SENATE DOCKET, NO. 239 FILED ON: 1/12/2009

SENATE . . . . . No. 924

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to fair licensing..

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 121 of Chapter 140 is hereby amended by deleting the following definitions and replacing them with the following:

"Ammunition", cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun.

"Violent crime", shall mean:

any crime punishable by imprisonment for a term exceeding one year for which a committed term of imprisonment has been served after sentencing has been carried out; ,

or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult year for which a committeed term of imprisonment has been served after sentencing has been carried out, that: (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii)

involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.

SECTION 2. Section 129B of Chapter 140 is hereby deleted in its entirety and replaced with the following:

Chapter 140: Section 129B. Firearm identification cards; conditions and restrictions

Section 129B. A firearm identification card shall be issued and possessed subject to the following conditions and restrictions:

(1) Any person residing or having a place of business within the jurisdiction of the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority an application for a firearm identification card, or renewal of the same, which the licensing authority shall issue, unless the applicant:

(i) has ever, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, both as defined in section 52 of chapter 119, for the commission of:

(a) a felony;

(b) a misdemeanor punishable by imprisonment for more than two years for which a committed term of imprisonment has been served after sentencing has been carried out;

(c) a violent crime as defined in section 121;

(d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a committed term of imprisonment has been served after sentencing has been carried out; or

(e) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C including, but not limited to, a violation under said chapter 94C;

provided, however, that except for the commission of a violent crime or a crime involving the trafficking of controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever is last occurring, not less than five years immediately preceding such application, such applicant's right or ability to possess any firearm, rifle or shotgun shall be deemed fully restored in the commonwealth with respect to such conviction or adjudication and such conviction or adjudication shall not disqualify such applicant for a firearm identification card;

(ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of:

(a) a felony;

(b) a misdemeanor punishable by imprisonment for more than two years for which a committed term of imprisonment has been served after sentencing has been carried out;

(c) a violent crime as defined in section 121;

(d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed for which a committed term of imprisonment has been served after sentencing has been carried out; or

(e) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C;

provided, however, that, except for the commission of a violent crime or a crime involving the trafficking of weapons or controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever is last occurring, not less than five years immediately preceding such application, and such applicant's right or ability to possess any firearm, rifle or shotgun has been fully restored in the jurisdiction wherein the subject conviction or adjudication was entered, such conviction or adjudication shall not disqualify such applicant for a firearm identification card;

(iii) has been confined to any hospital or institution for mental illness, unless the applicant submits with his application an affidavit of a registered physician attesting that such physician is familiar with the applicant's mental illness and that in such physician's opinion the applicant is not disabled by such an illness in a manner that should prevent the applicant from possessing a firearm, rifle or shotgun;

(iv) is or has been ordered to undergo treatment for or confinement for, by a court of law, drug addiction or habitual drunkenness, unless such applicant is deemed to no longer have such condition by a licensed physician, in which case he may make application for such card after the

expiration of five years from the date of such confinement or treatment and upon presentation of an affidavit issued by such physician to the effect that such physician knows the applicant's history of treatment and that in such physician's opinion the applicant no longer appears to be in need of treatment for drug addiction or habitual drunkeness;

(v) is at the time of the application less than 15 years of age;

(vi) is at the time of the application more than 15 but less than 18 years of age, unless the applicant submits with his application a letter from his parent or guardian granting the applicant permission to apply for a card;

(vii) is an alien;

(viii) is currently subject to: (a) an order for suspension or surrender issued pursuant to section 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; or (b) a permanent or temporary protection order issued pursuant to chapter 209A or a similar order issued by another jurisdiction; or

(ix) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction.

(2) At no time shall records that have been sealed be used to disqualify an applicant from obtaining a firearms identification card.

(3) When determining eligibility for a firearms identification card in regards to past convictions, the determination shall only be made using the penalties in place at the time of conviction.

(4) Within seven days of the receipt of a completed application for a card, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall, within 30 days, advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a firearm identification card; provided, however, that the taking of fingerprints shall not be required in issuing the renewal of a card if the renewal applicant's fingerprints are on file with the department of state police. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of mental health, department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. If the information available to the colonel does not indicate that the issuance of a firearm identification card to the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within such 30 day period.

(5) Upon receiving an application for a firearm identification card, the licensing authority shall immediately issue a receipt for said application.

(6) The licensing authority may not prescribe any other condition for the issuance of a firearm identification card and shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the specific reasons for such denial in writing; provided, however, that no such card shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate

that the issuance of a firearm identification card to applicant would be in violation of state or federal law.

(7) A firearm identification card shall be revoked or suspended by the licensing authority or his designee upon the occurrence of any event that would have disqualified the holder from being issued such card or from having such card renewed or for a violation of a restriction provided under this section. Any revocation or suspension of a card shall be in writing and shall state the specific reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such card and receipt for fee paid for such card, and the person whose card is so revoked or suspended shall take all action required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the executive director of the criminal history systems board and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended card may be reinstated only upon the termination of all disqualifying conditions.

(8) Any applicant or holder aggrieved by a denial, revocation or suspension of a firearm identification card, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receipt of notice of such denial, revocation or suspension or within 90 days after the expiration of the time limit in which the licensing authority is required to respond to the applicant, file a petition to obtain judicial review in the district court having jurisdiction in the city or town wherein the applicant filed for or was issued such card. A justice of such court, after a hearing and a finding of the facts, shall determine if the petitioner is presently eligible for a firearm identification card. If the justice finds in favor of the petitioner, said justice shall order the licensing authority to issue the firearms identification card to the petitioner within 10 days. A

refusal to issue said card by the licensing authority shall place the licensing authority in contempt of court. If it is found by the justice that the petitioner was found to be wrongfully denied a firearm identification card, the judge shall order that the petitioner's costs, including but not limited to attorney fees and filing fees, shall be reimbursed to the petitioner by the licensing authority within 60 days of said order.

(9) A firearm identification card shall be valid for all lawful purposes subject to the following:

(a) A firearm identification card holder aged 15 through 17 shall be entitled to borrow, possess and carry any rifle or shotgun;

(b) A firearm identification card holder aged 18 through 20 shall be entitled to purchase, own, rent, lease, borrow, possess and carry any rifle or shotgun;

(c) A firearm identification card holder aged 21 and over shall be entitled to purchase, own, rent, lease, borrow, possess, carry or carry concealed any firearm, rifle or shotgun;

(10) A firearm identification card shall be in a standard form provided by the executive director of the criminal history systems board in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and shall contain an identification number, name, address, photograph, place and date of birth, height, weight, hair color, eye color and signature of the cardholder and shall be marked "Firearm Identification Card".

(11) The application for such card shall be made in a standard form provided by the executive director of the criminal history systems board. The application shall not require the

applicant to divulge to any person not directly involved with the licensing process under this section that they are applying for a firearm identification card, nor shall the application require that the applicant supply any letters of reference.

(12) Any person who files an application containing false information with the expressed intent to deceive the licensing authority shall be punished by a fine of not less than $500 nor more than $1,000 or by imprisonment for not less than six months nor more than two years in a house of correction, or by both such fine and imprisonment.

(13) A firearm identification card shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issue, except that if the cardholder applied for renewal before the card expired, the card shall remain valid for a period of 90 days after the stated expiration date on the card, unless the application for renewal is denied. During the 90 day grace period the card holder shall be entitled to all of the rights expressed in paragraph 6 of this section. A card issued on February 29 shall expire on March 1.

(14) The executive director of the criminal history systems board shall send by first class mail to the holder of a firearm identification card, a notice of the expiration of the card not less than 120 days before its expiration, and shall enclose with the notice a form for the renewal of the card. The executive director of the criminal history systems board shall include in the notice all pertinent information about the penalties that may be imposed if the firearm identification card is not renewed within the 120 days before expiration.

(15) Except as provided in clause (9B), the fee for an application for a firearm identification card shall be $50, which shall be payable to the licensing authority and shall not be prorated or refunded in the case of revocation or denial. The licensing authority shall retain $25

of the fee; and $25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund.

(16) Any person of the age of 70 shall be exempt from the requirement of paying a renewal fee for a firearm identification card. All fees for an application for a renewal of a firearm identification card shall be prorated if it is determined that the applicant will turn 70 years of age during the upcoming license term.

(17) A cardholder shall notify, in writing, the licensing authority that issued such card, the chief of police into whose jurisdiction such cardholder moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. A cardholder who fails to complete such notification shall be fined not more than $100.

(18) Notwithstanding the provisions of section 10 of chapter 269, any person in possession of any firearm, rifle or shotgun whose firearm identification card issued under this section is invalid for the sole reason that it has expired, meaning after 90 days beyond the stated expiration date on the card, but who shall not be disqualified from renewal upon application therefor under this section, shall be subject to a civil fine of not less than $100 nor more than $500 and the provisions of said section 10 of said chapter 269 shall not apply; provided, however, that the exemption from the provisions of said section 10 of said chapter 269 provided herein shall not apply if: (i) such firearm identification card has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such firearm identification card is pending, unless such revocation or suspension was caused by failure to give notice of a change

of address as required under this section; or (iii) an application for renewal of such firearm identification card has been denied. Any law enforcement officer who discovers a person to be in possession of any firearm, rifle or shotgun after such person's firearm identification card has expired, meaning after 90 days beyond the stated expiration date on the card, or has been revoked or suspended solely for failure to give notice of a change of address shall confiscate any rifle or shotgun and such expired or suspended card then in possession, and such officer shall forward such card to the licensing authority by whom it was issued as soon as practicable. Any law enforcement officer who confiscates a firearm, rifle or shotgun under this section shall immediately issue a receipt to the card holder listing the make, model and serial number of each firearm, rifle or shotgun that has been confiscated. Any confiscated weapon shall be returned to the owner in the same condition in which it was confiscated upon the renewal or reinstatement of such expired or suspended card within one year of such confiscation or such weapon may be otherwise disposed of in accordance with the provisions of section 129D. Pending the issuance of a renewed firearm identification card, a receipt for the fee paid, after five days following issuance, shall serve as a valid substitute and any rifle or shotgun so confiscated shall be returned, unless the applicant is disqualified.

(19) Upon issuance of a firearm identification card under this section, the licensing authority shall forward a copy of such approved application and card to the executive director of the criminal history systems board, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a firearm identification card under this section.

(20) Nothing in this section shall authorize the purchase, possession or transfer of any weapon, ammunition or feeding device that is, or in such manner that is, prohibited by state or federal law.

(21) The secretary of the executive office of public safety, or his designee, may promulgate regulations to carry out the purposes of this section.

SECTION 3. Section 131 of Chapter 140 is hereby repealed.