

SENATE No. 1299

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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 consistent firearm licensing practices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Geoff Diehl</i>	<i>7th Plymouth</i>
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>
<i>Robert L. Hedlund</i>	<i>Plymouth and Norfolk</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>

SENATE No. 1299

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1299) of Bruce E. Tarr, Geoff Diehl, Viriato M. deMacedo, Robert L. Hedlund and other members of the General Court for legislation relative to consistent firearm licensing practices. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to consistent firearm licensing practices.

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 131 of chapter 140 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by striking the section in its entirety and inserting in place
3 thereof the following section:

4 Section 131. All licenses to carry firearms shall be subject to the following conditions:

5 (a) A license shall entitle a holder thereof of a license for all lawful purposes including
6 but not limited to purchase, rent, lease, borrow, possess and carry:

7 (i) firearms, including large capacity firearms, and feeding devices and ammunition
8 therefor, for all lawful purposes and

9 (ii) rifles and shotguns, including large capacity weapons, and feeding devices and
10 ammunition therefor, for all lawful purposes.

11 (b) A license to carry firearms shall be valid to own, possess, purchase and transfer non-
12 large capacity rifles and shotguns, consistent with the entitlements conferred by a firearm
13 identification card issued under section 129B.

14 (d) (1) Any person residing or having a place of business within the jurisdiction of
15 the licensing authority or any person residing in an area of exclusive federal jurisdiction located
16 within a city or town may submit to the licensing authority an application for a license to carry,
17 or renewal of the same, which the licensing authority shall issue if it appears that the applicant is
18 not a prohibited person. A prohibited person shall be a person who:

19 (i) has ever, in a court of the commonwealth, been convicted or adjudicated a
20 youthful offender or delinquent child, or both as defined in section 52 of chapter 119, for the
21 commission of: (A) a felony; (B) a misdemeanor punishable by imprisonment for more than 2
22 years ; (C) a violent crime as defined in section 121; (D) a violation of any law regulating the
23 use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of
24 weapons or ammunition for which a term of imprisonment may be imposed; (E) a violation of
25 any law regulating the use, possession or sale of controlled substances, as defined in section 1 of
26 chapter 94C, including, but not limited to, a violation under said chapter 94C; or (F) a
27 misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33); provided, however,
28 that, except for the commission of a felony, a misdemeanor crime of domestic violence, a violent
29 crime or a crime involving the trafficking of controlled substances, if the applicant has been so
30 convicted or adjudicated or released from confinement, probation or parole supervision for such
31 conviction or adjudication, whichever occurs last, for 5 or more years immediately preceding
32 such application, then the applicant's right or ability to possess a license to carry firearms shall be

33 deemed restored in the commonwealth with respect to such conviction or adjudication and that
34 conviction or adjudication shall not disqualify the applicant for a firearm identification card;

35 (ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a
36 youthful offender or delinquent child for the commission of: (A) a felony; (B) a misdemeanor
37 punishable by imprisonment for more than 2 years; (C) a violent crime as defined in section 121;
38 (D) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale,
39 lease, rental, receipt or transportation of weapons or ammunition for which a term of
40 imprisonment may be imposed; (E) a violation of any law regulating the use, possession or sale
41 of controlled substances, as defined in section 1 of chapter 94C, including, but not limited to, a
42 violation under said chapter 94C; or (F) a misdemeanor crime of domestic violence as defined in
43 18 U.S.C. 921(a)(33); provided, however, that, except for the commission of felony, a
44 misdemeanor crime of domestic violence, a violent crime or a crime involving the trafficking of
45 weapons or controlled substances, if the applicant has been so convicted or adjudicated or
46 released from confinement, probation or parole supervision for such conviction or adjudication,
47 whichever occurs last, for 5 or more years immediately preceding such application and the
48 applicant's right or ability to possess a license to carry has been fully restored in the jurisdiction
49 wherein the conviction or adjudication was entered, then the conviction or adjudication shall not
50 disqualify such applicant for a license to carry firearms;

51 (iii) is or has been: (A) except in the case of a commitment pursuant to sections
52 35 or 36C of chapter 123, committed to any hospital or institution for mental illness, alcohol or
53 substance abuse, unless after 5 years from the date of the confinement, the applicant submits
54 with the application an affidavit of a licensed physician or clinical psychologist attesting that
55 such physician or psychologist is familiar with the applicant's mental illness, alcohol or

56 substance abuse and that in the physician's or psychologist's opinion the applicant is not disabled
57 by a mental illness, alcohol or substance abuse in a manner that should prevent the applicant
58 from possessing a firearm, rifle or shotgun; (B) committed by an order of a court to any hospital
59 or institution for mental illness, unless the applicant was granted a petition for relief of the
60 court's order pursuant to said section 36C of said chapter 123 and submits a copy of the order for
61 relief with the application; (C) subject to an order of the probate court appointing a guardian or
62 conservator for a incapacitated person on the grounds that that applicant lacks the mental
63 capacity to contract or manage affairs, unless the applicant was granted a petition for relief
64 pursuant to section 56C of chapter 215 and submits a copy of the order for relief with the
65 application; or (D) found to be a person with an alcohol use disorder or substance use disorder or
66 both and committed pursuant to said section 35 of said chapter 123, unless the applicant was
67 granted a petition for relief of the court's order pursuant to said section 35 of said chapter 123
68 and submits a copy of the order for relief with the application;

69 (iv) is at the time of the application younger than 14 years of age; provided
70 however that the applicant shall not be issued the card until the applicant reaches the age of 15.

71 (v) is at the time of the application more than 14 but less than 18 years of age,
72 unless the applicant submits with the application a certificate of a parent or guardian granting the
73 applicant permission to apply for a card;

74 (vi) is an alien who does not maintain lawful permanent residency;

75 (vii) is currently subject to: (A) an order for suspension or surrender issued
76 pursuant to section 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; or

77 (B) a permanent or temporary protection order issued pursuant to chapter 209A, a similar order
78 issued by another jurisdiction, including an order described in 18 U.S.C. 922(g)(8);

79 (viii) is currently the subject of an outstanding arrest warrant in any state or
80 federal jurisdiction;

81 (ix) has been discharged from the armed forces of the United States under
82 dishonorable conditions;

83 (x) is a fugitive from justice; or

84 (xi) having been a citizen of the United States, has renounced that citizenship.

85 (11Z2) (a) Notwithstanding paragraph (1) to the contrary, the licensing authority
86 may file a petition to request that an applicant be denied the issuance or renewal of a license to
87 carry firearms, or to suspend or revoke such a card in the district court of jurisdiction. If the
88 licensing authority files any such petition it shall be accompanied by written notice to the
89 applicant describing the specific evidence in the petition. Such petition shall be founded upon a
90 written statement of the reasons for supporting a finding of unsuitability pursuant to subsection
91 (d).

92 (b) Upon the filing of a petition to deny the issuance or renewal of a license to carry
93 firearms, the court shall within 90 days hold a hearing to determine if the applicant is unsuitable
94 under subsection (d) of this paragraph. Such a petition shall serve to stay the issuance or renewal
95 of the license to carry firearms pending a judicial determination on such petition.

96 (c) Upon the filing of a petition to suspend or revoke a firearm identification card, the
97 court shall within 15 days determine whether there is sufficient evidence to support a finding that

98 the applicant is unsuitable. Such petition shall serve to effect the suspension or revocation
99 pending a judicial determination on the sufficiency of evidence. If a court determines that
100 insufficient evidence exists to support a finding of unsuitability, the licensing authority shall not
101 file a petition under this subsection for the same applicant within 75 days of the licensing
102 authority's previous petition for that applicant. If a court determines that sufficient evidence
103 exists to support a finding of unsuitability, the court shall within 75 days hold a hearing to
104 determine if the applicant is unsuitable under subsection (d); provided, however, that such initial
105 suspension or revocation shall remain in effect pending a judicial determination thereon.

106 (d) A determination of unsuitability shall be based on a preponderance of evidence that
107 there exists: (i) reliable, articulable, and credible information that the applicant has exhibited or
108 engaged in behavior to suggest the applicant could potentially create a risk to public safety; or
109 (ii) existing factors that suggest that the applicant could potentially create a risk to public safety.
110 If a court enters a judgment that an applicant is unsuitable the court shall notify the applicant in a
111 writing setting forth the specific reasons for such determination. If a court has not entered a
112 judgment that an applicant is unsuitable under this clause within 90 days for petitions under
113 clause (ii) or within 75 days under clause (iii), the court shall enter a judgment that the applicant
114 is suitable for the purposes of this paragraph.

115 (e) Within seven days of the receipt of a completed application for a license to carry or
116 possess firearms, or renewal of same, the licensing authority shall forward one copy of the
117 application and one copy of the applicant's fingerprints to the colonel of state police, who shall
118 within 30 days advise the licensing authority, in writing, of any disqualifying criminal record of
119 the applicant arising from within or without the commonwealth and whether there is reason to
120 believe that the applicant is disqualified for any of the foregoing reasons from possessing a

121 license to carry or possess firearms. In searching for any disqualifying history of the applicant,
122 the colonel shall utilize, or cause to be utilized, files maintained by the department of probation
123 and statewide and nationwide criminal justice, warrant and protection order information systems
124 and files including, but not limited to, the National Instant Criminal Background Check System.
125 The colonel shall inquire of the commissioner of the department of mental health relative to
126 whether the applicant is disqualified from being so licensed. If the information available to the
127 colonel does not indicate that the possession of a firearm or large capacity firearm by the
128 applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the
129 licensing authority within said 30 day period.

130 The licensing authority may also make inquiries concerning the applicant to: (i) the
131 commissioner of the department of criminal justice information services relative to any
132 disqualifying condition and records of purchases, sales, rentals, leases and transfers of weapons
133 or ammunition concerning the applicant; (ii) the commissioner of probation relative to any
134 record contained within the department of probation or the statewide domestic violence record
135 keeping system concerning the applicant; and (iii) the commissioner of the department of mental
136 health relative to whether the applicant is a suitable person to possess firearms or is not a suitable
137 person to possess firearms. The director or commissioner to whom the licensing authority makes
138 such inquiry shall provide prompt and full cooperation for that purpose in any investigation of
139 the applicant.

140 The licensing authority shall, within 40 days from the date of application, either approve
141 the application and issue the license or deny the application and notify the applicant of the reason
142 for such denial in writing; provided, however, that no such license shall be issued unless the
143 colonel has certified, in writing, that the information available to him does not indicate that the

144 possession of a firearm or large capacity firearm by the applicant would be in violation of state
145 or federal law.

146 The licensing authority shall provide to the applicant a receipt indicating that it received
147 the application. The receipt shall be provided to the applicant within 7 days by mail if the
148 application was received by mail or immediately if the application was made in person;
149 provided, however, that the receipt shall include the applicant's name and address; current
150 license number and license expiration date, if any; the date the licensing authority received the
151 application; the name, address and telephone number of the licensing authority; the agent of the
152 licensing authority that received the application; the type of application; and whether the
153 application is for a new license or a renewal of an existing license. The licensing authority shall
154 keep a copy of the receipt for not less than 1 year and shall furnish a copy to the applicant if
155 requested by the applicant.

156 (f) A license issued under this section shall be revoked or suspended by the licensing
157 authority, or his designee, upon the occurrence of any event that would have disqualified the
158 holder from being issued such license or from having such license renewed. A license may be
159 revoked or suspended by the licensing authority if it appears that the holder is no longer a
160 suitable person to possess such license. Any revocation or suspension of a license shall be in
161 writing and shall state the reasons therefor. Upon revocation or suspension, the licensing
162 authority shall take possession of such license and the person whose license is so revoked or
163 suspended shall take all actions required under the provisions of section 129D. No appeal or
164 post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation
165 and suspension shall be forwarded to the commissioner of the department of criminal justice
166 information services and the commissioner of probation and shall be included in the criminal

167 justice information system. A revoked or suspended license may be reinstated only upon the
168 termination of all disqualifying conditions, if any.

169 Any applicant or holder aggrieved by a denial, revocation, suspension or restriction
170 placed on a license, unless a hearing has previously been held pursuant to chapter 209A, may,
171 within either 90 days after receiving notice of the denial, revocation or suspension or within 90
172 days after the expiration of the time limit during which the licensing authority shall respond to
173 the applicant or, in the case of a restriction, any time after a restriction is placed on the license
174 pursuant to this section, file a petition to obtain judicial review in the district court having
175 jurisdiction in the city or town in which the applicant filed the application or in which the license
176 was issued. If after a hearing a justice of the court finds that there was no reasonable ground for
177 denying, suspending, revoking or restricting the license and that the petitioner is not prohibited
178 by law from possessing a license, the justice may order a license to be issued or reinstated to the
179 petitioner or may order the licensing authority to remove certain restrictions placed on the
180 license.

181 (g) A license shall be in a standard form provided by the commissioner of criminal justice
182 information services in a size and shape equivalent to that of a license to operate motor vehicles
183 issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and shall contain a
184 license number which shall clearly indicate the name, address, photograph, fingerprint, place and
185 date of birth, height, weight, hair color, eye color and signature of the licensee. The license shall
186 be clearly marked "License to Carry Firearms". The license shall provide in a legible font size
187 and style the phone numbers for the National Suicide Prevention Lifeline and the Samaritans
188 Statewide Helpline.

189 The application for such license shall be made in a standard form provided by the
190 executive director of the criminal history systems board, which form shall require the applicant
191 to affirmatively state under the pains and penalties of perjury that such applicant is not
192 disqualified on any of the grounds enumerated above from being issued such license.

193 (h) Any person who knowingly files an application containing false information shall be
194 punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less
195 than six months nor more than two years in a house of correction, or by both such fine and
196 imprisonment.

197 (i) A license to carry or possess firearms shall be valid, unless revoked or suspended, for
198 a period of not more than 6 years from the date of issue and shall expire on the anniversary of the
199 licensee's date of birth occurring not less than 5 years nor more than 6 years from the date of
200 issue; provided, however, that, if the licensee applied for renewal before the license expired, the
201 license shall remain valid after its expiration date for all lawful purposes until the application for
202 renewal is approved or denied. The form for renewal shall include an affidavit in which the
203 applicant shall verify that the applicant has not lost any firearms or had any firearms stolen from
204 the applicant since the date of the applicant's last renewal or issuance.

205 If a licensee is on active duty with the armed forces of the United States on the expiration
206 date of the license, the license shall remain valid until the licensee is released from active duty
207 and for a period not less than 180 days following the release; provided, however, that, if the
208 licensee applied for renewal prior to the end of that period, the license shall remain valid after its
209 expiration date for all lawful purposes until the application for renewal is approved or denied.

210 Any renewal thereof shall expire on the anniversary of the licensee's date of birth
211 occurring not less than 5 years but not more than 6 years from the effective date of such license.
212 Any license issued to an applicant born on February 29 shall expire on March 1. The fee for the
213 application shall be \$100, which shall be payable to the licensing authority and shall not be
214 prorated or refunded in case of revocation or denial. The licensing authority shall retain \$25 of
215 the fee; \$50 of the fee shall be deposited into the general fund of the commonwealth and not less
216 than \$50,000 of the funds deposited into the General Fund shall be allocated to the Firearm
217 Licensing Review Board, established in section 130B, for its operations and that any funds not
218 expended by said board for its operations shall revert back to the General Fund; and \$25 of the
219 fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. For law
220 enforcement officials, or local, state, or federal government entities acting on their behalf, the fee
221 for the application shall be set at \$25, which shall be payable to the licensing authority and shall
222 not be prorated or refunded in case of revocation or denial. The licensing authority shall retain
223 \$12.50 of the fee, and \$12.50 of the fee shall be deposited into the general fund of the
224 commonwealth. Notwithstanding any general or special law to the contrary, licensing authorities
225 shall deposit such portion of the license application fee into the Firearms Record Keeping Fund
226 quarterly, not later than January 1, April 1, July 1 and October 1 of each year. Notwithstanding
227 any general or special law to the contrary, licensing authorities shall deposit quarterly such
228 portion of the license application fee as is to be deposited into the General Fund, not later than
229 January 1, April 1, July 1 and October 1 of each year. For the purposes of section 10 of chapter
230 269, an expired license to carry firearms shall be deemed to be valid for a period not to exceed
231 90 days beyond the stated date of expiration, unless such license to carry firearms has been
232 revoked.

233 Any person over the age of 70 and any law enforcement officer applying for a license to
234 carry firearms through his employing agency shall be exempt from the requirement of paying a
235 renewal fee for a Class A or Class B license to carry.

236 (j) (1) No license shall be required for the carrying or possession of a firearm known
237 as a detonator and commonly used on vehicles as a signaling and marking device, when carried
238 or possessed for such signaling or marking purposes.

239 (2) No license to carry shall be required for the possession of an unloaded large
240 capacity rifle or shotgun or an unloaded feeding device therefor by a veteran's organization
241 chartered by the Congress of the United States, chartered by the commonwealth or recognized as
242 a nonprofit tax-exempt organization by the Internal Revenue Service, or by the members of any
243 such organization when on official parade duty or during ceremonial occasions. For purposes of
244 this subparagraph, an "unloaded large capacity rifle or shotgun" and an "unloaded feeding device
245 therefor" shall include any large capacity rifle, shotgun or feeding device therefor loaded with a
246 blank cartridge or blank cartridges, so-called, which contain no projectile within such blank or
247 blanks or within the bore or chamber of such large capacity rifle or shotgun.

248 (k) Whoever knowingly issues a license in violation of this section shall be punished by a
249 fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than six months
250 nor more than two years in a jail or house of correction, or by both such fine and imprisonment.

251 (l) The executive director of the criminal history systems board shall send electronically
252 or by first class mail to the holder of each such license to carry firearms, a notice of the
253 expiration of such license not less than 90 days prior to such expiration and shall enclose therein
254 a form for the renewal of such license. The taking of fingerprints shall not be required in issuing

255 the renewal of a license if the renewal applicant's fingerprints are on file with the department of
256 the state police. Any licensee shall notify, in writing, the licensing authority who issued said
257 license, the chief of police into whose jurisdiction the licensee moves and the executive director
258 of the criminal history systems board of any change of address. Such notification shall be made
259 by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for
260 revocation or suspension of said license. The commissioner of criminal justice information
261 services shall provide electronic notice of expiration only upon the request of a cardholder. A
262 request for electronic notice of expiration shall be forwarded to the department on a form
263 furnished by the commissioner. Any electronic address maintained by the department for the
264 purpose of providing electronic notice of expiration shall be considered a firearms record and
265 shall not be disclosed except as provided in section 10 of chapter 66.

266 (m) Notwithstanding the provisions of section 10 of chapter 269, any person in
267 possession of a firearm, rifle or shotgun whose license issued under this section is invalid for the
268 sole reason that it has expired, meaning after 90 days beyond the stated expiration date on the
269 license, but who shall not be disqualified from renewal upon application therefor under this
270 section, shall be subject to a civil fine of not less than not including licenses that remain valid
271 under paragraph (i) because the licensee applied for renewal before the license expired, but who
272 shall not be disqualified from renewal upon application therefor pursuant to this section, shall be
273 subject to a civil fine of not less than \$100 and the provisions of section 10 of chapter 269 shall
274 not apply; provided, however, that the exemption from the provisions of said section 10 of said
275 chapter 269 provided herein shall not apply if: (i) such license has been revoked or suspended,
276 unless such revocation or suspension was caused by failure to give notice of a change of address
277 as required under this section; (ii) revocation or suspension of such license is pending, unless

278 such revocation or suspension was caused by failure to give notice of a change of address as
279 required under this section; or (iii) an application for renewal of such license has been denied.
280 Any law enforcement officer who discovers a person to be in possession of a firearm, rifle or
281 shotgun after such person's license has expired, meaning after 90 days beyond the stated
282 expiration date on the license, has been revoked or suspended, solely for failure to give notice of
283 a change of address, shall confiscate such firearm, rifle or shotgun and the expired or suspended
284 license then in possession and such officer, shall forward such license to the licensing authority
285 by whom it was issued as soon as practicable. The officer shall, at the time of confiscation,
286 provide to the person whose firearm, rifle or shotgun has been confiscated, a written inventory
287 and receipt for all firearms, rifles or shotguns confiscated and the officer and his employer shall
288 exercise due care in the handling, holding and storage of these items. Any confiscated weapon
289 shall be returned to the owner upon the renewal or reinstatement of such expired or suspended
290 license within one year of such confiscation or may be otherwise disposed of in accordance with
291 the provisions of section 129D. The provisions of this paragraph shall not apply if such person
292 has a valid license to carry firearms issued under section 131F.

293 (n) Upon issuance of a license to carry or possess firearms under this section, the
294 licensing authority shall forward a copy of such approved application and license to the
295 executive director of the criminal history systems board, who shall inform the licensing authority
296 forthwith of the existence of any disqualifying condition discovered or occurring subsequent to
297 the issuance of a license under this section.

298 (o) No person shall be issued a license to carry or possess a machine gun in the
299 commonwealth, except that a licensing authority or the colonel of state police may issue a
300 machine gun license to:

301 (i) a firearm instructor certified by the municipal police training committee for the
302 sole purpose of firearm instruction to police personnel;

303 (ii) a bona fide collector of firearms upon application or upon application for
304 renewal of such license.

305 (p) The executive director of the criminal history systems board shall promulgate
306 regulations in accordance with chapter 30A to establish criteria for persons who shall be
307 classified as bona fide collectors of firearms.

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

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