

HOUSE No. 3250

The Commonwealth of Massachusetts

PRESENTED BY:

Russell E. Holmes and John Hart, Jr.

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 to combat gun violence.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>1/18/2013</i>
<i>John Hart, Jr.</i>	<i>First Suffolk</i>	<i>1/18/2013</i>
<i>District Attorney Daniel F. Conley</i>	<i>One Bulfinch Place # 300 Boston, MA 02114</i>	

HOUSE No. 3250

By Mr. Holmes of Boston and Senator Hart, a joint petition (accompanied by bill, House, No. 3250) of Russell E. Holmes, John Hart, Jr. and District Attorney Daniel F. Conley relative to the regulation of firearms. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to combat gun violence.

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. The first paragraph of Section 123 of Chapter 140 of the General Laws, as
2 appearing in the 2010 Official Edition, is hereby amended by adding the following clause after
3 line 230:-

4 Twenty-second, That no licensee shall purchase for resale, after January 1, 2015, a pistol
5 that is not designed and equipped with a microscopic array of characters that identify the make,
6 model, and serial number of the pistol, etched or otherwise imprinted in two or more places on
7 the interior surface or internal working parts of the pistol, and that are transferred by imprinting
8 on each cartridge case when the firearm is fired, provided that the Secretary of Public Safety
9 certifies that the technology used to create the imprint is available to more than one manufacturer
10 unencumbered by any patent restrictions. The Secretary of Public Safety may also approve a
11 method of equal or greater reliability and effectiveness in identifying the specific serial number
12 of a firearm from spent cartridge casings discharged by that firearm than that which is set forth in
13 this paragraph, in which case a licensee may also purchase for resale pistols utilizing the
14 Secretary's approved alternative method.

15 SECTION 2. Section 10 of Chapter 269 of said General Laws is hereby amended to add
16 the following language:

17 (p) Whoever

18 (i) knowingly has in his possession; or knowingly has under his control in a vehicle,
19 a weapon, loaded or unloaded, as defined in section 121 of chapter 140, without being in or on
20 his residence or place of business

(ii) with a percentage, by weight, of alcohol in their blood of 8 one-hundredths or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants, or stimulant substances, all as defined in section 1 of chapter 94C, or the vapors of glue

shall be punished by imprisonment in a house of correction for not more than 2 years or by a fine of not more than \$2000. A conviction or admission to sufficient facts of a violation of this subsection shall revoke any license under section 123, 129B, or 131 of chapter 140; provided that the defendant shall be allowed one month to dispose of any firearms possessed or owned by him or her prior to being convicted. Such revoked license shall immediately be surrendered to the prosecuting officer who shall forward the same to the licensing authority. The court shall report immediately any revocation, under this subsection, of a license to the criminal history systems board and to the police department of the municipality in which the defendant is domiciled. A person convicted of violating this subsection shall not be eligible to obtain a license a license under 123, 129B, or 131 for ten years from the date of conviction.

SECTION 3. Section 58 of Chapter 276 of said General Laws is hereby amended by inserting after the end of line 83, the following words:- “whether said charges or convictions are for offenses involving firearms, large capacity weapons, machine guns, or sawed-off shotguns,”

SECTION 4. Section 128 of Chapter 140 of said General Laws is hereby further amended by striking out, in lines 10 and 11, the words “, or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment.” and inserting in place thereof the following words:- “and by imprisonment for not less than 2½ years nor more than ten years.”

SECTION 5. Section 10 of Chapter 269 of said General Laws is hereby further amended by striking out, in lines 100 to 111, subsection (d), and inserting therefor the following language:-

(h) Any person convicted of violating subsection (a), (b), (c), (h), (m), or (n) of this section after one or more prior convictions of violating those subsections or of any law under this or any other prior law of this jurisdiction or of any other jurisdiction, federal, state, or territorial, pertaining to the unlawful possession of a firearm, rifle, shotgun, or ammunition, shall be punished by imprisonment in the state prison for not less than five years nor more than seven years for a second such offense; by imprisonment in the state prison for not less than seven years nor more than ten years for a third such offense; by imprisonment in the state prison for not less than ten years nor more than fifteen years for a fourth or subsequent such offense. The sentence imposed under this subsection shall not be suspended, nor shall any person so sentenced be eligible for probation or receive any deduction from his sentence for good conduct.

SECTION 6. Chapter 6 of said General Laws is hereby amended by inserting after section 172K the following section:-

58 Section 172L. Notwithstanding section 172, or any other general or special law to the
59 contrary, persons licensed pursuant to sections 122 or 122B of chapter 140 shall obtain all
60 available criminal offender record information and juvenile data as found in the court activity
61 record information from the department of criminal justice information services within the
62 executive office of public safety of all employees and volunteers prior to employment or
63 volunteer service. Information obtained under this section shall not be disseminated for any
64 purpose other than to further the protection of the public.

65 SECTION 7. The first paragraph of Section 123 of Chapter 140 of said General Laws is
66 hereby amended by adding the following clause after line 230:-

67 Twenty-third, That no licensee shall employ or accept as a volunteer any person in
68 connection with the operation of a license issued under section 122 who has been convicted or
69 adjudicated as youthful offender for the commission of any felony or of the unlawful use,
70 possession, or sale of narcotic or harmful drugs or adjudicated a delinquent child by reason of the
71 commission of any offense that is a felony if committed by an adult.

72 SECTION 8. Section 122 of Chapter 140 of said General Laws is hereby amended by
73 inserting after the word “drugs,” in line 9, the following language:- “or a person who has been
74 adjudicated a delinquent child by reason of the commission of any offense that is a felony if
75 committed by an adult,”

76 SECTION 9. Chapter 140 of said General Laws is hereby further amended by inserting
77 after 131P the following section:-

78 Section 131Q. Any person: (1) who is licensed under section 122, section 122B section
79 131 or to whom is issued a firearms identification card or who has received a rifle, shotgun, or
80 firearm by trust or devise; and (2) who fails to report that a rifle, shotgun, or firearm owned,
81 possessed, or under such person’s control is lost or has been stolen pursuant to chapter 129C of
82 this chapter within seven days of becoming aware that the weapon is either lost or stolen, shall be
83 punished by imprisonment in the house of correction for not more than 2½ years and a fine of
84 not less than \$1,000 nor more than \$5,000.

85 SECTION 10. Section 129B of Chapter 140 of said General Laws is hereby amended by
86 adding at the end of subsection (9) the following language to line 186:-

87 The form shall require the cardholder to certify that he or she has confirmed that no
88 firearm in his possession has been lost or stolen unless the loss or theft has already been reported
89 to the licensing authority, and shall require the cardholder to report a complete description of
90 every firearm owned by the cardholder, including the caliber, make, and serial number.

91 SECTION 11. Section 128A of Chapter 140 of said General Laws is hereby further
92 amended by striking out in lines 27 to 29, “commissioner of the department of criminal justice

information services on forms furnished by said executive director,” and inserting therefor,
“licensing authority, which will then transmit the report to the commissioner of the department
of criminal justice information services,”.

SECTION 12. Section 128B of Chapter 140 of said General Laws is hereby further
amended by inserting after the words, “in writing,” in lines 11, the following language:- “to the
licensing authority, which will then transmit the report”.

SECTION 13. Section 129C of Chapter 140 of said General Laws is hereby further
amended by inserting after the words “all such transfers” in line 12, the following language:- “to
the licensing authority, which will then transmit the report” and by striking out in lines 16 to 17,
“both the commissioner of the department of criminal justice information services and,” and by
adding in line 19, at the end of the sentence, the following language:- “, which will then transmit
the report to the commissioner of the department of criminal justice services”.

SECTION 14. Section 128B of Chapter 140 of said General Laws is hereby amended by
inserting after the word “receives”, in line 8, the following language:- “or keeps for any period of
time”.

SECTION 15. Chapter 140 of said General Laws is hereby amended by inserting after
section 129C the following section:-

Section 129C½. Any person or entity that inherits a firearm, rifle, or shotgun by trust or
devise, may sell, transfer, or deliver such weapon to a licensed dealer or to another if the
transferee is legally permitted to purchase or take possession of such weapon or, within 90 days
of receiving such weapon through trust or devise, the recipient thereof shall obtain the relevant
firearms identification card or license to carry. Whoever violates this section shall be punished
by a fine of not less than \$1,000 nor more than \$10,000, and by imprisonment for not more than
2½ years in a house of correction or for not more than 10 years in a state prison.

SECTION 16. Section 10 of Chapter 269 of said General Laws is hereby amended by
inserting after the word “business”, in line 5, the following language:- “and complying with the
provisions of section 129C of chapter 140” and by striking out in lines 133 to 134 the word,
“firearm”.

SECTION 17. Chapter 140 of said General Laws is hereby amended by inserting after
section 129D the following section:-

Section 129E.

(a) A person possessing a firearm identification card under section 129B of this
chapter or a license to carry under section 131 of this chapter must obtain an insurance policy or
liability bond that provides for payment to any person, other than an unlawful trespasser, of all
reasonable expenses incurred within two years of a shooting or other incident for necessary

128 medical, surgical, x-ray, and dental services, including prosthetic devices and necessary
129 ambulance, hospital, professional nursing and funeral services, and in the case of persons
130 employed or self-employed at the time of an accident of any amounts actually lost by reason of
131 inability to work and earn wages or salary or their equivalent, but not other income, that would
132 otherwise have been earned in the normal course of an injured person's employment, and for
133 payments in fact made to others, not members of the injured person's household and reasonably
134 incurred in obtaining from those others ordinary and necessary services in lieu of those that, had
135 he not been injured, the injured person would have performed not for income but for the benefit
136 of himself and/or members of his household, and in the case of persons not employed or self-
137 employed at the time of an accident of any loss by reason of diminution of earning power and for
138 payments in fact made to others, not members of the injured person's household and reasonably
139 incurred in obtaining from those others ordinary and necessary services in lieu of those that, had
140 he not been injured, the injured person would have performed not for income but for the benefit
141 of himself and/or members of his household, as a result of bodily injury, sickness or disease,
142 including death at any time resulting therefrom, caused by a weapon owned, possessed, or used
143 by the insured, without regard to negligence or gross negligence or fault of any kind, to the
144 amount or limit of at least \$250,000 on account of injury to or death of any one person, except
145 that payments for loss of wages or salary or their equivalent or, in the case of persons not
146 employed, loss by reason of diminution of earning power.

147 (b) A person renewing a firearms identification card or license to carry shall provide,
148 on forms created by the criminal history systems board, a certificate from an insurance company
149 authorized to issue in the commonwealth a firearms insurance policy or liability bond attesting
150 that the person has obtained insurance covering the period for which renewal of the card is
151 sought, for each weapon owned by the cardholder or license holder. The certificate will contain
152 a complete description of every weapon covered by the policy, including the caliber, make, and
153 serial number, and the cardholder or license holder shall certify under the pains and penalties of
154 perjury that the descriptions are correct, and that the cardholder or license holder neither owns
155 nor possesses any other weapon.

156 SECTION 18. Section 129B of Chapter 140 of said General Laws is hereby amended in
157 line 171 by striking out the number "6" and inserting therefor the number "2".

158 SECTION 19. Section 131 of Chapter 140 of said General Laws is hereby amended in
159 lines 232, 234, and 243 by striking out the number "6" and inserting therefor the number "5",
160 and by, in lines 234 and 243, by striking out the number "5" and inserting therefor the number
161 "1".

162 SECTION 20. Subsection (12) of Section 129B of Chapter 140 of said General Laws is
163 hereby struck, and the remaining subsections shall be renumbered accordingly.

SECTION 21. Section 36A of Chapter 123 of said General Laws is hereby amended by inserting the following paragraph:-

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

SECTION 22. Section 35 of Chapter 123 of said General Laws is hereby amended by inserting after the word “days.”, in line 38, the following language:-

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 commissioner of the department of criminal justice information services for the purposes and under the conditions set forth in the second paragraph of section 36A.

SECTION 23. Chapter 265 of said General Laws is hereby amended by inserting after section 13M the following section:-

Section 13N. Upon entry of a conviction for any misdemeanor offense that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, the court shall determine whether the victim or intended victim was a family or household member of the defendant, as defined in section 1 of chapter 209A. If the victim or intended victim was a family or household member of the defendant, the court shall enter the offense, the chapter, section, and subsection, if any, of the offense, and the relationship of the defendant to the victim upon the record, and this entry shall be forwarded to the commissioner of the department of criminal justice information services for inclusion in the criminal justice information system and for the purpose of providing the Attorney General of the United States with information required or permitted under federal law to be included in the National Instant Criminal Background Check System or any successor system maintained for the purpose of conducting background checks for firearms sales or licensing.

SECTION 24. Notwithstanding any general or special law or court order, including an order of impoundment, to the contrary, the administrative office of the trial court shall transmit any order of the probate court appointing a guardian or conservator for an incapacitated person under part 3 or part 4 of article V of the Massachusetts Uniform Probate Code on the ground that the person lacks the mental capacity to contract or manage his own affairs, and any subsequent order terminating or rescinding such appointment, to the commissioner of the department of criminal justice information services for the purpose of providing the Attorney General of the United States with information required or permitted under federal law to be included in the National Instant Criminal Background Check System or any successor system maintained for the purpose of conducting background checks for firearms sales or licensing. The department of criminal justice information services shall transmit no more information than is necessary for the purpose stated above, and such information shall not be considered a public record under section 7 of chapter 4.

SECTION 25. Notwithstanding the provisions of section 36 of chapter 123 of the General Laws, and for the sole purpose of providing licensing authorities as defined under section 121 of chapter 140 of the General Laws with information required or permitted to be considered under state law for the purpose of conducting background checks for firearms sales or licensing and of providing the Attorney General of the United States with information required or permitted under federal law to be included in the National Instant Criminal Background Check System or any successor system maintained for the purpose of conducting background checks for firearms sales or licensing:

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

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

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

SECTION 26. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth are hereby appropriated from the General Fund unless specifically designated otherwise herein, and subject to the provisions of law regulating the disbursement of

237 public funds for the fiscal year ending June 30, 2008, provided that said sums shall be in addition
238 to any amounts previously appropriated and made available for the purposes of said items.

239 EXECUTIVE OFFICE OF PUBLIC SAFETY

240 Firearm Licensing Enforcement Task Force

241 8000-XXXX For the operation of a task force of investigators to test compliance with
242 licensing requirements under Section 123 of Chapter 140 of the General Laws by attempting to
243 make illegal firearm purchases or otherwise \$150,000