HOUSE DOCKET, NO. 2002 FILED ON: 1/17/2013

HOUSE . . . . . No. 3256

The Commonwealth of Massachusetts

PRESENTED BY:

Aaron Michlewitz

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 transmission of firearms background check information.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Aaron Michlewitz	*3rd Suffolk*
Carlo Basile	*1st Suffolk*
William N. Brownsberger	*Second Suffolk and Middlesex*
Martin J. Walsh	*13th Suffolk*
Martha M. Walz	*8th Suffolk*
Thomas M. Menino	*Mayor, City of Boston*
Robert Consalvo	*City Councilor, City of Boston*
Byron Rushing	*9th Suffolk*
Russell E. Holmes	*6th Suffolk*

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HOUSE . . . . . No. 3256

By Mr. Michlewitz of Boston, a petition (accompanied by bill, House, No. 3256) of Aaron Michlewitz and others relative to the transmission of firearms background check information. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3569* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the transmission of firearms background check information.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 167A of chapter 6 of the General Laws, as inserted by section 8 of chapter 256 of the acts of 2010, is hereby amended by inserting the following paragraph:-

(h) Notwithstanding any general or special law or court order, including an order of impoundment, to the contrary, the department shall transmit to the Attorney General of the United States any information in its control required or permitted under federal law to be included in the National Instant Background Check System or any successor system maintained for the purpose of conducting background checks for firearms sales or licensing. No more information than is necessary for the purposes stated above shall be transmitted, and such information shall not be considered a public record under section 7 of chapter 4.

SECTION 2. Section 35 of chapter 123 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word “days.”, in line 38, the following words:- The court in its order shall specify whether such commitment is based upon a finding that said person is an alcoholic, a substance abuser, or both, and this information shall be entered in the record to permit transmission to the department of criminal justice information services for the purposes and under the conditions set forth in the second paragraph of section 36A.

16 SECTION 3. Section 36A of chapter 123, as so appearing, is hereby amended by
17 inserting after the first paragraph the following paragraph:-

18 Notwithstanding the foregoing, the administrative office of the trial court shall transmit
19 information contained in court records maintained under this section to the department of
20 criminal justice information services for the purposes of (a) providing licensing authorities as
21 defined under section 121 of chapter 140 with information required or permitted to be considered
22 under state or federal law for the purpose of conducting background checks for firearms sales or
23 licensing and (b) providing the Attorney General of the United States with information required
24 or permitted under federal law to be included in the National Instant Criminal Background Check
25 System or any successor system maintained for the purpose of conducting background checks for
26 firearms sales or licensing. The commissioner of the department of criminal justice information
27 services shall determine which court records shall be transmitted for said purposes, provided that
28 the commissioner shall require no more information than is necessary to be transmitted, and such
29 information shall not be considered a public record under section 7 of chapter 4.

30 SECTION 4. Section 129B of chapter 140 of the General Laws, as so appearing, is
31 hereby amended by striking out, in line 85, the words "department of mental health,".

32 SECTION 5. Section 130B of chapter 140 of the General Laws, as so appearing, is
33 hereby amended by inserting the following subsection:-

34 (h) There shall be, within the firearm licensing review board, a relief from disabilities
35 subcommittee comprised of 3 members, designated from time to time, as follows: 1 member of
36 the firearm licensing review board designated by the chair, 1 person designated by the
37 commissioner of the department of mental health, and 1 person designated by the secretary of
38 public safety and security, who shall chair the subcommittee.

39 An applicant who has been formally adjudicated as mentally defective in the
40 commonwealth or committed involuntarily to a mental institution in the commonwealth, within
41 the meaning of 18 U.S.C. § 922, may petition the subcommittee for relief from the firearms
42 prohibitions or disabilities imposed by federal law as the result of such adjudication or
43 commitment.

44 The applicant shall have the opportunity to submit evidence to the subcommittee and to
45 be heard by the subcommittee in support of the application. All hearings shall be conducted in
46 an informal manner, but otherwise according to the rules of evidence, and all witnesses shall be
47 sworn by the subcommittee chair. If requested by the petitioner and payment for stenographic
48 services, as determined by the subcommittee, accompanies such request, the subcommittee shall
49 cause a verbatim transcript of the hearing to be made. The subcommittee's decisions and
50 findings of facts shall be communicated in writing to the petitioner and to the licensing authority
51 to which the petitioner has applied or intends to apply within 60 days of rendering a decision.
52 The subcommittee shall maintain the records of its proceedings and of all materials submitted or

53 considered by the subcommittee for the purposes of judicial review for a minimum of 3 years
54 following the date of its decision. The records of the subcommittee shall not be considered a
55 public record under section 7 of chapter 4.

56 If the majority of the subcommittee determines that the applicant has shown by clear and
57 convincing evidence that the applicant will not be likely to act in a manner dangerous to public
58 safety and that granting relief will not be contrary to the public interest, the subcommittee may
59 grant relief and direct the department of criminal justice information services to notify the
60 Attorney General of the United States and to remove the record of the prohibition or disability
61 from any database that the department of criminal justice information services, the
62 commonwealth or the federal government maintains and makes available to the National Instant
63 Criminal Background Check System or any successor system maintained for the purpose of
64 conducting background checks for firearms sales or licensing.

65 In determining whether to grant relief, the subcommittee shall consider the circumstances
66 regarding the firearms disabilities imposed; the applicant's record, including the applicant's
67 mental health and criminal history records; and the applicant's reputation developed, at a
68 minimum, through character witness statements, testimony, or other character evidence. The
69 applicant shall have the burden to produce evidence concerning these matters and the burden of
70 persuading the subcommittee to grant relief. The subcommittee may promulgate regulations
71 governing the application process and the conduct of its hearings.

72 The decision of the subcommittee shall be a final decision. An applicant who is denied
73 relief by the subcommittee may, within 30 days of the receipt of the denial, seek review of the
74 subcommittee's decision by filing a complaint in the district court. The district court's review of
75 the subcommittee's decision shall be de novo, and the court may in its discretion receive
76 additional evidence necessary to conduct an adequate review.

77 The firearm licensing review board shall establish a fee to file an application for relief
78 under this section, which fees shall be retained by the department of criminal justice information
79 services.

80 SECTION 6. Section 131 of chapter 140 of the General Laws, as so appearing, is hereby
81 amended by striking out, in lines 155-157, the words "The colonel shall inquire of the
82 commissioner of the department of mental health relative to whether the applicant is disqualified
83 from being so licensed."

84 SECTION 7. Chapter 265 of the General Laws is hereby amended by inserting after
85 section 13M the following section:-

86 Section 13N. Upon entry of a conviction for any misdemeanor offense that has as an
87 element the use or attempted use of physical force, or the threatened use of a deadly weapon, the
88 court shall determine whether the victim or intended victim was a family or household member

89 of the defendant, as defined in section 1 of chapter 209A. If the victim or intended victim was a
90 family or household member of the defendant, the court shall enter the offense, the chapter,
91 section and subsection, if any, of the offense, and the relationship of the defendant to the victim
92 upon the record, and this entry shall be forwarded to the department of criminal justice
93 information services for inclusion in the criminal justice information system and for the purpose
94 of providing the Attorney General of the United States with information required or permitted
95 under federal law to be included in the National Instant Criminal Background Check System or
96 any successor system maintained for the purpose of conducting background checks for firearms
97 sales or licensing.

98 SECTION 8. Notwithstanding any general or special law or court order, including an
99 order of impoundment, to the contrary, the administrative office of the trial court shall transmit
100 any order of the probate court appointing a guardian or conservator for an incapacitated person
101 under part 3 or part 4 of article V of the Massachusetts Uniform Probate Code on the ground that
102 the person lacks the mental capacity to contract or manage his or her own affairs, and any
103 subsequent order terminating or rescinding such appointment, to the department of criminal
104 justice information services for the purpose of providing the Attorney General of the United
105 States with information required or permitted under federal law to be included in the National
106 Instant Criminal Background Check System or any successor system maintained for the purpose
107 of conducting background checks for firearms sales or licensing. The department of criminal
108 justice information services shall transmit no more information than is necessary for the purpose
109 stated above, and such information shall not be considered a public record under section 7 of
110 chapter 4.

111 SECTION 9. Notwithstanding section 36 of chapter 123 of the General Laws, and for the
112 sole purposes of providing licensing authorities as defined under section 121 of chapter 140 of
113 the General Laws with information required or permitted to be considered under state law for the
114 purpose of conducting background checks for firearms sales or licensing and of providing the
115 Attorney General of the United States with information required or permitted under federal law
116 to be included in the National Instant Criminal Background Check System or any successor
117 system maintained for the purpose of conducting background checks for firearms sales or
118 licensing:

119 (a) No later than 6 months from the effective date of this act, the department of mental
120 health shall transmit to the department of criminal justice information services sufficient
121 information to identify all persons known to the department of mental health who have been
122 confined to any hospital or institution for mental illness within 20 years of the effective date or
123 who are so confined at the time of transmission; and

124 (b) Thereafter, the department of mental health shall transmit such information to the
125 department of criminal justice information services on a quarterly basis concerning individuals
126 who have been so confined in the 3-month period preceding the date of each transmission.

127 The department of criminal justice information services shall provide such licensing
128 authorities or transmit no more information than is necessary for the purpose stated above and
129 such information shall not be considered a public record under section 7 of chapter 4.

130 SECTION 10. Sections 4 and 6 shall take effect 6 months after the effective date of this
131 act.