are stored or maintained, and inspect, in a reasonable manner, such records and inventory for the purpose of enforcing the provisions of this section. If such records and inventory contain evidence of violations of this section, the inspecting officer shall produce and take possession of copies of such records and, in the event that the licensee subject to inspection does not possess copying equipment, the inspecting officer shall arrange to have copied, in a reasonable time and manner, such records that contain evidence of such violations and the costs for such copying shall be assessed against the owner of such records. Licensees

found to be in violation of this section shall be subject to the suspension or permanent revocation of such license issued under section 122 and to the provisions of section 128. Nothing herein shall prohibit the licensing authority or the department of state police from conducting such inspections pursuant to a valid search warrant issued by a court of competent jurisdiction.

Notwithstanding the provisions of this section, a person licensed under the provisions of section 122, or section 122 B, may sell or transfer body armor, firearms, rifles, shotguns, machine guns or ammunition at any regular meeting of an incorporated collectors club or at a gun show open to the general public; provided, however, that all other provisions of this section are complied with and that such sale or transfer is in conformity with federal law or regulations applicable to the transfer or sale of body armor, firearms, rifles, shotguns, machine guns or ammunition, including the restrictions imposed upon firearm identification cards issued under section 129B, licenses to carry firearms issued under section 131 and permits to purchase, lease or rent firearms issued under section 131A.