

# HOUSE . . . . . No. 3742

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By Ms. Haddad of Somerset (by request), a petition (subject to Joint Rule 12) (accompanied by bill, House, No. [BILL NUMBER]) of Patrick Higgins and Michael J. Rodrigues relative to the regulation and licensing of locksmiths. Consumer Protection and Professional Licensure.

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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 locksmith licensing.

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

1           Preamble.

2           In order to protect the public of this state from the abuse and misuse of locksmithing  
3 supplies, manuals, or equipment resulting in violation of public safety and security, locksmiths  
4 should be licensed and regulated by this state. Locksmiths operate in the public trust to secure  
5 and protect property and persons and should have the knowledge and tools to bypass or  
6 neutralize security devices; locksmiths should be trained in the applicable regulations and laws  
7 pertinent to the profession such as the ADA code, building codes, fire and life safety codes as  
8 well as training in proper installation and maintenance of security devices for the public well-  
9 being. The regulations or laws of this state currently do not protect its citizens from the  
10 unscrupulous use and abuse of the tools and knowledge of the locksmithing profession by the  
11 untrained person or persons who have criminal intent. Therefore, the regulation and licensing of  
12 locksmiths in this state is necessary.

Section 1. Definitions

For the purposes of this Act, the following terms shall have the meanings indicated:

(a) "Building Permit", a permit issued by the authority of jurisdiction regarding the regulation of building construction, remodeling, and other physical changes to property.

(b) "Certificate", a document issued by the Division as proof that a license or permit has been granted.

(c) "Certification", the process whereby the Division or any regulatory board issues a certificate on behalf of this state to a person signifying that he/she possesses the character and minimum skills to engage properly in the profession of locksmithing.

(d) "Codebook", a compilation, in any form, of key codes.

(e) "Division" the Division of Professional Licensure.

(f) "Emergency", a life-threatening situation involving a person.

(g) "Hearing", the process for discharge of contested cases as described in the Administrative Procedure Act.

(h) "Inspection", a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

(i) "Key Duplication Machine", any device which is capable of copying or reproducing keys.

(j) "Licensure", a method of regulation whereby this state, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of the locksmith profession or occupation, which is unlawful to practice without a license.

(k) "Locksmith", a person, or security professional who performs locksmith and access control services to the public for any type of compensation and has received a license pursuant to this Act.

(l) "Locksmithing Tool", any tool that is designed, or intended by the user to be used, to open a mechanical or electrical locking device by a means other than that which is intended by the manufacturer of such device for normal operation.

(m) "Locksmith License", a license granted to a locksmith pursuant to Section 7 of this Act.

(n) "Locksmith Services" means:

(i) Servicing or installing:

(1) Repairing, rebuilding, rekeying, repinning, servicing, adjusting or installing locks, mechanical or electronic security devices, safes, vaults or safe deposit boxes;

(2) Operating a mechanical or electrical security device, safe or vault by a means other than those intended by the manufacturer of such locking devices, safes or vaults.

(o) "Organization", any entity other than a natural person, including but not limited to, a corporation, partnership, sole proprietorship or association.

(p) "Photo Identification Card", a document with a photograph of the licensee on its face issued by the Division as proof that license has been granted.

(q) "Regulatory Board" means the Board of Locksmiths.

(r) "Registration", a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature, and operation of his/her practice.

(s) "Safe-Opening Tool", any tool that is designed, or intended by the user to be used, to open a safe, safe deposit box or similar object by means other than that which is intended by the manufacturer of such safe, vault, safe deposit box or similar object for normal opening.

(t) "Director", the Director of the Division of Professional Licensure.

## Section 2. Board of Locksmiths

(a) A regulatory board, the Board of Locksmiths, shall be established to administer a system of certification and licensure. The Board of Locksmiths shall consist of members appointed by the Director as follows: locksmiths and "citizen members." Of the occupational members, all shall have at least five years' experience in the locksmith industry and be currently engaged in that industry. The Director's appointees shall all reside in this state and represent the various geographic areas of this state.

(b) The terms of the Board members shall be years. Of those members first appointed, three shall be appointed to -year terms, three for three-year terms, and three for two-year terms. Any vacancy occurring other than by expiration of terms shall be filled for the unexpired term by appointment by the Director. No member shall serve more than two successive full terms.

(c) A "citizen member" of the Board shall be a person who (1) is not by training or experience a locksmith, (2) is not a spouse, parent, child, or sibling of a locksmith, and (3) has no direct or indirect financial interest, except as a consumer, in the locksmith profession.

(d) The Board shall annually elect from its membership a chairman and vice-chairman. Five (5) members of the Board shall constitute a quorum.

(e) The powers and duties of the Board shall be as follows:

(i) To establish the qualification for certification or licensure to ensure competence and integrity to engage in the profession;

(ii) To examine, or cause to be examined, the qualification of each applicant for certification or licensure including, when necessary, the preparation, administration and grading of examinations;

(iii) To certify or license qualified applicants regulated by this Board;

(iv) To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Division of Professional Licensure of Professional and Occupational Regulation;

(v) To promulgate regulations in accordance with the Administrative Procedure Act necessary to ensure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by this regulatory board;

(vi) To receive complaints concerning the conduct of any person whose activities are regulated by the regulatory board and to take appropriate disciplinary action if necessary;

(vii) To ensure that inspections are conducted relating to the operations in this trade to ensure competency and lawful compliance;

(viii) To revoke, suspend, or fail to renew a certificate or license for just causes as enumerated in the regulations of the Board;

(ix) To promulgate canons of ethics under which the professional activities of person regulated shall be conducted.

### Section 3. Monetary Penalty.

Any person licensed or certified by a regulatory Board who violates any statute or regulation pertaining to that regulatory board who is not criminally prosecuted shall be subject to the monetary penalty provided in the section. If a regulatory Board determines that a respondent is guilty of the violation complained of, the Board shall determine the amount of the monetary penalty for the violation, which shall not exceed \$ for each violation. The penalty may be sued for and recovered.

### Section 4. Recovery of Cost After Grant of Formal Fact-Finding.

After a formal fact-finding, wherein a sanction is imposed to fine, suspend, revoke, or deny renewal of license, certificate or registration, the regulatory Board or the Division may assess the holder thereof the cost of conducting such a fact-finding when the Board or Division has final authority to grant license, certificate or registration, unless the Board or Division determines that the offense inadvertent or done in a good faith belief that such act did not violate

a statute or regulation. The cost shall be limited to (1) the reasonable hourly rate for the hearing officer, and (2) the actual cost of recording the proceedings.

#### Section 5. Promulgation of Regulations and Standards.

(a) The Board shall promulgate regulations and standards for the training and licensing of locksmiths. The Board shall examine and license locksmiths and may establish classifications of training and licensing.

(b) Locksmith competency standards and any changes thereto shall be established by Division regulations after a public hearing and consultation with licensed locksmiths who are knowledgeable regarding locksmithing services.

(c) The Board or its designee is authorized to evaluate the competency of applicants for locksmith licenses. The Board may develop and administer an examination to evaluate competency, or rely on an examination developed and administered by a professional locksmith association such as the Associated Locksmiths of America's Proficiency Registration Program.

(d) The Board may waive examination requirements for:

(i) Any person who has been issued a locksmith license within the previous three years from another state which the Board has determined requires proof of competency standards equivalent to those established pursuant to Section 5 as a prerequisite for granting its locksmiths license if the license is applied for within three months of the effective date of this act.

(e) Any person applying for a license under this act who does not otherwise qualify shall serve an apprenticeship under a licensed locksmith or under the Board for a period of two years and shall:

(i) Complete 32 hours of continuing education per year of Board- approved classes;

(ii) Identify his/her self as an "apprentice locksmith" in all advertising.

#### Section 6. Prohibited Activities.

(a) No person shall act as, or offer to act as, a locksmith unless he or she has a locksmith license which has not expired or been revoked or suspended.

(b) No organization shall provide or offer the services of a locksmith unless such services are, or can be, provided by an employee of such organization who has a locksmith license which has not expired or been revoked or suspended.

(c) It shall be unlawful and a Class 1 misdemeanor for any person not licensed under the provisions of this act to advertise that he/she is in the locksmith business or to hold himself/herself out to the public as a locksmith.

(d) It shall be unlawful for any person to obtain ownership or possession of locksmithing tools, safe-opening tools, manuals or codebooks, either in person or through an intermediary or through mail order or other remote-procurement method, unless he or she has a locksmith license which has not expired, been revoked or suspended. It shall be unlawful for any organization to obtain ownership or possession of locksmithing tools, safe-opening tools, manuals or codebooks by means of an employee, officer or other person who violates this subsection.

(e) Nothing in this section shall prohibit the emergency opening services by members of police departments, fire departments, or other government agencies in their official line of duty, nor shall sales representatives who are not licensed be prohibited from making bona fide sales demonstrations to locksmiths.



157 (f) No apprentice locksmiths may have a registered locksmith working under his/her  
158 supervision.

159 (g) Nothing in this section shall prohibit the acquisition or use of any key duplication  
160 machine or key blanks.

161 (h) Nothing in this section shall prohibit the performance of servicing, installing,  
162 repairing, rebuilding of automotive locks by automotive service dealers, lock manufacturers, or  
163 manufacturers agents.

164 (i) Nothing in this section shall prohibit the installation of locks or locking devices by  
165 building trades personnel on projects that require a "building permit".

166 (j) If any person has in his/her possession any locksmithing tools, implements or outfit  
167 with intent to commit burglary, robbery or larceny, upon conviction thereof he/she shall be guilty  
168 of a Class 3 felony. The possession of such locksmithing tools, implements or outfit by any  
169 person other than a bona fide dealer, licensed locksmith, automotive reposessor, locking device  
170 manufacturer, or such manufacturer's agent, who have a reasonable need to possess locksmithing  
171 tools for demonstration, testing and research purposes shall be prima facie evidence of an intent  
172 to commit burglary, robbery or larceny.

173 (k) it shall be unlawful for any person or organization to engage in any of the following  
174 acts:

175 (i) Making use of any designation provided by statute or regulation to denote a standard  
176 of professional or occupational competence without being duly certified or licensed;

(ii) Making use of any title, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed;

(iii) Providing material misrepresenting facts in an application for licensure, certification or registration;

(iv) Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation;

(v) Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1\* misdemeanor. The third of any subsequent conviction for violating this section during a 36-month period shall constitute a Class 6\* felony.

(l) The Division may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section. Such proceedings shall be brought in the name of this state by the appropriate Department in the circuit court of the city or county in which the unlawful act occurred or in which the defendant resides.

#### Section 7. Licensure.

(a) The Board of Locksmiths or their designee shall be authorized to issue locksmith licenses to all qualified individuals in accordance with regulations established by the Division.

(b) Effective January 1, 2012 , no locksmith shall do business in this state without having obtained the proper locksmith license from the Board of Locksmiths. The license shall not be transferred or assigned and is valid only with respect to the person to whom it is issued. No

license shall be granted if the applicant has an unpardoned felony in his/her criminal record or had any prior license to do business revoked for fraud, misrepresentation or any other act that would constitute a violation of this section.

(c) The terms of each license shall be no longer than years, with all licenses expiring on their anniversary unless renewed or revoked.

(d) Any individual shall have available the photo identification card at all times when providing locksmithing services.

(e) An organization shall display at its normal place of business and in a manner easily readable by the general public a certificate for the licensed locksmith.

(f) Any individual licensed or registered under this act must show in all advertising his/her license number.

(g) Any applicant for licensure who provides documentation that he/she has practiced as a locksmith for at least two consecutive years immediately preceding his/her date of application and is still engaged in the trade shall be exempt from the examination requirements contained in this Act and promulgated by the Board if he/she applies to the board prior to January 1, 2012.

(h) A nonresident of this state may be licensed as a locksmith by meeting on of the following requirements:

(i) Conform to the provisions of this Act and the regulations of the Board; or,

(ii) Hold a valid locksmith license in another state with which reciprocity has been established by the Board.

(i) Nonresident applicants shall also file with the Board an irrevocable consent that service of process upon the Director of the Division of Professional Licensure as valid and binding as service of process upon the applicant. The Director shall notify or cause to be notified by certified mail, the nonresident licensee named in a service, at the licensee's address of record.

#### Section 8. Qualifications of Applicants.

(a) An applicant for a locksmith license shall:

(i) Be at least 18 years of age;

(ii) Comply with the competency requirements as established by the Board;

(iii) Pay a license fee as established by Division regulations;

(iv) Comply with the insurance requirements;

(v) A person shall not be refused a license, certificate or registration to practice, pursue, or engage in any regulated occupation or profession solely because of a prior criminal conviction, unless the criminal conviction directly relates to the occupation or profession for which the license, certificate or registration is sought. However, the regulatory board shall have the authority to refuse a license, certificate or registration if, based on all the information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in such occupation or profession;

(vi) Complete all application requirements pursuant to Division regulations.

(b) The Board or its designee shall consult with appropriate state or federal law enforcement authorities to verify whether an applicant has a criminal record prior to granting any

license and, as an aid to this duty, each applicant shall be required to provide his/her fingerprints and complete an affidavit or his/her criminal record, if any, as a part of the application. The Board or its designee shall periodically consult with state and federal law enforcement officials to determine whether current licensees have new criminal convictions.

(c) The form of application, certificate, photo identification card and method to obtain and renew photographs shall be established by the regulations and administered by the Board or its designee.

#### Section 9. Employee Requirements.

All employees of a locksmith who perform locksmithing services as defined by Section 1 of this Act shall be registered with the Division. The holder of a locksmith license issued under this Act may employ in the conduct of the organization's business employees under the following provisions:

(a) No person shall be registered employee of a licensed locksmith who:

(i) Is not a citizen or legal resident alien;

(ii) Has been determined by the Division to be unfit by reason of conviction of a felony or misdemeanor offense in this or in another state or convicted of any crime related to the practice of locksmithing. The Division shall promulgate rules for procedures by which those circumstances shall be determined and that afford the applicant due process of law;

(iii) Has had an employee registration refused, denied, suspended, or revoked under this Act;

(iv) No person may be employed by a licensed locksmith until he/she has executed and furnished to the employer, on forms approved by the Division , a verified statement to be known as "Employee's Statement" setting forth:

(1) The person's full name, date of birth and residence address;

(2) The name of the country of which the person is a citizen; and if the person is not a citizen of the United States, proof that the person is a legal resident alien;

(3) The business or occupation engaged in for the five years immediately before the date of the execution of the statement, the place where the business or occupation was engaged in, and the names of employers, if any;

(4) That the person has not had a license or employee registration refused, revoked, or suspended under this Act;

(5) Any conviction for a felony as it relates to Section 8 (a) (v) of this Act;

(6) Any other information as may be required by the Division to show the good character, competency, and integrity of the person executing the statement.

(b) Each licensed locksmith shall submit to the Division, with the applicable fees, on fingerprint cards furnished by the Division , two complete sets of fingerprints that are verified to be those of the applicant. If an applicant's fingerprint cards are returned to the Division as unclassified by the screening agency, the agency has 30 days after notification is sent by the Division to resubmit such fingerprints taken by a different technician.

(c) Upon receipt of the verified fingerprint cards, the Division shall cause the fingerprints to be compared with fingerprints of criminals now or hereafter filed with the Division. The Division

may also cause the fingerprints to be checked against the fingerprints of criminals now or hereafter filed in the records of other official fingerprint files within or without this state. The Division shall notify the submitting licensed locksmith within 10 days upon the invoking of a procedure to deny registration.

(d) Within five days of the receipt of the application materials, the Division shall institute an investigation for a criminal record by checking the applicant's name with immediately available criminal history information systems.

(e) Each licensed locksmith shall maintain a record of each registered employee. The record shall contain the following information:

(i) A photograph taken within 10 days of the date that the employee begins employment with the licensed agency. The photograph shall be replaced with a current photograph every three calendar years;

(ii) The employee's statement specified in this Section;

(iii) A record of all Board-approved classes taken by the employee together with the dates. Each employee must take a minimum of 16 hours of continuing education per year.

(f) A duly authorized representative of the Division shall be allowed complete access to all records to be kept under this Section upon three days advance notice in writing provided to the licensed locksmith.

#### Section 10. Expiration and Renewal.

(a) Any license granted pursuant to this Act shall expire at the end of its term unless it is renewed pursuant to regulations established by the Division or revoked.

(b) All individuals licensed under this Act must complete a minimum of 16 hours of continuing education per year of classes approved by the Board in order to renew his/her license and provide documentation thereof.

(c) An affirmative vote of a majority of those serving on the board who are qualified shall be required before any action to suspend or revoke a license, or to impose a sanction on a license. A board member shall disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. However, an affirmative vote of a majority of a quorum of the regulatory board shall be sufficient for summary suspension pursuant to specific statutory authority.

#### Section 11. Licensed Locksmith Requirements.

No licensed locksmith may employ any person who performs locksmithing services under this Act unless the locksmith:

(a) Submits to the Division the name, address, date of birth, and such other information sufficient to identify the individual, as the Division shall require by rule, including fingerprint cards and fees.

(b) Exercises due diligence to ensure that the person is qualified under the requirements of the Act to be a registered employee of a licensed locksmith.

(c) Maintains a separate roster of the names of all employees hired and whose employment was terminated within the previous month and submits the roster to the Division on or before the 10th of the month. Rosters are to be maintained by the locksmith for a period of at least 24 months. The locksmith is not required to submit a roster for any month during which no



new employees were hired and the employment of no employee was terminated. Failure to maintain and submit the specified rosters is grounds for discipline under this Act. The Division may by rule prescribe further record requirements.

(d) Failure of a locksmith to notify the Division when a new employee is hired and to submit fingerprint cards and fees required before scheduling the person for work shall result in a fine in an amount up to \$ or other disciplinary action being imposed against the locksmith.

(e) If information is discovered affecting the registration of a person whose fingerprints were submitted under this Section, the Division shall so notify the locksmith that submitted the fingerprints on behalf of that person.

(f) Every locksmith shall furnish an employee identification card to each of its registered employees on an identification card, the form of which shall be designated by the Division. The employee identification card shall contain a recent photograph of the employee, the employee's name, the name and license number of the licensed locksmith, the employee's personal description, the signature of the employee, the date of issuance and an employee identification card number which shall be the licensed locksmith's license number followed by a unique suffix for each employee.

(g) No employer may issue an employee identification card to any person who is not employed by the employer in accordance with this Section or falsely state or represent that a person is or has been in his or her employ. It is unlawful for an applicant for registered employment to file with the Division the fingerprints of a person other than himself/herself, or for a licensed locksmith to fail to exercise diligence in resubmitting replacement fingerprints for those employees who have had original fingerprint submissions returned as unclassified.

(h) Every employer shall make a reasonable effort to obtain the identification card of every employee who terminates employment with him/her.

#### Section 12. List of Locksmiths.

The Division shall maintain a list of the names and addresses of all locksmiths licensed under this Act. Such lists shall also be mailed by the Division to any person upon request and payment of the required fee.

#### Section 13. Insurance.

A locksmith shall maintain an insurance policy sufficient for the purpose of paying claims or judgments for damages which may occur as a result of negligence of said locksmith or his employees.

#### Section 14. Customer Identification.

(a) Any licensed locksmith who knowingly and willfully opens any residential or commercial establishment for another by any method, whether or not for compensation, shall make a reasonable attempt to obtain correct information regarding the street address of the resident or commercial establishment and the signature of the person for whom the residence or commercial establishment was opened on a work order form and the following information regarding the person requesting entry to the resident or commercial property: name, address, telephone number, date of birth, and driver's license or identification number. A copy of each work order shall be retained for one year. It shall include the name and license number of the locksmith (performing the service and shall be open for inspection by any peace officer or by the Division during business hours or submitted to the Division upon request.

(b) Any licensed locksmith who opens a motor vehicle or personal property registered under the vehicle code for another by any method, whether or not for compensation, shall attempt to obtain the name, address, telephone number, and driver's license number and the identification of the person requesting entrance, and the registration or identification number of the vehicle or personal property, registered under the vehicle code for which entrance is requested. Such information, together with the date the service was performed and the signature of the person requesting entrance, shall be set forth on a work order. A copy of each work order form shall be retained for one year and include the name and license number of the locksmith performing the service and shall be open for inspection by any peace officer or by the Division during business hours or submitted to the Division upon request.

Section 15. Effective Date.

The effective date of this Act shall be January 1, 2012.