

**HOUSE . . . . . No. 3569**

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A message from His Excellency the Governor recommending legislation relative to the transmission of firearms background check information.

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Eleven**  
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**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:*

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

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

10           SECTION 2. Section 35 of chapter 123 of the General Laws, as appearing in the 2008  
11 Official Edition, is hereby amended by inserting after the word “days.”, in line 38, the following  
12 words:- The court in its order shall specify whether such commitment is based upon a finding

13 that said person is an alcoholic, a substance abuser, or both, and this information shall be entered  
14 in the record to permit transmission to the department of criminal justice information services for  
15 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.