

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Mr. Brewer**

*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 passage of the accompanying bill:

An Act relative to fair licensing.

PETITION OF:

NAME:

Mr. Brewer

DISTRICT/ADDRESS:

Worcester, Hampden, Hampshire and Franklin

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01361 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine  
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### AN ACT RELATIVE TO FAIR 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 SECTION 1. Section 121 of Chapter 140 is hereby amended by deleting the following  
2 definitions and replacing them with the following:

3 “Ammunition”, cartridges or cartridge cases, primers (igniter), bullets or propellant powder  
4 designed for use in any firearm, rifle or shotgun.

5 “Violent crime”, shall mean:

6 (a) any crime punishable by imprisonment for a term exceeding one year for which a  
7 committed term of imprisonment has been served after sentencing has been carried out; ,

8 (b) or any act of juvenile delinquency involving the use or possession of a deadly weapon  
9 that would be punishable by imprisonment for such term if committed by an adult year  
10 for which a committed term of imprisonment has been served after sentencing has been  
11 carried out, that: (i) has as an element the use, attempted use or threatened use of physical  
12 force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson  
13 or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that  
14 presents a serious risk of physical injury to another.

15 SECTION 2. Section 129B of Chapter 140 is hereby deleted in its entirety and replaced with the  
16 following:

17 Chapter 140: Section 129B. Firearm identification cards; conditions and restrictions

18 Section 129B. A firearm identification card shall be issued and possessed subject to the  
19 following conditions and restrictions:

20 (1) Any person residing or having a place of business within the jurisdiction of the licensing  
21 authority or any person residing in an area of exclusive federal jurisdiction located within a city  
22 or town may submit to the licensing authority an application for a firearm identification card, or  
23 renewal of the same, which the licensing authority shall issue, unless the applicant:

24 (i) has ever, in a court of the commonwealth, been convicted or adjudicated a youthful offender  
25 or delinquent child, both as defined in section 52 of chapter 119, for the commission of:

26 (a) a felony;

27 (b) a misdemeanor punishable by imprisonment for more than two years for which a committed  
28 term of imprisonment has been served after sentencing has been carried out;

29 (c) a violent crime as defined in section 121;

30 (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale,  
31 lease, rental, receipt or transportation of weapons or ammunition for which a committed term of  
32 imprisonment has been served after sentencing has been carried out; or

33 (e) a violation of any law regulating the use, possession or sale of controlled substances, as  
34 defined in section 1 of chapter 94C including, but not limited to, a violation under said chapter  
35 94C;

36 provided, however, that except for the commission of a violent crime or a crime involving the  
37 trafficking of controlled substances, if the applicant has been so convicted or adjudicated or  
38 released from confinement, probation or parole supervision for such conviction or adjudication,  
39 whichever is last occurring, not less than five years immediately preceding such application,  
40 such applicant's right or ability to possess any firearm, rifle or shotgun shall be deemed fully  
41 restored in the commonwealth with respect to such conviction or adjudication and such  
42 conviction or adjudication shall not disqualify such applicant for a firearm identification card;

43 (ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful  
44 offender or delinquent child for the commission of:

45 (a) a felony;

46 (b) a misdemeanor punishable by imprisonment for more than two years for which a committed  
47 term of imprisonment has been served after sentencing has been carried out;

48 (c) a violent crime as defined in section 121;

49 (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale,  
50 lease, rental, receipt or transportation of weapons or ammunition for which a term of  
51 imprisonment may be imposed for which a committed term of imprisonment has been served  
52 after sentencing has been carried out; or

53 (e) a violation of any law regulating the use, possession or sale of controlled substances, as  
54 defined in section 1 of chapter 94C;

55 provided, however, that, except for the commission of a violent crime or a crime involving the  
56 trafficking of weapons or controlled substances, if the applicant has been so convicted or  
57 adjudicated or released from confinement, probation or parole supervision for such conviction or  
58 adjudication, whichever is last occurring, not less than five years immediately preceding such

59 application, and such applicant's right or ability to possess any firearm, rifle or shotgun has been  
60 fully restored in the jurisdiction wherein the subject conviction or adjudication was entered, such  
61 conviction or adjudication shall not disqualify such applicant for a firearm identification card;

62 (iii) has been confined to any hospital or institution for mental illness, unless the applicant  
63 submits with his application an affidavit of a registered physician attesting that such physician is  
64 familiar with the applicant's mental illness and that in such physician's opinion the applicant is  
65 not disabled by such an illness in a manner that should prevent the applicant from possessing a  
66 firearm, rifle or shotgun;

67 (iv) is or has been ordered to undergo treatment for or confinement for, by a court of law, drug  
68 addiction or habitual drunkenness, unless such applicant is deemed to no longer have such  
69 condition by a licensed physician, in which case he may make application for such card after the  
70 expiration of five years from the date of such confinement or treatment and upon presentation of  
71 an affidavit issued by such physician to the effect that such physician knows the applicant's  
72 history of treatment and that in such physician's opinion the applicant no longer appears to be in  
73 need of treatment for drug addiction or habitual drunkenness;

74 (v) is at the time of the application less than 15 years of age;

75 (vi) is at the time of the application more than 15 but less than 18 years of age, unless the  
76 applicant submits with his application a letter from his parent or guardian granting the applicant  
77 permission to apply for a card;

78 (vii) is an alien;

79 (viii) is currently subject to: (a) an order for suspension or surrender issued pursuant to section  
80 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; or (b) a permanent or  
81 temporary protection order issued pursuant to chapter 209A or a similar order issued by another  
82 jurisdiction; or

83 (ix) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction.

84 (2) At no time shall records that have been sealed be used to disqualify an applicant from  
85 obtaining a firearms identification card.

86 (3) When determining eligibility for a firearms identification card in regards to past convictions,  
87 the determination shall only be made using the penalties in place at the time of conviction.

88 (4) Within seven days of the receipt of a completed application for a card, the licensing authority  
89 shall forward one copy of the application and one copy of the applicant's fingerprints to the  
90 colonel of state police, who shall, within 30 days, advise the licensing authority, in writing, of  
91 any disqualifying criminal record of the applicant arising from within or without the  
92 commonwealth and whether there is reason to believe that the applicant is disqualified for any of  
93 the foregoing reasons from possessing a firearm identification card; provided, however, that the  
94 taking of fingerprints shall not be required in issuing the renewal of a card if the renewal

95 applicant's fingerprints are on file with the department of state police. In searching for any  
96 disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files  
97 maintained by the department of mental health, department of probation and statewide and  
98 nationwide criminal justice, warrant and protection order information systems and files  
99 including, but not limited to, the National Instant Criminal Background Check System. If the  
100 information available to the colonel does not indicate that the issuance of a firearm identification  
101 card to the applicant would be in violation of state or federal law, he shall certify such fact, in  
102 writing, to the licensing authority within such 30 day period.

103 (5) Upon receiving an application for a firearm identification card, the licensing authority shall  
104 immediately issue a receipt for said application.

105 (6) The licensing authority may not prescribe any other condition for the issuance of a firearm  
106 identification card and shall, within 40 days from the date of application, either approve the  
107 application and issue the license or deny the application and notify the applicant of the specific  
108 reasons for such denial in writing; provided, however, that no such card shall be issued unless the  
109 colonel has certified, in writing, that the information available to him does not indicate that the  
110 issuance of a firearm identification card to applicant would be in violation of state or federal law.

111 (7) A firearm identification card shall be revoked or suspended by the licensing authority or his  
112 designee upon the occurrence of any event that would have disqualified the holder from being  
113 issued such card or from having such card renewed or for a violation of a restriction provided  
114 under this section. Any revocation or suspension of a card shall be in writing and shall state the  
115 specific reasons therefor. Upon revocation or suspension, the licensing authority shall take  
116 possession of such card and receipt for fee paid for such card, and the person whose card is so  
117 revoked or suspended shall take all action required under the provisions of section 129D. No  
118 appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of  
119 revocation and suspension shall be forwarded to the executive director of the criminal history  
120 systems board and the commissioner of probation and shall be included in the criminal justice  
121 information system. A revoked or suspended card may be reinstated only upon the termination of  
122 all disqualifying conditions.

123 (8) Any applicant or holder aggrieved by a denial, revocation or suspension of a firearm  
124 identification card, unless a hearing has previously been held pursuant to chapter 209A, may,  
125 within either 90 days after receipt of notice of such denial, revocation or suspension or within 90  
126 days after the expiration of the time limit in which the licensing authority is required to respond  
127 to the applicant, file a petition to obtain judicial review in the district court having jurisdiction in  
128 the city or town wherein the applicant filed for or was issued such card. A justice of such court,  
129 after a hearing and a finding of the facts, shall determine if the petitioner is presently eligible for  
130 a firearm identification card. If the justice finds in favor of the petitioner, said justice shall order  
131 the licensing authority to issue the firearms identification card to the petitioner within 10 days. A  
132 refusal to issue said card by the licensing authority shall place the licensing authority in contempt  
133 of court. If it is found by the justice that the petitioner was found to be wrongfully denied a  
134 firearm identification card, the judge shall order that the petitioner's costs, including but not  
135 limited to attorney fees and filing fees, shall be reimbursed to the petitioner by the licensing  
136 authority within 60 days of said order.

137 (9) A firearm identification card shall be valid for all lawful purposes subject to the following:

138 (a) A firearm identification card holder aged 15 through 17 shall be entitled to borrow, possess  
139 and carry any rifle or shotgun;

140 (b) A firearm identification card holder aged 18 through 20 shall be entitled to purchase, own,  
141 rent, lease, borrow, possess and carry any rifle or shotgun;

142 (c) A firearm identification card holder aged 21 and over shall be entitled to purchase, own, rent,  
143 lease, borrow, possess, carry or carry concealed any firearm, rifle or shotgun;

144 (10) A firearm identification card shall be in a standard form provided by the executive director  
145 of the criminal history systems board in a size and shape equivalent to that of a license to operate  
146 motor vehicles issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and  
147 shall contain an identification number, name, address, photograph, place and date of birth,  
148 height, weight, hair color, eye color and signature of the cardholder and shall be marked  
149 "Firearm Identification Card".

150 (11) The application for such card shall be made in a standard form provided by the executive  
151 director of the criminal history systems board. The application shall not require the applicant to  
152 divulge to any person not directly involved with the licensing process under this section that they  
153 are applying for a firearm identification card, nor shall the application require that the applicant  
154 supply any letters of reference.

155 (12) Any person who files an application containing false information with the expressed intent  
156 to deceive the licensing authority shall be punished by a fine of not less than \$500 nor more than  
157 \$1,000 or by imprisonment for not less than six months nor more than two years in a house of  
158 correction, or by both such fine and imprisonment.

159 (13) A firearm identification card shall be valid, unless revoked or suspended, for a period of not  
160 more than 6 years from the date of issue, except that if the cardholder applied for renewal before  
161 the card expired, the card shall remain valid for a period of 90 days after the stated expiration  
162 date on the card, unless the application for renewal is denied. During the 90 day grace period the  
163 card holder shall be entitled to all of the rights expressed in paragraph 6 of this section. A card  
164 issued on February 29 shall expire on March 1.

165 (14) The executive director of the criminal history systems board shall send by first class mail to  
166 the holder of a firearm identification card, a notice of the expiration of the card not less than 120  
167 days before its expiration, and shall enclose with the notice a form for the renewal of the card.  
168 The executive director of the criminal history systems board shall include in the notice all  
169 pertinent information about the penalties that may be imposed if the firearm identification card is  
170 not renewed within the 120 days before expiration.

171 (15) Except as provided in clause (9B), the fee for an application for a firearm identification card  
172 shall be \$50, which shall be payable to the licensing authority and shall not be prorated or  
173 refunded in the case of revocation or denial. The licensing authority shall retain \$25 of the fee;

174 and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust  
175 Fund.

176 (16) Any person of the age of 70 shall be exempt from the requirement of paying a renewal fee  
177 for a firearm identification card. All fees for an application for a renewal of a firearm  
178 identification card shall be prorated if it is determined that the applicant will turn 70 years of age  
179 during the upcoming license term.

180 (17) A cardholder shall notify, in writing, the licensing authority that issued such card, the chief  
181 of police into whose jurisdiction such cardholder moves and the executive director of the  
182 criminal history systems board of any change of address. Such notification shall be made by  
183 certified mail within 30 days of its occurrence. A cardholder who fails to complete such  
184 notification shall be fined not more than \$100.

185 (18) Notwithstanding the provisions of section 10 of chapter 269, any person in possession of  
186 any firearm, rifle or shotgun whose firearm identification card issued under this section is invalid  
187 for the sole reason that it has expired, meaning after 90 days beyond the stated expiration date on  
188 the card, but who shall not be disqualified from renewal upon application therefor under this  
189 section, shall be subject to a civil fine of not less than \$100 nor more than \$500 and the  
190 provisions of said section 10 of said chapter 269 shall not apply; provided, however, that the  
191 exemption from the provisions of said section 10 of said chapter 269 provided herein shall not  
192 apply if: (i) such firearm identification card has been revoked or suspended, unless such  
193 revocation or suspension was caused by failure to give notice of a change of address as required  
194 under this section; (ii) revocation or suspension of such firearm identification card is pending,  
195 unless such revocation or suspension was caused by failure to give notice of a change of address  
196 as required under this section; or (iii) an application for renewal of such firearm identification  
197 card has been denied. Any law enforcement officer who discovers a person to be in possession of  
198 any firearm, rifle or shotgun after such person's firearm identification card has expired, meaning  
199 after 90 days beyond the stated expiration date on the card, or has been revoked or suspended  
200 solely for failure to give notice of a change of address shall confiscate any rifle or shotgun and  
201 such expired or suspended card then in possession, and such officer shall forward such card to  
202 the licensing authority by whom it was issued as soon as practicable. Any law enforcement  
203 officer who confiscates a firearm, rifle or shotgun under this section shall immediately issue a  
204 receipt to the card holder listing the make, model and serial number of each firearm, rifle or  
205 shotgun that has been confiscated. Any confiscated weapon shall be returned to the owner in the  
206 same condition in which it was confiscated upon the renewal or reinstatement of such expired or  
207 suspended card within one year of such confiscation or such weapon may be otherwise disposed  
208 of in accordance with the provisions of section 129D. Pending the issuance of a renewed firearm  
209 identification card, a receipt for the fee paid, after five days following issuance, shall serve as a  
210 valid substitute and any rifle or shotgun so confiscated shall be returned, unless the applicant is  
211 disqualified.

212 (19) Upon issuance of a firearm identification card under this section, the licensing authority  
213 shall forward a copy of such approved application and card to the executive director of the  
214 criminal history systems board, who shall inform the licensing authority forthwith of the

215 existence of any disqualifying condition discovered or occurring subsequent to the issuance of a  
216 firearm identification card under this section.

217 (20) Nothing in this section shall authorize the purchase, possession or transfer of any weapon,  
218 ammunition or feeding device that is, or in such manner that is, prohibited by state or federal  
219 law.

220 (21) The secretary of the executive office of public safety, or his designee, may promulgate  
221 regulations to carry out the purposes of this section.

222 SECTION 3. Section 131 of Chapter 140 is hereby repealed.