

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Shawn Dooley

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 legalizing recreational fireworks for holders of a firearms identification card or a license to carry.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Shawn Dooley</i>	<i>9th Norfolk</i>	<i>1/30/2018</i>

HOUSE No.

By Mr. Dooley of Norfolk, a petition (subject to Joint Rule 12) of Shawn Dooley relative to legalizing recreational fireworks for holders of firearms identification cards or licenses to carry. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to legalizing recreational fireworks for holders of a firearms identification card or a license to carry.

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. (a) Paragraph (7) of section 129B of chapter 140 of the General Laws is
2 hereby amended by adding the following sentence:- A firearm identification card may be issued
3 for the sole purpose of purchasing, possessing, and using recreational fireworks pursuant to
4 section 61 of chapter 148.

5 SECTION 2. Said section 129B of said chapter 140 is hereby further amended by adding
6 the following paragraph:-

7 (16) If a firearm identification card is issued for the sole purpose of purchasing,
8 possessing, and using recreational fireworks pursuant to section 61 of chapter 148, such card
9 shall clearly state that such card is valid for such limited purpose only. The application for such
10 card shall be made in a standard form provided by the commissioner of the department of
11 criminal justice information services which shall require the applicant to affirmatively state,

12 under the pains and penalties of perjury, that he is not disqualified on any of the grounds
13 enumerated in clauses (i) to (ix), inclusive, from being issued such card. The application fee for a
14 firearm identification card issued for the sole purpose of purchasing, possessing, and using
15 recreational fireworks pursuant to section 61 of chapter 148 shall be \$25, which shall be payable
16 to the licensing authority and shall not be prorated or refunded in the case of revocation or
17 denial. The licensing authority shall retain 50 per cent of the fee and the remaining portion shall
18 be deposited in the General Fund. Notwithstanding any general or special law to the contrary,
19 licensing authorities shall deposit quarterly that portion of the firearm identification card
20 application fee, which is to be deposited into the General Fund, not later than January 1, April 1,
21 July 1 and October 1 of each year. There shall be no application fee for the renewal of a firearm
22 identification card issued under this paragraph.

23 SECTION 3. Section 12 of chapter 148 of the General Laws is hereby amended by
24 adding the following paragraph:-

25 Nothing in this section shall prevent the lawful sale of recreational fireworks pursuant to
26 section 62.

27 SECTION 4. Section 39 of said chapter 148 is hereby amended by adding the following
28 paragraph:-

29 Nothing in this section shall prohibit the lawful purchase, possession, or use of
30 recreational fireworks pursuant to section 61.

31 SECTION 5. Section 40 of said chapter 148 is hereby amended by adding the following
32 paragraph:-

33 Nothing in this section shall prevent the lawful sale of recreational fireworks pursuant to
34 section 62.

35 SECTION 6. Chapter 148 of the General Laws is hereby amended by adding the
36 following 2 sections:-

37 Section 61. (a) For the purposes of this section, the following terms shall have the
38 following meanings, unless the context clearly requires otherwise:-

39 “Display fireworks”, large fireworks to be used solely by professional pyro-technicians
40 that are designed to primarily produce visible or audible effects by combustion, deflagration or
41 detonation, including any fireworks deemed by the state fire marshal or the division of fire safety
42 to be unsafe for public recreational use.

43 “Recreational fireworks”, the term ‘fireworks’ as defined by section 39 that are safe for
44 public and recreational use, excluding sparklers and display fireworks as defined by this section.

45 “Sparklers”, ground based or hand-held devices that produce a shower of white, gold or
46 colored sparks as their primary pyrotechnic effect and that do not rise into the air, do not fire
47 inserts or projectiles into the air, and do not explode or produce a report. Their effects may also
48 include a colored flame, an audible crackling effect, an audible whistle effect and smoke.

49 “Firearm identification card”, a firearm identification card issued pursuant to section
50 129B of chapter 140 or a Class A or B license to carry issued pursuant to section 131 of chapter
51 140.

52 “Special firearm identification card”, a special firearm identification card issued for the
53 sole purpose of purchasing, possessing, and using pursuant to section 129B of chapter 140.

54 (b) Any person legally holding a firearm identification card or a special firearm
55 identification card whose primary residence is within the commonwealth may purchase, possess,
56 and use recreational fireworks; provided, however, that the use of said fireworks is in compliance
57 with any local or state regulations and said person at no time while purchasing, possessing, or
58 using said recreational fireworks is under the influence of alcohol or drugs, including marijuana
59 or any form of cannabis, as defined by section 24 of chapter 90. Said person shall not be able to
60 purchase, possess or use display fireworks. Said person shall not sell or purchase with the intent
61 to sell or otherwise provide said recreational fireworks to another person; however, such person
62 may permit another person not possessing a firearm identification card or a special firearm
63 identification to use said recreational fireworks so long as they remain in direct supervision of
64 the activity at all times.

65 (c) The commonwealth, cities and towns retain the right to promulgate rules and
66 regulations regarding the permitted locations and times for the use of recreational fireworks to
67 ensure the safety and comfort of all citizens.

68 (d) Any person that is at least 18 years of age may purchase, possess and use sparklers.

69 (e) Any person under the age 18 may possess and use sparklers only under the direct and
70 constant supervision of a person at least 18 years of age.

71 (f) Whoever willfully misrepresents their age, or in any way alters, defaces or otherwise
72 falsifies their identification offered as proof of age in the act of procuring or purchasing sparklers
73 shall be subject to a fine of not less than \$250 for the first offense and not less than \$500 for each
74 subsequent offense.

75 (g) Whoever is found in violation of subsection (e) shall be subject to a fine of at least
76 \$50 and nor more than \$100.

77 (h) Punishments for violations of subsection (b) shall be as follows:

78 (1) Whoever willfully misrepresents the ownership of a firearms identification card or a
79 special firearms identification card, or in any way alters, defaces or otherwise falsifies their
80 firearms identification card or special firearms identification card offered during the purchase of
81 recreational fireworks shall be punished by a fine of not less than \$500 nor more than \$1,000 or
82 by imprisonment for not less than 2 months nor more than 2 years in a house of correction, or by
83 both such fine and imprisonment.

84 (2) Whoever willfully misrepresents their primary residential address, or in any way
85 alters, defaces or otherwise falsifies their identification offered as proof of residence in the act of
86 procuring or purchasing recreational fireworks shall be subject to a fine of not less than \$250 for
87 the first offense and not less than \$500 for each subsequent offense.

88 (3) Any person in possession of recreational fireworks pursuant to subsection (b) who
89 sells or otherwise provides or furnishes recreational fireworks to another person, except for
90 supervised use as outlined in subsection (b), shall be subject to a fine of not less than \$500 for
91 the first offense, of not less than \$1,000 for the second offense, and of not less than \$5,000 for
92 each subsequent offense and a suspension of their firearm identification card or special firearm
93 identification card for not less than 6 months and not more than 1 year for the first offense, for
94 not less than 2 years and not more than 5 years for the second offense and a permanent
95 revocation of said firearm identification card or special firearm identification card at the

96 discretion of the relevant local police chief or judge. Incarceration in a house of correction for
97 not more than 5 years may also be applicable for 3 or more offenses.

98 (4) Any person found to be under the influence of alcohol or drugs, including marijuana
99 or any form of cannabis, as defined by section 24 of chapter 90, shall be subject to a fine of not
100 less than \$500 for the first offense, of not less than \$1,000 for the second offense, and of not less
101 than \$5,000 for each subsequent offense and a suspension of their firearm identification card or
102 special firearm identification card for not less than 6 months and not more than 1 year for the
103 first offense, for not less than 2 years and not more than 5 years for the second offense, and a
104 permanent revocation of said firearm identification card or special firearm identification card at
105 the discretion of the relevant local police chief or judge. Incarceration in a house of correction
106 for not more than 5 years may also be applicable for 3 or more offenses.

107 (5) All other violations of subsection (b) shall be adjudicated pursuant to section 39 of
108 chapter 148.

109 Section 62. (a) For the purposes of this section, the following terms shall have the
110 following meanings, unless the context clearly requires otherwise:-

111 “Fireworks Selling License”, a valid and current certificate of qualification issued by the
112 marshal to a qualified individual, company, firm, association, partnership, corporation or other
113 business entity, which shall give the named individual or entity to which it is issued authority to
114 engage in the retail sale of recreational fireworks to a person holding a firearms identification
115 card or special firearms identification card as defined by section 61.

116 “Licensee”, the qualified individual or entity holding a fireworks selling license.

117 “Marshal”, the state fire marshal.

118 “Recreational fireworks”, the term as defined in section 61.

119 (b) No individual, company, firm, association, partnership, corporation or other business
120 entity shall engage in the retail sale of recreational fireworks in the Commonwealth unless they
121 have received the required fireworks selling license from the marshal, unless said individual is at
122 least 18 years of age; employed by a duly licensed company, firm, association, partnership,
123 corporation or other business entity; and has been properly trained in the area of fireworks safety
124 pursuant to subsection (h).

125 (c) No individual, company, firm, association, partnership, corporation or other business
126 entity shall knowingly sell, furnish or provide, or purchase with the intent to sell, furnish
127 recreational fireworks to a person not holding a firearm identification card or a special firearm
128 identification card pursuant to section 61 of this chapter, to a person whose primary residence is
129 outside of the Commonwealth, or to a person appearing under the influence of alcohol or any
130 type of drug, including marijuana or any form of cannabis.

131 (d) Nothing in this section shall permit the retail selling of display fireworks as defined
132 by section 61.

133 (e) Cities and towns may, by vote of their legislative body, establish a separate licensing
134 procedure and set of rules, in addition to the fireworks selling license prescribed in this section,
135 for the retail sales of recreational fireworks within their jurisdiction.

136 (f) An individual company, firm, association, partnership, corporation or other business
137 entity may hold multiple fireworks selling licenses; however, each fireworks selling license shall
138 only apply to 1 facility.

139 (g) All licensees shall abide by all federal, state, and local laws and ordinances. No
140 fireworks selling license issued by the marshal may be sold or transferred. Any fireworks selling
141 license misused may be revoked by the marshal.

142 (h) The marshal in conjunction with the division of fire safety shall promulgate a
143 licensing procedure and licensing qualifications for applicants applying for a fireworks selling
144 license provided that the qualifications and procedures include:

145 (1) The applicant shall provide the name of the applying business or individual, date of
146 incorporation of the applying business or date of birth of the applying individual, the applying
147 business's tax ID or the social security number of the applying individual, the phone number of
148 the applying business or individual, the address of the facility where the recreational fireworks
149 will be sold and a list of other fireworks selling licenses held.

150 (2) A licensee shall give immediate notice to the marshal of any change in the
151 information listed in paragraph (1).

152 (3) A licensee shall be 18 years of age or older.

153 (4) A licensee shall be required to pay an annual licensing fee of \$5,000 per license.

154 (5) A fireworks selling license shall be effective for 1 year from the date of issuance.

155 (6) Each facility licensed shall:

- 156 (i) be solely dedicated to the retail sale of recreational fireworks;
- 157 (ii) comply with all regulations of the Massachusetts fire code and all other regulations
158 deemed necessary by the marshal;
- 159 (iii) be a stand-alone building no larger than 12,000 square feet;
- 160 (iv) separate storage areas from wholesale or retail areas to which a person may be
161 admitted by appropriately rated fire separation;
- 162 (v) be located no closer than 500 feet from any facility selling or dispensing gasoline,
163 propane, or similar flammable products;
- 164 (vi) be located no closer than 500 feet from another facility with a fireworks selling
165 license;
- 166 (vii) meet all locational requirements enumerated in section 40;
- 167 (viii) maintain a monitored burglar and fire alarm system;
- 168 (ix) perform quarterly fire drills and preplanning meetings as required by the relevant
169 local fire chief;
- 170 (x) not permit smoking or the possession of any smoking related paraphernalia, including
171 lighters and matches, on the premises;
- 172 (xi) maintain a security presence on the premises for the 7 days preceding and including
173 July 4 and for the 3 days preceding and including January 2;

174 (xii) train each of its employees in the area of fireworks safety and provide written
175 confirmation to the marshal;

176 (xiii) not permit any person under the age of 18 on the property unless accompanied by
177 someone at least 18 years of age at all times;

178 (xiv) carry at least \$2,000,000 in public and product liability insurance;

179 (xv) not permit any person appearing to be under the influence of alcohol or drugs,
180 including marijuana or any form of cannabis, on the property;

181 (xvi) not permit any form of liquor, beer, or wine on the premises;

182 (xvii) clearly and centrally post evacuation and emergency procedures; and

183 (xviii) be subject to an inspection by the marshal during the application review phase,
184 prior to each subsequent renewal of said license, and at any other given point deemed necessary
185 by the marshal.

186 (7) All applicants shall pass a criminal background check. No fireworks selling license
187 shall be issued to a convicted felon or to an entity where any portion of the equity is owned by a
188 convicted felon. The marshal shall retain the right to deny an application for any result on said
189 background check that he or she believes in good faith would present a danger to public should
190 said applicant be granted a fireworks selling license.

191 (8) Before issuing a fireworks selling license, the marshal shall inspect the facility at
192 which the recreational fireworks will be sold and stored to ensure it meets the standards
193 prescribed by this section. Said inspection shall occur within 45 days of the receipt of the

194 application. A final decision on said application must be rendered within 14 days of said
195 inspection. No license may be issued to a facility failing said inspection.

196 (9) Prior to a yearly renewal of the license, the marshal shall again inspect the facility
197 applying for the renewal to ensure it meets the standards enumerated in this section. If the
198 marshal deems the facility to be acceptable, the renewal shall be automatic upon payment of the
199 required fee and the receipt of any forms required by the marshal.

200 (10) Licensees applying for renewal shall submit all required paperwork at least 30 days
201 in advance of the pending expiration date. The marshal shall have until 14 days before said
202 expiration date to perform the required inspection pursuant to paragraph (9) and shall issue a
203 decision before the said expiration date. If the licensee fails the inspection their license shall be
204 temporarily suspended and they shall have 60 days to remedy the issues satisfactorily. If said
205 licensee fails to remedy the issues satisfactorily their licensee shall be revoked and all fireworks
206 in the facility shall be confiscated by the marshal.

207 (11) No fireworks of any kind shall be ignited within 500 feet of the licensed facility.

208 (12) All applicants shall provide a letter from the relevant local fire chief indicating they
209 are in good standing with the local fire authorities.

210 (13) The marshal shall notify the appropriate local fire authorities upon the granting of a
211 fireworks selling license.

212 (14) If the marshal approved an application, license certificates bearing the licensee's
213 name, license number, the date of issuance, and the date of expiration shall be issued to all

214 qualified licensees. Every licensee holding a license issued by the division shall display it in a
215 conspicuous manner at the corresponding duly licensed facility.

216 (i) Failure to renew a fireworks selling license for any other reason than inspection failure
217 or administrative inefficiencies on the part of the commonwealth shall result in an immediate
218 revocation of said license and an immediate confiscation of all fireworks on the previously
219 licensed premises.

220 (j) The marshal shall establish criteria for circumstances warranting the suspension or
221 revocation of a fireworks selling license and establish the procedures for suspension or
222 revocation of fireworks selling licenses. These circumstances shall include, but not be limited to,
223 the following:

224 (1) Obtaining a fireworks selling license under a false pretense.

225 (2) Allowing another individual, company, firm, association, partnership, corporation or
226 other business entity to use the fireworks selling license.

227 (3) Selling or conveying the fireworks selling license to another individual, company,
228 firm, association, partnership, corporation or other business entity.

229 (4) Failure to timely renew a fireworks selling license.

230 (5) Failure to follow the rules and regulations of the marshal or the appropriate local
231 department or authorities.

232 (6) Committing a dishonest or illegal act in the performance of work covered under the
233 fireworks selling license.

234 (7) Two or more violations of subsection (c).

235 (k) Whoever reasonably relies on a motor vehicle license issued pursuant to section 8 of
236 chapter 90, an identification card issued pursuant to section 8E of said chapter 90, a valid
237 passport issued by the United States government, or by the government, recognized by the
238 United States government, of a foreign country or a valid United States issued military
239 identification card for proof of a person's identity, age and primary residence shall be presumed
240 to have exercised due care and shall not be liable under, or in violation of, subsection (c).

241 (l) Whoever reasonably relies on a firearm identification card or a special firearm
242 identification card as defined by section 61 and issued by the commonwealth pursuant to section
243 129B of chapter 140 for proof of a person's eligibility to purchase recreational fireworks shall be
244 presumed to have exercised due care and shall not be liable under, or in violation of, subsection
245 (c).

246 (m) Whoever undertakes or attempts to undertake the sale of recreational fireworks
247 without first having obtained and having possession of a current, valid fireworks selling license
248 from the marshal or who knowingly presents or files false information with the division for the
249 purpose of obtaining a fireworks license or otherwise fraudulently obtains a fireworks selling
250 license, or who sells recreational fireworks from an unlicensed facility or who knowingly
251 violates any provision of subsection (b) or (c) shall be punished by imprisonment in the house of
252 correction for not more than 2½ years or by a fine of not more than \$20,000 or by both.