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COMMONWEALTH OF MASSACHUSETTS  
**Supreme Judicial Court**  
SJC-10480

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COMMONWEALTH,

v.

RICHARD RUNYAN,  
*DEFENDANT-APPELLEE.*

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BRIEF OF THE ATTORNEY GENERAL; DISTRICT ATTORNEYS FOR THE BERKSHIRE,  
BRISTOL, CAPE AND ISLANDS, EASTERN, HAMPDEN, MIDDLE, NORFOLK,  
NORTHWESTERN, PLYMOUTH, AND SUFFOLK DISTRICTS; EXECUTIVE OFFICE OF  
PUBLIC SAFETY AND SECURITY; EXECUTIVE OFFICE OF HEALTH AND HUMAN  
SERVICES; AND DEPARTMENT OF PUBLIC HEALTH AS *AMICI CURIAE*

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**I. ISSUES PRESENTED FOR REVIEW**

This appeal requires the Court to address the impact of the Supreme Court's ruling in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), on the Commonwealth's firearm-safety laws. The Commonwealth has one of the most effective regulatory frameworks for firearm safety in the United States. As a result, fewer Massachusetts residents are victims of firearm deaths than residents of almost any other state.

G.L. c. 140, § 131L is an integral part of this regulatory scheme. It requires all stored firearms be secured in a locked container or equipped with a tamper-resistant safety device, except when "carried by or under the control of the owner or other lawfully authorized user."<sup>1</sup>

Relying on *Heller*, the District Court held that § 131L is facially unconstitutional because it allegedly deprives gun owners of their Second Amendment right to

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<sup>1</sup> G.L. c. 140, § 131L(a) makes it "unlawful to store or keep any firearm, rifle or shotgun . . . in any place unless such weapon is secured in a locked container or equipped with a tamper resistant mechanical lock or other safety device, properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user."

use a firearm for self-defense in the home. This novel ruling presents 2 issues for review:

- Is the Second Amendment incorporated into the Fourteenth Amendment and, thus, made applicable to the States when the Supreme Court in *Heller* expressly declined to reverse settled precedent holding that the Second Amendment is not incorporated?
- Does § 131L amount to a complete ban on the use of a firearm for self-defense in the home when the statute, by its terms, exempts firearms "carried by or under the control of the owner or other lawfully authorized user"?

## II. INTERESTS OF AMICI

As the "chief law officer of the Commonwealth," the Attorney General is charged with setting a "unified and consistent legal policy for the Commonwealth." *Commonwealth v. Twitchell*, 416 Mass. 114, 129 (1993) (citing G.L. c. 12, § 3). The District Court's decision has produced uncertainty about § 131L's continued validity. See David E. Frank, *It's (not) a Lock: State Judges Split Over Supreme Court Gun Ruling*, Massachusetts Lawyers Weekly (Mar. 16, 2009). It is in the public interest that this uncertainty be resolved and that all arguments in support of § 131L's continued validity be advanced for the Court's consideration. The Attorney General is uniquely empowered to advance these arguments. See *Commonwealth v. Kozlowsky*, 238 Mass. 379, 390 (1921).

The Attorney General's interest also is a function of her regulatory authority over unfair and deceptive trade practices. See G.L. c. 93A, § 2(c). The Court has held that this authority extends to the sale and manufacture of firearms sold to Massachusetts consumers. See *American Shooting Sports Council v. Attorney Gen.*, 429 Mass. 871, 875 (1999). Pursuant to this authority, the Attorney General has promulgated regulations ensuring that all handguns sold to Massachusetts consumers meet minimum safety and performance standards. See 940 C.M.R. § 16.00 to § 16.09. The District Court's expansive reading of *Heller* potentially undermines this comprehensive regulatory scheme. For this reason as well, the Court should consider the Attorney General's views.

\*\*\*\*\*

The District Attorneys for the Berkshire, Bristol, Cape and Islands, Eastern, Hampden, Middle, Norfolk, Northern, Northwestern, Plymouth, and Suffolk Districts are charged with representing the Commonwealth in all criminal cases in the Superior Court within their respective districts.<sup>2</sup> G.L. c. 12,

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<sup>2</sup> The District Attorneys for the Cape and Islands and Plymouth Districts join all parts of this brief, except Section IV(A).

§ 27. In addition, the District Attorneys represent the Commonwealth in all cases tried in jury sessions of the District Courts, G.L. c. 218, § 27A(g), and have discretion to appear in all other criminal cases pending in the District Courts. *Commonwealth v. Buck*, 285 Mass. 41, 43 (1933). Because the District Attorneys prosecute violations of § 131L and other firearms laws, they have a substantial interest in the resolution of this appeal.

\*\*\*\*\*

The Executive Office of Public Safety and Security ("EOPSS") oversees 14 state agencies responsible for criminal justice, law enforcement, forensic sciences, and homeland security in the Commonwealth. This oversight includes the Department of State Police, which maintains a list of approved safety locking devices designed to prevent the discharge of a weapon by unauthorized users, pursuant to G.L. c. 140, § 131K. The EOPSS also oversees the Firearms Records Bureau of the Criminal History Systems Board, which serves as the statewide repository for firearms records.

The Secretary of Public Safety and Security is responsible for publishing a list of weapons approved

to be sold in the Commonwealth. G.L. c. 140, § 131¾. In addition, the Secretary has authority to promulgate rules and regulations to carry out several provisions of the General Laws relating to the possession, carrying, locking, and storage of weapons. *Id.*

\*\*\*\*\*

The Executive Office of Health and Human Services, through the Department of Public Health ("DPH"), is mandated to protect and promote the health of the residents of the Commonwealth and to authorize research, develop policies and implement programs which reduce morbidity and mortality. DPH data on firearm injuries and deaths shows that firearms constitute a threat to the health and well-being of the Commonwealth's residents. In response, DPH has developed a number of programs and promoted numerous policies to minimize these risks. These program areas include youth violence prevention, domestic violence prevention and service programs, batterers' intervention efforts, and other community-based violence prevention programs.

### **III. STATEMENT OF THE CASE**

The Amici adopt the statement of the case as set forth in the Commonwealth's brief.

#### **IV. STATEMENT OF THE FACTS**

##### **A. The legislative framework for gun safety.**

The Commonwealth's firearms laws are intended to ensure that irresponsible persons do not gain access to firearms. See *Ruggiero v. Police Comm'r of Boston*, 18 Mass. App. Ct. 256, 258 (1984) ("The goal of firearms control legislation in Massachusetts is to limit access to deadly weapons by irresponsible persons."). "[T]he Legislature has adopted a wide range of methods . . . to accomplish this goal," *Jupin v. Kask*, 447 Mass. 141, 154 (2006), including restrictions on who may carry or possess firearms.

##### **1. Restrictions on who may carry or possess firearms.**

Any person deemed suitable by the local licensing authority (and not statutorily disqualified for one of the reasons detailed below) may obtain a license to carry ("LTC"). A LTC authorizes the person to possess and carry large capacity firearms, rifles, and shotguns. G.L. c. 140, §§ 121, 131. The local licensing authority, which is usually the chief of police in the city or town where the person resides, has "considerable latitude" in determining suitability. *Ruggiero*, 18 Mass. App. Ct. at 259. In addition, all new applicants for a LTC must complete a

state-approved safety course or hunter-education course taught by state-certified instructors. G.L. c. 140, §§ 131, 131P.

To possess, but not carry, non-large capacity firearms, rifles, and shotguns, a person must obtain a firearm identification card ("FID") from the local licensing authority. A FID permits possession of these weapons in the home or place of business. G.L. c. 140, §§ 129B, 129C. Before obtaining a FID, the applicant must complete the same safety courses required for a LTC. *Id.*; G.L. c. 140, §§ 131, 131P. The local licensing authority has no discretion to deny a FID based on suitability. G.L. c. 140, § 129B.

Certain categories of persons are statutorily precluded from obtaining a LTC or FID. Anyone convicted or adjudicated delinquent of any felony, certain defined misdemeanors, any violent crime, or any firearms or controlled substance law violation is automatically disqualified. G.L. c. 140, §§ 129B, 131. Aliens; persons subject to a restraining order<sup>3</sup>

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<sup>3</sup> A LTC or FID is subject to immediate suspension if the holder becomes subject to a domestic restraining order. G.L. c. 209A, §§ 3B, 3C; G.L. c. 140, § 129D. In addition, when a restraining order is issued, the police must confiscate all firearms, as well as the holder's LTC or FID card. *Id.* The police cannot directly give the seized weapons to a friend,

or outstanding arrest warrant; persons who have been confined for mental illness; and persons who are or have been under treatment for drug addiction or habitual drunkenness<sup>4</sup> are similarly disqualified. *Id.* In addition, no one under 21-years old may obtain a LTC, and no one under 15-years old may obtain a FID. G.L. c. 140, § 129B(1); § 131(d)(iv).

## **2. Restrictions on access by minors.**

Massachusetts laws are particularly protective in restricting access to firearms by minors. For instance, it is a criminal offense to provide a minor with a machine gun or to provide anyone under 21-years old with a firearm or large capacity weapon. G.L. c. 140, § 130. Moreover, although minors over the age of 15 may be issued a FID for possession of non-large capacity rifles and shotguns (generally used for hunting or sport shooting), they must first obtain consent from their parent or guardian. G.L. c. 140, § 129B(1)(vi). In addition, the minor must complete a

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relative, or licensed dealer but may later turn the weapons over to an authorized person. *Id.*

<sup>4</sup> A person may produce proof that a physician aware of the circumstances certifies the mental health, drug, or alcohol condition is "cured" or does not disable the person from obtaining a license. G.L. c. 140, §§ 129B(1)(iii)-(iv), 131(d)(ii)-(iii), 131F(ii)-(iii).

hunter-education course or have an adult present whenever the weapon is in the minor's possession. G.L. c. 131, § 14; G.L. c. 140, § 130.

### **3. Restrictions on firearm sales.**

Anyone seeking to purchase a firearm, rifle, or shotgun in Massachusetts, whether from a private party or a licensed dealer, must possess the appropriate LTC or FID. G.L. c. 140, § 131A. In addition, the buyer must obtain a permit to purchase from their local licensing authority. *Id.*

A person who sells more than 4 firearms per year must be licensed as a dealer. G.L. c. 140, §§ 123, 128A. But, anyone who sells firearms, *i.e.*, dealers and non-dealers, must ensure that the purchaser has a proper license for the weapon and a permit to purchase it. G.L. c. 140, §§ 123, 131A. In addition, anyone who sells a firearm must report the sale to the Firearms Record Bureau within 7 days. G.L. c. 140, §§ 123, 128A, 129C. And, any resident who purchases a firearm from a person who is not a licensed dealer, either within Massachusetts or elsewhere, must report that purchase within 7 days. G.L. c. 140, §§ 128A-B.

All firearms dealers must have a permanent place of business that is separate from any residence or

dwelling. G.L. c. 140, §§ 122, 123 (15th para.). Dealers may only sell weapons that meet minimum state-testing standards, unless the weapon is exempted from those standards. G.L. c. 140, § 123 (18th para.). In addition, dealers are precluded from selling firearms that are prone to discharging accidentally, firing more than once per trigger pull, or exploding during firing. G.L. c. 140, § 123 (19th and 20th paras.).

Dealers are mandated to notify purchasers of the Commonwealth's firearm storage law. They must conspicuously post a sign in bold lettering at least 1 inch high that states:

IT IS UNLAWFUL TO STORE OR KEEP A FIREARM, RIFLE, SHOTGUN OR MACHINE GUN IN ANY PLACE UNLESS THAT WEAPON IS EQUIPPED WITH A TAMPER-RESISTANT SAFETY DEVICE OR IS STORED OR KEPT IN A SECURELY LOCKED CONTAINER.

G.L. c. 140, § 123 (14th para.). This same notification must be provided in writing to all purchasers. *Id.*

In addition, all firearms and large-capacity weapons sold by Massachusetts dealers must be equipped with a safety device approved by the colonel of the State Police.<sup>5</sup> G.L. c. 140, § 131K. A dealer's failure to comply with this requirement constitutes a

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<sup>5</sup> The colonel's current list of approved safety devices is included as Appendix A.

breach of warranty and an unfair and deceptive trade practice, potentially subjecting the dealer to civil liability. *Id.*

The Commonwealth's interest in protecting consumers from defective or unsafe firearms is further demonstrated by the Attorney General's comprehensive regulations governing handgun design, safety, and performance. *See, e.g.,* 940 C.M.R. § 16.01 (handgun design and performance standards), § 16.04 (unfair and deceptive trade practice to sell handguns made of inferior materials); § 16.05 (unfair and deceptive trade practice to sell handguns without childproofing or safety devices). The Attorney General's regulations also recognize the importance of safe firearm storage. *See* 940 C.M.R. § 16.06(1). Accordingly, it is an unfair and deceptive trade practice to sell a handgun to a Massachusetts consumer unless the following warning accompanies the handgun:

This handgun is not equipped with a device that fully blocks use by unauthorized users. More than 200,000 firearms like this one are stolen from their owners every year in the United States. In addition, there are more than a thousand suicides each year by younger children and teenagers who get access to firearms. Hundreds more die from accidental discharge. It is likely that many more children sustain serious wounds, or inflict such wounds accidentally on others. In order to limit the chance of such misuse, it is imperative that you keep this weapon locked in a secure place and

take other steps necessary to limit the possibility of theft or accident. Failure to take reasonable preventive steps may result in innocent lives being lost, and in some circumstances may result in your liability for these deaths.

*Id.* Dealers also must demonstrate to all retail customers how to load, unload, and safely store the handgun, as well as how to engage and disengage all of the handgun's safety devices. *Id.*

**B. Section 131L's safe-storage provisions are an integral part of the legislative scheme.**

Section 131L is an integral part of the legislative scheme of preventing firearms from "reaching the hands of unauthorized users." *Jupin*, 447 Mass. at 154. It requires that all stored firearms be "secured in a locked container or equipped with a tamper resistant mechanical lock or other safety device." G.L. c. 140, § 131L. There are a wide range of commercially-available devices capable of satisfying these requirements. Although all are designed to secure a firearm safely, each device has its own advantages and disadvantages.

**1. Locked containers.**

A locked container, as its name implies, is designed to securely store a firearm and keep it out of sight. Commonly referred to as gun safes, vaults, or lock boxes, these containers come in a variety of

sizes and weights to permit storage of all types of firearms. See LOK-IT-UP: A Campaign to Promote Safe Storage of Firearms, *Safe Storage of Firearms* (2009), available at <http://depts.washington.edu/lokitup/locks.html>. Some also are large enough to accommodate more than one gun. *Id.* The containers are opened by pushbutton, combination, digital keypad, or key, allowing the owner quick access. *Id.* In addition, most containers can be bolted to the ground or permanently mounted, making them difficult to steal. *Id.*; see also Mike Burchman, *Properly Storing a Firearm in the Home*, 2 (2006), available at <http://www.homegunsafety.com>. Although generally more expensive than lock boxes and other safety devices, gun vaults and safes are likely the most secure way to store a firearm. See James T. Dixon, *On Lemon Squeezers and Locking Devices: Consumer Product Safety and Firearms*, *A Modest Proposal*, 47 Case W. Res. L. Rev. 979, 994 (1997).

## **2. Gun locks.**

Gun locks are another method of securing a firearm and preventing accidental discharge. 2 *Guns in American Society* 589 (Gregg L. Carter ed. 2006). They too are widely available and relatively

inexpensive. Phillip J. Cook & Jens Ludwig, *Principles for Effective Gun Policy*, 73 Fordham L. Rev. 589, 612 (2004).

There are 2 main types of gun locks currently on the market. The first, commonly called a trigger lock, "fits over the gun and prevents access to the trigger." 2 *Guns in American Society* at 589. It consists of interlocking caps that come together from either side of the trigger. Cook & Ludwig, 73 Fordham L. Rev. at 612. A rigid cylinder fits behind the trigger so it cannot be pulled until the lock is opened by using a pushbutton keypad, combination, or key. See *id.*; 2 *Guns in American Society* at 589. Some models are battery operated or have lighted keypads and anti-tamper alarms. See Appendix A at #2, #5, #12, #42; LOK-IT-UP, *Safe Storage*, available at <http://depts.washington.edu/lokitup/locks.html>.

Trigger locks are effective in securing firearms and preventing accidental discharge. A survey of police officers on safe-firearm storage practices revealed that 59% favored trigger locks as the "preferred method for preventing unintentional firearms accidents at home." Stephen L. Bang, *Trigger Locks and Warning Labels on Firearms Become a Reality*,

31 McGeorge L. Rev. 265, 266 (2000). In addition, nearly 80% of police officers recommended either the use of a trigger lock or locked container to secure firearms stored at home. *Id*

A cable lock is the second most common type of gun lock. 2 *Guns in American Society* at 589. This device usually consists of vinyl-covered, heavy-duty metal wire with a lock at the end. LOK-IT-UP, *Safe Storage of Firearms*, available at <http://depts.washington.edu/lokitup/locks.html>. The wire is inserted into the chamber of the firearm, preventing a cartridge from moving into firing position. *Id*. Cable locks are usually opened by key or combination, and can be equipped with anti-tamper alarms. See Appendix A at #23, #27, #41. The locks are capable of "disabl[ing] most gun types" and also can be used to "lock the gun to a solid object" so it cannot be moved. 2 *Guns in American Society* at 589.

An important limitation on both trigger and cable locks is that they are designed for use only on unloaded firearms. *Id*. Accordingly, most of these devices are sold with warnings that use on a loaded firearm could result in accidental discharge. *Id*.

### 3. Personalized locks.

Another common method of securing a firearm and preventing accidental discharge involves the use of "smart gun" technology. This technology is "widely available" and "affordable." Mark D. Polston & Douglas S. Weil, *Unsafe by Design: Using Tort Actions to Reduce Firearm-Related Injuries*, 8 Stan. L. & Pol'y Rev. 13, 20 (1997). It renders a firearm inoperable until the lock is released by a signal from a special ring or bracelet worn by the owner, or by matching the owner's fingerprint to the firearm. 2 *Guns in American Society* at 589; see also 940 C.M.R. §§ 16.01, 16.05(1) (sale of handguns equipped with passive use-limitation device that resets automatically to prevent unauthorized use is not a deceptive trade practice). No key, combination, or pushbutton code is required to unlock these so-called "personalized" locks because the lock instantly recognizes the authorized user. 2 *Guns in American Society* at 589. In the near future, most gun locks likely will employ some form of smart gun technology. *Id.*

### V. SUMMARY OF ARGUMENT

The District Court's dismissal of the § 131L charge against defendant-appellee Richard Runyan

should be reversed for three independent reasons. First, the District Court erred in applying the Second Amendment to a state statute. For over 120 years, it has been settled that the Second Amendment is a limitation on the power of the National government, not State governments. *Heller* did not overrule this precedent. *Infra* at 18-23.

Second, even assuming the Second Amendment were applicable to the States, the District Court erred in holding that § 131L was indistinguishable from the statute at issue in *Heller*. The statute in *Heller* imposed a complete ban on the use of an operable handgun for self-defense in the home. Section 131L's plain language creates an exception from the statute's safe-storage provisions whenever the firearm is carried by or under the control of the owner or other lawfully authorized user. This exception is sufficiently broad to permit the use of an operable firearm for self-defense in the home. Moreover, this interpretation of the statute's plain language is consistent with its overall purpose, legislative history, and other statutory enactments, including the castle law. *Infra* at 23-39.

Third, the District Court erred in failing to recognize *Heller's* limited scope. Although a complete ban on the use of a firearm for self-defense is not permissible under *Heller*, the Supreme Court stressed that nothing in its analysis casts doubt on a broad range of "presumptively lawful regulatory measures," *Heller*, 128 S. Ct. at 2817, n.26, including, without limitation, "laws regulating the storage of firearms to prevent accidents." *Id.* at 2820.

Section 131L is such a "presumptively lawful" safety regulation. It is designed to reduce the risk of operable firearms falling into the hands of unauthorized users. Studies show that safe-storage laws, like § 131L, are effective in preventing unintentional and intentional firearm deaths and injuries, particularly among children. And, most importantly, statistical evidence confirms that § 131L has been effective in reducing the number of firearm-related deaths in Massachusetts. *Infra* at 39-49.

## VI. ARGUMENT

A. The Supreme Court has unequivocally held that the Second Amendment is a constraint only on the National government and is inapplicable to the States.

For over 120 years it has been established that the Second Amendment is not incorporated through the

Fourteenth Amendment and, thus, does not restrict the authority of States to regulate firearms. *United States v. Cruikshank*, 92 U.S. 542, 553 (1876), was the first in a line of Supreme Court decisions to hold that the Second Amendment is a limitation only on the Federal government. As construed by the Supreme Court, the Second Amendment's right to keep and bear arms "means no more than that it shall not be infringed by Congress [, and has] no other effect than to restrict the powers of the National government." *Id.* at 553.

The Supreme Court reaffirmed this interpretation of the Second Amendment in *Presser v. Illinois*, 116 U.S. 252 (1886). There, the defendant led 400 armed members of a private society through Chicago in violation of a state statute that required organizers of any armed parade to obtain a license from the governor. *Id.* at 264. In rejecting the defendant's contention that he had a Second Amendment right to keep and bear arms, the Supreme Court again held that the Second Amendment was a restriction only on the Federal, not State governments. *Id.* at 264-65 (the Second Amendment "'has no other effect than to

restrict the powers of the National government'") (quoting *Cruikshank*, 92 U.S. at 553).

The Supreme Court reaffirmed this interpretation of the Second Amendment once again in *Miller v. Texas*, 153 U.S. 535 (1894). *Miller* involved a Second Amendment challenge to the validity of a state criminal statute that prohibited carrying dangerous weapons on the person. *Id.* at 538. Relying on *Cruikshank*, the Supreme Court held it was "well settled" that the Second Amendment "operate[s] only upon the federal power, and ha[s] no reference whatever to proceedings in state courts." *Id.*

Although *Cruikshank*, *Presser*, and *Miller* were decided more than a century ago, they remain valid and binding precedent today.<sup>6</sup> See, e.g., *Malloy v. Hogan*,

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<sup>6</sup> The Second Amendment is not the only provision of the Bill of Rights the Supreme Court has held is inapplicable to the States. The Supreme Court has held that the Fifth Amendment right to indictment by a grand jury and the Seventh Amendment right to jury trials in civil cases also are inapplicable to the States. See *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211 (1916) (Seventh Amendment); *Hurtado v. California*, 110 U.S. 516 (1884) (Fifth Amendment). The Supreme Court has not yet decided whether the Eighth Amendment right against excessive bail and excessive fines or the Third Amendment right against quartering of troops apply to the States. See *Murphy v. Hunt*, 455 U.S. 478 (1982) (Eighth Amendment); see also *Engblom v. Casey*, 677 F.2d 957 (2d Cir. 1982) (Third Amendment). The States, of course, are free to provide such rights through their

378 U.S. 1, 4 n.2 (1964) (citing *Cruikshank* and *Presser* for the proposition that Second Amendment rights are "not safeguarded against state action by the Privileges and Immunities Clause or other provision of the Fourteenth Amendment"); *Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (the Second Amendment has "distinctly been held not" applicable to the States). Indeed, as this Court observed in *Commonwealth v. Davis*, 369 Mass. 886, 890 (1976), "courts have not retreated from the view that the [Second A]mendment inhibits only the national government, not the States."<sup>7</sup>

Contrary to the District Court's implicit holding, *Heller* did not overrule this settled precedent. Instead, *Heller* reiterated *Cruikshank's* central holding that the "Second Amendment does not by its own force apply to anyone other than the Federal Government." *Heller*, 128 S. Ct. at 2812. The Supreme Court also declined to reconsider *Cruikshank's* "continuing validity on incorporation" because the

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own constitutional or statutory provisions, but the Federal Constitution does not compel them to do so.

<sup>7</sup> *Davis* further establishes that there is no individual right to keep or bear arms under the Massachusetts Constitution, as noted in the Commonwealth's Brief. See *Davis*, 369 Mass. at 888-89.

statute under review was enacted by a federal enclave and, thus, the incorporation question was not before it. *Id.* at 2813 n.23. Nevertheless, the Supreme Court noted that its later decisions in *Presser* and *Miller* "reaffirmed that the Second Amendment applies only to the Federal Government." *Id.*

Unless and until the Supreme Court overrules its holdings in *Cruikshank*, *Presser*, and *Miller*, the Second Amendment cannot be applied to limit the power of States.<sup>8</sup> See *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535 (1983) (per curiam) ("only th[e] [Supreme] Court may overrule one of its precedents"); *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) (when "a

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<sup>8</sup> Two recent decisions from the Second and Seventh Circuits confirm this point. See *Maloney v. Cuomo*, 554 F.3d 56, 58-59 (2d Cir. 2009), petition for cert. filed, 78 U.S.L.W. 3015 (June 26, 2009) (No. 08-1592); *National Rifle Ass'n of Am., Inc. v. Chicago*, 567 F.3d 856, 858 (7th Cir. 2009), petition for cert. filed, 77 U.S.L.W. 3679 (June 3, 2009) (No. 08-1497). Earlier this year, a Ninth Circuit panel concluded that *Cruikshank*, *Presser*, and *Miller* were no longer controlling on the incorporation question, and proceeded to apply the Second Amendment to a California law that prohibited the possession of firearms and ammunition on county-owned property. *Nordyke v. King*, 563 F.3d 439, 449 (9th Cir. 2009). The Ninth Circuit, however, *sua sponte* ordered *en banc* review and withdrew the panel's decision. See *Nordyke v. King*, No. 07-15763, 2009 WL 2383875, at \*1 (9th Cir. July 29, 2009).

precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [appellate courts] should follow the case which directly controls, leaving this Court the prerogative of overruling its own decisions"). Rather, the States remain free to promulgate, pursuant to their police powers, all manner of firearm regulations, including, without limitations, safe-storage regulations. And, the States remain free to prosecute individuals, like Runyan, who violate those laws.

This interpretation of the Second Amendment also makes sense in light of the amendment's history. As the *Heller* majority explained, "history showed" that, in adopting the Second Amendment, the Framers were responding to the perceived "threat that the new Federal Government would destroy the citizens' militia by taking away their arms. . . ." *Id.* at 2801. By including the right to keep and bear arms in the Federal Constitution, the Framers sought to make the people "better able to resist tyranny" perpetrated by the National government. *Id.* at 2800-01. The Framers never intended the Second Amendment to be a restriction on State governments. *See id.*

Accordingly, the order dismissing the § 131L charge against Runyan should be reversed because the Second Amendment is inapplicable to the States.

**B. Even if the Second Amendment were applicable to the Commonwealth, § 131L is constitutional under *Heller*.**

The District Court allowed Runyan's motion to dismiss because it found that, like the District of Columbia statute at issue in *Heller*, § 131L "makes it impossible for citizens to use [firearms] for the core lawful purpose of self defense. . . ." <sup>9</sup> Record App. at 17-18 (quoting *Heller*, 128 S. Ct. at 2818). Even assuming that the Second Amendment right recognized by *Heller* applied to the States, the District Court erred in concluding that § 131L was unconstitutional under *Heller*. Rather, as detailed below, § 131L is entitled to a presumption of constitutionality and is properly construed as permitting, not prohibiting, the use of a firearm for self-defense in the home.

**1. Section 131L is entitled to a presumption of constitutionality.**

"A facial challenge to the constitutional validity of a statute is the weakest form of

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<sup>9</sup> Runyan's motion challenged § 131L "as applied to self defense." Record App. 10. But, no factual basis supporting a self-defense claim existed here. Thus, Runyan's motion is properly viewed as a facial attack on the statute's validity.

challenge, and the one that is the least likely to succeed. A statute so questioned is presumed constitutional. A court may interpret a statute to set forth considerations to clarify and specify, and, where necessary, to narrow, the statute's terms in order that it may be held constitutional." *Blixt v. Blixt*, 437 Mass. 649, 652 (2002) (internal citations omitted). Moreover, because the Court must "'grant all rational presumptions in favor of the constitutionality of a legislative enactment,' the positing of theoretically possible unreasonable scenarios are insufficient to make the [statute] unreasonable." *Route One Liquors, Inc. v. Secretary of Admin. & Fin.*, 439 Mass. 111, 118 (2003) (quoting *Kienzler v. Dalkon Shield Claimants Trust*, 426 Mass. 87, 89 (1997)).

Here, the District Court found § 131L unconstitutional because it erroneously concluded that § 131L was indistinguishable from the statute at issue in *Heller*. *Heller* addressed a District of Columbia statute that broadly prohibited residents from possessing operable handguns and other firearms in

their homes.<sup>10</sup> It was a "total ban on handguns, as well as [a] requirement that firearms in the home be kept nonfunctional even when necessary for self-defense." *Heller*, 128 S. Ct. at 2788; see also *id.* at 2817 ("[T]he law totally bans handgun possession in the home. It also requires that any lawful firearm in the home be disassembled or bound by a trigger lock at all times, rendering it inoperable.").

The Supreme Court held that this "total ban on handguns" and operable firearms in the home, even when necessary for self-defense, violated the Second Amendment. *Id.* In reaching that conclusion, the Supreme Court recognized an individual right under the Second Amendment for non-prohibited persons to possess a handgun, which is "the most popular weapon chosen by Americans for self-defense in the home." *Id.* at 2818. The District's "absolute prohibition of handguns held and used for self-defense in the home," the Court concluded, was unconstitutional because it prohibited an "entire class of 'arms' that is overwhelmingly

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<sup>10</sup> The statute at issue required that any person registered to carry a firearm must keep any firearm "in his possession unloaded and disassembled bound by a trigger lock or similar device, unless such firearm is kept at his place of business, or while being used for recreational purposes. . . ." D.C. Code, § 7-2507.02.

chosen by American society for [the] lawful purpose [of self-defense.]" *Id.* at 2817. And, it extended that prohibition to the home, "where the need for defense of self, family, and property is most acute." *Id.* Furthermore, to the extent that the District's trigger-lock requirement rendered firearms kept in the home inoperable, with no exception for self-defense, it too violated the Second Amendment.<sup>11</sup> *Id.* at 2818.

**2. Section 131L's plain language permits an owner or other lawfully authorized user to keep an operable firearm for self-defense in the home.**

Contrary to the District Court's analysis, § 131L is readily distinguished from the District of Columbia's complete ban on the possession of firearms for self-defense in the home. Unlike the District's statute, § 131L's requires only that firearms be securely stored; it does not prohibit any possession of handguns whatsoever in the home. Moreover, § 131L's plain language includes an exemption that allows owners and other lawfully authorized users to

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<sup>11</sup> The District urged the Supreme Court to read a self-defense exception into the statute, but the Court declined to do so because "we think that is precluded by the unequivocal text, and by the presence of other enumerated exceptions[.]" *Id.* at 2818. No similar barrier exists here because, as demonstrated in the following section, § 131L's "unequivocal text" includes an exception for self-defense.

use firearms for self-defense in the home. More specifically, § 131L(a)'s second sentence exempts firearms "carried by or under the control of the owner or other lawfully authorized user" from storage.

"Where the language of a statute is plain, it must be interpreted in accordance with the usual and natural meaning of the words. In particular, absent clear indication to the contrary, statutory language is to be given its 'ordinary lexical meaning.'" *Commonwealth v. Biagiotti*, 451 Mass. 599, 601-02 (2008) (internal citations omitted). The plain and ordinary meaning of the language used in § 131L(a)'s second sentence is that the section's safe-storage provisions are inapplicable whenever a firearm is "carried by or under the control of the owner or other lawfully authorized user."

This straightforward reading of the statute is confirmed by the Legislature's use of the phrases "carried by" and "under the control of." Both of these phrases have established meanings that are sufficiently broad to permit the use of a firearm for self-defense in the home.

The phrase "carried by" indicates that the exemption applies whenever the firearm is in the hands

or on the person of the owner or other lawfully authorized user. See Black's Law Dictionary (8th ed. 2004) (first definition of "carry" is to "sustain the weight or burden of; to hold or bear"); see also *Muscarello v. United States*, 524 U.S. 125, 134 (1998) ("'Carry' implies personal agency and some degree of possession[.]"). In a similar context, the Court has stated that "'[c]arrying' a firearm occurs when a defendant knowingly has more than momentary possession of a working firearm and moves it from one place to another." *Commonwealth v. Ramirez*, 407 Mass. 553, 558 (1990) (quoting *Commonwealth v. Seay*, 376 Mass. 735, 737 (1978)) (defining "carrying" for purposes of G.L. c. 269, § 10(a)).<sup>12</sup> This definition is sufficiently broad to permit an owner or other lawfully authorized user, who is carrying a firearm, to keep the firearm available for self-defense in the home.

The phrase "under the control of" is even broader. "'Control' requires that one exercise dominion over a particular item." *Commonwealth v.*

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<sup>12</sup> In 1990, the Legislature rewrote G.L. c. 269, § 10(a) to eliminate the phrase "carries on his person." See St. 1990, c. 511, § 2. The statute now provides: "Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded . . . shall be punished. . . ."

*Gray*, 5 Mass. App. Ct. 296, 299 (1977). Individuals generally have dominion or control over objects that are on their body or within their reach. In the context of searches incident to arrest, for instance, the Supreme Court has construed the term "immediate control" to mean the "area from within which [the arrestee] might gain possession of a weapon[.]" *Chimel v. California*, 395 U.S. 752, 763 (1961); see also *Commonwealth v. Alvarado*, 420 Mass. 542, 554 (1995) (same). Ordinarily, this zone of control extends to any weapons within the arrestee's reach. See *Alvarado*, 420 Mass. at 554 ("A search incident to arrest is limited to the area within the arrestee's immediate control as its purpose is to protect the arresting officer from weapons . . . , which may be within the arrestee's reach."); *United States v. Maldonado-Espinosa*, 968 F.2d 101, 104 (1st Cir. 1992) (search of carry-on bag valid as incident to arrest because it was on table within arrestee's reach); *Riley v. Kentucky*, 120 S.W.3d 622, 629 (Ky. 2003) (defendant properly found in control of 2 firearms "which were laying in an unobstructed location only six to eight feet from where he was sitting").

Safe-storage statutes in other states shed further light on the meaning of the phrase "under the control of." See *Seideman v. City of Newton*, 452 Mass. 472, 478 (2008) ("We derive the words' usual and accepted meanings from sources presumably known to the statute's enactors, such as their use in other legal contexts[.]") (quoting *Commonwealth v. Zone Book, Inc.*, 372 Mass. 366, 369 (1977)). California, Connecticut, Florida, Hawaii, New Hampshire, North Carolina, Rhode Island, and Wisconsin all have safe-storage laws that, like § 131L(a), provide exemptions for when the firearm is carried by the owner or "within such close proximity" to the owner that the owner can readily retrieve the firearm.<sup>13</sup> Thus, like the standard applicable to searches incident to arrest, other states' safe-storage statutes define

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<sup>13</sup> See Cal. Penal Code § 12035(c)(3) (West 2009) (exemption from safe storage law when "firearm is carried on the person or within such close proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person"); Cal. Penal Code, § 12036 (West 2009) (same exemption for child access to firearms); Conn. Gen. Stat. § 29-37i (2008) (similar "close proximity" exemption); Fla. Stat. § 790.174(1) (2009) (same); Haw. Rev. Stat. § 134-10.5 (2009) (same); N.H. Rev. Stat. Ann. § 650-C:1(V)(c) (West 2009) (same); N.C. Gen. Stat. § 14-315.1 (2009) (same); R.I. Gen. Laws § 11-47-60.1 (2009) (same); Wis. Stat. § 948.55 (2008) (same).

control in terms of what is or is not within the owner's reach.

These legal definitions of control were available when § 131L was enacted and, thus, presumably known to the Legislature.<sup>14</sup> See *Seideman*, 452 Mass. at 478; *Zone Book, Inc.*, 372 Mass. at 369. Given the similarity of statutory purpose and language, the phrase "under the control of" as used in § 131L(a) is properly interpreted in the same manner as these generally-accepted legal definitions. Accordingly, § 131L(a)'s "under the control of" exemption applies whenever a firearm is in such close proximity to the owner or other lawfully authorized user that it can be readily reached and retrieved for that individual's use, including for self-defense in the home.

In sum, contrary to the District Court's conclusion, § 131L's plain language demonstrates that it is fundamentally unlike the District's complete ban on operable firearms for self-defense in the home. So long as a firearm is on or in close proximity to the owner or other lawfully authorized user's person such that it can be readily retrieved, the firearm may be

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<sup>14</sup> New Hampshire's statute, which was enacted in 2000, is the sole exception. See N.H. Advance Leg. Serv. 267:1 (2000).

kept unsecured and fully operable and, thus, immediately available for self-defense in the home. See *Heller*, 128 S. Ct. at 2822; *Commonwealth v. Cantelli*, No. 08-422, 2009 WL 1514958, \*2 (Mass. Sup. Ct. May 29, 2009) (Sanders, J.) (rejecting *Heller*-based challenge to § 131L because statute “permits an owner to have a firearm on his person (and thus available for self-defense purposes)”); *Commonwealth v. Gibbs*, Chelsea District Court No. 0714CR2057 (Oct. 2008) (Singer, J.) (same).

**3. Interpreting § 131L as permitting the owner or other authorized user to keep an operable firearm for self-defense in the home is consistent with the statute’s purpose, its legislative history, and the castle law.**

This interpretation of § 131L is consistent not only with the statute’s plain language but also its overall purpose. See *Hanlon v. Rollins*, 286 Mass. 444, 447 (1934) (“a statute must be interpreted according to the intent of the Legislature ascertained from all its words . . . considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished”). “The goal of firearms control legislation in Massachusetts is to limit access to deadly weapons by irresponsible persons.” *Ruggiero*,

18 Mass. App. Ct. at 258. Section 131L furthers this goal by ensuring that firearms are inoperable to all but the owner or other lawfully authorized user. See *Cantelli*, 2009 WL 1514958, at \*2 (“The purpose of [§ 131L] is stated in the statute itself: it is intended to render the firearm inoperable *except* by the owner or lawfully authorized user.”). In so doing, the statute plays an important role in “prevent[ing] the temptation and the ability to use firearms to inflict harm, be it negligently or intentionally, on another or on oneself.” *Commonwealth v. Lee*, 10 Mass. App. Ct. 518, 523 (1980). The Legislature reasonably concluded that this risk of harm was most acute when an operable firearm is not carried by or under the control of the owner or other lawfully authorized user. See *Jupin*, 447 Mass. at 153 (noting the “significant social benefit to be realized by recognizing a duty of the person in control of the premises to exercise due care with the regard to the storage of guns on the premises”).

- a. The Legislature rejected draft language that could have rendered firearms inoperable by all users.

Section 131L’s legislative history confirms this interpretation. The Senate’s original draft of the

legislation stated as follows: "Whoever stores or keeps a firearm . . . shall store or keep such weapon in a securely locked container or, in the case that such weapon may be equipped with a trigger lock, equip such weapon with a trigger lock *so as to effectively render the weapon incapable of operation.*" 1997 Senate Doc. No. 1985, § 10H(a) (emphasis added).<sup>15</sup> Significantly, the House rejected the Senate's draft language and rewrote the legislation to emphasize that the firearm must be rendered inoperable to all but the "owner or other lawfully authorized user." 1998 House Doc. No. 5613, § 131L. The House accomplished this by substituting the following language, which appears in the final version of the statute as enacted: "It shall be unlawful to store or keep any firearm . . . in any place unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable *by any person other than the owner or other lawfully*

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<sup>15</sup> Senate Doc. No. 1985 went on to provide an exception for whenever "such weapon is carried on the person of anyone in lawful possession of such weapon or when such person exercises dominion and control over such weapon." The House modified this language to its current form in House Doc. No. 5613.

authorized user." *Id.* (emphasis added); see also St. 1998, c. 180, § 47.

Section 131L's legislative history thus confirms that, unlike the District's complete ban on operable handguns, the Legislature did not intend its safe-storage law to render firearms completely inoperable to all persons and for all purposes, including self-defense. The District Court erred in reading such a complete ban into the statute. See *Victoria, Inc. v. Alcoholic Beverage Control Comm'n*, 33 Mass. App. Ct. 507, 511 (1992) ("[W]hen any statute is revised, or one act framed from another, some parts being omitted, the parts omitted are not to be revived by construction, but are to be considered as annulled.").

b. The District Court's erroneous interpretation of § 131L is at odds with the castle law.

Reading § 131L to impose a complete ban on operable firearms in the home (as the District Court erroneously did) also is at odds with the "castle law" as codified in G.L. c. 278, § 8A.<sup>16</sup> The castle law

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<sup>16</sup> G.L. c. 278, § 8A provides as follows:

In the prosecution of a person who is an occupant of a dwelling charged with killing or injuring one who was unlawfully in said dwelling, it shall be a defense that the occupant was in his dwelling at the time of the

"modified the common law by justifying the use of deadly force by a person in his own home to respond to an assault threatening death or great bodily harm by someone unlawfully in the home, even though the person had a reasonable means of retreat or escape." *Commonwealth v. Peloquin*, 437 Mass. 204, 208 (2002). Because the castle law was enacted nearly 18 years before § 131L, see St. 1981, c. 696 (enactment of the castle law), the Legislature is presumed to have been aware of its provisions when it enacted § 131L. See *Charland v. Muzi Motors, Inc.*, 417 Mass. 580, 582-83 (1994) ("we assume, as we must, that the Legislature was aware of the existing statutes in enacting [new legislation]").

Whenever "possible a statute is to be interpreted in harmony with prior enactments to give rise to a consistent body of law.'" *Id.* (quoting *Everett v. Revere*, 344 Mass. 585, 589 (1962)); see also *School Comm. of Newton v. Newton Sch. Custodians Ass'n, Local*

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offense and that he acted in the reasonable belief that the person unlawfully in said dwelling was about to inflict great bodily injury or death upon said occupant or upon another person lawfully in said dwelling, and that said occupant used reasonable means to defend himself or such other person lawfully in said dwelling. There shall be no duty on said occupant to retreat from such person unlawfully in said dwelling.

454, 438 Mass. 739, 751 (2003) (absent "explicit legislative commands to the contrary, we construe statutes to harmonize and not to undercut each other."). Here, the Legislature's prior enactment (*i.e.*, the castle law) established that a person may use deadly force, including a firearm, to respond to an assault threatening death or great bodily harm by someone unlawfully in the home, without having to retreat. *Peloquin*, 437 Mass. at 208. There is no reason to believe that the Legislature silently intended to repeal or limit this right to self-defense in the home when it subsequently enacted § 131L's safe-storage provisions. See *Commonwealth v. Burke*, 390 Mass. 480, 486 (1983) ("It is not to be lightly supposed that radical changes in the law were intended where not plainly expressed."); *Commonwealth v. Hayes*, 372 Mass. 505, 512 (1977) (a "statute is not to be deemed to repeal or supersede a prior statute in whole or in part in the absence of express words to that effect or of clear implication"). Rather, as already demonstrated, § 131L's plain language creates an exception whenever the firearm is "carried by" or "under the control of" the owner or other lawfully authorized user. This exception allows a firearm to

be readily available to the owner or other lawfully authorized user for self-defense in the home, as the castle law clearly anticipates.<sup>17</sup> *Cf. Seay*, 376 Mass. at 742 (interpreting G.L. c. 269, § 10(a), which prohibits the unlawful carrying of a firearm, as exempting "persons who keep a firearm only in their homes . . . for self-protection from the requirement of obtaining a license to carry").

This straightforward reading of § 131L harmonizes its safe-storage provisions with the castle law and results in a "consistent body of law." *Charland*, 417 Mass. at 583. The District Court's erroneous reading, in contrast, creates unnecessary conflict between the two statutes and, as such, should be rejected. See *School Comm. of Newton*, 438 Mass. at 751.

**C. The Second Amendment right recognized by *Heller* is not absolute but subject to a broad range of reasonable state regulations.**

Furthermore, a requirement that stored firearms be secured in a locked container or equipped with a

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<sup>17</sup> In this respect too, § 131L differs from the District's safe-storage law where "the nonexistence of a self-defense exception [was] also suggested by the D.C. Court of Appeals' statement that the [safe-storage] statute forbids residents to use firearms to stop intruders." *Heller*, 128 S. Ct. at 2819 n.28 (citing *McIntosh v. Washington*, 395 A.2d 744, 755-56 (D.C. Ct. App. 1978)). Given the castle law, no similar prohibition exists under Massachusetts law.

tamper-resistant safety device, except when "carried by or under the control of the owner or other lawfully authorized user," does not impermissibly burden the Second Amendment right recognized by the Court in *Heller*. "Like most rights, the right secured by the Second Amendment is not unlimited." *Heller*, 128 S. Ct. at 2816; *id.* at 2799 ("Of course, the [historical Second Amendment] right was not unlimited, just as the First Amendment's right of free speech was not"). In *Heller*, the Supreme Court stressed that "[f]rom Blackstone through the 19th-century cases, commentators and courts routinely explained that the [Second Amendment] right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 2816. Prohibitions on carrying a concealed weapon are one example of the type of limitations commonly imposed on an individual's Second Amendment right. See *id.* at 2816-17 & n.26. Other examples include "longstanding prohibitions" on:

- "the possession of firearms by felons"
- "and the mentally ill,"
- "or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings,"
- "or laws imposing conditions and qualifications on the commercial sale of arms,"

- and laws "prohibiting the carrying of dangerous and unusual weapons[.]"

*Id.* at 2816-17. Moreover, the Supreme Court stressed that this list of "presumptively lawful regulatory measures" was illustrative only and by no means "exhaustive." *Id.* at 2817 n.26.

With regard to safe-storage laws, in particular, the dissenting justices in *Heller* observed that similar laws had been in effect in the founding era, including in Massachusetts.<sup>18</sup> *Heller*, 128 S. Ct. at 2848-2850 (Breyer, J., dissenting). The majority responded by stating that "[n]othing about" those laws "remotely burden[s] the right of self-defense as much as an absolute ban on handguns." *Id.* at 2819-20. Nor, according to the majority, did anything in *Heller's* "analysis suggest the invalidity of laws regulating the storage of firearms to prevent accidents," provided those laws do not preclude the use of a firearm for self-defense in the home. *Id.*

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<sup>18</sup> One respected historian has observed: "As long as there have been guns in America, there have been regulations." Saul Cornell, *The Ironic Second Amendment*, 1 Alb. Gov't L. Rev. 292, 301 (2008). Thus, safe-storage laws like § 131L are "hardly a modern development." *Id.*

**1. Section 131L is a "presumptively lawful" safety regulation.**

Section 131L is such a "presumptively lawful" safety regulation. It is intended to deter the "unauthorized use of firearms," which the Court has noted is a "significant problem." *Jupin*, 447 Mass. at 153. In 2006 alone, firearms resulted in 1 unintentional death, 98 suicides, and 105 homicides in Massachusetts. DPH, Registry of Vital Records and Statistics, *2006 Injury Fatalities* (Feb. 2008), available at [http://www.mass.gov/Eeohhs2/docs/dph/injury\\_surveillance/ma\\_residents\\_fatalities\\_summary\\_06.xls](http://www.mass.gov/Eeohhs2/docs/dph/injury_surveillance/ma_residents_fatalities_summary_06.xls). Some of those incidents involved guns that were not safely stored. Last year, for instance, an 8-year old boy in Boston was accidentally shot to death by his 7-year-old cousin. Jessica van Sack, *Mom and Bro Charged in Boy's Death*, *The Boston Herald*, Apr. 1, 2008, at 7. The 9mm semi-automatic pistol that the boys were "playing with" was kept in an unlocked drawer, 2½ feet off the ground, without any type of safety device. *Id.* Sadly, as recent headlines demonstrate, similar tragedies have taken place in communities across the country.<sup>19</sup>

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<sup>19</sup> See, e.g., *Toddler Dies of Gun Shot Wound*, Fox News 5 (Las Vegas), July 27, 2009, available at

The amici curiae brief submitted by the Brady Center to Prevent Handgun Violence et al. provides additional support, based on empirical data and scientific studies, for the conclusion that unsafe-firearm storage poses a grave societal risk. A 2002 study of unintentional firearm deaths, suicide, and homicide among 5-to-14 year olds indicates that this risk is perhaps most acute among children who gain access to unsecured firearms. See Matthew Miller, M.D. et al., *Availability and Unintentional Firearm Deaths, Suicides, and Homicides Among 5-14 Year Olds*, 52 J. Trauma 267-75 (2002). This study examined data from 1988 to 1997 to estimate the rate of violent

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<http://www.fox5vegas.com/news/20192350/detail.html> (2-year old Nevada girl shot by her 4-year old brother with gun left unsecured in their home); *Mich. Teen Charged After Police Say He Shot Cousin*, Associated Press, July 27, 2009, available at <http://www.chicacotribune.com/news/chi-ap-mi-cellphone-shooting,0,1422550.story> (Michigan teenager posing for a picture with a 9mm pistol accidentally shot his 16-year old cousin in the face, killing him); Beth Hundsdorfer, *Alton Dad Gets 15 Years After 4-Year Old Son Finds Gun, Shoots Brother*, Bellville News-Democrat, July 25, 2009, available at <http://www.bnd.com./news/local/story/857609/html> (2-year old Wisconsin boy shot in chest by his 4-year old brother with gun found in family bedroom); Robert Souza, *Girl Accidentally Wounded During Juvenile Gun Play*, San Leandro Times, July 14, 2009, available at [http://www.ebpublishing.com/\\*ws4d-db-column\(R\).html](http://www.ebpublishing.com/*ws4d-db-column(R).html) (California girl shot in bedroom when friend pointed small caliber handgun at her and pulled trigger thinking gun was not loaded).

death among 5-to-14 year olds with access to firearms. *Id.* It found that a disproportionately high number of 5-to-14 year olds died from suicide, homicide, and unintentional firearm deaths in states and regions where guns are prevalent. *Id.* Thus, the researchers concluded that a statistically significant association exists between gun availability and the rates of unintentional firearm deaths, homicides, and suicides.<sup>20</sup> *Id.* The American Academy of Pediatrics similarly has concluded that “[t]here is strong evidence attesting to the magnitude and nature of the threat that is posed [to children] by the prevalence

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<sup>20</sup> Indeed, one respected study reported that the presence of a firearm in the home increased the risk of suicide fivefold. Arthur L. Kellerman et al., *Suicide in the Home in Relation to Gun Ownership*, 327 N. Eng. J. Med. 467 (1992). A similar connection has been shown between the presence of firearm in the home and the increased risk of homicide by a family member or intimate. Arthur L. Kellerman et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 N. Eng. J. Med. 1084 (1993). This latter connection is confirmed by a recent study of Massachusetts intimate partner homicides between 2005 and 2007. See EOPSS, *Massachusetts Intimate Partner Homicide Review* (June 2009), [http://www.mass.gov/Eeops/docs/eops/Publications/070909\\_IP\\_homicides-2005\\_to\\_2007.pdf](http://www.mass.gov/Eeops/docs/eops/Publications/070909_IP_homicides-2005_to_2007.pdf). The EOPSS study revealed that a firearm was used in 34% of all intimate partner homicides, making it the most common weapon used by domestic abusers. *Id.* at 11.

of firearms, especially when stored unsafely.”<sup>21</sup>  
Robert H. DuRant et al., *Firearm Ownership and Storage Patterns Among Families with Children Who Receive Well-Child Care in Pediatric Offices*, 119 *Pediatrics* 1271, 1272 (June 2007).

At the same time, national studies of firearm-storage practices show that of the 11 million homes with children and firearms, 55% had 1 or more firearms in an unlocked place, and 43% had unlocked firearms (e.g., firearms not equipped with a trigger lock or other safety device). Mark A. Schuster et al., *Firearm Storage Patterns in U.S. Homes with Children*, 90 *Am. J. Pub. Health* 588, 590 (Apr. 2000). In addition, surveys of gun-owning families with children revealed that 40% to 95% of those families stored at least 1 gun unlocked, and 9% to 20% stored at least 1 gun loaded. DuRant, *Firearm Ownership and Storage Patterns*, 119 *Pediatrics* at 1272.

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<sup>21</sup> This is one reason why the Attorney General requires all handguns sold in the Commonwealth be accompanied by a warning stressing the importance of safe-storage. See 940 C.M.R. § 16.06(1); see also G.L. c. 140, § 123 (14th para.) (same).

**2. The Legislature enacted § 131L to prevent injuries and deaths resulting from unsafe firearm storage.**

Recognizing the societal danger associated with unsafe firearm storage, the Massachusetts Legislature enacted § 131L to prevent firearms from "reaching the hands of unauthorized users." *Jupin*, 447 Mass. at 154. By requiring all stored firearms be secured in a locked container or equipped with a tamper-resistant safety device, except when carried by or under the control of the owner or other lawfully authorized user, the Legislature sought to "prevent[] their use by persons not competent to use them." *Id.* at 153. Legislatures in 26 other states have enacted similar safe-storage laws. See Appendix B.

Safe-storage laws, like § 131L, promote public safety and impose no constitutionally-impermissible burden on a gun owner's right to use a firearm for self-defense in the home.<sup>22</sup> See *Planned Parenthood v.*

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<sup>22</sup> The Supreme Court declined to identify what constitutional standard would apply to future challenges to gun regulations, but its list of several presumptively lawful regulations strongly indicates that the strict scrutiny standard should not be applied. See *Heller*, 128 S. Ct. at 2821; see also *id.* at 2851 (Breyer, J. dissenting). Indeed, because the statute here is one of the "presumptively lawful" regulations identified in *Heller*, the statute easily passes muster under whatever standard of review the Supreme Court will eventually select.

*Casey*, 505 U.S. 833, 873 (1992) (“not every law which makes a right more difficult to exercise is, *ipso facto*, an infringement of that right”). The firearm need not be secured while in the owner’s or other authorized user’s control. And, even when required to be secured, the firearm can be made available for self-defense simply by removing it from the storage container or opening the locking device.<sup>23</sup> Thus, the burden imposed on gun owners is minimal, at most. *Cf. Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610, 1616 (2008) (requiring voters to present identification “does not qualify as a substantial burden on the right to vote”).

Moreover, studies show that laws requiring safe firearm storage are successful in preventing firearm deaths and suicides, particularly among children. See Daniel W. Webster & Marc Starnes, *Reexamining the Association Between Child Access Prevention Gun Laws and Unintentional Shooting Deaths of Children*, 106 *Pediatrics* 1466, 1468 (Dec. 2000) (“Keeping guns securely locked up and unloaded has the potential to

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<sup>23</sup> During oral argument in *Heller*, the District’s counsel stated that it took only 3 seconds to remove a trigger lock installed on a handgun. See *Heller*, No 07-290, Transcript of Oral Argument, 2008 WL 731297, \*83 (U.S. Mar. 18, 2008).

reduce the risk of both intentional and unintentional shootings by children and adolescents, and may reduce the availability of guns to criminals by reducing firearm thefts." ). In 1991, the United States General Accounting Office estimated that 8% of all accidental deaths caused by firearms could have been prevented had the firearms been equipped with a child-proof safety device, like a trigger lock, to prevent the trigger from accidentally being engaged. U.S. General Accounting Office, *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented*, GAO/PEMD-91-9, 17-19 (Mar. 1991). More recent studies confirm that safe-storage measures, including keeping firearms secured in a locked container or equipped with a tamper-resistant safety device as § 131L requires, significantly decrease the risk of suicide and unintentional firearm injury and death.<sup>24</sup>

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<sup>24</sup> See, e.g., David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 J. Am. Med. Assoc. 707, 711-13 (Feb. 2005) ("[s]afe storage practices, including keeping firearms stored unloaded, in a locked place, separate from ammunition, and/or secured with an extrinsic safety device, were shown to be protective for unintentional firearm shootings and suicide attempts among adolescents and children"); Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws and Youth Suicides*, 292 J. Am. Med. Assoc. 594, 596, 599 (Aug. 2004) (safe-gun

Data analyzing Massachusetts firearm-storage practices and firearm deaths bear this out. A 50-state survey of firearm-storage practices revealed that Massachusetts had the lowest prevalence on each of the following key risk indicators:

- lowest prevalence of adults with loaded household firearms (1.6% in Massachusetts, Hawaii, and New Jersey compared to a median of 7.0% nationally and a high of 19.2% in Alabama)
- lowest prevalence of adults with loaded and unlocked household firearms (0.4% in Massachusetts compared to a median of 4.2% nationally and a high of 12.7% in Alabama)
- lowest prevalence of loaded household firearms among adults with children and adolescents under 18 years old (1.0% in Massachusetts compared to a median of 5.3% nationally and a high of 13.4% in Alabama)
- lowest prevalence of loaded and unlocked household firearms among adults with children and adolescents under 18 years old (0.3% in Massachusetts compared to a median of 2.3% nationally and a high of 7.3% in Alabama).

Catherine A. Okoro, et al., *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings from the Behavioral Risk Factor Surveillance System, 2002*, 116 *Pediatrics* 370, 371-73 (Sept. 2005). In addition, Massachusetts had the second lowest rate of firearm deaths of all 50 states, according to 2006 mortality

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storage laws responsible for a 8.3% decrease in suicide rates among 14-17 year olds).

statistics compiled by the Centers for Disease Control and Prevention ("CDC").<sup>25</sup> See CDC's National Center for Injury Prevention and Control, 2006, *United States Firearm Deaths and Rates*, available at [http://webappa.cdc.gov/sasweb/ncipc/mortrate10\\_sy.html](http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html) (2006 report).

## VII. CONCLUSION

The Court should reverse the order dismissing the § 131L unlawful storage charge against Runyan, and remand this case to the District Court for trial. Settled precedent establishes that the Second Amendment is not applicable to the States; *Heller* did not overrule that precedent. Moreover, even if the Second Amendment were applicable to the States, § 131L does not offend the limited constitutional right recognized in *Heller*. Rather, it is one of many state gun regulations that *Heller* declared presumptively lawful.

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<sup>25</sup> Hawaii had the lowest firearm death rate in 2006 (2.58 deaths per 100,000 individuals). CDC, 2006, *United States Firearm Deaths and Rates per 100,000*, available at <http://webappa.cdc.gov/sasweb/ncipc/mortrate10sy.html>. Massachusetts's rate was the next lowest (3.28 deaths per 100,000 individuals). *Id.* The District of Columbia and Alabama were at the other end of the spectrum (22.89 deaths per 100,000 individuals in the District and 16.99 deaths per 100,000 individuals in Alabama). *Id.*

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**CERTIFICATION PURSUANT TO MASS. R. APP. P. 16(k)**

I, James J. Arguin, hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure.

\_\_\_\_\_  
James J. Arguin

**CERTIFICATE OF SERVICE**

I, James J. Arguin, hereby certify that I have this date caused to be served by first class mail, postage prepaid, 2 true and correct copies of the foregoing amicus brief on the following counsel of record:

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Signed under the pains and penalties of perjury  
this 15th day of September 2009.

\_\_\_\_\_  
James J. Arguin

## APPENDIX A

1. CCL Sesamee Gun Blok combination lock
2. Master Lock: cable key lock or trigger guard lock
3. Outer/Cease Fire trigger lock
4. Shot Lock Corp. keyed cable lock or trigger guard lock
5. Speed Release gun lock
6. Dominion group trigger lock
7. Remington trigger lock
8. Mossberg cable lock
9. American Firearms Council cable lock
10. Rocky Mountain Tool and Armory chamber-safe
11. Saf T Lock's magazine lock
12. Franzen trigger combination lock
13. Noble guard wall mount gun lock
14. Noble trigger lock
15. Noble double security cable
16. Central Specialties Trigger Lock Model 9311
17. Crown Trigger Lock
18. Miltex Inc. Trigger Lock
19. Concept Development Corp. / Law Lock key cuff trigger lock
20. Concept Development Corp. / Trigger block safety in conjunction with the Saf-T-Block combination lock
21. A. Rifkin Company Arcolock-7 keyed lock model
22. Armloc Magnum (handgun safety system) combination lock container
23. Franzen model 6.0 combination cable lock
24. Franzen keyed trigger lock
25. Concept Development Corp. Law Lok III, key cuff trigger lock
26. Bell Trigger Lock model B100KA
27. Bellock model #B300-8ka cable key lock
28. Bellock economy trigger lock model #B200-3
29. CCL Security Products model K-39 Trigger Blok (keyed)
30. CCL Security Products model CA12 Sesamee Cablelock (combination)
31. Palmer Security Products model/ series 5000, 5500, 6000, 7000, 8100, 9000, push button lock/ key systems
32. Steyer M-Series Integrated Limited Access Lock with Key
33. Armadillo Gun Trigger lock (keyed)
34. Master Lock: combination gunlock
35. Taurus International - hammer key lock
36. Mossberg Safe Systems Inc. Portable Electronic firearm safe
37. Life jacket by Mogul Company
38. Saf-T-Trigger
39. DAC Technologies Items: MTL, LHL, TVP, GL001, CL200, CL100
40. UNEX Keyed trigger lock and keyed cable lock
41. Alarm It w/cable lock
42. Smart Trigger lock with alarm
43. Maximum security cable lock
44. Regal keyed cable lock model SL14-4PTACA
45. Project HomeSafe Cable Lock
46. Omega Safety Systems Internal Chamber Lock
47. Project Child Safe Cable Lock w/Key
48. Regal keyed cable lock model DCSC-5-DTACA14
49. VisualLock (special Keyed lock)
50. CABLE LOCK (NAD Corporation, Worcester, MA)
51. CHILD GUARD (Child Guard LLC, Lancaster, PA)

## APPENDIX B

### States with Safe-Storage or Child Access Prevention Statutes

STATE	STATUTE
California	Cal. Penal Code §§ 12035-36
Colorado	Colo. Rev. Stat. § 18-12-108.7
Connecticut	Conn. Gen. Stat. §§ 29-37i, 52-571g, 53a-217a
Delaware	Del. Code Ann. tit. 11, §§ 603, 1456
Florida	Fla. Stat. Ann. § 790.174
Georgia	Ga. Code Ann. § 16-11-101.1
Hawaii	Haw. Rev. Stat. §§ 134-10.5, 707-714.5
Illinois	720 Ill. Comp. Stat. 5/24-9(a); 430 Ill. Comp. Stat. 65/4(c)
Indiana	Ind. Code § 35-47-10-7
Iowa	Iowa Code § 724.22
Kentucky	Ky. Rev. Stat. Ann. § 527.110
Maryland	Md. Code Ann., Crim. Law § 4-104
Minnesota	Minn. Stat. § 609.666
Mississippi	Miss. Code Ann. §§ 97-37-14, 97-37-15
Missouri	Mo. Rev. Stat. § 571.060.1(2)
Nevada	Nev. Rev. Stat. Ann. §§ 41.472, 202.300
New Hampshire	N.H. Rev. Stat. Ann. § 650-C:1
New Jersey	N.J. Stat. Ann. § 2C:58-15
North Carolina	N.C. Gen. Stat. § 14-315.1
Oklahoma	Okla. Stat. tit. 21, § 1273(B)
Rhode Island	R.I. Gen. Laws § 11-47-60.1
Tennessee	Tenn. Code Ann. §§ 39-17-1319, 39-17-1320
Texas	Tex. Penal Code Ann. § 46.13
Utah	Utah Code Ann. § 76-10-509.6
Virginia	Va. Code Ann. § 18.2-56.2
Wisconsin	Wis. Stat. § 948.55

**STATUTORY AND REGULATORY ADDENDUM**

**Statutes and Acts**

G.L. c. 140, § 123 .....	Add. 1
G.L. c. 140, § 129B .....	Add. 6
G.L. c. 140, § 129C .....	Add. 12
G.L. c. 140, § 131 .....	Add. 16
G.L. c. 140, § 131K .....	Add. 24
G.L. c. 140, § 131L.....	Add. 25
G.L. c. 269, § 10 .....	Add. 26
G.L. c. 278, § 8A.....	Add. 28
St. 1998, c. 180, § 47 .....	Add. 29
St. 1990, c. 511, § 2 .....	Add. 32
St. 1981, c. 696 .....	Add. 34
1998 House Doc. No. 5613 .....	Add. 35
1997 Senate Doc. No. 1985 .....	Add. 65

**Code of Massachusetts Regulations**

940 C.M.R. § 16.01 .....	Add. 74
940 C.M.R. § 16.02 .....	Add. 77
940 C.M.R. § 16.03 .....	Add. 78
940 C.M.R. § 16.04 .....	Add. 78
940 C.M.R. § 16.05 .....	Add. 79
940 C.M.R. § 16.06 .....	Add. 79
940 C.M.R. § 16.07 .....	Add. 80

## Chapter 140: Section 123. Conditions of licenses

Section 123. A license granted under section one hundred and twenty-two shall be expressed to be and shall be subject to the following conditions:— First, That the provisions in regard to the nature of the license and the building in which the business may be carried on under it shall be strictly adhered to. Second, That every licensee shall, before delivery of a firearm, rifle or shotgun, make or cause to be made a true, legible entry in a sales record book to be furnished by the executive director of the criminal history systems board and to be kept for that purpose, specifying the complete description of the firearm, rifle or shotgun, including the make, serial number, if any, type of firearm, rifle or shotgun, and designation as a large capacity weapon, if applicable, whether sold, rented or leased, the date of each sale, rental or lease, the license to carry firearms number or permit to purchase number and the identification card number in the case of a firearm or the identification card number or the license to carry firearms number in the case of a rifle or shotgun, the sex, residence and occupation of the purchaser, renter or lessee, and shall before delivery, as aforesaid, require the purchaser, renter or lessee personally to write in said sales record book his full name. Said book shall be open at all times to the inspection of the police. Third, That the license or a copy thereof, certified by the official issuing the same, shall be displayed on the premises in a position where it can easily be read. Fourth, That no firearm, rifle or shotgun, or machine gun shall be displayed in any outer window of said premises or in any other place where it can readily be seen from the outside. Fifth, That the licensee shall submit a record of all sales, rentals and leases forthwith at the time of such sale, rental or lease via electronic communication link to the executive director of the criminal history systems board. Sixth, That every firearm, rifle or shotgun shall be unloaded when delivered. Seventh, That no delivery of a firearm shall be made to any person not having a license to carry firearms issued under the provisions of section one hundred and thirty-one nor shall any delivery of a rifle or shotgun or ammunition be made to any minor nor to any person not having a license to carry firearms issued under the provisions of section one hundred and thirty-one or a firearm identification card issued under the provisions of section one hundred and twenty-nine B nor shall any large capacity firearm or large capacity feeding device therefor be delivered to any person not having a Class A license to carry firearms issued under section 131 nor shall any large capacity rifle or shotgun or large capacity feeding device therefor be delivered to any person not having a Class A or Class B license to carry firearms issued under said section 131; provided, however, that delivery of a firearm by a licensee to a person possessing a valid permit to purchase said firearm issued under the provisions of section one hundred and thirty-one A and a valid firearm identification card issued under section one hundred and twenty-nine B may be made by the licensee to the purchaser's residence or place of business, subject to the restrictions imposed upon such permits as provided under section 131A. Eighth, That no firearm shall be sold, rented or leased to a minor or a person who has not a permit then in force to purchase, rent or lease the same issued under section one hundred and thirty-

one A, and a firearm identification card issued under the provisions of section one hundred and twenty-nine B, or unless such person has a license to carry firearms issued under the provisions of section one hundred and thirty-one; nor shall any rifle or shotgun be sold, rented or leased to a person who has not a valid firearm identification card as provided for in section one hundred and twenty-nine B, or has a license to carry firearms as provided in section one hundred and thirty-one; that no large capacity firearm nor large capacity feeding device therefor shall be sold, rented, leased or transferred to any person not having (i) a Class A license to carry firearms issued under section 131 or (ii) a proper permit issued under section 131A and a firearm identification card issued under section 129B; that no large capacity rifle or shotgun nor large capacity feeding device therefor shall be sold to any person not having a Class A or Class B license to carry firearms issued under said section 131; and that no machine gun shall be sold, rented or leased to any person who has not a license to possess the same issued under section one hundred and thirty-one. Ninth, That upon the sale, rental or lease of a firearm, subject to a permit to purchase issued under the provisions of section one hundred and thirty-one A, the licensee under section one hundred and twenty-two shall take up such permit to purchase and shall endorse upon it the date and place of said sale, rental or lease, and shall transmit the same to the executive director of the criminal history systems board; and that upon the sale, rental or lease of a machine gun shall endorse upon the license to possess the same the date and place of said sale, rental or lease, and shall within seven days transmit a notice thereof to said executive director. In case of a sale under the provisions of section one hundred and thirty-one E the licensee under section one hundred and twenty-two shall write in the sales record book the number of the license to carry firearms issued the purchaser under the provisions of section one hundred and thirty-one, or the number of the firearm identification card issued the purchaser under the provisions of section one hundred and twenty-nine B, whichever is applicable under the provisions of condition Eighth of this section. Tenth, That this license shall be subject to forfeiture as provided in section one hundred and twenty-five for breach of any of its conditions, and that, if the licensee hereunder is convicted of a violation of any such conditions, this license shall thereupon become void. Eleventh, That the second, fifth, eighth and ninth conditions shall not apply to a gunsmith with regard to repair or remodeling or servicing of firearms, rifles or shotguns unless said gunsmith has manufactured a firearm, rifle or shotgun for the purchaser, but said gunsmith shall keep records of the work done by him together with the names and addresses of his customers. Such records shall be kept open for inspection by the police at all times. Twelfth, That any licensee shall keep records of each sale, rental or lease of a rifle or shotgun, specifying the description of said rifle or shotgun, together with the name and address of the purchaser, renter or lessee, and the date of such transaction. Thirteenth, That the current validity of any firearm identification card, license to carry firearms or permit to purchase, rent or lease firearms presented, and that the person presenting said card, license or permit is the lawful holder thereof, shall be verified by the licensee prior to any sale, rental or lease of a rifle, shotgun, firearm or large capacity feeding device; and, upon being presented with such card or license that

is expired, suspended or revoked, the licensee shall notify the licensing authority of the presentment of such expired, suspended or revoked card, license or permit; and further, the licensee may take possession of such card or license provided that, in such case, such licensee shall: (i) issue a receipt, in a form provided by the executive director of the criminal history systems board, to the holder thereof which shall state that the holder's card or license is expired, suspended or revoked, was taken by such licensee and forwarded to the licensing authority by whom it was issued and such receipt shall be valid for the date of issuance for the purpose of providing immunity from prosecution under section 10 of chapter 269 for unlawfully possessing a firearm, rifle or shotgun or large capacity weapon; (ii) notify the cardholder or licensee of his requirement to renew said card or license; and (iii) forward such expired card or license to the licensing authority forthwith; provided, however, that such licensee shall be immune from civil and criminal liability for good faith compliance with the provisions herein. Fourteenth, That the licensee shall conspicuously post at each purchase counter the following warning in bold type not less than one inch in height: "IT IS UNLAWFUL TO STORE OR KEEP A FIREARM, RIFLE, SHOTGUN OR MACHINE GUN IN ANY PLACE UNLESS THAT WEAPON IS EQUIPPED WITH A TAMPER-RESISTANT SAFETY DEVICE OR IS STORED OR KEPT IN A SECURELY LOCKED CONTAINER.", and that such licensee shall provide said warning, in writing, to the purchaser or transferee of any firearm, rifle, shotgun or machine gun in bold type not less than one-quarter inch in height. Fifteenth, That all licensees shall maintain a permanent place of business that is not a residence or dwelling wherein all transactions described in this section shall be conducted and wherein all records required to be kept under this section shall be so kept. Sixteenth, That no licensee shall sell, lease, rent, transfer or deliver or offer for sale, lease, rent, transfer or delivery to any person any assault weapon or large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Seventeenth, That any licensee from whom a rifle, shotgun, firearm or machine gun is lost or stolen shall report such loss or theft to the licensing authority and the executive director of the criminal history systems board forthwith. Such report shall include a complete description of the weapon, including the make, model, serial number and caliber and whether such weapon is a large capacity weapon. Eighteenth, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery any firearm, to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler and the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm has a frame, barrel, cylinder, slide or breechblock that is composed of: (i) any metal having a melting point of less than 900 degrees Fahrenheit; (ii) any metal having an ultimate tensile strength of less than 55,000 pounds per square inch; or (iii) any powdered metal having a density of less than 7.5 grams per cubic centimeter. This clause shall not apply to any make and model of firearm for which a sample of three firearms in new condition all pass the following test: Each of the three samples shall fire 600 rounds, stopping every 100 rounds to tighten any loose screws and to clean the gun if required by the

cleaning schedule in the user manual, and as needed to refill the empty magazine or cylinder to capacity before continuing. For any firearm that is loaded in a manner other than via a detachable magazine, the tester shall also pause every 50 rounds for ten minutes. The ammunition used shall be the type recommended by the firearm manufacturer in its user manual or, if none is recommended, any standard ammunition of the correct caliber in new condition. A firearm shall pass this test if it fires the first 20 rounds without a malfunction, fires the full 600 rounds with not more than six malfunctions and completes the test without any crack or breakage of an operating part of the firearm. The term "crack" or "breakage" shall not include a crack or breakage that does not increase the danger of injury to the user. For purposes of evaluating the results of this test, malfunction shall mean any failure to feed, chamber, fire, extract or eject a round or any failure to accept or eject a magazine or any other failure which prevents the firearm, without manual intervention beyond that needed for routine firing and periodic reloading, from firing the chambered round or moving a new round into position so that the firearm is capable of firing the new round properly. "Malfunction" shall not include a misfire caused by a faulty cartridge the primer of which fails to detonate when properly struck by the firearm's firing mechanism. Nineteenth, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearms wholesaler, and the sale, by its terms, prohibits such purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm is prone to accidental discharge which, for purposes of this clause, shall mean any make and model of firearm for which a sample of five firearms in new condition all undergo, and none discharge during, the following test: Each of the five sample firearms shall be: (a) test loaded; (b) set so that the firearm is in a condition such that pulling the trigger and taking any action that must simultaneously accompany the pulling of the trigger as part of the firing procedure would fire the handgun; and (c) dropped onto a solid slab of concrete from a height of one meter from each of the following positions: (i) normal firing position; (ii) upside down; (iii) on grip; (iv) on the muzzle; (v) on either side; and (vi) on the exposed hammer or striker or, if there is no exposed hammer or striker, the rearmost part of the firearm. If the firearm is designed so that its hammer or striker may be set in other positions, each sample firearm shall be tested as above with the hammer or striker in each such position but otherwise in such condition that pulling the trigger, and taking any action that must simultaneously accompany the pulling of the trigger as part of the firing procedure, would fire the firearm. Alternatively, the tester may use additional sample firearms of the same make and model, in a similar condition, for the test of each of these hammer striker settings. Twentieth, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery, any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler, and the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm is prone to: (i) firing more than once per pull of the trigger; or (ii)

explosion during firing. Twenty-first, That no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler and the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or consumer in the commonwealth if such firearm has a barrel less than three inches in length, unless the licensee discloses in writing, prior to the transaction, to the prospective buyer, lessee, deliverer or transferee the limitations of the accuracy of the particular make and model of the subject firearm, by disclosing the make and model's average group diameter test result at seven yards, average group diameter test result at 14 yards and average group diameter test result at 21 yards. For purposes of this clause, "average group diameter test result" shall mean the arithmetic mean of three separate trials, each performed as follows on a different sample firearm in new condition of the make and model at issue. Each firearm shall fire five rounds at a target from a set distance and the largest spread in inches between the centers of any of the holes made in a test target shall be measured and recorded. This procedure shall be repeated two more times on the firearm. The arithmetic mean of each of the three recorded results shall be deemed the result of the trial for that particular sample firearm. The ammunition used shall be the type recommended by the firearm manufacturer in its user manual or, if none is recommended, any standard ammunition of the correct caliber in new condition. No licensee shall sell any rifle or shotgun, contrary to the provisions of section one hundred and thirty or section 131E.

Clauses Eighteenth to Twenty-first, inclusive, of the first paragraph shall not apply to: (a) any firearm lawfully owned or possessed under a license issued under this chapter on or before October 21, 1998; or (b) any firearm designated by the secretary of public safety, with the advice of the gun control advisory board established pursuant to section 1311/2 of chapter 140, as a firearm solely designed and sold for formal target shooting competition. The secretary of public safety shall compile a list, on a bi-annual basis, of firearms designated as formal target shooting firearms in accordance with this paragraph. Such list shall be made available for distribution by the executive office of public safety.

No person licensed under the provisions of section 122 or section 122B shall sell, rent, lease, transfer or deliver any rifle, shotgun or firearm or ammunition or ammunition feeding device contrary to the provisions of section 130 or section 131E; and no such licensee shall sell, rent, lease, transfer or deliver any rifle, shotgun or firearm or ammunition or ammunition feeding device to any person who does not have in his possession the required firearm identification card or proof of exemption therefrom, license to carry firearms or permit to purchase, rent or lease firearms and who does not present such card, proof, license or permit to the licensee in person at the time of purchase, rental or lease. No person licensed under the provisions of section 122 or section 122B shall fill an order for such weapon, ammunition or ammunition feeding device that was received by mail, facsimile, telephone or other telecommunication unless such transaction or

transfer includes the in-person presentation of the required card, proof, license or permit as required herein prior to any sale, delivery or any form of transfer of possession of the subject weapon, ammunition or ammunition feeding device. Transactions between persons licensed under section 122 or between federally licensed dealers shall be exempt from the provisions of this paragraph.

The licensing authority shall enter, one time per calendar year, during regular business hours, the commercial premises owned or leased by any licensee, wherein such records required to be maintained under this section are stored or maintained, and inspect, in a reasonable manner, such records and inventory for the purpose of enforcing the provisions of this section. If such records and inventory contain evidence of violations of this section, the inspecting officer shall produce and take possession of copies of such records and, in the event that the licensee subject to inspection does not possess copying equipment, the inspecting officer shall arrange to have copied, in a reasonable time and manner, such records that contain evidence of such violations and the costs for such copying shall be assessed against the owner of such records. Licensees found to be in violation of this section shall be subject to the suspension or permanent revocation of such license issued under section 122 and to the provisions of section 128. Nothing herein shall prohibit the licensing authority or the department of state police from conducting such inspections pursuant to a valid search warrant issued by a court of competent jurisdiction.

Notwithstanding the provisions of this section, a person licensed under the provisions of section one hundred and twenty-two, or section one hundred and twenty-two B, may sell or transfer firearms, rifles, shotguns, machine guns or ammunition at any regular meeting of an incorporated collectors club or at a gun show open to the general public; provided, however, that all other provisions of this section are complied with and that such sale or transfer is in conformity with federal law or regulations applicable to the transfer or sale of firearms, rifles, shotguns, machine guns or ammunition, including the restrictions imposed upon firearm identification cards issued under section 129B, licenses to carry firearms issued under section 131 and permits to purchase, lease or rent firearms issued under section 131A.

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

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

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

(i) has ever, in a court of the commonwealth, been convicted or adjudicated a youthful offender or delinquent child, both as defined in section 52 of chapter 119, for the commission of: (a) a felony; (b) a misdemeanor punishable by imprisonment for more than two years; (c) a violent crime as defined in section 121; (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; or (e) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C including, but not limited to, a violation under said chapter 94C; provided, however, that except for the commission of a violent crime or a crime involving the trafficking of controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever is last occurring, not less than five years immediately preceding such application, such applicant's right or ability to possess a non-large capacity rifle or shotgun shall be deemed restored in the commonwealth with respect to such conviction or adjudication and such conviction or adjudication shall not disqualify such applicant for a firearm identification card;

(ii) has, in any other state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of: (a) a felony; (b) a misdemeanor punishable by imprisonment for more than two years; (c) a violent crime as defined in section 121; (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; or (e) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C; provided, however, that, except for the commission of a violent crime or a crime involving the trafficking of weapons or controlled substances, if the applicant has been so convicted or adjudicated or released from confinement, probation or parole supervision for such conviction or adjudication, whichever is last occurring, not less than five years immediately preceding such application, and such applicant's right or ability to possess a rifle or shotgun has been fully restored in the jurisdiction wherein the subject conviction or adjudication was entered, such conviction or adjudication shall not disqualify such applicant for a firearm identification card;

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

(iv) is or has been under treatment for or confinement for drug addiction or habitual drunkenness, unless such applicant is deemed to be cured of such

condition by a licensed physician, in which case he may make application for such card after the expiration of five years from the date of such confinement or treatment and upon presentation of an affidavit issued by such physician to the effect that such physician knows the applicant's history of treatment and that in such physician's opinion the applicant is deemed cured;

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

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

(vii) is an alien;

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

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

(2) Within seven days of the receipt of a completed application for a card, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall, within 30 days, advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a card; provided, however, that the taking of fingerprints shall not be required in issuing the renewal of a card if the renewal applicant's fingerprints are on file with the department of state police. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of mental health, department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. If the information available to the colonel does not indicate that the possession of a non-large capacity rifle or shotgun by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within such 30 day period.

(3) The licensing authority may not prescribe any other condition for the issuance of a firearm identification card and shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such card shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that

the possession of a rifle or shotgun by the applicant would be in violation of state or federal law.

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

(5) Any applicant or holder aggrieved by a denial, revocation or suspension of a firearm identification card, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receipt of notice of such denial, revocation or suspension or within 90 days after the expiration of the time limit in which the licensing authority is required to respond to the applicant, file a petition to obtain judicial review in the district court having jurisdiction in the city or town wherein the applicant filed for or was issued such card. A justice of such court, after a hearing, may direct that a card be issued or reinstated to the petitioner if the justice finds that such petitioner is not prohibited by law from possessing such card.

(6) A firearm identification card shall not entitle a holder thereof to possess: (i) a large capacity firearm or large capacity feeding device therefor, except under a Class A license issued to a shooting club as provided under section 131 or under the direct supervision of a holder of a Class A license issued to an individual under section 131 at an incorporated shooting club or licensed shooting range; or (ii) a non-large capacity firearm or large capacity rifle or shotgun or large capacity feeding device therefor, except under a Class A license issued to a shooting club as provided under section 131 or under the direct supervision of a holder of a Class A or Class B license issued to an individual under section 131 at an incorporated shooting club or licensed shooting range. A firearm identification card shall not entitle a holder thereof to possess any rifle or shotgun that is, or in such manner that is, otherwise prohibited by law. A firearm identification card shall be valid for the purpose of purchasing and possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate. Except as otherwise provided herein, a firearm identification card shall not be valid for the use, possession, ownership, transfer,

purchase, sale, lease, rental or transportation of a rifle or shotgun if such rifle or shotgun is a large capacity weapon as defined in section 121.

(7) A firearm identification card shall be in a standard form provided by the executive director of the criminal history systems board in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and shall contain an identification number, name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the cardholder and shall be marked "Firearm Identification Card". If a firearm identification card is issued for the sole purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate, such card shall clearly state that such card is valid for such limited purpose only. The application for such card shall be made in a standard form provided by the executive director of the criminal history systems board which shall require the applicant to affirmatively state, under the pains and penalties of perjury, that he is not disqualified on any of the grounds enumerated in clauses (i) to (ix), inclusive, from being issued such card.

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

(9) A firearm identification card shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issue, except that if the cardholder applied for renewal before the card expired, the card shall remain valid for a period of 90 days after the stated expiration date on the card, unless the application for renewal is denied. A card issued on February 29 shall expire on March 1. The executive director of the criminal history systems board shall send by first class mail to the holder of a firearm identification card, a notice of the expiration of the card not less than 90 days before its expiration, and shall enclose with the notice a form for the renewal of the card. The executive director of the criminal history systems board shall include in the notice all pertinent information about the penalties that may be imposed if the firearm identification card is not renewed within the 90 days before expiration.

(9A) Except as provided in clause (9B), the fee for an application for a firearm identification card shall be \$100, which shall be payable to the licensing authority and shall not be prorated or refunded in the case of revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be deposited in the General Fund; and \$25 of the fee shall be deposited in the Firearms Fingerprint Identity Verification Trust Fund. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly that portion of the firearm identification card application fee which is to be deposited

into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year.

(9B) The application fee for a firearm identification card issued for the sole purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate shall be \$25, which shall be payable to the licensing authority and shall not be prorated or refunded in the case of revocation or denial. The licensing authority shall retain 50 per cent of the fee and the remaining portion shall be deposited in the General Fund. Notwithstanding any general or special law to the contrary, licensing authorities shall deposit quarterly that portion of the firearm identification card application fee which is to be deposited into the General Fund, not later than January 1, April 1, July 1 and October 1 of each year. There shall be no application fee for the renewal of a firearm identification card issued under this clause.

A firearm identification card issued under this clause shall display, in clear and conspicuous language, that the card shall be valid only for the purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate.

(10) Any person over the age of 70 shall be exempt from the requirement of paying a renewal fee for a firearm identification card.

(11) A cardholder shall notify, in writing, the licensing authority that issued such card, the chief of police into whose jurisdiction such cardholder moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of such card.

(12) Notwithstanding the provisions of section 10 of chapter 269, any person in possession of a non-large capacity rifle or shotgun whose firearm identification card issued under this section is invalid for the sole reason that it has expired, meaning after 90 days beyond the stated expiration date on the card, but who shall not be disqualified from renewal upon application therefor under this section, shall be subject to a civil fine of not less than \$500 nor more than \$5,000 and the provisions of said section 10 of said chapter 269 shall not apply; provided, however, that the exemption from the provisions of said section 10 of said chapter 269 provided herein shall not apply if: (i) such firearm identification card has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such firearm identification card is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such firearm identification card has been denied. Any law enforcement officer who discovers a person to be in possession of a rifle or shotgun after such person's

firearm identification card has expired, meaning after 90 days beyond the stated expiration date on the card, or has been revoked or suspended solely for failure to give notice of a change of address shall confiscate any rifle or shotgun and such expired or suspended card then in possession, and such officer shall forward such card to the licensing authority by whom it was issued as soon as practicable. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended card within one year of such confiscation or such weapon may be otherwise disposed of in accordance with the provisions of section 129D. Pending the issuance of a renewed firearm identification card, a receipt for the fee paid, after five days following issuance, shall serve as a valid substitute and any rifle or shotgun so confiscated shall be returned, unless the applicant is disqualified. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131 or 131F.

(13) Upon issuance of a firearm identification card under this section, the licensing authority shall forward a copy of such approved application and card to the executive director of the criminal history systems board, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a firearm identification card under this section.

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

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

**Chapter 140: Section 129C. Application of Sec. 129B; ownership or possession of firearms or ammunition; transfers; report to executive director; exemptions; exhibiting license to carry, etc. on demand**

Section 129C. No person, other than a licensed dealer or one who has been issued a license to carry a pistol or revolver or an exempt person as hereinafter described, shall own or possess any firearm, rifle, shotgun or ammunition unless he has been issued a firearm identification card by the licensing authority pursuant to the provisions of section one hundred and twenty-nine B.

No person shall sell, give away, loan or otherwise transfer a rifle or shotgun or ammunition other than (a) by operation of law, or (b) to an exempt person as hereinafter described, or (c) to a licensed dealer, or (d) to a person who displays his firearm identification card, or license to carry a pistol or revolver.

A seller shall, within seven days, report all such transfers to the executive director of the criminal history systems board according to the provisions set forth in

section one hundred and twenty-eight A, and in the case of loss, theft or recovery of any firearm, rifle, shotgun or machine gun, a similar report shall be made forthwith to both the executive director of the criminal history systems board and the licensing authority in the city or town where the owner resides. Failure to so report shall be cause for suspension or permanent revocation of such person's firearm identification card or license to carry firearms, or both, and shall be punished by a fine of not less than \$200 nor more than \$1,000 for a first offense and by a fine of not less than \$1,000 nor more than \$5,000 for a second offense.

The provisions of this section shall not apply to the following exempted persons and uses:

- (a) Any device used exclusively for signalling or distress use and required or recommended by the United States Coast Guard or the Interstate Commerce Commission, or for the firing of stud cartridges, explosive rivets or similar industrial ammunition;
- (b) Federally licensed firearms manufacturers or wholesale dealers, or persons employed by them or by licensed dealers, or on their behalf, when possession of firearms, rifles or shotguns is necessary for manufacture, display, storage, transport, installation, inspection or testing;
- (c) To a person voluntarily surrendering a firearm, rifle or shotgun and ammunition therefor to a licensing authority, the colonel of the state police or his designee if prior written notice has been given by said person to the licensing authority or the colonel of the state police, stating the place and approximate time of said surrender;
- (d) The regular and ordinary transport of firearms, rifles or shotguns as merchandise by any common carrier;
- (e) Possession by retail customers for the purpose of firing at duly licensed target concessions at amusement parks, piers and similar locations, provided that the firearms, rifles or shotguns to be so used are firmly chained or affixed to the counter and that the proprietor is in possession of a firearm identification card or license to carry firearms;
- (f) Possession of rifles and shotguns and ammunition therefor by nonresident hunters with valid nonresident hunting licenses during hunting season;
- (g) Possession of rifles and shotguns and ammunition therefor by nonresidents while on a firing or shooting range;
- (h) Possession of rifles and shotguns and ammunition therefor by nonresidents traveling in or through the commonwealth, providing that any rifles or shotguns are unloaded and enclosed in a case;

- (i) Possession of rifles and shotguns by nonresidents while at a firearm showing or display organized by a regularly existing gun collectors' club or association;
- (j) Any new resident moving into the commonwealth, any resident of the commonwealth returning after having been absent from the commonwealth for not less than 180 consecutive days or any resident of the commonwealth upon being released from active service with any of the armed services of the United States with respect to any firearm, rifle or shotgun and any ammunition therefor then in his possession, for 60 days after such release, return or entry into the commonwealth;
- (k) Any person under the age of fifteen with respect to the use of a rifle or shotgun by such person in hunting or target shooting, provided that such use is otherwise permitted by law and is under the immediate supervision of a person holding a firearm identification card or a license to carry firearms, or a duly commissioned officer, noncommissioned officer or enlisted member of the United States Army, Navy, Marine Corps, Air Force or Coast Guard, or the National Guard or military service of the commonwealth or reserve components thereof, while in the performance of his duty;
- (l) The possession or utilization of any rifle or shotgun during the course of any television, movie, stage or other similar theatrical production, or by a professional photographer or writer for examination purposes in the pursuit of his profession, providing such possession or utilization is under the immediate supervision of a holder of a firearm identification card or a license to carry firearms;
- (m) The temporary holding, handling or firing of a firearm for examination, trial or instruction in the presence of a holder of a license to carry firearms, or the temporary holding, handling or firing of a rifle or shotgun for examination, trial or instruction in the presence of a holder of a firearm identification card, or where such holding, handling or firing is for a lawful purpose;
- (n) The transfer of a firearm, rifle or shotgun upon the death of an owner to his heir or legatee shall be subject to the provisions of this section, provided that said heir or legatee shall within one hundred and eighty days of such transfer, obtain a firearm identification card or a license to carry firearms if not otherwise an exempt person who is qualified to receive such or apply to the licensing authority for such further limited period as may be necessary for the disposition of such firearm, rifle or shotgun;
- (o) Persons in the military or other service of any state or of the United States, and police officers and other peace officers of any jurisdiction, in the performance of their official duty or when duly authorized to possess them;
- (p) Carrying or possession by residents or nonresidents of so-called black powder rifles, shotguns, and ammunition therefor as described in such paragraphs (A) and

(B) of the third paragraph of section 121, and the carrying or possession of conventional rifles, shotguns, and ammunition therefor by nonresidents who meet the requirements for such carrying or possession in the state in which they reside.

*[There is no clause (q).]*

(r) Possession by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the Internal Revenue Service and possession by the members of any such organization when on official parade duty or ceremonial occasions.

(s) Possession by federal, state and local historical societies, museums, and institutional collections open to the public, provided such firearms, rifles or shotguns are unloaded, properly housed and secured from unauthorized handling;

(t) the possession of firearms, rifles, shotguns, machine guns and ammunition, by banks or institutional lenders, or their agents, servants or employees, when the same are possessed as collateral for a secured commercial transaction or as a result of a default under a secured commercial transaction.

(u) Any nonresident who is eighteen years of age or older at the time of acquiring a rifle or shotgun from a licensed firearms dealer; provided, however, that such nonresident must hold a valid firearms license from his state of residence; provided, further, that the licensing requirements of such nonresident's state of residence are as stringent as the requirements of the commonwealth for a firearm identification card, as determined by the colonel of the state police who shall, annually, publish a list of those states whose requirements comply with the provisions of this clause.

Any person, exempted by clauses (o), (p) and (q), purchasing a rifle or shotgun or ammunition therefor shall submit to the seller such full and clear proof of identification, including shield number, serial number, military or governmental order or authorization, military or other official identification, other state firearms license, or proof of nonresidence, as may be applicable.

Nothing in this section shall permit the sale of rifles or shotguns or ammunition therefor to a minor under the age of eighteen in violation of section one hundred and thirty nor may any firearm be sold to a person under the age of 21 nor to any person who is not licensed to carry firearms under section one hundred and thirty-one unless he presents a valid firearm identification card and a permit to purchase issued under section one hundred and thirty-one A, or presents such permit to purchase and is a properly documented exempt person as hereinbefore described.

Nothing in this section shall permit the sale or transfer of any large capacity rifle or shotgun or large capacity feeding device therefor to any person not in possession of a Class A or Class B license to carry firearms issued under section

131, or of any large capacity firearm or large capacity feeding device therefor to any person not in possession of a Class A license to carry firearms issued under section 131.

The possession of a firearm identification card issued under section one hundred and twenty-nine B shall not entitle any person to carry a firearm in violation of section ten of chapter two hundred and sixty-nine and, the possession of a firearm identification card issued under section 129B shall not entitle any person to possess any large capacity rifle or shotgun or large capacity feeding device therefor in violation of subsection (m) of said section 10 of said chapter 269.

Any person who, while not being within the limits of his own property or residence, or such person whose property or residence is under lawful search, and who is not exempt under this section, shall on demand of a police officer or other law enforcement officer, exhibit his license to carry firearms, or his firearm identification card or receipt for fee paid for such card, or, after January first, nineteen hundred and seventy, exhibit a valid hunting license issued to him which shall bear the number officially inscribed of such license to carry or card if any. Upon failure to do so such person may be required to surrender to such officer said firearm, rifle or shotgun which shall be taken into custody as under the provisions of section one hundred and twenty-nine D, except that such firearm, rifle or shotgun shall be returned forthwith upon presentation within thirty days of said license to carry firearms, firearm identification card or receipt for fee paid for such card or hunting license as hereinbefore described. Any person subject to the conditions of this paragraph may, even though no firearm, rifle or shotgun was surrendered, be required to produce within thirty days said license to carry firearms, firearm identification card or receipt for fee paid for such card, or said hunting license, failing which the conditions of section one hundred and twenty-nine D will apply. Nothing in this section shall prevent any person from being prosecuted for any violation of this chapter.

**Chapter 140: Section 131. Licenses to carry firearms; Class A and B; conditions and restrictions**

Section 131. All licenses to carry firearms shall be designated Class A or Class B, and the issuance and possession of any such license shall be subject to the following conditions and restrictions:

(a) A Class A license shall entitle a holder thereof to purchase, rent, lease, borrow, possess and carry: (i) firearms, including large capacity firearms, and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of firearms as the licensing authority deems proper; and (ii) rifles and shotguns, including large capacity weapons, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as

it deems proper. A violation of a restriction imposed by the licensing authority under the provisions of this paragraph shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that the provisions of section 10 of chapter 269 shall not apply to such violation.

The colonel of state police may, after an investigation, grant a Class A license to a club or facility with an on-site shooting range or gallery, which club is incorporated under the laws of the commonwealth for the possession, storage and use of large capacity weapons, ammunition therefor and large capacity feeding devices for use with such weapons on the premises of such club; provided, however, that not less than one shareholder of such club shall be qualified and suitable to be issued such license; and provided further, that such large capacity weapons and ammunition feeding devices may be used under such Class A club license only by such members that possess a valid firearm identification card issued under section 129B or a valid Class A or Class B license to carry firearms, or by such other persons that the club permits while under the direct supervision of a certified firearms safety instructor or club member who, in the case of a large capacity firearm, possesses a valid Class A license to carry firearms or, in the case of a large capacity rifle or shotgun, possesses a valid Class A or Class B license to carry firearms. Such club shall not permit shooting at targets that depict human figures, human effigies, human silhouettes or any human images thereof, except by public safety personnel performing in line with their official duties.

No large capacity weapon or large capacity feeding device shall be removed from the premises except for the purposes of: (i) transferring such firearm or feeding device to a licensed dealer; (ii) transporting such firearm or feeding device to a licensed gunsmith for repair; (iii) target, trap or skeet shooting on the premises of another club incorporated under the laws of the commonwealth and for transporting thereto; (iv) attending an exhibition or educational project or event that is sponsored by, conducted under the supervision of or approved by a public law enforcement agency or a nationally or state recognized entity that promotes proficiency in or education about semiautomatic weapons and for transporting thereto and therefrom; (v) hunting in accordance with the provisions of chapter 131; or (vi) surrendering such firearm or feeding device under the provisions of section 129D. Any large capacity weapon or large capacity feeding device kept on the premises of a lawfully incorporated shooting club shall, when not in use, be secured in a locked container, and shall be unloaded during any lawful transport. The clerk or other corporate officer of such club shall annually file a report with the colonel of state police and the executive director of the criminal history systems board listing all large capacity weapons and large capacity feeding devices owned or possessed under such license. The colonel of state police or his designee, shall have the right to inspect all firearms owned or possessed by such club upon request during regular business hours and said colonel may revoke or suspend a club license for a violation of any provision of

this chapter or chapter 269 relative to the ownership, use or possession of large capacity weapons or large capacity feeding devices.

(b) A Class B license shall entitle a holder thereof to purchase, rent, lease, borrow, possess and carry: (i) non-large capacity firearms and feeding devices and ammunition therefor, for all lawful purposes, subject to such restrictions relative to the possession, use or carrying of such firearm as the licensing authority deems proper; provided, however, that a Class B license shall not entitle the holder thereof to carry or possess a loaded firearm in a concealed manner in any public way or place; and provided further, that a Class B license shall not entitle the holder thereof to possess a large capacity firearm, except under a Class A club license issued under this section or under the direct supervision of a holder of a valid Class A license at an incorporated shooting club or licensed shooting range; and (ii) rifles and shotguns, including large capacity rifles and shotguns, and feeding devices and ammunition therefor, for all lawful purposes; provided, however, that the licensing authority may impose such restrictions relative to the possession, use or carrying of large capacity rifles and shotguns as he deems proper. A violation of a restriction provided under this paragraph, or a restriction imposed by the licensing authority under the provisions of this paragraph, shall be cause for suspension or revocation and shall, unless otherwise provided, be punished by a fine of not less than \$1,000 nor more than \$10,000; provided, however, that the provisions of section 10 of chapter 269 shall not apply to such violation.

A Class B license shall not be a valid license for the purpose of complying with any provision under this chapter governing the purchase, sale, lease, rental or transfer of any weapon or ammunition feeding device if such weapon is a large capacity firearm or if such ammunition feeding device is a large capacity feeding device for use with a large capacity firearm, both as defined in section 121.

(c) Either a Class A or Class B license shall be valid for the purpose of owning, possessing, purchasing and transferring non-large capacity rifles and shotguns, and for purchasing and possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate, consistent with the entitlements conferred by a firearm identification card issued under section 129B.

*[ Introductory paragraph of paragraph (d) effective until October 29, 2008. For text effective October 29, 2008, see below.]*

(d) Any person residing or having a place of business within the jurisdiction of the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to such licensing authority or the colonel of state police, an application for a Class A or Class B license to carry firearms, or renewal of the same, which such licensing authority or said colonel may issue if it appears that the applicant is a suitable person to be issued

such license, and that the applicant has good reason to fear injury to his person or property, or for any other reason, including the carrying of firearms for use in sport or target practice only, subject to such restrictions expressed or authorized under this section, unless the applicant:

*[ Introductory paragraph of paragraph (d) as amended by 2008, 224 effective October 29, 2008. For text effective until October 29, 2008, see above.]*

(d) Any person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to such licensing authority or the colonel of state police, an application for a Class A or Class B license to carry firearms, or renewal of the same, which such licensing authority or said colonel may issue if it appears that the applicant is a suitable person to be issued such license, and that the applicant has good reason to fear injury to his person or property, or for any other reason, including the carrying of firearms for use in sport or target practice only, subject to such restrictions expressed or authorized under this section, unless the applicant:

(i) has, in any state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (a) a felony; (b) a misdemeanor punishable by imprisonment for more than two years; (c) a violent crime as defined in section 121; (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; or (e) a violation of any law regulating the use, possession or sale of controlled substances as defined in section 1 of chapter 94C;

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

(iii) is or has been under treatment for or confinement for drug addiction or habitual drunkenness, unless such applicant is deemed to be cured of such condition by a licensed physician, and such applicant may make application for such license after the expiration of five years from the date of such confinement or treatment and upon presentment of an affidavit issued by such physician stating that such physician knows the applicant's history of treatment and that in such physician's opinion the applicant is deemed cured;

(iv) is at the time of the application less than 21 years of age;

(v) is an alien;

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

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

(e) Within seven days of the receipt of a completed application for a license to carry or possess firearms, or renewal of same, the licensing authority shall forward one copy of the application and one copy of the applicant's fingerprints to the colonel of state police, who shall within 30 days advise the licensing authority, in writing, of any disqualifying criminal record of the applicant arising from within or without the commonwealth and whether there is reason to believe that the applicant is disqualified for any of the foregoing reasons from possessing a license to carry or possess firearms. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files including, but not limited to, the National Instant Criminal Background Check System. The colonel shall inquire of the commissioner of the department of mental health relative to whether the applicant is disqualified from being so licensed. If the information available to the colonel does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law, he shall certify such fact, in writing, to the licensing authority within said 30 day period.

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

The licensing authority shall, within 40 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing; provided, however, that no such license shall be issued unless the colonel has certified, in writing, that the information available to him does not indicate that the possession of a firearm or large capacity firearm by the applicant would be in violation of state or federal law.

(f) A license issued under this section shall be revoked or suspended by the licensing authority, or his designee, upon the occurrence of any event that would have disqualified the holder from being issued such license or from having such license renewed. A license may be revoked or suspended by the licensing authority if it appears that the holder is no longer a suitable person to possess such license. Any revocation or suspension of a license shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of such license and the person whose license is so revoked or suspended shall take all actions required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the executive director of the criminal history systems board and the commissioner of probation and shall be included in the criminal justice information system. A revoked or suspended license may be reinstated only upon the termination of all disqualifying conditions, if any.

Any applicant or holder aggrieved by a denial, revocation or suspension of a license, unless a hearing has previously been held pursuant to chapter 209A, may, within either 90 days after receiving notice of such denial, revocation or suspension or within 90 days after the expiration of the time limit during which the licensing authority is required to respond to the applicant, file a petition to obtain judicial review in the district court having jurisdiction in the city or town wherein the applicant filed for, or was issued, such license. A justice of such court, after a hearing, may direct that a license be issued or reinstated to the petitioner if such justice finds that there was no reasonable ground for denying, suspending or revoking such license and that the petitioner is not prohibited by law from possessing same.

(g) A license shall be in a standard form provided by the executive director of the criminal history systems board in a size and shape equivalent to that of a license to operate motor vehicles issued by the registry of motor vehicles pursuant to section 8 of chapter 90 and shall contain a license number which shall clearly indicate whether such number identifies a Class A or Class B license, the name, address, photograph, fingerprint, place and date of birth, height, weight, hair color, eye color and signature of the licensee. Such license shall be marked "License to Carry Firearms" and shall clearly indicate whether the license is Class A or Class B. The application for such license shall be made in a standard form provided by the executive director of the criminal history systems board, which form shall require the applicant to affirmatively state under the pains and penalties of perjury that such applicant is not disqualified on any of the grounds enumerated above from being issued such license.

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

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

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

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

(2) No license to carry shall be required for the possession of an unloaded large capacity rifle or shotgun or an unloaded feeding device therefor by a veteran's organization chartered by the Congress of the United States, chartered by the commonwealth or recognized as a nonprofit tax-exempt organization by the

Internal Revenue Service, or by the members of any such organization when on official parade duty or during ceremonial occasions. For purposes of this subparagraph, an "unloaded large capacity rifle or shotgun" and an "unloaded feeding device therefor" shall include any large capacity rifle, shotgun or feeding device therefor loaded with a blank cartridge or blank cartridges, so-called, which contain no projectile within such blank or blanks or within the bore or chamber of such large capacity rifle or shotgun.

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

(l) The executive director of the criminal history systems board shall send by first class mail to the holder of each such license to carry firearms, a notice of the expiration of such license not less than 90 days prior to such expiration and shall enclose therein a form for the renewal of such license. The taking of fingerprints shall not be required in issuing the renewal of a license if the renewal applicant's fingerprints are on file with the department of the state police. Any licensee shall notify, in writing, the licensing authority who issued said license, the chief of police into whose jurisdiction the licensee moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence. Failure to so notify shall be cause for revocation or suspension of said license.

(m) Notwithstanding the provisions of section 10 of chapter 269, any person in possession of a firearm, rifle or shotgun whose license issued under this section is invalid for the sole reason that it has expired, meaning after 90 days beyond the stated expiration date on the license, but who shall not be disqualified from renewal upon application therefor under this section, shall be subject to a civil fine of not less than \$500 nor more than \$5,000 and the provisions of section 10 of chapter 269 shall not apply; provided, however, that the exemption from the provisions of said section 10 of said chapter 269 provided herein shall not apply if: (i) such license has been revoked or suspended, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; (ii) revocation or suspension of such license is pending, unless such revocation or suspension was caused by failure to give notice of a change of address as required under this section; or (iii) an application for renewal of such license has been denied. Any law enforcement officer who discovers a person to be in possession of a firearm, rifle or shotgun after such person's license has expired, meaning after 90 days beyond the stated expiration date on the license, has been revoked or suspended, solely for failure to give notice of a change of address, shall confiscate such firearm, rifle or shotgun and the expired or suspended license then in possession and such officer, shall forward such license to the licensing authority by whom it was issued as soon as practicable. The officer shall, at the time of confiscation, provide to the person whose firearm, rifle

or shotgun has been confiscated, a written inventory and receipt for all firearms, rifles or shotguns confiscated and the officer and his employer shall exercise due care in the handling, holding and storage of these items. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended license within one year of such confiscation or may be otherwise disposed of in accordance with the provisions of section 129D. The provisions of this paragraph shall not apply if such person has a valid license to carry firearms issued under section 131F.

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

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

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

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

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

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

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

**Chapter 140: Section 131K. Firearms or large capacity weapons without safety devices; liability**

Section 131K. Any firearm or large capacity weapon, both as defined in section 121, sold within the commonwealth without a safety device designed to prevent the discharge of such weapon by unauthorized users and approved by the colonel of state police including, but not limited to, mechanical locks or devices designed to recognize and authorize, or otherwise allow the firearm to be discharged only by its owner or authorized user, by solenoid use-limitation devices, key activated or combination trigger or handle locks, radio frequency tags, automated

fingerprint identification systems or voice recognition, provided, that such device is commercially available, shall be defective and the sale of such a weapon shall constitute a breach of warranty under section 2-314 of chapter 106 and an unfair or deceptive trade act or practice under section 2 of chapter 93A. Any entity responsible for the manufacture, importation or sale as an inventory item or consumer good, both as defined in section 9-102 of chapter 106, of such a weapon that does not include or incorporate such a device shall be individually and jointly liable to any person who sustains personal injury or property damage resulting from the failure to include or incorporate such a device. If death results from such personal injury, such entities shall be liable in an amount including, but not limited to, that provided under chapter 229. Contributory or comparative negligence shall not be valid defenses to an action brought under this section in conjunction with section 2 of chapter 93A or section 2-314 of chapter 106 or both; provided, however, that nothing herein shall prohibit such liable parties from maintaining an action for indemnification or contribution against each other or against the lawful owner or other authorized user of said weapon. Any disclaimer, limit or waiver of the liability provided under this section shall be void.

No entity responsible for the manufacture, importation or sale of such a weapon shall be liable to any person for injuries caused by the discharge of such weapon that does not include or incorporate a safety device as required under this section if such injuries were: (i) self-inflicted, either intentionally or unintentionally, unless such injuries were self-inflicted by a person less than 18 years of age; (ii) inflicted by the lawful owner or other authorized user of said weapon; (iii) inflicted by any person in the lawful exercise of self-defense; or (iv) inflicted upon a co-conspirator in the commission of a crime.

This section shall not apply to any weapon distributed to an officer of any law enforcement agency or any member of the armed forces of the United States or the organized militia of the commonwealth; provided, however, that such person is authorized to acquire, possess or carry such a weapon for the lawful performance of his official duties; and provided further, that any such weapon so distributed is distributed solely for use in connection with such duties. This section shall not apply to any firearm manufactured in or prior to the year 1899, or to any replica of such a firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

**Chapter 140: Section 131L. Weapons stored or kept by owner; inoperable by any person other than owner or lawfully authorized user; punishment**

Section 131L. (a) It shall be unlawful to store or keep any firearm, rifle or shotgun including, but not limited to, large capacity weapons, or machine gun in any place unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed

stored or kept if carried by or under the control of the owner or other lawfully authorized user.

(b) A violation of this section shall be punished, in the case of a firearm, rifle or shotgun that is not a large capacity weapon, by a fine of not less than \$500 nor more than \$5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment, and in the case of a large capacity weapon or machine gun, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment.

(c) A violation of this section shall be punished, in the case of a rifle or shotgun that is not a large capacity weapon and such weapon was stored or kept in a place where a person under the age of 18 who does not possess a valid firearm identification card issued under section 129B may have access without committing an unforeseeable trespass, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment.

(d) A violation of this section shall be punished, in the case of a rifle or shotgun that is a large capacity weapon, firearm or machine gun was stored or kept in a place where a person under the age of 18 may have access, without committing an unforeseeable trespass, by a fine of not less than \$5,000 nor more than \$10,000 or by imprisonment for not less than two and one-half years, nor more than ten years, or by both such fine and imprisonment.

(e) A violation of the provisions of this section shall be evidence of wanton or reckless conduct in any criminal or civil proceeding if a person under the age of 18 who was not a trespasser or was a foreseeable trespasser acquired access to a weapon, unless such person possessed a valid firearm identification card issued under section 129B and was permitted by law to possess such weapon, and such access results in the personal injury to or the death of any person.

(f) This section shall not apply to the storage or keeping of any firearm, rifle or shotgun with matchlock, flintlock, percussion cap or similar type of ignition system manufactured in or prior to the year 1899, or to any replica of any such firearm, rifle or shotgun if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

**Chapter 269: Section 10. Carrying dangerous weapons; possession of machine gun or sawed-off shotguns; possession of large capacity weapon or large capacity feeding device; punishment**

Section 10. (a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm,

loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

- (1) being present in or on his residence or place of business; or
- (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or
- (3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or
- (4) having complied with the provisions of sections one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or
- (5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; and whoever knowingly has in his possession; or knowingly has under control in a vehicle; a rifle or shotgun, loaded or unloaded, without either:

- (1) being present in or on his residence or place of business; or
- (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or
- (3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or
- (4) having in effect a firearms identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or
- (5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns; or

(6) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years, or for not less than 18 months nor more than two and one-half years in a jail or house of correction. The sentence imposed on such person shall not be reduced to less than 18 months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 18 months of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for

the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file.

No person having in effect a license to carry firearms for any purpose, issued under section one hundred and thirty-one or section one hundred and thirty-one F of chapter one hundred and forty shall be deemed to be in violation of this section.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person seventeen years of age or older, charged with a violation of this subsection, or to any child between ages fourteen and seventeen so charged, if the court is of the opinion that the interests of the public require that he should be tried as an adult for such offense instead of being dealt with as a child.

The provisions of this subsection shall not affect the licensing requirements of section one hundred and twenty-nine C of chapter one hundred and forty which require every person not otherwise duly licensed or exempted to have been issued a firearms identification card in order to possess a firearm, rifle or shotgun in his residence or place of business.

**Chapter 278: Section 8A. Killing or injuring a person unlawfully in a dwelling; defense**

Section 8A. In the prosecution of a person who is an occupant of a dwelling charged with killing or injuring one who was unlawfully in said dwelling, it shall be a defense that the occupant was in his dwelling at the time of the offense and that he acted in the reasonable belief that the person unlawfully in said dwelling was about to inflict great bodily injury or death upon said occupant or upon another person lawfully in said dwelling, and that said occupant used reasonable means to defend himself or such other person lawfully in said dwelling. There shall be no duty on said occupant to retreat from such person unlawfully in said dwelling.

St. 1998, ch. 180, § 47

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under section 131A; and provided further, that an alien permit to possess a rifle or shotgun shall not be valid for the purpose of purchasing firearms or ammunition or ammunition feeding devices therefor; and provided further, that no firearm or ammunition or ammunition feeding device therefor shall be sold to any person less than 21 years of age.

SECTION 46. Section 131F of said chapter 140, as so appearing, is hereby amended by striking out the first to fourth sentences, inclusive, and inserting in place thereof the following words:-

A Class A or Class B temporary license to carry firearms or feeding devices or ammunition therefor, within the commonwealth, may be issued by the colonel of state police, or persons authorized by him, to a nonresident or any person not falling within the jurisdiction of a local licensing authority or to an alien that resides outside the commonwealth for purposes of firearms competition and subject to such terms and conditions as said colonel may deem proper; provided, however, that no license shall be issued to a person who:

- (i) has, in any state or federal jurisdiction, been convicted or adjudicated a youthful offender or delinquent child for the commission of (a) a felony; (b) a misdemeanor punishable by imprisonment for more than two years; (c) a violent crime as defined in section 121; (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; or (e) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C;
- (ii) has been confined to any hospital or institution for mental illness, unless the applicant submits with his application an affidavit of a registered physician attesting that such physician is familiar with the applicant's mental illness and that in such physician's opinion the applicant is not disabled by such an illness in a manner that should prevent such applicant from possessing a firearm;
- (iii) is or has been under treatment for or confinement for drug addiction or habitual drunkenness, unless such applicant is deemed to be cured of such condition by a licensed physician, and such applicant may make application for said license after the expiration of an five years from the date of such confinement or treatment and upon presentation of an affidavit issued by such physician stating that such physician knows the applicant's history of treatment and that in such physician's opinion the applicant is deemed cured;
- (iv) is currently subject to: (A) an order for suspension or surrender issued pursuant to section 3B or 3C of chapter 209A or a similar order issued by another jurisdiction; or (B) a permanent or temporary protection order issued pursuant to chapter 209A or a similar order issued by another jurisdiction; or
- (v) is currently the subject of an outstanding arrest warrant in any state or federal jurisdiction.

Such license shall be valid for a period of one year but the colonel may renew such license, if in his discretion, such renewal is necessary.

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The colonel may also issue such license, subject to such terms and conditions as he deems proper, to any resident of the commonwealth for the purposes of sports competition.

A temporary license issued under this section shall be marked "Temporary License to Carry Firearms", shall clearly indicate whether it is Class A or Class B and shall not be used to purchase firearms in the commonwealth as provided under section 131E. Neither a large capacity firearm nor large capacity feeding device therefor may be carried unless such person has been issued a Class A license; provided, however, that the colonel may permit a Class A or Class B licensee to possess large capacity rifles or shotguns or both, and such entitlement shall be clearly indicated on such license. The fee for such license shall be \$50, which fee shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial; provided, however, that such fee shall be deposited in the Firearms Record Keeping Fund, established under section 25S of chapter 29.

SECTION 47. Said chapter 140 is hereby further amended by inserting after section 131J the following six sections:-

Section 131K. Any firearm or large capacity weapon, both as defined in section 121, sold within the commonwealth without a safety device designed to prevent the discharge of such weapon by unauthorized users and approved by the colonel of state police including, but not limited to, mechanical locks or devices designed to recognize and authorize, or otherwise allow the firearm to be discharged only by its owner or authorized user, by solenoid use-limitation devices, key activated or combination trigger or handle locks, radio frequency tags, automated fingerprint identification systems or voice recognition, provided, that such device is commercially available, shall be defective and the sale of such a weapon shall constitute a breach of warranty under section 2-314 of chapter 106 and an unfair or deceptive trade act or practice under section 2 of chapter 93A. Any entity responsible for the manufacture, importation or sale as an inventory item or consumer good, both as defined in section 9-109 of chapter 106, of such a weapon that does not include or incorporate such a device shall be individually and jointly liable to any person who sustains personal injury or property damage resulting from the failure to include or incorporate such a device. If death results from such personal injury, such entities shall be liable in an amount including, but not limited to, that provided under chapter 229. Contributory or comparative negligence shall not be valid defenses to an action brought under this section in conjunction with section 2 of chapter 93A or section 2-314 of chapter 106 or both; provided, however, that nothing herein shall prohibit such liable parties from maintaining an action for indemnification or contribution against each other or against the lawful owner or other authorized user of said weapon. Any disclaimer, limit or waiver of the liability provided under this section shall be void.

No entity responsible for the manufacture, importation or sale of such a weapon shall be liable to any person for injuries caused by the discharge of such weapon that does not include or incorporate a safety device as required under this section if such injuries were: (i) self-inflicted, either intentionally or unintentionally, unless such injuries were self-inflicted

by a person less than 18 years of age; (ii) inflicted by the lawful owner or other authorized user of said weapon; (iii) inflicted by any person in the lawful exercise of self-defense; or (iv) inflicted upon a co-conspirator in the commission of a crime.

This section shall not apply to any weapon distributed to an officer of any law enforcement agency or any member of the armed forces of the United States or the organized militia of the commonwealth; provided, however, that such person is authorized to acquire, possess or carry such a weapon for the lawful performance of his official duties; and provided further, that any such weapon so distributed is distributed solely for use in connection with such duties.

Section 131L. (a) It shall be unlawful to store or keep any firearm, rifle or shotgun including, but not limited to, large capacity weapons, or machine gun in any place unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user.

(b) A violation of this section shall be punished, in the case of a firearm, rifle or shotgun that is not a large capacity weapon, by a fine of not less than \$500 nor more than \$5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment, and in the case of a large capacity weapon or machine gun, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment.

(c) A violation of this section shall be punished, in the case of a rifle or shotgun that is not a large capacity weapon and such weapon was stored or kept in a place where a person under the age of 18 who does not possess a valid firearm identification card issued under section 129B may have access without committing an unforseeable trespass, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment.

(d) A violation of this section shall be punished, in the case of a rifle or shotgun that is a large capacity weapon, firearm or machine gun was stored or kept in a place where a person under the age of 18 may have access, without committing an unforseeable trespass, by a fine of not less than \$5,000 nor more than \$10,000 or by imprisonment for not less than two and one-half years, nor more than ten years, or by both such fine and imprisonment.

(e) A violation of the provisions of this section shall be evidence of wanton or reckless conduct in any criminal or civil proceeding if a person under the age of 18 who was not a trespasser or was a foreseeable trespasser acquired access to a weapon, unless such person possessed a valid firearm identification card issued under section 129B and was permitted by law to possess such weapon, and such access results in the personal injury to or the death of any person.

Section 131M. No person shall sell, offer for sale, transfer or possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on Sep-

tember 13, 1994. Whoever not being licensed under the provisions of section 122 violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment, and for a second offense, by a fine of not less than \$5,000 nor more than \$15,000 or by imprisonment for not less than five years nor more than 15 years, or by both such fine and imprisonment.

The provisions of this section shall not apply to: (i) the possession by a law enforcement officer for purposes of law enforcement; or (ii) the possession by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving such a weapon or feeding device from such agency upon retirement.

Section 131N. No person shall sell, offer for sale, transfer or possess any weapon, capable of discharging a bullet or shot, that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk-through metal detectors. Whoever violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment, and for a second offense, by a fine of not less than \$5,000 nor more than \$15,000 or by imprisonment for not less than five years nor more than 15 years, or by both such fine and imprisonment.

Section 131O. Notwithstanding any general or special law, rule or regulation to the contrary, the colonel of state police, in conjunction with the secretary of the executive office of public safety, shall promulgate rules and regulations implementing a statewide firearms surrender program. In conjunction with this program only, any citizen of the commonwealth who complies with the policies set forth by the colonel shall not be asked for identification and shall be immune from prosecution for possession of such firearm; provided, however, that nothing herein shall prohibit the prosecution of any person for the unlawful possession of a firearm who is not in compliance with the conditions and procedures established by the colonel; and provided further, that nothing herein shall prohibit the prosecution of any person for any other offense committed within the commonwealth.

Any firearm surrendered in accordance with the provisions of this program that is reported stolen shall be returned to its lawful owner; provided, however, that any firearm suspected to be evidence in a crime shall remain in the custody and control of the department of state police in the same manner as any other such firearm lawfully seized by the department of state police. The department of state police may test-fire and preserve any and all firearms voluntarily surrendered. All weapons that have been voluntarily surrendered that are not suspected to be evidence of criminal activity and have not been reported stolen shall be disposed of in accordance with procedures established by the colonel.

Section 131P. (a) Any person making application for the issuance of a firearms identification card under section 129B, a Class A or Class B license to carry firearms under section 131 or 131F, or a permit to purchase under section 131A, who was not licensed

under the provisions of this chapter on June 1, 1998, shall, in addition to the requirements set forth in said sections 129B, 131, 131A or 131F submit to the licensing authority a basic firearms safety certificate; provided, however, that a certificate issued by the division of fisheries and wildlife pursuant to the provisions of section 14 of chapter 131, evidencing satisfactory completion of a hunting safety course, shall serve as a valid substitute for a basic firearms safety certificate required under this section; and provided further, that any applicant for a firearm identification card for the sole purpose of purchasing or possessing chemical mace, pepper spray or other similarly propelled liquid, gas or powder designed to temporarily incapacitate shall not be required to complete any basic firearms safety course as a prerequisite for receiving such card. Persons lawfully possessing a firearm identification card or license to carry firearms on June 1, 1998 shall be exempt from the provisions of this section upon expiration of such card or license and when applying for licensure as required under this chapter. No application for the issuance of a firearm identification card or license to carry shall be accepted or processed by the licensing authority without such certificate attached thereto; provided, however, that the provisions of this section shall not apply to (i) any officer, agent or employee of the commonwealth or any state of the United States; (ii) any member of the military or other service of any state or of the United States; (iii) any duly authorized law enforcement officer, agent or employee of any municipality of the commonwealth; provided, however, that any such person described in clauses (i) to (iii), inclusive, is authorized by a competent authority to carry or possess the weapon so carried or possessed and is acting within the scope of his duties.

(b) The colonel of state police shall promulgate rules and regulations governing the issuance and form of basic firearms safety certificates required by this section. Said colonel shall certify certain persons as firearms safety instructors and shall certify safety course curriculum. Such certification shall be for a period of ten years, unless sooner revoked by reason of unsuitability, in the discretion of said colonel. The department of state police may impose a fee of \$50 for initial issuance of such certification to offset the cost of certifying instructors. The fee for certification renewal shall be \$10. Firearms safety instructors shall be any person certified by a nationally recognized organization that fosters safety in firearms, or any other person in the discretion of said colonel, to be competent to give instruction in a basic firearms safety course. Applicants for certification as instructors under the provisions of this section shall not be exempt from the requirements of this chapter or any other law or regulation of the commonwealth or the United States. Upon application to the colonel of state police, said colonel may, in his discretion, certify as a firearms safety instructor any person who operates a firearms safety course or program which provides in its curriculum: (a) the safe use, handling and storage of firearms; (b) methods for securing and childproofing firearms; (c) the applicable laws relating to the possession, transportation and storage of firearms; and (d) knowledge of operation, potential dangers and basic competency in the ownership and usage of firearms.

(c) Any firearms safety instructor certified under the provisions of this section may, in his discretion, issue a basic firearms safety certificate to any person who successfully completes the requirements of a basic firearms safety course approved by the colonel. No

firearms safety instructor shall issue or cause to be issued any basic firearms safety certificate to any person who fails to meet minimum requirements of the prescribed course of study including, but not limited to, demonstrated competency in the use of firearms. Instructors certified under the provisions of this section shall forward to the department of state police the names of those persons who have received basic firearms safety certificates. Local licensing authorities, as defined in section 121, shall, upon receipt of an application for a firearm identification card or a Class A or Class B license to carry firearms, make inquiry to the department of state police to confirm the issuance to the applicant of a basic firearms safety certificate.

(d) Any person applying for licensure under the provisions of this chapter who knowingly files or submits a basic firearms safety certificate to a licensing authority which contains false information shall be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment for not more than two years in a house of correction, or by both such fine and imprisonment.

(e) Any firearms safety instructor who knowingly issues a basic firearms safety certificate to a person who has not successfully completed a firearms safety course approved by the colonel shall be punished by a fine of not less than \$5,000 nor more than \$10,000 or by imprisonment for not more than two years in a house of correction, or by both such fine and imprisonment.

**SECTION 48.** Section 3B of chapter 209A of the General Laws, as so appearing, is hereby amended by inserting after the word "chapter", in line 11, the following words: - and, said law enforcement official may store, transfer or otherwise dispose of any such weapon in accordance with the provisions of section 129D of chapter 140; provided however, that nothing herein shall authorize the transfer of any weapons surrendered by the defendant to anyone other than a licensed dealer.

**SECTION 49.** Said chapter 209A is hereby further amended by striking out section 3C, as so appearing, and inserting in place thereof the following section:-

Section 3C. Upon the continuation or modification of an order issued pursuant to section 4 or upon petition for review as described in section 3B, the court shall also order or continue to order the immediate suspension and surrender of a defendant's license to carry firearms, including a Class A or Class B license, and firearms identification card and the surrender of all firearms, rifles, shotguns, machine guns or ammunition which such defendant then controls, owns or possesses if the court makes a determination that the return of such license to carry firearms, including a Class A or Class B license, and firearm identification card or firearms, rifles, shotguns, machine guns or ammunition presents a likelihood of abuse to the plaintiff. A suspension and surrender order issued pursuant to this section shall continue so long as the restraining order to which it relates is in effect; and, any law enforcement official to whom such weapon is surrendered may store, transfer or otherwise dispose of any such weapon in accordance with the provisions of section 129D of chapter 140; provided, however, that nothing herein shall authorize the transfer of any weapons surrendered by the defendant to anyone other than a licensed dealer. Any violation of such order shall be punishable by a fine of not more than \$5,000 or by imprisonment for

**St. 1990, ch. 511, § 2**

facility or expansion thereof as will, to the maximum extent feasible, ensure that the facility or the expansion thereof will not present a threat to the public health, safety or the environment of the host municipality or of any municipality within a one-half mile radius of the proposed site. In determining whether the facility or the expansion thereof will present a threat to public health, safety or the environment of the host community or of any municipality within a one-half mile radius of the proposed site, the department of environmental protection shall utilize the considerations set forth in clauses (1) to (17), inclusive, of section one hundred and fifty A 1/2 of chapter one hundred and eleven of the General Laws.

*Emergency Letter: January 2, 1991 @ 4:58 P.M.* Approved December 31, 1990.

**Chapter 510. AN ACT AUTHORIZING THE SUPERINTENDENT OF PUBLIC WORKS IN THE TOWN OF FAIRHAVEN TO HOLD OTHER APPOINTIVE OFFICES.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Section 3 of chapter 722 of the acts of 1968, as amended by section 1 of chapter 453 of the acts of 1975, is hereby further amended by striking out the fourth sentence and inserting in place thereof the following sentence:- During his tenure he shall hold no elective office nor shall he be engaged in any other business or occupation.

**SECTION 2.** This act shall take effect upon its passage.

Approved January 2, 1991.

**Chapter 511. AN ACT REGULATING THE POSSESSION OF FIREARMS.**

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to immediately regulate the possession of firearms, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public welfare.

*Be it enacted, etc., as follows:*

**SECTION 1.** Section 121 of chapter 140 of the General Laws, as amended by chapter 443 of the acts of 1989, is hereby further amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

Sections one hundred and twenty-two to one hundred and twenty-nine D, inclusive, and sections one hundred and thirty-one, one hundred and thirty-one

A, one hundred and thirty-one B and one hundred and thirty-one E shall not apply to:

(A) any firearm, rifle or shotgun including any firearm, rifle or shotgun with matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before eighteen hundred and ninety-eight;

(B) any replica, or any firearm, rifle or shotgun described in clause (A) if such replica (1) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(C) manufacturers or wholesalers of firearms, rifles, shotguns or machine guns.

**SECTION 2.** Section 10 of chapter 269 of the General Laws is hereby amended by striking out subsection (a), as appearing in the 1988 Official Edition, and inserting in place thereof the following subsection:-

(a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty, without either:

(1) being present in or on his residence or place of business; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(4) having complied with the provisions of sections one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or

(5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; and whoever knowingly has in his possession; or knowingly has under control in a vehicle; a rifle or shotgun, loaded or unloaded, without either:

(1) being present in or on his residence or place of business; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(4) having in effect a firearms identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or

(5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns; or

(6) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; shall be punished by imprisonment in

the state prison for not less than two and one-half years nor more than five years, or for not less than one year nor more than two and one-half years in a jail or house of correction. The sentence imposed on such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served one year of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file.

No person having in effect a license to carry firearms for any purpose, issued under section one hundred and thirty-one or section one hundred and thirty-one F of chapter one hundred and forty shall be deemed to be in violation of this section.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person seventeen years of age or older, charged with a violation of this subsection, or to any child between ages fourteen and seventeen so charged, if the court is of the opinion that the interests of the public require that he should be tried as an adult for such offense instead of being dealt with as a child.

The provisions of this subsection shall not affect the licensing requirements of section one hundred and twenty-nine C of chapter one hundred and forty which require every person not otherwise duly licensed or exempted to have been issued a firearms identification card in order to possess a firearm, rifle or shotgun in his residence or place of business.

SECTION 3. Said section 10 of said chapter 269 is hereby further amended by striking out subsection (h), as so appearing, and inserting in place thereof the following subsection:-

(h) Whoever owns, possesses or transfers possession of a firearm, rifle, shotgun, or ammunition without complying with the requirements relating to the firearm identification card provided for in section one hundred and twenty-nine C of chapter one hundred and forty shall be punished by imprisonment in a jail or house of correction for not more than one year or by a fine of not more than five hundred dollars. A second violation of this subsection shall be punished by imprisonment in a jail or house of correction for not more than two years or by a fine of not more than one thousand dollars or both. A violation of this subsection shall not be considered a lesser included offense to a violation of subsection (a), nor shall any one prosecute as a violation of this subsection the mere possession

of a firearm, rifle, or shotgun by an unlicensed person not being present in or on his residence or place of business, nor shall the court allow an attempt to so prosecute.

Approved January 2, 1991.

**Chapter 512. AN ACT EXCLUDING FROM GROSS INCOME AMOUNTS RECEIVED UNDER FEDERAL LAW BY CERTAIN PERSONS OF JAPANESE ANCESTRY AND ALEUT RESIDENTS OF THE Pribilof AND ALEUTIAN ISLANDS.**

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to immediately exclude from gross income amounts received under federal law by certain persons of Japanese ancestry and Aleut residents of the Pribilof and Aleutian islands, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted, etc., as follows:*

Notwithstanding any general or special law to the contrary, amounts received by an eligible individual under the provisions of the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act shall be exempt from taxation under chapter sixty-two of the General Laws for taxable years commencing on or after January first, nineteen hundred and ninety.

Approved January 2, 1991.

**Chapter 513. House 6292 was not signed by the Governor and is not a law.**

**Chapter 514. AN ACT PROVIDING PLANNING ASSISTANCE TO THE CITY OF REVERE.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Section 2 of chapter 150 of the acts of 1990 is hereby amended by inserting after item 3743-2036 the following item:-  
3743-2041 For a grant for planning activities in the city of Revere in connection with the recovery from the fire of December, nineteen hundred and ninety, said funds to be allocated by

thousand the licensing authority of said city may adopt a rule prohibiting on all premises licensed under the provisions of section twelve of said chapter one hundred and thirty-eight any person to appear on said licensed premises in any manner or attire as to expose to public view any portion of the pubic area, anus, vulva, or genitals, or any simulation thereof, or shall suffer or permit any female to appear on licensed premises in such manner or attire as to expose to view any portion of the breast below the top of the areola, or any simulation thereof. Any violation of the provisions of this section shall be enforced by the alcoholic beverage control commission and the local authorities.

Approved December 23, 1981.

EMERGENCY LETTER - December 24, 1981 @ 12:02 P.M.

**Chap. 695. AN ACT RELATIVE TO COMMERCIAL PAPER.**

Be it enacted, etc., as follows:

SECTION 1. Section 53 of chapter 29 of the General Laws, as amended by section 5 of chapter 336 of the acts of 1977, is hereby further amended by striking out, in line 2, the word "one" and inserting in place thereof the following word: - three.

SECTION 2. Said chapter 29 is hereby amended by inserting after section 49A the following section: -

Section 49B. The state treasurer may enter into agreements with one or more commercial banks or trust companies to provide a line of credit pursuant for the issuance of any commonwealth note borrowings.

The state treasurer may enter into agreements with brokers for the placement of any such commonwealth notes; provided, however that the total liability of all such notes placed by brokers shall not exceed one hundred and fifty million dollars at any given time on those notes issued in anticipation of bonds.

SECTION 3. This act shall take effect upon its passage.  
Approved December 24, 1981.

**Chap. 696. AN ACT PERMITTING THE KILLING OR INJURING OF A PERSON UNLAWFULLY IN A DWELLING.**

Be it enacted, etc., as follows:

Chapter 278 of the General Laws is hereby amended by inserting after section 8 the following section: -

Section 8A. In the prosecution of a person who is an occupant of a dwelling charged with killing or injuring one who was unlawfully in said dwelling, it shall be a defense that the occupant was in his dwelling at the time of the offense and that he acted in the reasonable belief that the person unlawfully in said dwelling was about to inflict great bodily injury or death upon said occupant or upon another person lawfully in said dwelling, and that said occupant used reasonable means to defend himself or such other person lawfully in said dwelling. There shall be no duty on said occupant to retreat from such person unlawfully in said dwelling.

Approved December 24, 1981.

**Chap. 697. AN ACT PROVIDING FOR AN AUDIT OF THE DEFERRED COMPENSATION PLAN OF THE COMMONWEALTH.**

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately provide for an audit of the accounts of the deferred compensation program of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

Section 64 of chapter 29 of the General Laws, as most recently amended by chapter 955 of the acts of 1977, is hereby amended by adding the following paragraph: -

At the request of the state treasurer, the state auditor or an independent auditing firm chosen by said treasurer with the approval of the majority of the oversight committee, may perform an audit of the accounts of the deferred compensation plan for a fiscal or calendar year designated by said treasurer.

Approved December 24, 1981.

**Chap. 698. AN ACT AUTHORIZING THE CITY OF MEDFORD TO SET THE AMOUNT OF THE FEE TO BE CHARGED FOR CERTAIN LICENSES.**

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any provision of law to the contrary, the fees to be charged by the city of Medford for the issuance of common victualler and lodging house licenses shall be

(H) 5613

HOUSE . . . . .

No. 5613

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 15, 1998.

The committee on Ways and Means, to whom was referred the Bill relative to certain prohibited semiautomatic weapons and large capacity ammunition magazines (Senate, No. 1985), reports that the same ought to pass, with certain amendments by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 5613; and by striking out the title and inserting in place thereof the following title: "An Act relative to the banning and control of assault and other large capacity weapons."

For the committee,

PAUL R. HALEY.

Text of amendments recommended by the committee on Ways and Means to the Senate Bill relative to certain prohibited semiautomatic weapons and large capacity ammunition magazines (Senate No. 1985). June 15, 1998.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Eight.

Striking out all after the enacting clause and inserting in place thereof the following:

1 "SECTION 1. Section 168B of chapter 6 of the General Laws, as amended by chapter 130A of the Acts of 1996, is hereby amended by striking out the words 'one hundred and thirty-one J', in line 4 and inserting in place thereof the figures:— 131 O.

1 SECTION 2. The second paragraph of section 22F of chapter 140 of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:— A fee or charge imposed pursuant to this section shall supersede fees or charges already in effect, or any limitations on amounts placed thereon for the same service, work or license, permit or certificate, provided that this section shall supersede the provisions of sections 31 to 77, inclusive, of chapter 6A, chapter 80, chapter 83, sections 121 to 131O, inclusive, of chapter 140, chapter 138 or section 10A of chapter 148.

1 SECTION 3. Section two hundred of chapter one hundred and eleven of the General Laws is hereby repealed.

1 SECTION 4. Section 12A of chapter 112 of the General Laws, as so appearing, is hereby amended by adding the following sentence:— The colonel of the department of state police shall make available to the commissioner of public health all reports regarding: (i) bullet wounds, gunshot wounds, powder burns or

6 any other injury arising from or caused by the discharge of a rifle, 7 shotgun, firearm or air rifle; (ii) burn injuries affecting five 8 per cent or more of the surface area of the human body; and 9 (iii) wounds or injuries caused by a knife or other sharp or pointed 10 instrument.

SECTION 5. Chapter 140 of the General Laws is hereby amended by striking out section 121, as so appearing and inserting in place thereof the following section:—

4. Section 121. As used in sections 122 to 131O, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

7. 'Ammunition', cartridges or cartridge cases, primers (igniter), 8 bullets or propellant powder designed for use in any firearm, rifle 9 or shotgun. The term 'ammunition' shall also mean tear gas cartridges, chemical mace, or any device or instrument which contains or emits a liquid, gas, powder, or any other substance designed to incapacitate.

14. 'Assault weapon', shall have the same meaning as a semiautomatic assault weapon as defined in the federal Public Safety and Recreational Firearms Use Protection Act 18 USC § 921(a)(30) and shall include, but not be limited to, any of the weapons, or copies or duplicates of the weapons, of any caliber, known as: (i) Avtomat Kalashnikov (AK) (all models); (ii) Action Arms Israeli Military Industries UZI and Galil; (iii) Beretta Ar70 (SC-70); (iv) Colt AR-15; (v) Fabrique Nationale FN/FAL, FN/LAR and FNC; (vi) SWD M-10, M-11, M-11/9 and M-12; (vii) Steyr AUG; (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and (ix) revolving cylinder shotguns, such as, or similar to, the Street Sweeper and Striker 12; provided, however, that the term assault weapon shall not include: (i) any of the weapons, or replicas or duplicates of such weapons, specified in appendix A to 18 USC § 922, as such weapons were manufactured on October 1, 1993; (ii) any weapon that is operated by manual bolt, pump, lever or slide action; (iii) any weapon that has been rendered permanently inoperable or otherwise rendered permanently unable to be designated a semiautomatic assault weapon; (iv) any weapon that was manufactured prior to the year 1899; (v) any weapon that is an antique or relic, theatrical prop or other

34 weapon that is not capable of firing a projectile and which is not  
 35 intended for use as a functional weapon and cannot be readi  
 36 modified through a combination of available parts into an oper  
 37 able large capacity weapon; (vi) any semiautomatic rifle th  
 38 cannot accept a detachable magazine that holds more than five  
 39 rounds of ammunition; or (vii) any semiautomatic shotgun th  
 40 cannot hold more than five rounds of ammunition in a fixed  
 41 detachable magazine.  
 42 'Conviction', a finding or verdict of guilt, or a plea of guil  
 43 whether or not final sentence is imposed.  
 44 'Firearm', a pistol, revolver or other weapon of any descriptio  
 45 loaded or unloaded, from which a shot or bullet can be discharg  
 46 and of which the length of the barrel or barrels is less than 1  
 47 inches or 18 inches in the case of a shotgun as originally manufa  
 48 tured; provided, however, that the term firearm shall not includ  
 49 any weapon that is: (i) constructed in a shape that does not  
 50 resemble a handgun, short-barreled rifle or short-barreled shotgu  
 51 including, but not limited to, covert weapons that resemble ke  
 52 chains, pens, cigarette-lighters or cigarette-packages; or (ii) n  
 53 detectable as a weapon or potential weapon by x-ray machine  
 54 commonly used at airports or walk-through metal detectors.  
 55 'Gunsmith', any person who engages in the business of  
 56 repairing, altering, cleaning, polishing, engraving, blueing or pe  
 57 forming any mechanical operation on any firearm, rifle, shotgun  
 58 or machine gun.  
 59 'Imitation firearm', any weapon which is designed, manuf  
 60 factured, or altered in such a way as to render it incapable  
 61 of discharging a shot or bullet.  
 62 'Large capacity feeding device', (i) a fixed or detachable maga  
 63 zine, box, drum, feed strip or similar device capable of accepting  
 64 or that can be readily converted to accept, more than 10 rounds  
 65 of ammunition cartridges or more than five shotgun shells; or (ii)  
 66 large capacity ammunition feeding device as defined in the federa  
 67 Public Safety and Recreational Firearms Use Protection Act 1  
 68 USC § 921(a)(30). The term 'large capacity feeding device' sha  
 69 not include an attached tubular device designed to accept, and  
 70 capable of operating only with, .22 caliber ammunition.  
 71 'Large capacity weapon', any firearm, rifle or shotgun: (i) th  
 72 is semiautomatic with a fixed large capacity ammunition feeding

73 device; (ii) that is semiautomatic and capable of accepting,  
 74 or readily modifiable to accept, any detachable large capacity  
 75 ammunition feeding device; (iii) that employs a rotating cylinder  
 76 capable of accepting more than 10 rounds of ammunition in a rifle  
 77 or firearm and more than five rounds in the case of a shotgun; or  
 78 (iv) that is an assault weapon. The term 'large capacity weapon'  
 79 shall be a secondary designation and shall apply to a weapon in  
 80 addition to its primary designation as a firearm, rifle or shotgun,  
 81 and shall not include: (i) any weapon that was manufactured prior  
 82 to the year 1899; (ii) any weapon that operates by manual bolt,  
 83 pump, lever or slide action; (iii) any weapon that is a single-shot  
 84 weapon; (iv) any weapon that has been modified so as to render it  
 85 permanently inoperable or otherwise rendered permanently unable  
 86 to be designated a large capacity weapon; or (v) any weapon that  
 87 is an antique or relic, theatrical prop or other weapon that is not  
 88 capable of firing a projectile and which is not intended for use as a  
 89 functional weapon and cannot be readily modified through a com-  
 90 bination of available parts into an operable large capacity weapon.  
 91 'Length of barrel', that portion of a firearm, rifle, shotgun or  
 92 machine gun through which a shot or bullet is driven, guided or  
 93 stabilized, and shall include the chamber.  
 94 'Licensing authority', the chief of police or the board or officer  
 95 having control of the police in a city or town, or persons autho-  
 96 rized by them.  
 97 'Machine gun', a weapon of any description, by whatever name  
 98 known, loaded or unloaded, from which a number of shots or bul-  
 99 lets may be rapidly or automatically discharged by one continuous  
 100 activation of the trigger, and includes a submachine gun.  
 101 'Purchase' and 'sale' shall include exchange; the word  
 102 'purchaser' shall include exchanger; and the verbs 'sell' and 'pur-  
 103 chase', in their different forms and tenses, shall include the verb  
 104 exchange in its appropriate form and tense.  
 105 'Rifle', a weapon having a rifled bore with a barrel length equal  
 106 to or greater than 16 inches, capable of discharging a shot or  
 107 bullet for each pull of the trigger.  
 108 'Sawed-off shotgun', any weapon made from a shotgun,  
 109 whether by alteration, modification or otherwise, if such weapon  
 110 as modified has one or more barrels less than 18 inches in length  
 111 or as modified has an overall length of less than 26 inches.

112 'Semiautomatic', capable of utilizing a portion of the energy of  
 113 a firing cartridge to extract the fired cartridge case and chamber  
 114 the next round, and requires a separate pull of the trigger to fire  
 115 each cartridge.  
 116 'Shotgun', a weapon having a smooth bore with a barrel length  
 117 equal to or greater than 18 inches with an overall length equal to  
 118 or greater than 26 inches, capable of discharging a shot or bullet  
 119 for each pull of the trigger.  
 120 'Violent crime' shall mean any crime punishable by imprison-  
 121 ment for a term exceeding one year, or any act of juvenile delin-  
 122 quency involving the use or possession of a deadly weapon that  
 123 would be punishable by imprisonment for such term if committed  
 124 by an adult, that (i) has as an element the use, attempted use or  
 125 threatened use of physical force or a deadly weapon against the  
 126 person of another; (ii) is burglary, extortion, arson, kidnapping,  
 127 (iii) involves the use of explosives; or (iv) otherwise involves con-  
 128 duct that presents a serious risk of physical injury to another.  
 129 'Weapon', any rifle, shotgun or firearm.  
 130 Where the local licensing authority has the power to issue  
 131 licenses or cards under this chapter, but no such authority exists,  
 132 any resident or applicant may apply for such license or firearm  
 133 identification card directly to the colonel of the state police and  
 134 the colonel shall for this purpose be the licensing authority.  
 135 Sections 122 to 129D, inclusive, and sections 131, 131A, 131B,  
 136 and 131E shall not apply to:  
 137 (A) any firearm, rifle or shotgun including any firearm, rifle or  
 138 shotgun with matchlock, flintlock, percussion cap, or similar type  
 139 of ignition system manufactured in or before eighteen hundred  
 140 and ninety-eight;  
 141 (B) any replica, or any firearm, rifle or shotgun described  
 142 in clause (A) if such replica (i) is not designed or redesigned  
 143 for using rimfire or conventional centerfire fixed ammunition, or  
 144 (ii) uses rimfire or conventional centerfire fixed ammunition and  
 145 which is no longer manufactured in the United States and which is  
 146 not readily available in the ordinary channels of commercial trade;  
 147 and  
 148 (C) manufacturers or wholesalers of firearms, rifles, shotgun  
 149 or machine guns.

SECTION 6. Section 122 of said chapter 140, as so appearing,  
 is hereby amended by inserting after the word 'investigation', in  
 line 3, the following words:— into the criminal history of the  
 applicant to determine eligibility for a license under this section.

SECTION 7. Said section 122 of said chapter 140, as so  
 appearing, is hereby further amended by striking out, in line 10,  
 the words ' , if any,'.

SECTION 8. Said section 122 of said chapter 140, as so  
 appearing, is hereby further amended by inserting after the fourth  
 sentence the following sentence:— The licensing authority to  
 whom such application is made shall cause one copy of said appli-  
 cation to be forwarded to the executive director of the criminal  
 history systems board.

SECTION 9. Section 122A of said chapter 140, as so  
 appearing, is hereby amended by inserting after the word 'books',  
 in line 12, the following words:— or computer equipment.

SECTION 10. Section 122B of said chapter 140, as so  
 appearing, is hereby amended by striking out, in line 4, the word  
 'grant' and inserting in place thereof the following words:—  
 after an investigation into the criminal history of the applicant to  
 determine eligibility to be licensed under this section, grant.

SECTION 11. The first paragraph of said section 122B of said  
 chapter 140, as so appearing, is hereby amended by adding the  
 following sentence:— The licensing authority to whom such  
 application is made shall cause one copy of any approved applica-  
 tion to be forwarded to the executive director of the criminal his-  
 tory systems board.

SECTION 12. Section 123 of said chapter 140, as so appearing,  
 is hereby amended by inserting after the word 'book', in line 7,  
 the following words:— or computerized database by means.

SECTION 13. Said section 123 of said chapter 140, as so  
 appearing, is hereby further amended by inserting after the word

3 'shotgun', in line 11, the following words:—, and designation  
4 a large capacity weapon, if applicable.

1 SECTION 14. Said section 123 of said chapter 140, as  
2 appearing, is hereby amended by inserting after the word  
3 'one hundred and twenty-nine B', in lines 34 and 35, the  
4 following words:—; and, no large capacity firearm nor large  
5 capacity ammunition feeding device therefor shall be delivered to  
6 any person not having a Class A license to carry firearms issued  
7 under paragraph (a) of section 131; and, further, no large capacity  
8 rifle or shotgun nor large capacity ammunition feeding device  
9 therefor shall be delivered to any person not having a Class  
10 firearm identification card issued under clause (a) of the fourth  
11 paragraph of section 129B.

1 SECTION 15. Said section 123 of said chapter 140, as  
2 appearing, is hereby further amended by inserting after the  
3 word 'business', in line 40, the following words:—, subject to  
4 the restrictions imposed upon said permits as provided under  
5 section 131A.

1 SECTION 16. Said section 123 of said chapter 140, as  
2 appearing, is hereby further amended by inserting after the word  
3 'one hundred and thirty-one', in line 49, the following words:  
4 ; and, no large capacity firearm nor large capacity ammunition  
5 feeding device therefor shall be sold, rented, leased or transferred  
6 to any person not having a Class A license to carry firearms issued  
7 under clause (a) of the last paragraph of section 131 or a Class A  
8 permit issued under section 131A together with a Class A  
9 Class B firearm identification card issued under section 129B  
10 and, further, no large capacity rifle or shotgun nor large capacity  
11 ammunition feeding device therefor shall be sold to any person  
12 not having a Class A firearm identification card issued under sub-  
13 section (a) of section 129B.

1 SECTION 17. Said section 123 of said chapter 140, as  
2 appearing, is hereby further amended by inserting after the word  
3 'book', in line 63, the following words:— or computerize  
4 database.

1 SECTION 18. Said section 123 of said chapter 140, as  
2 so appearing, is hereby amended by inserting after word  
3 'transaction', in line 81, the following six clauses:— Thirteenth,  
4 That the current validity of any firearm identification card, license  
5 to carry firearms or permit to purchase, rent or lease firearms pre-  
6 sented, and that the person presenting said card, license or permit  
7 is the lawful holder thereof, shall be verified by the licensee prior  
8 to any sale, rental or lease of a rifle, shotgun, firearm or large  
9 capacity magazine; and, upon being presented with such card or  
10 license that is expired, suspended or revoked, the licensee shall  
11 notify the licensing authority of such expiration, suspension or  
12 revocation; and, further, the licensee may take possession of such  
13 card or license, provided that, in such case, he shall (i) issue a  
14 receipt, in a form provided by the executive director of the crim-  
15 inal history systems board, to the holder thereof which shall state  
16 that the holder's card or license is expired, suspended or revoked,  
17 was taken by the licensee and forwarded to the licensing authority  
18 by whom it was issued and shall be valid for the date of issuance  
19 for the purpose of providing immunity from prosecution under  
20 section 10 of chapter 269 for unlawfully possessing a firearm,  
21 rifle or shotgun or large capacity semiautomatic weapon,  
22 (ii) notify the cardholder or licensee of his requirement to renew  
23 said card or license, and (iii) forward said expired card or license  
24 to the licensing authority as soon as practicable; provided, that  
25 said licensee shall be immune from civil and criminal liability for  
26 good faith compliance with the provisions herein. Fourteenth,  
27 That the licensee shall conspicuously post at each purchase  
28 counter the following warning in bold type not less than one inch  
29 in height: 'IT IS UNLAWFUL TO STORE OR KEEP A  
30 FIREARM, RIFLE, SHOTGUN OR MACHINE GUN IN ANY  
31 PLACE UNLESS THAT WEAPON IS EQUIPPED WITH A  
32 TAMPER-RESISTANT SAFETY DEVICE OR IS STORED OR  
33 KEPT IN A SECURELY LOCKED CONTAINER.'; and that said  
34 licensee shall provide said warning, in writing, to the purchaser or  
35 transferee of any firearm, rifle, shotgun or machine gun in bold  
36 type not less than one quarter inch in height. Fifteenth, That all  
37 licensees shall maintain a permanent place of business that is not a  
38 residence or dwelling wherein all transactions described in this  
39 section shall be conducted and wherein all records required to be

40 kept under this section shall be so kept. Sixteenth, That no  
 41 licensee shall sell, lease, rent, transfer or deliver or offer for sale.  
 42 lease, rent, transfer or delivery to any person any assault weapon  
 43 or large capacity feeding device that was not otherwise lawfully  
 44 possessed on September 13, 1994. Seventeenth, That any licensee  
 45 from whom a rifle, shotgun, firearm or machine gun is lost or  
 46 stolen shall report such loss or theft to the licensing authority and  
 47 the executive director of the criminal history systems board forth-  
 48 with. Such report shall include a complete description of the  
 49 weapon, include the make, model, serial number, caliber and  
 50 whether it is a large capacity weapon. Eighteenth, That no  
 51 licensee shall sell, rent, lease, transfer or deliver, or offer for sale,  
 52 lease, transfer or delivery, any firearm that: (a) has a frame, barrel  
 53 cylinder, slide or breechblock that is composed of (i) any metal  
 54 having a melting point of less than 900 degrees Fahrenheit;  
 55 (ii) any metal having an ultimate tensile strength of less than  
 56 55,000 pounds per square inch, or (iii) any powdered metal having  
 57 a density of less than 7.5 grams per cubic centimeter; (b) is prone  
 58 to (i) accidental discharge, (ii) firing more than once per pull of  
 59 the trigger, or (iii) explosion during firing; or (c) has a barrel less  
 60 than three inches in length, unless the licensee discloses in  
 61 writing, prior to the transaction, to the prospective buyer, lessee,  
 62 deliverer or transferee the limitations of the accuracy of the par-  
 63 ticular make and model of the subject firearm.

1 SECTION 19. Said section 123 of said chapter 140, as so  
 2 appearing, is hereby further amended by inserting after the words  
 3 'one hundred and thirty', in line 83, the following words:—  
 4 or section 131E.

1 SECTION 20. Said section 123 of said chapter 140, as so  
 2 appearing, is hereby further amended by inserting after the first  
 3 paragraph the following two paragraphs:—  
 4 No person licensed under the provisions of section 122 or  
 5 section 122B shall sell, rent, lease, transfer or deliver any rifle,  
 6 shotgun or firearm or ammunition or ammunition feeding device  
 7 contrary to the provisions of section 130 or section 131E; and no  
 8 such licensee shall sell, rent, lease, transfer or deliver any rifle  
 9 shotgun or firearm or ammunition or ammunition feeding device

10 to any person who does not have in his possession the required  
 11 firearm identification card or proof of exemption therefrom,  
 12 license to carry firearms or permit to purchase, rent or lease  
 13 firearms and who does not present said card, proof, license or  
 14 permit to the licensee in person at the time of purchase, rental or  
 15 lease. Notwithstanding the provisions of any general or special  
 16 law, rule or regulation to the contrary, no person licensed under  
 17 the provisions of section 122 or section 122B shall fulfill any  
 18 order for such weapon, ammunition or ammunition feeding device  
 19 that was received by mail, facsimile, telephone or other telecom-  
 20 munication unless said transaction or transfer includes the in-  
 21 person presentation of the required card, proof, license or permit  
 22 as required herein prior to any sale, delivery or any form of  
 23 transfer of possession of the subject weapon, ammunition or  
 24 ammunition feeding device.

25 The licensing authority shall enter, one time per calendar year,  
 26 during regular business hours, the commercial premises owned or  
 27 leased by any licensee, wherein such records required to be main-  
 28 tained under this section are stored or maintained, and inspect, in  
 29 a reasonable manner, said records, and inventory, for the purpose  
 30 of enforcing the provisions of this section. If such records and  
 31 inventory contain evidence of violations of this section, the  
 32 inspecting officer shall produce and take possession of copies of  
 33 said records, and in the event that the licensee subject to inspec-  
 34 tion does not possess copying equipment, the inspecting officer  
 35 shall arrange to have copied, in a reasonable time and manner,  
 36 such records that contain evidence of such violations, and the  
 37 costs for such copying shall be assessed against the owner of said  
 38 records. Licensees so found to be in violation of this section shall  
 39 be subject to the suspension or permanent revocation of such  
 40 license issued under section 122 and to the provisions of sec-  
 41 tion 128. Nothing herein shall prohibit the licensing authority or  
 42 the department of state police from conducting such inspections  
 43 under a valid search warrant issued by a court of competent  
 44 jurisdiction.

1 SECTION 21. Said section 123 of said chapter 140, as so  
 2 appearing, is hereby further amended by inserting after the word  
 3 'ammunition', in line 92, the following words:—, including the

4 restrictions imposed upon firearm identification cards issued  
 5 under section 129B, licenses to carry firearms issued under  
 6 section 131 and permits to purchase, lease or rent firearms issued  
 7 under section 131A.

1 SECTION 22. Section 128 of said chapter 140, as so appearing  
 2 is hereby amended by striking out, in line 4, the words 'or ninth  
 3 and inserting in place thereof the following words:—, ninth, sixteenth  
 4 tenth or eighteenth.

1 SECTION 23. Said section 128 of said chapter 140, as so  
 2 appearing, is hereby further amended by striking out, in lines  
 3 to 11, inclusive, the words 'for the first offense be punished by  
 4 a fine of not less than five hundred nor more than one thousand dol-  
 5 lars, and for any subsequent offense by imprisonment in the state  
 6 prison for not more than ten years' and inserting in place thereof  
 7 the following words:— be punished by a fine of not less than  
 8 \$1,000 nor more than \$10,000, or by imprisonment for not less than  
 9 than one year nor more than 10 years, or both such fine and  
 10 imprisonment.

1 SECTION 24. Section 128A of said chapter 140, as so  
 2 appearing, is hereby amended by inserting after the word 'sell'  
 3 in line 10, the following words:— or transfers.

1 SECTION 25. Said section 128A of said chapter 140, as so  
 2 appearing, is hereby further amended by inserting after the word  
 3 'such', in line 30, the following words:— large capacity ammuni-  
 4 tion feeding device or.

1 SECTION 26. Said section 128A of said chapter 140, as so  
 2 appearing, is hereby further amended by inserting after the word  
 3 'including', in line 31, the following words:— its designation as  
 4 large capacity weapon, if applicable.

1 SECTION 27. Section 128B of said chapter 140, as so  
 2 appearing, is hereby amended by striking out, in line 16, the words  
 3 'or not more than one hundred dollars, and for any subsequent  
 4 offense by imprisonment for not more than two and one-half' and  
 5 inserting in place thereof the following words:— of not less than

6 \$500 nor more than \$1,000, and for any subsequent offense by  
 7 imprisonment in the state prison for not more than 10.

1 SECTION 28. Said chapter 140 is hereby further amended by  
 2 striking out section 129B, as so appearing, and inserting in place  
 3 thereof the following section:—

4 Section 129B. All firearm identification cards shall be desig-  
 5 nated Class A or Class B, and the issuance and possession of  
 6 any such card shall be subject to the following conditions and  
 7 restrictions:

8 (a) Class A firearm identification card. Any person residing or  
 9 having a place of business within the jurisdiction of the licensing  
 10 authority or any person residing in an area of exclusive federal  
 11 jurisdiction located within a city or town may submit to the  
 12 licensing authority an application for a Class A firearm identifica-  
 13 tion card, or renewal of the same, which the licensing authority  
 14 may issue if it appears that the applicant is a suitable person to be  
 15 issued such card and that the applicant has good reason to fear  
 16 injury to his person or property, or for any other reason, including  
 17 the possession of large capacity rifles and shotguns for use in  
 18 target practice only, unless the applicant:

19 (i) has, in any state or federal jurisdiction, been convicted or  
 20 adjudicated a youthful offender or delinquent child for the com-  
 21 mission of (a) a felony; (b) a misdemeanor punishable by impris-  
 22 onment for more than two years; (c) a violent crime as defined in  
 23 section 121; (d) a violation of any law regulating the use, posses-  
 24 sion, ownership, transfer, purchase, sale, lease, rental, receipt or  
 25 transportation of weapons or ammunition for which a term of  
 26 imprisonment may be imposed; or (e) a violation of any law regu-  
 27 lating the use, possession or sale of a narcotic or harmful drug; or  
 28 (ii) has been confined to any hospital or institution for mental  
 29 illness, except where the applicant shall submit with the applica-  
 30 tion an affidavit of a registered physician attesting that he is  
 31 familiar with the applicant's mental illness and that in his opinion  
 32 the applicant is not disabled by such an illness in a manner that  
 33 should prevent him from possessing a rifle or shotgun; or

34 (iii) is or has been under treatment for or confinement for drug  
 35 addiction or habitual drunkenness, except when he is deemed to  
 36 be cured of such condition by a licensed physician, he may make

37 application for said card after the expiration of five years from the  
 38 date of such confinement or treatment and upon presentation of an  
 39 affidavit issued by said physician to the effect that the physician  
 40 knows the applicant's history of treatment and that in his opinion  
 41 the applicant is deemed cured; or  
 42 (iv) is at the time of the application less than 21 years of age; or  
 43 (v) is an alien; or  
 44 (vi) is currently subject to: (a) an order for suspension or sur-  
 45 render issued pursuant to section 3B or 3C of chapter 209A or  
 46 similar order issued by another jurisdiction; or (b) a permanent or  
 47 temporary protection order issued pursuant to chapter 209A or  
 48 a similar order issued by another jurisdiction; or  
 49 (vii) is currently the subject of an outstanding arrest warrant  
 50 any state or federal jurisdiction.

51 Within seven days of the receipt of a completed application for  
 52 a Class A card, the licensing authority shall forward one copy of  
 53 the application and one copy of the applicant's fingerprints to the  
 54 colonel of the state police, who shall, within 30 days, advise, in  
 55 writing, the licensing authority of any disqualifying criminal  
 56 record of the applicant, arising from within or without the  
 57 commonwealth, and whether there is reason to believe that the  
 58 applicant is disqualified for any of the foregoing reasons from  
 59 possessing a Class A card; provided, however, that the taking  
 60 of fingerprints shall not be required in issuing the renewal of  
 61 Class A card if the renewal applicant's fingerprints are on file  
 62 with the department of the state police. In searching for any dis-  
 63 qualifying history of the applicant, the colonel shall utilize,  
 64 cause to be utilized, files maintained by the department and nation-  
 65 health, department of probation and statewide and nation-wide  
 66 criminal justice, warrant and protection order information system  
 67 and files, including, but not limited to, the National Instan-  
 68 Criminal Background Check System. If the information avail-  
 69 to the colonel does not indicate that the possession of a large  
 70 capacity rifle or shotgun by the applicant would be in violation of  
 71 state or federal law, he shall certify such fact, in writing, to the  
 72 licensing authority within said 30 day period.

73 The licensing authority may also make inquiries concerning the  
 74 applicant to: (i) the executive director of the criminal history sy-  
 75 tems board relative to any disqualifying condition and records

76 purchases, sales, rentals, leases and transfers of weapons or  
 77 ammunition concerning the applicant; (ii) the commissioner of  
 78 probation relative to any record contained within the department  
 79 of probation or the statewide domestic violence record keeping  
 80 system concerning the applicant; and (iii) the commissioner of the  
 81 department of mental health relative to information held by said  
 82 department concerning the applicant, and whether the applicant is  
 83 a suitable person to possess rifles or shotguns, or is not a suitable  
 84 person to possess rifles or shotguns. The director or commissioner  
 85 to whom the licensing authority makes such inquiry shall provide  
 86 prompt and full cooperation for that purpose in any investigation  
 87 of the applicant.

88 The colonel of the state police may, after an investigation, grant  
 89 a Class A firearm identification card to a club, with an on-site  
 90 shooting range or gallery, incorporated under the laws of the com-  
 91 monwealth for the purpose of lawful target, trap or skeet shooting,  
 92 for the possession, storage and use of large capacity rifles and  
 93 shotguns, ammunition therefor and large capacity ammunition  
 94 feeding devices for use with such rifles and shotguns on the  
 95 premises of such club; provided, however, that not less than one  
 96 shareholder of said club shall be qualified and suitable to be  
 97 issued said card; and provided, further, that such large capacity  
 98 rifles and shotguns and ammunition feeding devices may be used  
 99 under such Class A club card only by such members that possess a  
 100 valid Class A or Class B firearm identification card or a valid  
 101 Class A or Class B license to carry or possess firearms, or by such  
 102 other persons that the club permits while under the direct supervi-  
 103 sion of a club member who possesses a valid Class A firearm  
 104 identification card or valid Class A license to carry firearms. No  
 105 large capacity rifle or shotgun or large capacity ammunition  
 106 feeding device shall be removed from the premises except for the  
 107 purposes of: (i) transferring such rifle, shotgun or feeding device  
 108 to a licensed dealer; (ii) transporting such rifle, shotgun or feeding  
 109 device to a licensed gunsmith for repair; (iii) target, trap or skeet  
 110 shooting on the premises of another club incorporated under the  
 111 laws of the commonwealth, and for transporting thereto and there-  
 112 from; (iv) attending an exhibition or educational project or event  
 113 that is sponsored by, conducted under the supervision of or  
 114 approved by a public law enforcement agency or a nationally or

115 state recognized entity that promotes proficiency in or education  
 116 about semiautomatic weapons, and for transporting thereto;  
 117 (v) hunting in accordance with the provisions of chapter 131;  
 118 or (vi) surrendering such rifle, shotgun or feeding device under  
 119 the provisions of section 129D. Any large capacity rifle or  
 120 shotgun or large capacity ammunition feeding device kept on the  
 121 premises of a lawfully incorporated shooting club shall, when not  
 122 in use, be secured in a locked container, and shall be unloaded  
 123 during any lawful transport. The clerk or other corporate officer of  
 124 such club shall annually file a report with the colonel of the  
 125 department of state police and the executive director of the crim-  
 126 inal history systems board listing all large capacity rifles and shot-  
 127 guns and large capacity ammunition feeding devices owned or  
 128 possessed under such license. The colonel of the state police, or  
 129 his designee, shall have the right to inspect all rifles and shotguns  
 130 owned or possessed by such club upon request during regular  
 131 business hours and said colonel may revoke or suspend a club  
 132 license for a violation of any provision of this chapter or chap-  
 133 ter 269, relative to the ownership, use or possession of large  
 134 capacity weapons or large capacity ammunition feeding devices.  
 135 The licensing authority or colonel shall, within 40 days from  
 136 the date of application, either approve the application and issue  
 137 the card or deny the application and notify the applicant of the  
 138 reason for such denial in writing; provided, however, that no such  
 139 card shall be issued unless the colonel has certified, in writing,  
 140 that the information available to him does not indicate that the  
 141 possession of a large capacity rifle or shotgun by the applicant  
 142 would be in violation of state or federal law.

143 A Class A firearm identification card shall be revoked or sus-  
 144 pended by the licensing authority or his designee upon the occur-  
 145 rence of any event that would have disqualified the holder from  
 146 being issued the card or from having the card renewed; and, a  
 147 Class A firearm identification card may be revoked or suspended  
 148 by the licensing authority if it appears that the holder is no longer  
 149 a suitable person to possess such card. Any revocation or suspen-  
 150 sion of a card shall be in writing and shall state the reasons  
 151 therefor. Upon revocation or suspension, the licensing authority  
 152 shall take possession of said card and receipt for fee paid for such  
 153 card, and the person whose card is so revoked or suspended shall

154 take all actions required under the provisions of section 129D. No  
 155 appeal or post-judgment motion shall operate to stay such revoca-  
 156 tion or suspension. Notices of revocation and suspension shall be  
 157 forwarded to the executive director of the criminal history systems  
 158 board and the commissioner of probation and shall be included in  
 159 the criminal justice information system. A revoked or suspended  
 160 card may be reinstated only upon the termination of all disquali-  
 161 fying conditions, if any.

162 Any applicant or holder aggrieved by a denial, revocation or  
 163 suspension of a Class A card, unless a hearing has previously been  
 164 held pursuant to chapter 209A, may, within either 90 days  
 165 after receiving notice of said denial, revocation or suspension or  
 166 within 90 days after the expiration of the time limit in which the  
 167 licensing authority is required to respond to the applicant, file a  
 168 petition to obtain judicial review in the district court having juris-  
 169 diction in the city or town wherein the applicant filed for, or was  
 170 issued, said card; and, a justice of said court, after a hearing, may  
 171 direct that a Class A card be issued or reinstated to the petitioner  
 172 if he finds that there was no reasonable ground for denying, sus-  
 173 pending or revoking said card and that the petitioner is not prohib-  
 174 ited by law from possessing the same.

175 A person granted a Class A card under this section may, subject  
 176 to such other restrictions as may be imposed by the licensing  
 177 authority, possess large capacity rifles and shotguns and partially  
 178 or fully loaded large capacity ammunition feeding devices for use  
 179 therewith only: (i) at his residence, place of business or other  
 180 property owned by such cardholder; (ii) while on the premises of  
 181 a club incorporated under the laws of the commonwealth for the  
 182 purpose of target, trap or skeet shooting or a shooting gallery or  
 183 range licensed under section 56A; (iii) while attending an exhibi-  
 184 tion or educational project or event that is sponsored by, con-  
 185 ducted under the supervision of or approved by a public law  
 186 enforcement agency or a nationally or state recognized entity that  
 187 promotes proficiency in or education about semiautomatic  
 188 weapons; and (iv) while hunting in accordance with the provisions  
 189 of chapter 131.

190 (b) Class B firearm identification card. Any person residing or  
 191 having a place of business within the jurisdiction of the licensing  
 192 authority or any person residing in an area of exclusive federal-

193 jurisdiction located within a city or town may submit to the  
 194 licensing authority an application for a Class B firearm identifica-  
 195 tion card, or renewal of the same, which the licensing authority  
 196 shall issue, unless the applicant:  
 197 (i) has ever, in a court of the commonwealth, been convicted  
 198 or adjudicated a youthful offender or delinquent child, both  
 199 as defined in section 52 of chapter 119, for the commission of  
 200 (a) a felony; (b) a misdemeanor punishable by imprisonment for  
 201 more than two years; (c) a violent crime as defined in section 121  
 202 (d) a violation of any law regulating the use, possession, owner-  
 203 ship, transfer, purchase, sale, lease, rental, receipt or transporta-  
 204 tion of weapons or ammunition for which a term of imprisonment  
 205 may be imposed; or (e) a violation of any law regulating the use,  
 206 possession or sale of a narcotic or harmful drug, including, but not  
 207 limited to, a violation under chapter 90C; provided, however, that  
 208 where the applicant has been so convicted or adjudicated or  
 209 released from confinement, probation or parole supervision for  
 210 such conviction or adjudication, whichever is last occurring, the  
 211 less than five years immediately preceding such application, the  
 212 applicant's right or ability to possess a rifle or shotgun that is not  
 213 a large capacity weapon as defined in section 121 shall be deemed  
 214 restored in the commonwealth with respect to such conviction or  
 215 adjudication, and such conviction or adjudication shall not be con-  
 216 sidered with regard to an application for a Class B firearm identi-  
 217 fication card; or  
 218 (ii) has, in any state or federal jurisdiction, been convicted or  
 219 adjudicated a youthful offender or delinquent child for the com-  
 220 mission of (a) a felony; (b) a misdemeanor punishable by impris-  
 221 onment for more than two years; (c) a violent crime as defined in  
 222 section 121; (d) a violation of any law regulating the use, posses-  
 223 sion, ownership, transfer, purchase, sale, lease, rental, receipt or  
 224 transportation of weapons or ammunition for which a term of  
 225 imprisonment may be imposed; or (e) a violation of any law regu-  
 226 lating the use, possession or sale of a narcotic or harmful drug,  
 227 provided, however, that where the applicant has been so convicted  
 228 or adjudicated or released from confinement, probation or parole  
 229 supervision for such conviction or adjudication, whichever is last  
 230 occurring, not less than five years immediately preceding such  
 231 application, and the applicant's right or ability to possess a rifle or

232 shotgun has been fully restored in the jurisdiction wherein the  
 233 subject conviction or adjudication was entered, such conviction or  
 234 adjudication shall not be considered with regard to an application  
 235 for a Class B firearm identification card; or  
 236 (iii) has been confined to any hospital or institution for mental  
 237 illness, except where the applicant shall submit with the applica-  
 238 tion an affidavit of a registered physician attesting that he is  
 239 familiar with the applicant's mental illness and that in his opinion  
 240 the applicant is not disabled by such an illness in a manner that  
 241 should prevent his possessing a firearm, rifle or shotgun; or  
 242 (iv) is or has been under treatment for or confinement for drug  
 243 addiction or habitual drunkenness, except when he is deemed to  
 244 be cured of such condition by a licensed physician, he may make  
 245 application for said card after the expiration of five years from the  
 246 date of such confinement or treatment and upon presentation of an  
 247 affidavit issued by said physician to the effect that the physician  
 248 knows the applicant's history of treatment and that in his opinion  
 249 the applicant is deemed cured; or  
 250 (v) is at the time of the application under 15 years of age; or  
 251 (vi) is at the time of the application more than 15 but less  
 252 than 18 years of age, except where the applicant submits with his  
 253 application a certificate of his parent or guardian granting the  
 254 applicant permission to apply for a card; or  
 255 (vii) is an alien; or  
 256 (viii) is currently subject to: (a) an order for suspension or sur-  
 257 render issued pursuant to section 3B or 3C of chapter 209A or a  
 258 similar order issued by another jurisdiction; or (b) a permanent or  
 259 temporary protection order issued pursuant to chapter 209A or a  
 260 similar order issued by another jurisdiction; or  
 261 (ix) is currently the subject of an outstanding arrest warrant in  
 262 any state or federal jurisdiction.  
 263 Within seven days of the receipt of a completed application for  
 264 a Class B card, the licensing authority shall forward one copy of  
 265 the application and one copy of the applicant's fingerprints to the  
 266 colonel of the state police, who shall, within 30 days, advise, in  
 267 writing, the licensing authority of any disqualifying criminal  
 268 record of the applicant, arising from within or without the com-  
 269 monwealth, and whether there is reason to believe that the appli-  
 270 cant is disqualified for any of the foregoing reasons from

271 possessing a Class B card; provided, however, that the taking of fingerprints shall not be required in issuing the renewal of a Class B card if the renewal applicant's fingerprints are on file with the department of the state police. In searching for any disqualifying history of the applicant, the colonel shall utilize, or cause to be utilized, files maintained by the department of mental health, department of probation and statewide and nationwide criminal justice, warrant and protection order information systems and files, including, but not limited to, the National Instant Criminal Background Check System. If the information available to the colonel does not indicate that the possession of a rifle or shotgun by the applicant would be in violation of state or federal law, the applicant shall certify such fact, in writing, to the licensing authority within a 30 day period.

285 The licensing authority may not prescribe any other condition for the issuance of a Class B firearm identification card and shall, within 30 days from the date of application, either approve the application and issue the license or deny the application and notify the applicant of the reason for such denial in writing. Provided, however, that no such card shall be issued unless the executive director has certified, in writing, that the information available to him does not indicate that the possession of a rifle or shotgun by the applicant would be in violation of state or federal law.

295 A Class B firearm identification card shall be revoked or suspended by the licensing authority or his designee upon the occurrence of any event that would have disqualified the holder from being issued the card or from having the card renewed or for a violation of a restriction provided under this subsection. Any revocation or suspension of a card shall be in writing and shall state the reasons therefor. Upon revocation or suspension, the licensing authority shall take possession of said card and receipt for fee paid for such card, and the person whose card is revoked or suspended shall take all actions required under the provisions of section 129D. No appeal or post-judgment motion shall operate to stay such revocation or suspension. Notices of revocation and suspension shall be forwarded to the executive director of the criminal history systems board and the commissioner of probation and shall be included in the criminal justice information system.

300 A firearm identification card shall be in a standard form provided by the executive director of the criminal history systems board and shall contain an identification number which shall clearly indicate whether said number identifies a Class A or Class B card, the name and address, a photograph and fingerprint of the licensee, his place and date of birth, his height, weight, and hair and eye color, and his signature, shall be marked 'Firearm identification card', and shall clearly indicate whether the card is Class A or Class B. The application for said card shall be made in a standard form provided by the executive director of the criminal

349 history systems board which shall require the applicant to affirmatively state under the pains and penalties of perjury that he is not disqualified on any of the grounds enumerated in subsection (a) or (b), whichever applies, from being issued said card.

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

358 A firearm identification card shall be valid, unless revoked or suspended, for a period of not more than three years from the date of issue and shall expire on the anniversary of the cardholder's date of birth occurring not less than two years but not more than three years from the date of issue. Any renewal thereof shall expire on the anniversary of the cardholder's date of birth occurring not less than two years but not more than three years from the date of issue. Any card issued to an applicant born on February 29 shall expire on March first. The executive director of the criminal history systems board shall send by first class mail to the holder of each such license to carry firearms, a notice of the expiration of his license not less than 90 days prior to such expiration, and shall enclose therein a form for the renewal of said license. The fee for such application shall be \$35 in the case of a Class A card and \$25 in the case of a Class B card which shall be payable to the licensing authority and shall not be prorated or refunded in case of revocation or denial; provided, that the licensing authority shall retain \$15 of said fee in the case of a Class A card and \$10 in the case of a Class B card; and provided further, that the remaining portion of said fee shall be deposited into the Firearms Record Keeping Trust Fund, established under section 131M.

380 Any cardholder shall notify, in writing, the licensing authority who issued said card, the chief of police into whose jurisdiction the licensee moves and the executive director of the criminal history systems board of any change of address. Such notification shall be made by certified mail within 30 days of its occurrence.

385 Failure to so notify shall be cause for revocation or suspension of said card.

387 Notwithstanding the provisions of section 10 of chapter 269, any person in possession of a rifle or shotgun whose firearm identification card issued under this section is invalid for the sole reason that it has expired, but who shall not be disqualified from renewal upon application therefor under this section, shall be subject to a civil fine of not less than \$1,000 nor more than \$5,000 in the case of a Class A card and not less than \$200 nor more than \$1,000 in the case of a Class B card and the provisions of section 10 of chapter 269 shall not apply; provided, however, that the exemption from the provisions of section 10 of said chapter 269 provided herein shall not apply for any such card that has been revoked or suspended, unless solely for failure to give notice of a change of address as required under this section, or for which revocation or suspension is pending or an application for renewal of which has been denied. Any person found by a law enforcement officer to be in possession of a rifle or shotgun after said card has expired or has been revoked or suspended solely for failure to give notice of a change of address shall have any rifle or shotgun and the expired or suspended card then in possession confiscated by said law enforcement officer, who shall forward said card to the licensing authority by whom it was issued as soon as practicable. Any confiscated weapon shall be returned to the owner upon the renewal or reinstatement of such expired or suspended card within one year of said confiscation or may be otherwise disposed of in accordance with the provisions of section 129D. Pending the issuance of a renewed firearm identification card, a receipt for the fee paid, after five days following issuance, shall serve as a valid substitute and any rifle or shotgun so confiscated shall be returned, unless the applicant is disqualified. The provisions of this paragraph shall not apply with regard to rifles and shotguns that are not large capacity weapons if such person has a valid license to carry firearms issued under section 131 or 131F.

420 Upon issuance of a firearm identification card under this section, the licensing authority shall forward a copy of such approved application and card to the executive director of the criminal history systems board, who shall inform the licensing authority forthwith of the existence of any disqualifying condition discovered or occurring subsequent to the issuance of a license under this section.

427 Nothing in this section shall authorize the use, possession,  
 428 ownership, transfer, purchase, sale, lease, rental or transportation  
 429 of any weapon, including rifles and shotguns, that is otherwise  
 430 prohibited by state or federal law.  
 431 The secretary of the executive office of public safety, or his  
 432 designee, is authorized to promulgate regulations to carry out the  
 433 purposes of this section.

1 SECTION 29. Section 129C of said chapter 140, as so  
 2 appearing, is hereby amended by inserting after the words  
 3 'resides', in line 18, the following words:—; and, failure to  
 4 report as required by this paragraph shall be cause for suspension  
 5 or permanent revocation of the person's firearm identification card  
 6 or license to carry firearms, or both, and shall be punished by  
 7 a fine of not less than \$200 nor more than to \$1,000 for a first  
 8 offense and by a fine of not less than \$1,000 nor more than \$5,000  
 9 for a second offense.

1 SECTION 30. The fourth paragraph of said section 129C of  
 2 said chapter 140, as so appearing, is hereby amended by striking  
 3 out clause (j) and inserting in place thereof the following  
 4 clause:—  
 5 (j) Any new resident moving into the commonwealth, or any  
 6 resident of the commonwealth returning after having been absent  
 7 from the commonwealth for not less than 180 consecutive days  
 8 any resident of the commonwealth upon being released from  
 9 active service with any of the armed services of the United States  
 10 with respect to any firearm, rifle or shotgun and any ammunition  
 11 therefor then in his possession, for 60 days after such release  
 12 entry or return into the commonwealth.

1 SECTION 31. Said section 129C of said chapter 140, as  
 2 appearing, is hereby amended by striking out, in line 13,  
 3 the word 'minor' and inserting in place thereof the following  
 4 words:— person under the age of 21.

1 SECTION 32. Said section 129C of said chapter 140, as  
 2 appearing, is hereby further amended by inserting after the sixth  
 3 paragraph the following paragraph:—

4 Nothing in this section shall permit the sale or transfer of any  
 5 large capacity rifle or shotgun or large capacity ammunition  
 6 feeding device therefor to any person not in possession of a  
 7 Class A firearm identification card issued under subsection (a) of  
 8 section 129B or of any large capacity firearm or large capacity  
 9 ammunition feeding device therefor to any person not in posses-  
 10 sion of Class A license issued under section 131.

1 SECTION 33. Said section 129C of said chapter 140, as so  
 2 appearing, is hereby further amended by inserting after the  
 3 words 'two hundred and sixty-nine', in line 139, the following  
 4 words:—; and, the possession of a Class B firearm identification  
 5 card issued under clause (b) of the first paragraph of section 129B  
 6 shall not entitle any person to possess any large capacity rifle or  
 7 shotgun or large capacity ammunition feeding device therefor in  
 8 violation of subsection (m) of section 10 of chapter 269.

1 SECTION 34. Section 129D of said chapter 140, as so  
 2 appearing, is hereby amended by inserting after the first paragraph  
 3 the following paragraph:—  
 4 The licensing authority, after taking possession of any firearm,  
 5 rifle, shotgun, machine gun or ammunition by any means, may  
 6 transfer possession of such weapon for storage purposes to a fed-  
 7 erally and state licensed dealer of such weapons and ammunition  
 8 who operates a bonded warehouse on the licensed premises that is  
 9 equipped with a safe for the secure storage of firearms and a  
 10 weapon box or similar container for the secure storage of other  
 11 weapons and ammunition; provided, however, that the licensing  
 12 authority shall not transfer to such dealer possession of any  
 13 weapon that is or may be evidence in any current or pending crim-  
 14 inal case concerning a violation of any general or special law, rule  
 15 or regulation governing the use, possession or ownership of such  
 16 weapon. Any such dealer that takes possession of a weapon under  
 17 the provisions of this section shall: (i) inspect such weapon;  
 18 (ii) issue to the owner a receipt indicating the make, model, cal-  
 19 iber, serial number, condition and current market value of each  
 20 weapon so received; and (iii) store and maintain all weapons so  
 21 received in accordance with such regulations, rules or guidelines  
 22 as the secretary of the executive office of public safety may estab-  
 23 lish under this section. The owner shall be liable to such dealer for

24 reasonable storage charges and may dispose of any such weapon  
 25 as provided under this section by transfer to a person lawfully per-  
 26 mitted to purchase or take possession of such weapon.

1 SECTION 35. The second paragraph of said section 129D of  
 2 said chapter 140, as so appearing, is hereby amended by adding  
 3 the following sentence:— Such weapon that is stored and main-  
 4 tained by a licensed dealer as provided under this section may be  
 5 so auctioned at the direction of: (i) the licensing authority at the  
 6 expiration of one year following initial surrender or delivery to  
 7 said licensing authority; or (ii) the dealer then in possession when  
 8 the storage charges exceed the fair market value of such weapon;  
 9 provided, that, in either case, after deduction and payment for  
 10 storage charges and all necessary costs associated with such sur-  
 11 render and transfer all surplus proceeds, if any, shall be immedi-  
 12 ately returned to the owner of such weapon.

1 SECTION 36. Section 130 of said chapter 140, as so appearing,  
 2 is hereby amended by striking out, in lines 6 and 7, the words  
 3 'firearm, rifle, shotgun, machine gun or ammunition' and  
 4 inserting in place thereof the following words:— rifle, shotgun,  
 5 machine gun or ammunition, or whoever sells or furnishes any  
 6 person under 21 years of age a firearm or ammunition therefor.

1 SECTION 37. Said section 130 of said chapter 140, as so  
 2 appearing, is hereby further amended by striking out, in lines 10  
 3 and 11, the words 'five hundred nor more than one thousand dol-  
 4 lars' and inserting in place thereof the following words:— '\$1,000  
 5 nor more than \$10,000, or by imprisonment in a state prison for  
 6 not more than 10 years or by imprisonment in a house of correc-  
 7 tion for not more than two and one-half years or both such fine  
 8 and imprisonment.

1 SECTION 38. Said section 130 of said chapter 140, as so  
 2 appearing, is hereby further amended by inserting after the word  
 3 'shotgun', in line 17, the following words:— that is not a large  
 4 capacity weapon.

1 SECTION 39. Chapter 140, as so appearing, is hereby further  
 2 amended by striking out section 131 and inserting in place thereof  
 3 the following section:—

4 Section 131. All licenses to carry firearms shall be designated  
 5 Class A or Class B, and the issuance and possession of any such  
 6 card shall be subject to the following conditions and restrictions:  
 7 (a) Class A license to carry firearms. A Class A license shall  
 8 entitle a holder thereof to purchase, rent, lease, borrow and pos-  
 9 sess large capacity firearms, large capacity ammunition feeding  
 10 devices and ammunition therefor, subject to the restrictions  
 11 expressed herein and such restrictions as the licensing authority  
 12 may impose. A Class A license shall not entitle a holder thereof to  
 13 carry or possess: (i) a large capacity firearm simultaneously with a  
 14 fully or partially loaded large capacity ammunition feeding  
 15 device, or a fully or partially loaded large capacity firearm that  
 16 employs a rotating cylinder or fixed magazine capable of  
 17 accepting more than 10 rounds of ammunition, except as  
 18 expressly authorized under this section; or (ii) any rifle or shotgun  
 19 that is a large capacity weapon or a large capacity ammunition  
 20 feeding device for such weapons, except as provided under sub-  
 21 section (a) of section 129B. A violation of a restriction provided  
 22 in this paragraph shall be cause for suspension or revocation and  
 23 shall, unless otherwise provided, be punished by a fine of not less  
 24 than \$1,000 nor more than \$10,000; provided, however, that the  
 25 provisions of section 10 of chapter 269 shall not apply to such  
 26 violation.

27 A person granted a Class A license under this section may, sub-  
 28 ject to such other restrictions as may be imposed by the licensing  
 29 authority, possess or carry large capacity firearms together with a  
 30 fully or partially loaded large capacity ammunition feeding  
 31 device, or fully or partially loaded large capacity firearms that  
 32 employ a rotating cylinder or fixed magazine capable of accepting  
 33 more than 10 rounds of ammunition, only: (i) at his residence,  
 34 place of business or other property owned by such licensee;  
 35 (ii) while on the premises of a club incorporated under the laws of  
 36 the commonwealth for the purpose of target, trap or skeet shooting  
 37 or a shooting gallery or range licensed under section 56A;  
 38 (iii) while attending an exhibition or educational project or event  
 39 that is sponsored by, conducted under the supervision of or

40 approved by a public law enforcement agency or a nationally  
 41 state recognized entity that promotes proficiency in or education  
 42 about semiautomatic weapons; or (iv) while hunting in accordance  
 43 with the provisions of chapter 131.

44 The colonel of the state police may, after an investigation, grant  
 45 a Class A license to a club, with an on-site shooting range or  
 46 gallery, incorporated under the laws of the commonwealth for the  
 47 purpose of lawful target, trap or skeet shooting, for the possession  
 48 storage and use of large capacity firearms, ammunition therefor  
 49 and large capacity ammunition feeding devices for use with such  
 50 firearms on the premises of such club; provided, however, that no  
 51 less than one shareholder of said club shall be qualified and suit-  
 52 able to be issued such license; and provided, further, that such  
 53 large capacity firearms and ammunition feeding devices may be  
 54 used under such Class A club license only by such member  
 55 that possess a valid Class A firearm identification card or a valid  
 56 Class A or Class B license to carry or possess firearms, or by such  
 57 other persons that the club permits while under the direct supervi-  
 58 sion of a club member who possesses a valid Class A license to  
 59 carry firearms. No large capacity firearm or large capacity ammu-  
 60 nition feeding device shall be removed from the premises except  
 61 for the purposes of: (i) transferring such firearm or feeding device  
 62 to a licensed dealer; (ii) transporting such firearm or feeding  
 63 device to a licensed gunsmith for repair; (iii) target, trap or skeet  
 64 shooting on the premises of another club incorporated under  
 65 the laws of the commonwealth, and for transporting thereof;  
 66 (iv) attending an exhibition or educational project or event that is  
 67 sponsored by, conducted under the supervision of or approved by  
 68 a public law enforcement agency or a nationally or state recog-  
 69 nized entity that promotes proficiency in or education about semi-  
 70 automatic weapons, and for transporting thereto and therefrom;  
 71 (v) hunting in accordance with the provisions of chapter 131; or  
 72 (vi) surrendering such firearm or feeding device under the provi-  
 73 sions of section 129D. Any large capacity firearm or large  
 74 capacity ammunition feeding device kept on the premises of a  
 75 lawfully incorporated shooting club shall, when not in use, be  
 76 secured in a locked container, and shall be unloaded during any  
 77 lawful transport. The clerk or other corporate officer of such club  
 78 shall annually file a report with the colonel of the state police and

79 the executive director of the criminal history systems board listing  
 80 all large capacity firearms and large capacity ammunition feeding  
 81 devices owned or possessed under such license. The colonel of the  
 82 state police or his designee, shall have the right to inspect all  
 83 firearms owned or possessed by such club upon request during  
 84 regular business hours and said colonel may revoke or suspend a  
 85 club license for a violation of any provision of this chapter or  
 86 chapter 269, relative to the ownership, use or possession of large  
 87 capacity weapons or large capacity ammunition feeding devices.  
 88 (b) Class B license to carry firearms. A Class B license shall  
 89 entitle a holder thereof to carry or possess firearms, rifles and  
 90 shotguns that are not large capacity weapons, ammunition therefor  
 91 and feeding devices that are not large capacity feeding devices,  
 92 subject to such additional restrictions as the licensing authority  
 93 may impose, including, but not limited to, restricting the ability to  
 94 carry or possess such weapons to the licensee's residence, place of  
 95 business or shooting club or range; provided, however, that a  
 96 Class B license shall not entitle a large capacity firearm or large  
 97 capacity ammunition feeding device to be used, possessed, carried  
 98 or transported, except under a Class A license issued to a shooting  
 99 club as provided under subsection (a) or under the direct supervi-  
 100 sion of a Class A licensee at a shooting club or range. A violation  
 101 of any restriction relative to large capacity firearms and large  
 102 capacity feeding devices that would not so restrict the holder of a  
 103 Class A license, where the person possesses a valid Class B  
 104 license, shall be cause for suspension or revocation of said  
 105 Class B license and shall be punished by a fine of not less than  
 106 \$1,000 nor more than \$10,000; provided, however, that the provi-  
 107 sions of section 10 of chapter 269 shall not apply to such viola-  
 108 tion. A Class B license shall not be a valid license for the purpose  
 109 of complying with any provision under this chapter governing the  
 110 purchase, sale, lease, rental or transfer of any weapon or ammu-  
 111 tion feeding device where the subject weapon is a large capacity  
 112 weapon or the subject ammunition feeding device is a large capacity  
 113 ammunition feeding device, both as defined in sec-  
 114 tion 121. A Class B license shall not entitle a holder thereof to  
 115 carry or possess any firearm, rifle or shotgun that is, or in such  
 116 manner that is, otherwise prohibited by law.

(c) Either a Class A or Class B license shall be valid for the  
 117 purpose of owning, possessing and using rifles and shotguns that  
 118

119 are not large capacity weapons consistent with the entitlements  
 120 conferred by a Class B firearm identification card issued under  
 121 subsection (b) of section 129B; provided, however, that neither a  
 122 Class A nor Class B license shall enable the holder thereof to  
 123 own, possess or use a large capacity rifle or shotgun except as  
 124 provided under subsection (a) said section 129B relative to the use  
 125 of large capacity rifles and shotguns on the premises of a shooting  
 126 club incorporated under the laws of the commonwealth. A viola-  
 127 tion of a restriction provided in this paragraph that does not apply  
 128 to Class A firearm identification cards issued under said clause (a)  
 129 shall be cause for suspension or revocation and shall be punished  
 130 by a fine of not less than \$1,000 nor more than \$10,000; provided,  
 131 however, that the provisions of section 10 of chapter 269 shall not  
 132 apply to such violation. Neither a Class A nor Class B license  
 133 shall allow the purchase, use, possession or transportation of any  
 134 firearm, rifle, shotgun or feeding device that is, or in such manner  
 135 that is, otherwise prohibited by law.

136 (d) Any person residing or having a place of business within  
 137 the jurisdiction of the licensing authority or any person residing in  
 138 an area of exclusive federal jurisdiction located within a city or  
 139 town may submit to the licensing authority an application for a  
 140 Class A or Class B license to carry firearms, or renewal of the  
 141 same, which the licensing authority may issue if it appears that the  
 142 applicant is a suitable person to be issued such license, and that  
 143 the applicant has good reason to fear injury to his person or prop-  
 144 erty, or for any other reason, including the carrying of firearms for  
 145 use in target practice only, subject to such restrictions expressed  
 146 herein or authorized hereunder, unless the applicant:

147 (i) has, in any state or federal jurisdiction, been convicted or  
 148 adjudicated a youthful offender or delinquent child for the com-  
 149 mission of (a) a felony; (b) a misdemeanor punishable by impris-  
 150 onment for more than two years; (c) a violent crime as defined in  
 151 section 121; (d) a violation of any law regulating the use, posses-  
 152 sion, ownership, transfer, purchase, sale, lease, rental, receipt or  
 153 transportation of weapons or ammunition for which a term of  
 154 imprisonment may be imposed; or (e) a violation of any law regu-  
 155 lating the use, possession or sale of a narcotic or harmful drug; or  
 156 (ii) has been confined to any hospital or institution for mental  
 157 illness, except where the applicant shall submit with the applica-  
 158 tion an affidavit of a registered physician attesting that he is

159 familiar with the applicant's mental illness and that in his opinion  
 160 the applicant is not disabled by such an illness in a manner that  
 161 should prevent him from possessing a firearm; or  
 162 (iii) is or has been under treatment for or confinement for drug  
 163 addiction or habitual drunkenness, except when he is deemed to  
 164 be cured of such condition by a licensed physician, he may make  
 165 application for said license after the expiration of five years from  
 166 the date of such confinement or treatment and upon presentation  
 167 of an affidavit issued by said physician to the effect that the physi-  
 168 cian knows the applicant's history of treatment and that in his  
 169 opinion the applicant is deemed cured; or  
 170 (iv) is at the time of the application less than 21 years of age; or  
 171 (v) is an alien; or  
 172 (vi) is currently subject to: (a) an order for suspension or sur-  
 173 render issued pursuant to section 3B or 3C of chapter 209A or a  
 174 similar order issued by another jurisdiction; or (b) a permanent or  
 175 temporary protection order issued pursuant to chapter 209A or a  
 176 similar order issued by another jurisdiction; or  
 177 (vii) is currently the subject of an outstanding arrest warrant in  
 178 any state or federal jurisdiction.

179 Within seven days of the receipt of a completed application for  
 180 a license to carry or possess firearms, or renewal of the same, the  
 181 licensing authority shall forward one copy of the application and  
 182 one copy of the applicant's fingerprints to the colonel of the state  
 183 police, who shall, within 30 days, advise, in writing, the licensing  
 184 authority of any disqualifying criminal record of the applicant,  
 185 arising from within or without the commonwealth, and whether  
 186 there is reason to believe that the applicant is disqualified for any  
 187 of the foregoing reasons from possessing a license to carry or pos-  
 188 sess firearms. In searching for any disqualifying history of the  
 189 applicant, the colonel shall utilize, or cause to be utilized, files  
 190 maintained by the department of mental health, department of pro-  
 191 tection and statewide and nationwide criminal justice, warrant and  
 192 protection order information systems and files, including, but not  
 193 limited to, the National Instant Criminal Background Check  
 194 System. If the information available to the colonel does not indi-  
 195 cate that the possession of a firearm or large capacity firearm by  
 196 the applicant would be in violation of state or federal law, he shall  
 197 certify such fact, in writing, to the licensing authority within  
 198 said 30 day period.

199 The licensing authority may also make inquiries concerning  
 200 the applicant to: (i) the executive director of the criminal history  
 201 systems board relative to any disqualifying condition and records  
 202 of purchases, sales, rentals, leases and transfers of weapons or  
 203 ammunition concerning the applicant; (ii) the commissioner of  
 204 probation relative to any record contained within the department  
 205 of probation or the statewide domestic violence record keeping  
 206 system concerning the applicant; and (iii) the commissioner of the  
 207 department of mental health relative to information held by said  
 208 department concerning the applicant, and whether the applicant is  
 209 a suitable person to possess firearms, or is not a suitable person to  
 210 possess firearms. The director or commissioner to whom the  
 211 licensing authority makes such inquiry shall provide prompt  
 212 and full cooperation for that purpose in any investigation of the  
 213 applicant.  
 214 The licensing authority shall, within 40 days from the date of  
 215 application, either approve the application and issue the license or  
 216 deny the application and notify the applicant of the reason for  
 217 such denial in writing; provided, however, that no such license  
 218 shall be issued unless the colonel has certified, in writing, that the  
 219 information available to him does not indicate that the possession  
 220 of a firearm or large capacity firearm by the applicant would be in  
 221 violation of state or federal law.  
 222 A license issued under this section shall be revoked or sus-  
 223 pended by the licensing authority or his designee upon the occur-  
 224 rence of any event that would have disqualified the holder from  
 225 being issued the license or from having the license renewed; and  
 226 a license may be revoked or suspended by the licensing authority  
 227 if it appears that the holder is no longer a suitable person to pos-  
 228 sess such license. Any revocation or suspension of a license shall  
 229 be in writing and shall state the reasons therefor. Upon revocation  
 230 or suspension, the licensing authority shall take possession of said  
 231 license, and the person whose license is so revoked or suspended  
 232 shall take all actions required under the provisions of sec-  
 233 tion 129D. No appeal or post-judgment motion shall operate to  
 234 stay such revocation or suspension. Notices of revocation and sus-  
 235 pension shall be forwarded to the executive director of the crim-  
 236 inal history systems board and the commissioner of probation and  
 237 shall be included in the criminal justice information system.

238 A revoked or suspended license may be reinstated only upon the  
 239 termination of all disqualifying conditions, if any.  
 240 Any applicant or holder aggrieved by a denial, revocation or  
 241 suspension of a license, unless a hearing has previously been  
 242 held pursuant to chapter 209A, may, within either 90 days  
 243 after receiving notice of said denial, revocation or suspension or  
 244 within 90 days after the expiration of the time limit in which the  
 245 licensing authority is required to respond to the applicant, file a  
 246 petition to obtain judicial review in the district court having juris-  
 247 diction in the city or town wherein the applicant filed for, or was  
 248 issued, said license; and, a justice of said court, after a hearing,  
 249 may direct that a license be issued or reinstated to the petitioner if  
 250 he finds that there was no reasonable ground for denying, sus-  
 251 pending or revoking said license and that the petitioner is not pro-  
 252 hibited by law from possessing the same.  
 253 A license shall be in a standard form provided by the executive  
 254 director of the criminal history systems board and shall contain a  
 255 license number which shall clearly indicate whether said number  
 256 identifies a Class A or Class B license, the name and address, a  
 257 photograph and fingerprint of the licensee, his place and date of  
 258 birth, his height, weight, and hair and eye color, and his signature.  
 259 Said license shall be marked 'License to Carry Firearms,' and  
 260 shall clearly indicate whether the license is Class A or Class B.  
 261 The application for said license shall be made in a standard form  
 262 provided by the executive director of the criminal history systems  
 263 board which shall require the applicant to affirmatively state  
 264 under the pains and penalties of perjury that he is not disqualified  
 265 on any of the grounds enumerated above from being issued  
 266 said license.  
 267 Any person who knowingly files an application with false  
 268 information shall be punished by a fine of not less than \$500 nor  
 269 more than \$1,000 or by imprisonment for not less than six months  
 270 nor more than two years in a house of correction, or both such fine  
 271 and imprisonment.  
 272 A license to carry or possess firearms shall be valid, unless  
 273 revoked or suspended, for a period of not more than three years  
 274 from the date of issue and shall expire on the anniversary of the  
 275 licensee's date of birth occurring not less than two years but not  
 276 more than three years from the date of issue. Any renewal thereof

277 shall expire on the anniversary of the licensee's date of birth.  
 278 occurring not less than two years but not more than three years  
 279 from the effective date of such license. Any license issued to an  
 280 applicant born on February 29 shall expire on March first. The fee  
 281 for such application shall be \$35 in the case of a Class A license  
 282 and \$25 in the case of a Class B license which shall be payable to  
 283 the licensing authority and shall not be prorated or refunded in  
 284 case of revocation or denial; provided, however, that the licensing  
 285 authority shall retain \$15 of said fee in the case of a Class A  
 286 license and \$10 in the case of a Class B license; and provided, fur-  
 287 ther, that the remaining portion of said fee shall be deposited into  
 288 the Firearms Record Keeping Trust Fund, established under  
 289 section 131M.

290 Notwithstanding other provisions of this section, no license  
 291 shall be required for the carrying or possession of a firearm  
 292 known as a detonator and commonly used on vehicles as a sig-  
 293 naling and marking device, when carried or possessed for such  
 294 signaling or marking purposes. Whoever knowingly issues a  
 295 license in violation of this section shall be punished by a fine of  
 296 not less than \$500 nor more than \$1,000 or by imprisonment for  
 297 not less than six months nor more than two years in a jail or house  
 298 of correction, or both such fine and imprisonment. The executive  
 299 director of the criminal history systems board shall send by first  
 300 class mail to the holder of each such license to carry firearms, a  
 301 notice of the expiration of his license not less than 90 days prior  
 302 to such expiration, and shall enclose therein a form for the  
 303 renewal of said license. The taking of fingerprints shall not be  
 304 required in issuing the renewal of a license if the renewal appli-  
 305 cant's fingerprints are on file with the department of the state  
 306 police. Any licensee shall notify, in writing, the licensing  
 307 authority who issued said license, the chief of police into whose  
 308 jurisdiction the licensee moves and the executive director of the  
 309 criminal history systems board of any change of address. Such  
 310 notification shall be made by certified mail within 30 days of its  
 311 occurrence. Failure to so notify shall be cause for revocation or  
 312 suspension of said license.

313 Notwithstanding the provisions of section 10 of chapter 269,  
 314 any person in possession of a firearm, rifle or shotgun whose  
 315 license issued under this section is invalid for the sole reason that

316 it has expired, but who shall be entitled to renewal upon applica-  
 317 tion therefor under this section, shall be subject to a civil fine of  
 318 not less than \$1,000 nor more than \$5,000 in the case of a Class A  
 319 license and not less than \$200 nor more than \$1,000 in the case of  
 320 a Class B license and the provisions of section 10 of chapter 269  
 321 shall not apply; provided, however, that the exemption from the  
 322 provisions of section 10 of said chapter 269 provided herein shall  
 323 not apply for any such license that has been revoked or suspended  
 324 or for which revocation or suspension is pending or an application  
 325 for renewal of which has been denied, unless solely for failure to  
 326 give notice of a change of address as required under this section.  
 327 Any person found by a law enforcement officer to be in posses-  
 328 sion of a firearm, rifle or shotgun after said license has expired or  
 329 has been revoked or suspended solely for failure to give notice of  
 330 a change of address shall have any firearm, rifle or shotgun and  
 331 the expired or suspended license then in possession confiscated by  
 332 said law enforcement officer, who shall forward said license to the  
 333 licensing authority by whom it was issued as soon as practicable.  
 334 Any confiscated weapon shall be returned to the owner upon the  
 335 renewal or reinstatement of such expired or suspended license  
 336 within one year of said confiscation or may be otherwise disposed  
 337 of in accordance with the provisions of section 129D. The provi-  
 338 sions of this paragraph shall not apply if such person has a valid  
 339 license to carry firearms issued under section 131F.

340 Upon approval of an application of an individual or club, the  
 341 licensing authority may place limitations on the license issued,  
 342 including but not limited to prohibiting the ability of a firearm to  
 343 be carried in any public place under said license; and, any restric-  
 344 tions so imposed shall be clearly printed on said license in a  
 345 manner to be prescribed by the executive director of the criminal  
 346 history systems board. A violation of any restriction so imposed  
 347 shall be cause for suspension or revocation of said license. A  
 348 license issued under this section shall not entitle a holder thereof  
 349 to carry or possess a firearm, rifle or shotgun for any purpose not  
 350 authorized under the license to carry firearms issued to such  
 351 person hereunder.

352 Upon issuance of a license to carry or possess firearms under  
 353 this section, the licensing authority shall forward a copy of such  
 354 approved application and license to the executive director of the

355 criminal history systems board, who shall inform the licensing  
356 authority forthwith of the existence of any disqualifying condition  
357 discovered or occurring subsequent to the issuance of a license  
358 under this section.

359 No person shall be issued a license to carry or possess a  
360 machine gun in the commonwealth, except that a licensing  
361 authority may issue a machine gun license to:

362 (a) a firearm instructor certified by the criminal justice training  
363 council for the sole purpose of firearm instruction to police per-  
364 sonnel;

365 (b) a bona fide collector of firearms upon application or upon  
366 application for renewal of such license.

367 The executive director of the criminal history systems board  
368 shall promulgate regulations in accordance with chapter 30A to  
369 establish criteria for persons who shall be classified as bona fide  
370 collectors of firearms.

371 Nothing in this section shall authorize the use, possession,  
372 ownership, transfer, purchase, sale, lease, rental or transportation  
373 of any weapons, including firearms, rifles and shotguns, that is  
374 otherwise prohibited by state or federal law.

375 The secretary of the executive office of public safety or his  
376 designee, is authorized to promulgate regulations to carry out the  
377 purposes of this section.

1 SECTION 40. Section 131A of said chapter 140, as so  
2 appearing, is hereby amended by striking out the third sentence  
3 and inserting in place thereof the following two sentences:—  
4 Such permits shall be either Class A or Class B, shall be issued on  
5 forms furnished by the executive director of the criminal history  
6 systems board which shall clearly indicate whether it is a Class A  
7 or Class B permit, shall be valid for not more than 10 days after  
8 issue, and a copy of every such permit so issued shall within one  
9 week thereafter be sent to said executive director. Only a Class A  
10 permit shall entitle a person to purchase, rent or lease a firearm  
11 that is a large capacity weapon, as defined in section 121.

1 SECTION 41. Said section 131A of said chapter 140, as so  
2 appearing, is hereby further amended by striking out the  
3 second paragraph and inserting in place thereof the following  
4 paragraph:—

5 The fee for such permits shall be \$35 in the case of a Class A  
6 permit and \$25 in the case of a Class B permit; provided, how-  
7 ever, that the licensing authority shall retain \$15 of said fee in  
8 the case of a Class A permit and \$10 of said fee in the case of a  
9 Class B permit; and provided, further, that the balance of said fee  
10 shall be deposited in the Firearms Record Keeping Trust Fund  
11 established under section 131M.

1 SECTION 42. Said chapter 140 is hereby further amended by  
2 striking out section 131C, as so appearing, and inserting in place  
3 thereof the following section:—

4 Section 131C. (a) No person carrying a firearm under a license  
5 issued under section 131 or 131F shall carry the same in a vehicle  
6 unless such firearm while carried therein is under the direct con-  
7 trol of such person. Whoever violates the provisions of this sub-  
8 section shall be punished by a fine of \$500.

9 (b) Notwithstanding the provisions of subsection (a), no person  
10 carrying a large capacity firearm under a license issued under  
11 section 131 or 131F shall carry the same in a vehicle simultane-  
12 ously with a fully or partially loaded large capacity feeding  
13 device, whether or not either or both such firearm or feeding  
14 device is under the direct control of such person; and, no person  
15 shall so carry a fully or partially loaded large capacity firearm that  
16 employs a rotating cylinder or fixed magazine capable of  
17 accepting more than 10 rounds of ammunition. Whoever violates  
18 the provisions of this subsection shall be punished by a fine of not  
19 less than \$500 nor more than \$5,000; provided, however, that  
20 where said license is a Class B license, such violation shall be  
21 punished by a fine of not less than \$1000 nor more than \$10,000,  
22 and the provisions of section 10 of chapter 269 shall not apply.

23 (c) No person possessing a large capacity rifle or shotgun under  
24 a Class A card issued under section 129B shall possess the same  
25 in a vehicle unless such weapon is unloaded and contained within  
26 the locked trunk of such vehicle or in a locked case or other  
27 secure container. Whoever violates the provisions of this subsec-  
28 tion shall be punished by a fine of not less than \$500 nor more  
29 than \$5,000.

30 The provisions of this section shall not apply to (i) any officer,  
31 agent or employee of the commonwealth or any state or the  
32 United States; (ii) any member of the military or other service of

33 any state or of the United States; (iii) any duly authorized law  
 34 enforcement officer, agent or employee of any municipality of the  
 35 commonwealth; provided, however, that any such person  
 36 described in clauses (i) to (iii), inclusive, is authorized by a com-  
 37 petent authority to carry or possess the weapon so carried or pos-  
 38 sessed and is acting within the scope of his duties.  
 39 A conviction of a violation of this section shall be reported  
 40 forthwith by the court or magistrate to the licensing authority who  
 41 shall immediately revoke the card or license of the person so con-  
 42 victed. No new such card or license shall be issued to any such  
 43 person until one year after the date of revocation.

1 SECTION 43. Section 131E of said chapter 140, as so  
 2 appearing, is hereby amended by striking out the first sentence  
 3 and inserting in place thereof the following paragraph:—  
 4 Any resident of the commonwealth may purchase firearms,  
 5 rifles, shotguns and ammunition feeding devices from any dealer  
 6 licensed under section 122, or from such person as shall be quali-  
 7 fied under section 128A, or ammunition or ammunition feeding  
 8 devices from a licensee under section 122B, subject to the  
 9 following conditions and restrictions:

10 (a) rifles, shotguns and feeding devices therefor may be so pur-  
 11 chased only upon presentation of: (i) a valid Class A or Class B  
 12 firearm identification card issued under section 129B; or  
 13 (ii) a valid Class A or Class B license to carry firearms issued  
 14 under section 131; or (iii) valid proof of exempt status under  
 15 section 129C; provided, however, that large capacity rifles and  
 16 shotguns and large capacity ammunition feeding devices therefor  
 17 may be so purchased only upon presentation of a Class A firearm  
 18 identification card issued under section 129B; and provided, fur-  
 19 ther, that neither a Class A nor Class B license to carry firearms  
 20 issued under section 131 shall be valid for the purpose of purchasing  
 21 large capacity rifles or shotguns or large capacity ammunition  
 22 feeding devices therefor; and provided, further, that no rifle or  
 23 shotgun or ammunition or ammunition feeding device therefor  
 24 shall be sold to any person less than 18 years of age; and pro-  
 25 vided, further, that no large capacity rifle or shotgun or large  
 26 capacity ammunition or ammunition feeding device therefor shall  
 27 be sold to any person less than 21 years of age;

28 (b) firearms and feeding devices therefor may be so purchased  
 29 only upon presentation of: (i) a valid Class A or Class B license to  
 30 carry firearms issued under section 131; or (ii) a valid Class A or  
 31 Class B firearm identification card issued under section 129B  
 32 together with a valid Class or Class B permit to purchase firearms  
 33 issued under section 131A; or (iii) a valid Class A or Class B  
 34 permit to purchase firearms issued under section 131A together  
 35 with valid proof of exempt status under section 129C; provided,  
 36 however, that large capacity firearms and large capacity ammuni-  
 37 tion feeding devices therefor may be so purchased only upon pre-  
 38 sentment of: (i) a valid Class A license to carry firearms issued  
 39 under section 131; or (ii) a valid Class A or Class B firearm iden-  
 40 tification card issued under section 129B together with a valid  
 41 Class A permit to purchase firearms issued under section 131A; or  
 42 (iii) a valid Class A permit to purchase firearms issued under  
 43 section 131A together with valid proof of exempt status under  
 44 section 129C; and provided, further, that neither a Class A nor  
 45 Class B firearm identification card issued under section 129B, nor  
 46 proof of exempt status under section 129C, shall be valid for the  
 47 purpose of purchasing any firearm or ammunition feeding device  
 48 therefor without being presented together with a Class A or  
 49 Class B permit to purchase issued under section 131A; and pro-  
 50 vided, further, that neither a Class A nor Class B firearm identifi-  
 51 cation card issued under section 129B, nor proof of exempt status  
 52 under section 129C, shall be valid for the purpose of purchasing  
 53 large capacity firearms or large capacity ammunition feeding  
 54 devices therefor without being presented together with a Class A  
 55 permit to purchase issued under section 131A; and provided, fur-  
 56 ther, that an alien permit to possess a rifle or shotgun shall not be  
 57 valid for the purpose of purchasing firearms or ammunition or  
 58 ammunition feeding devices therefor; and provided, further, that  
 59 no firearm or ammunition or ammunition feeding device therefor  
 60 shall be sold to any person less than 21 years of age.

1 SECTION 44. Section 131F of said chapter 140, as so  
 2 appearing, is hereby amended by striking out the first sentence  
 3 and inserting in place thereof the following sentence:— A Class A  
 4 or Class B license to carry firearms, or feeding devices or ammu-  
 5 nition therefor, within the commonwealth, may be issued by the

6 colonel of the state police, or persons authorized by him, to a non-  
 7 resident or any person not falling within the jurisdiction of a local  
 8 licensing authority or to an alien that resides outside the common-  
 9 wealth for purposes of firearms competition and subject to such  
 10 terms and conditions as said colonel may deem proper; provided,  
 11 however, that no license shall be issued to a person who:

- 12 (i) has, in any state or federal jurisdiction, been convicted or
- 13 adjudicated a youthful offender or delinquent child for the com-
- 14 mission of (a) a felony; (b) a misdemeanor punishable by impris-
- 15 onment for more than two years; (c) a violent crime as defined in
- 16 section 121; (d) a violation of any law regulating the use, posses-
- 17 sion, ownership, transfer, purchase, sale, lease, rental, receipt or
- 18 transportation of weapons or ammunition for which a term of
- 19 imprisonment may be imposed; or (e) a violation of any law regu-
- 20 lating the use, possession or sale of a narcotic or harmful drug; or
- 21 (ii) has been confined to any hospital or institution for mental
- 22 illness, except where the applicant shall submit with the applica-
- 23 tion an affidavit of a registered physician attesting that he is
- 24 familiar with the applicant's mental illness and that in his opinion
- 25 the applicant is not disabled by such an illness in a manner that
- 26 should prevent him from possessing a firearm; or

- 27 (iii) is or has been under treatment for or confinement for drug
- 28 addiction or habitual drunkenness, except when he is deemed to
- 29 be cured of such condition by a licensed physician, he may make
- 30 application for said license after the expiration of five years from
- 31 the date of such confinement or treatment and upon presentation
- 32 of an affidavit issued by said physician to the effect that the physi-
- 33 cian knows the applicant's history of treatment and that in his
- 34 opinion the applicant is deemed cured; or

- 35 (iv) is currently subject to: (a) an order for suspension or sur-
- 36 render issued pursuant to section 3B or 3C of chapter 209A or a
- 37 similar order issued by another jurisdiction; or (b) a permanent or
- 38 temporary protection order issued pursuant to chapter 209A or a
- 39 similar order issued by another jurisdiction; or
- 40 (v) is currently the subject of an outstanding arrest warrant in
- 41 any state or federal jurisdiction.

3 fourth sentences and inserting in place thereof the following four  
 4 sentences:— The colonel may also issue such license, subject to  
 5 such terms and conditions as he deems proper, to any resident  
 6 of the commonwealth for the purposes of sports competition.  
 7 A temporary license issued under this section shall be marked  
 8 Temporary License to Carry Firearms', shall clearly indicate  
 9 whether it is Class A or Class B and shall not be used to purchase  
 10 firearms in the commonwealth as provided under section 131E.  
 11 Neither a large capacity weapon nor large capacity ammunition  
 12 feeding device may be carried unless the person has been issued a  
 13 Class A license; provided, however, that the colonel may permit a  
 14 Class A licensee to possess large capacity rifles or shotguns or  
 15 both, and such entitlement shall be clearly indicated on  
 16 the license. The fee for said license shall be \$35 in the case of a  
 17 Class A license and \$25 dollars in the case of a Class B license;  
 18 provided, however, that said fee shall be deposited in the Firearms  
 19 Record Keeping Trust Fund, established under section 131M.

1 SECTION 46. Said chapter 140 is hereby further amended by  
 2 inserting after section 131J the following four sections:—

3 Section 131K. Any firearm or large capacity semiautomatic  
 4 weapon, both as defined in section 121, sold within the common-  
 5 wealth without a safety device designed to prevent the discharge  
 6 of such weapon by unauthorized users and approved by the  
 7 colonel of the state police, including but not limited to mechanical  
 8 locks or devices designed to recognize and authorize, or otherwise  
 9 allow the firearm to be discharged only by, its owner or authorized  
 10 user by solenoid use-limitation devices, key activated or combina-  
 11 tion trigger or handle locks, radio frequency tags, automated fin-  
 12 gerprint identification systems or voice recognition, so long as  
 13 such device is commercially available, shall be defective and the  
 14 sale of such a weapon shall constitute a breach of warranty under  
 15 section 2-314 of chapter 106 and an unfair or deceptive trade act  
 16 or practice under section 2 of chapter 93A. Any entity responsible  
 17 for the manufacture, importation or sale as an inventory item or  
 18 consumer good, both as defined in section 9-109 of chapter 106,  
 19 of such a weapon that does not include or incorporate such a  
 20 device shall be individually and jointly liable to any person who  
 21 sustains personal injury or property damage resulting from the

1 SECTION 45. Said section 131F of said chapter 140, as so  
 2 appearing, is hereby amended by striking out the third and

22 failure to include or incorporate such a device. In the case where  
 23 death results from such personal injury, such entities shall be  
 24 liable in an amount including, but not limited to, that provided  
 25 under chapter 229. Contributory or comparative negligence shall  
 26 not be valid defenses to an action brought under this section in  
 27 conjunction with section 2 of chapter 93A or section 2-314 of  
 28 chapter 106 or both; provided, however, that nothing herein shall  
 29 prohibit such liable parties from maintaining an action for indem-  
 30 nification or contribution against each other or against the lawful  
 31 owner or other authorized user of said weapon. Any disclaimer,  
 32 limit or waiver of the liability provided under this section shall  
 33 be void.

34 No entity responsible for the manufacture, importation or sale  
 35 of such a weapon shall be liable to any person for injuries caused  
 36 by the discharge of such weapon that does not include or incorpo-  
 37 rate a safety device as required under this section if said injuries  
 38 were: (i) self-inflicted, either intentionally or unintentionally,  
 39 unless said injuries were self-inflicted by a person less than 18  
 40 years of age; (ii) inflicted by the lawful owner or other authorized  
 41 user of said weapon; (iii) inflicted by any person in the lawful  
 42 exercise of self-defense; or (iv) inflicted upon a co-conspirator in  
 43 the commission of a crime.

44 This section shall not apply to any weapon distributed to an  
 45 officer of any law enforcement agency or any member of the  
 46 armed forces of the United States or the organized militia of the  
 47 commonwealth; provided, however, that such person is authorized  
 48 to acquire, possess or carry such a weapon for the lawful perfor-  
 49 mance of his official duties; and provided, further, that any such  
 50 weapon so distributed is distributed solely for use in connection  
 51 with said duties.

52 Section 131L. It shall be unlawful to store or keep any firearm  
 53 rifle or shotgun, including but not limited to large capacity  
 54 weapons, or machine gun in any place unless such weapon is  
 55 secured in a locked container or equipped with a tamper-resistant  
 56 mechanical lock or other safety device, properly engaged so as to  
 57 render such weapon inoperable by any person other than the  
 58 owner or other lawfully authorized user. For purposes of  
 59 this section, such weapon shall not be deemed stored or kept if  
 60 carried by or under the control of the owner or other lawfully  
 61 authorized user.

62 A violation of this section shall be punished, in the case of a  
 63 firearm, rifle or shotgun that is not a large capacity weapon, by  
 64 a fine of not less than \$500 nor more than \$5,000 or by imprison-  
 65 ment for not more than one year, or both such fine and imprison-  
 66 ment, and in the case of a large capacity weapon or machine gun,  
 67 by a fine of not less than \$1,000 nor more than \$10,000 or by  
 68 imprisonment for not less than one year nor more than 10 years,  
 69 or both such fine and imprisonment; provided, however, that such  
 70 violation where a rifle or shotgun that is not a large capacity  
 71 weapon was stored or kept in a place where a minor under the age  
 72 of 18 who does not possess a valid firearm identification card  
 73 issued under section 129B may have access without committing  
 74 an unforeseeable trespass shall be punished by a fine of not less  
 75 than \$1,000 nor more than \$10,000 or by imprisonment for not  
 76 less than one year nor more than 10 years, or both such fine and  
 77 imprisonment; and provided, further, that such violation where a  
 78 rifle or shotgun that is a large capacity weapon, firearm or  
 79 machine gun was stored or kept in a place where a minor under  
 80 the age of 18 may have access without committing an unforesee-  
 81 able trespass shall be punished by a fine of not less than \$5,000  
 82 nor more than \$10,000 or by imprisonment for not less than two  
 83 and one-half years, nor more than 10 years, or both such fine and  
 84 imprisonment.

85 If a violation of the provisions of this section where a minor  
 86 under the age of 18 who was not an unforeseeable trespasser  
 87 acquired access to a weapon, unless such minor possessed a valid  
 88 firearm identification card issued under section 129B and was  
 89 permitted by law to possess such weapon, results in the personal  
 90 injury to or the death of any person, said violation shall be  
 91 evidence of wanton or reckless conduct in any criminal or civil  
 92 proceeding.

93 Section 131M. (a) There shall be established and set upon the  
 94 books of the commonwealth a separate fund to be known as the  
 95 Firearms Record Keeping Trust Fund. It shall be the sole purpose  
 96 of said trust fund to fund projects to improve the access of local  
 97 law enforcement departments to state firearm information systems  
 98 and to improve the quality of record keeping of firearm identifica-  
 99 tion cards and licenses to carry firearms, the sale of firearms,  
 100 rifles and shotguns, including large capacity weapons, large

101 capacity feeding devices, machine guns and ammunition therefor  
 102 and other related firearms licenses and permits at the state and  
 103 local law enforcement levels. Said fund shall also be used to pro-  
 104 mote the efficient and accurate recording of such information, and  
 105 verification of the same, that is required as a condition for all  
 106 sales transactions and other transfers of such weapons and ammu-  
 107 nition. The expenditure of the \$300,000 of principal appropriated  
 108 to the trust by this section shall be made at the direction of the  
 109 secretary of the executive office of public safety, hereinafter  
 110 referred to as the secretary. All other monies for said trust fund  
 111 shall be solicited, received and expended within the limits of and  
 112 in the manner to be prescribed by the secretary of the executive  
 113 office of public safety; provided, however, that \$200,000 of said  
 114 monies shall be expended annually for the purpose of paying  
 115 administrative costs and salaries incurred in carrying out the pro-  
 116 visions of this section and, in accordance with the provisions of  
 117 chapter 30B, for the purpose of providing specialized training pro-  
 118 grams for licensing authorities in the operation of information  
 119 systems implemented under this section, updating training man-  
 120 uals, review of rules and regulations for police officers, updating  
 121 handbooks relative to civil liability and on-duty injuries, updating  
 122 the police chiefs guide to labor relations and other specialized  
 123 professional development conferences, seminars and classes, and  
 124 management training; and provided, further, that chiefs of police  
 125 shall be given priority in access to said specialized training pro-  
 126 grams, conferences, seminars and classes and management  
 127 training.

128 (b) Notwithstanding any general or special law to the contrary,  
 129 revenue shall be credited to the fund in the following manner:

130 (i) the sum of \$300,000 is hereby made available from the  
 131 General Fund of the commonwealth for the purposes of said fund,  
 132 provided, however, that said funds shall remain available until  
 133 July 1, 2001; and provided, further, that from time to time, the  
 134 secretary shall, as he deems appropriate, notify the state treasurer,  
 135 the state comptroller, the commissioner of administration, and the  
 136 house and senate committees on ways and means that funds are  
 137 required for the purposes listed in subsection (a). Upon receipt of  
 138 said notification, the comptroller shall, without delay, transfer to  
 139 the fund without further appropriation the amounts requested;

140 provided, that the cumulative total of all such transfers may not  
 141 exceed the \$300,000 authorized by this paragraph; and provided,  
 142 further, that the amounts transferred pursuant to this paragraph  
 143 shall be held separately from the amounts received pursuant to  
 144 clauses (ii), (iii), (iv) and (v);

145 (ii) all revenues received by the commonwealth under sec-  
 146 tions 129B, 131, 131A and 131F shall be immediately credited to  
 147 the trust fund;

148 (iii) quarterly, on or about September 30, December 31, March 31  
 149 and June 30 of each year, the treasurer shall certify to the comp-  
 150 troller an amount of interest to be credited to the trust fund, calcu-  
 151 lated on the basis of the daily balance remaining in the general  
 152 fund of the \$300,000 principal appropriated under clause (i), plus  
 153 accumulated interest, less amounts already transferred pursuant to  
 154 either this clause or clause (i), and the comptroller shall quarterly  
 155 transfer said amount of interest to said fund without further appro-  
 156 priation, provided, that the amounts credited under this clause  
 157 shall be in addition to the amounts credited in clause (i), and shall  
 158 not be subject to the \$300,000 limitation imposed under clause (i);

159 (iv) the trust fund shall retain all interest earned on sums  
 160 deposited in the fund; and

161 (v) the trust fund may receive such other funds as may be  
 162 appropriated from time to time, as well as gifts and grants from  
 163 other sources, or fines and penalties not designated by law for  
 164 other specific purposes, to be used for the purposes of the trust.

165 (c) The state comptroller shall charge the amounts transferred  
 166 under clauses (i) and (ii) of subsection (b) to the General Fund of  
 167 the commonwealth, and said charges shall be reflected in annual  
 168 financial reports in accordance with section 12 of chapter 7A.

169 Section 131N. Notwithstanding any other general or special  
 170 law, or rule or regulation, to the contrary, no person shall sell,  
 171 offer for sale, transfer or possess an assault weapon or a large  
 172 capacity ammunition feeding device that was not otherwise law-  
 173 fully possessed on September 13, 1994. Whoever not being  
 174 licensed under the provisions of section 122 violates the provi-  
 175 sions of this section shall be punished, for a first offense, by a fine  
 176 of not less than \$1,000 nor more than \$10,000 or by imprisonment  
 177 for not less than one year nor more than 10 years, or both such  
 178 fine and imprisonment, and for a second offense, by fine of not

179 less than \$5,000 nor more than \$15,000 or by imprisonment for  
180 not less than five years nor more than 15 years, or both such fine  
181 and imprisonment.

182 The provisions of this section shall not apply to: (i) the  
183 possession by a law enforcement officer for purposes of law  
184 enforcement; or (ii) the possession by an individual who is retired  
185 from service with a law enforcement agency and is not otherwise  
186 prohibited from receiving such a weapon or feeding device from  
187 such agency upon retirement.

188 Section 1310. Notwithstanding any other general or special  
189 law, or rule or regulation, to the contrary, no person shall sell,  
190 offer for sale, transfer or possess any weapon, capable of dis-  
191 charging a bullet or shot, that is: (i) constructed in a shape that  
192 does not resemble a handgun, short-barreled rifle or short-barreled  
193 shotgun, including, but not limited to, covert weapons that  
194 resemble key-chains, pens, cigarette-lighters or cigarette-  
195 packages; or (ii) not detectable as a weapon or potential weapon  
196 by x-ray machines commonly used at airports or walk-through  
197 metal detectors. Whoever violates the provisions of this section  
198 shall be punished, for a first offense, by a fine of not less than  
199 \$1,000 nor more than \$10,000 or by imprisonment for not less  
200 than one year nor more than 10 years, or both such fine and  
201 imprisonment, and for a second offense, by fine of not less than  
202 \$5,000 nor more than \$15,000 or by imprisonment for not less  
203 than five years nor more than 15 years, or both such fine and  
204 imprisonment.

1 SECTION 47. Section 3B of chapter 209A of the General  
2 Laws, as so appearing, is hereby amended by inserting after the  
3 word 'chapter', in line 11, the following words:— and, said law  
4 enforcement official may store, transfer or otherwise dispose of  
5 any such weapon in accordance with the provisions of sec-  
6 tion 129D of chapter 140.

1 SECTION 48. Said chapter 209A is hereby further amended by  
2 striking out section 3C, as so appearing, and inserting in place  
3 thereof the following section:—  
4 Section 3C. Upon the continuation or modification of an order  
5 issued pursuant to section 4 or upon petition for review as

6 described in section 3B, the court shall also order or continue to  
7 order the immediate suspension and surrender of the defendant's  
8 license to carry firearms, firearms identification card and license  
9 to possess large capacity semiautomatic weapons and the  
10 surrender of all firearms, rifles, shotguns, machine guns, and  
11 ammunition which he then controls, owns or possesses if the court  
12 makes a determination that the return of said license to carry  
13 firearms, firearm identification card, license to possess large  
14 capacity semiautomatic weapons or firearms, rifles, shotguns,  
15 machine guns and ammunition presents a likelihood of abuse to  
16 the plaintiff. A suspension and surrender order issued pursuant to  
17 this section shall continue so long as the restraining order to  
18 which it relates is in effect; and, any law enforcement official to  
19 whom such weapon is surrendered may store, transfer or other-  
20 wise dispose of any such weapon in accordance with the provi-  
21 sions of section 129D of chapter 140. Any violation of such order  
22 shall be punishable by a fine of not more than \$5,000 or by  
23 imprisonment for not more than two and one-half years in a house  
24 of correction, or both such fine and imprisonment.

1 SECTION 49. Chapter 265 of the General Laws is hereby  
2 amended by striking out section 18B, as so appearing, and  
3 inserting in place thereof the following section:—  
4 Section 18B. Whoever, while in the commission of or the  
5 attempted commission of an offense which may be punished by  
6 imprisonment in the state prison, has in his possession or under  
7 his control a firearm, rifle or shotgun shall, in addition to the  
8 penalty for such offense, be punished by imprisonment in the state  
9 prison for not less than five years; provided, however, that where  
10 the subject firearm, rifle or shotgun is a large capacity weapon, as  
11 defined in section 121 of chapter 140, or if such person while in  
12 the commission or attempted commission of such offense has in  
13 his possession or under his control a machine gun, as defined in  
14 said section 121, such person shall be punished by imprisonment  
15 in the state prison for not less than 10 years. Whoever has com-  
16 mitted an offense which may be punished by imprisonment in the  
17 state prison and had in his possession or under his control a  
18 firearm, rifle or shotgun, including but not limited to a large  
19 capacity weapon or machine gun and who thereafter, while in the

20 commission or the attempted commission of a second or subse-  
 21 quent offense which may be punished by imprisonment in the  
 22 state prison, has in his possession or under his control a firearm,  
 23 rifle or shotgun shall, in addition to the penalty for such offense,  
 24 be punished by imprisonment in the state prison for not less  
 25 than 20 years; provided, however, that where the subject firearm,  
 26 rifle or shotgun is a large capacity semiautomatic weapon, or if  
 27 such person while in the commission or attempted commission of  
 28 such offense has in his possession or under his control a machine  
 29 gun, such person shall be punished by imprisonment in the state  
 30 prison for not less than 25 years.

31 A sentence imposed under this section for a second or subse-  
 32 quent offense shall not be reduced nor suspended, nor shall any  
 33 person convicted under this section be eligible for probation,  
 34 parole, furlough or work release or receive any deduction from his  
 35 sentence for good conduct until he shall have served the minimum  
 36 term of such additional sentence, nor shall the term of imprison-  
 37 ment imposed under this section run concurrently with the term of  
 38 imprisonment imposed for the predicate felony in which the  
 39 firearm, rifle, shotgun or machine gun was possessed or used; pro-  
 40 vided, however, that the commissioner of correction may, on the  
 41 recommendation of the warden, superintendent or other person in  
 42 charge of a correctional institution or the administrator of a  
 43 county correctional institution, grant to said offender a temporary  
 44 release in the custody of an officer of such institution for the  
 45 following purposes only: (i) to attend the funeral of a spouse or  
 46 next of kin; (ii) to visit a critically ill close relative or spouse; or  
 47 (iii) to obtain emergency medical services unavailable at said  
 48 institution. Prosecutions commenced under this section shall nei-  
 49 ther be continued without a finding nor placed on file. The provi-  
 50 sions of section 87 of chapter 276 relative to the power of the  
 51 court to place certain offenders on probation shall not apply to any  
 52 person 17 years of age or over charged with a violation of this  
 53 section. In accordance with the provisions of section 8 of chap-  
 54 ter 279, such sentence shall begin at the expiration of the sentence  
 55 imposed for the predicate felony, if any.

56 This section shall not apply in the case of any predicate felony  
 57 in which the offense consists in whole or in part of using a dan-  
 58 gerous weapon.

1 SECTION 50. Subsection (c) of section 10 of chapter 269, as so  
 2 appearing, is hereby amended by striking out, in lines 97 to 100,  
 3 inclusive, the words "without being the holder of a valid license to  
 4 carry firearms issued in accordance with the provisions of said  
 5 section one hundred and thirty-one of said chapter one hundred  
 6 and forty."

1 SECTION 51. Said section 10 of said chapter 269, as  
 2 so appearing, is hereby amended by adding the following  
 3 subsection:—

4 (m) Notwithstanding the provisions of subsection (a) or (h), any  
 5 person not exempted by statute who knowingly has in his posses-  
 6 sion, or knowingly has under his control in a vehicle, a large  
 7 capacity rifle or shotgun or large capacity ammunition feeding  
 8 device therefor who does not possess a valid Class A firearm  
 9 identification card issued under subsection (a) of section 129B of  
 10 chapter 140, and any such person who knowingly has in his pos-  
 11 session, or knowingly has under his control in a vehicle a large  
 12 capacity firearm or large capacity ammunition feeding device  
 13 therefor who does not possess a valid Class A or Class B license  
 14 to carry firearms issued under section 131 or 131F of chapter 140,  
 15 except as permitted or otherwise provided under this section or  
 16 chapter 140, shall be punished by imprisonment in a state prison  
 17 for not less than two and one-half years nor more than ten years.  
 18 Neither the possession of a valid Class B firearm identification  
 19 card issued under clause (b) of said first paragraph of said sec-  
 20 tion 129B nor a valid Class A or Class B license to carry firearms  
 21 issued under said section 131 or 131F shall be a defense for a vio-  
 22 lation of the prohibition provided herein against the possession of  
 23 a large capacity rifle or shotgun or large capacity ammunition  
 24 feeding device therefor.

25 The sentence imposed upon such person shall not be reduced to  
 26 less than one year, nor suspended, nor shall any person convicted  
 27 under this subsection be eligible for probation, parole, furlough,  
 28 work release or receive any deduction from his sentence for good  
 29 conduct until he shall have served such minimum term of such  
 30 sentence; provided, however, that the commissioner of correction  
 31 may, on the recommendation of the warden, superintendent or  
 32 other person in charge of a correctional institution or the adminis-  
 33 trator of a county correctional institution, grant to said offender a

34 temporary release in the custody of an officer of such institution  
 35 for the following purposes only: (i) to attend the funeral of a  
 36 spouse or next of kin; (ii) to visit a critically ill close relative or  
 37 spouse; or (iii) to obtain emergency medical services unavailable  
 38 at said institution. Prosecutions commenced under this subsection  
 39 shall neither be continued without a finding nor placed on file.  
 40 The provisions of section 87 of chapter 276 relative to the power  
 41 of the court to place certain offenders on probation shall not apply  
 42 to any person 17 years of age or over charged with a violation of  
 43 this section.

44 The provisions of this subsection shall not apply to the posses-  
 45 sion of a large capacity weapon or large capacity ammunition  
 46 feeding device by (i) any officer, agent or employee of the com-  
 47 monwealth or any other state or the United States, including any  
 48 federal, state or local law enforcement personnel; (ii) any member  
 49 of the military or other service of any state or the United States;  
 50 (iii) any duly authorized law enforcement officer, agent or  
 51 employee of any municipality of the commonwealth; (iv) any fed-  
 52 eral, state or local historical society, museum or institutional col-  
 53 lection open to the public; provided, however, that any such  
 54 person described in clauses (i) to (iii), inclusive, is authorized by a  
 55 competent authority to acquire, possess or carry a large capacity  
 56 semiautomatic weapon and is acting within the scope of his  
 57 duties; or (v) any gunsmith duly licensed under the applicable  
 58 federal law.

1 SECTION 52. Said chapter 269 is hereby further amended by  
 2 inserting after section 10E the following three sections:—

3 Section 10F. (a) Any person who sells, keeps for sale, or offers  
 4 or exposes for sale, gives or otherwise transfers any large capacity  
 5 weapon or large capacity ammunition feeding device, both as  
 6 defined in section 121 of chapter 140, to a person 18 years of age  
 7 or over, except as permitted under this section or chapter 140,  
 8 shall be punished by imprisonment in a state prison for not less  
 9 than two and one-half years nor more than 10 years. Any person  
 10 who commits a second or subsequent such crime shall be punished  
 11 by imprisonment in a state prison for not less than five years nor  
 12 more than 15 years. The sentence imposed upon such person shall  
 13 not be reduced to less than two and one-half years for a first

14 offense, nor less than five years for a second or subsequent such  
 15 offense, nor suspended, nor shall any person convicted under this  
 16 subsection be eligible for probation, parole, furlough, work  
 17 release or receive any deduction from his sentence for good con-  
 18 duct until he shall have served such minimum term of such sen-  
 19 tence; provided, however, that the commissioner of correction  
 20 may, on the recommendation of the warden, superintendent or  
 21 other person in charge of a correctional institution or the adminis-  
 22 trator of a county correctional institution, grant to said offender a  
 23 temporary release in the custody of an officer of such institution  
 24 for the following purposes only: (i) to attend the funeral of a  
 25 spouse or next of kin; (ii) to visit a critically ill close relative or  
 26 spouse; or (iii) to obtain emergency medical services unavailable  
 27 at said institution. Prosecutions commenced under this subsection  
 28 shall neither be continued without a finding nor placed on file.  
 29 The provisions of section 87 of chapter 276 relative to the power  
 30 of the court to place certain offenders on probation shall not apply  
 31 to any person 17 years of age or over charged with a violation of  
 32 this section.

33 (b) Any person who transfers, sells, lends, or gives a large  
 34 capacity weapon or large capacity ammunition feeding device to a  
 35 person under the age of 18, except as permitted under the provi-  
 36 sions of chapter 140, shall be punished by imprisonment in a state  
 37 prison for not less than five nor more than fifteen years. The sen-  
 38 tence imposed upon such person shall not be reduced to less than  
 39 five years, nor suspended, nor shall any person convicted under  
 40 this subsection be eligible for probation, parole, furlough, work  
 41 release or receive any deduction from his sentence for good con-  
 42 duct until he has served five years of such sentence; provided,  
 43 however, that the commissioner of corrections may, on the recom-  
 44 mendation of the warden, superintendent or other person in charge  
 45 of a correctional institution or the administrator of a county cor-  
 46 rectional institution, grant to said offender a temporary release in  
 47 the custody of an officer of such institution for the following  
 48 purposes only: (i) to attend the funeral of a spouse or next of kin;  
 49 (ii) to visit a critically ill close relative or spouse; or (iii) to obtain  
 50 emergency medical services unavailable at said institution.  
 51 Prosecutions commenced under this subsection shall neither be  
 52 continued without a finding nor placed on file. The provisions of

53 section 87 of chapter 276 relative to the power of the court  
54 to place certain offenders on probation shall not apply to any  
55 person 17 years of age or over charged with a violation of this  
56 subsection.

57 Section 10G. Whoever, having been previously convicted of a  
58 violent crime, as defined in section 121 of chapter 140, or a  
59 serious drug offense, as defined herein, violates the provisions of  
60 subsection (a), (c) or (h) of section 10 shall be punished by  
61 imprisonment in the state prison for not less than three years nor  
62 more than 15 years.

63 Whoever, having been previously convicted of two violent  
64 crimes, as defined in section 121 of chapter 140, or two serious  
65 drug offenses, or one violent crime and one serious drug offense,  
66 arising from separate incidences, violates the provisions of said  
67 subsection (a), (c) or (h) of said section 10 shall be punished by  
68 imprisonment in the state prison for not less than 10 years nor  
69 more than 15 years.

70 Whoever, having been previously convicted of three violent  
71 crimes or three serious drug offenses, or any combination thereof  
72 totaling three, arising from separate incidences, violates the provi-  
73 sions of said subsection (a), (c) or (h) of said section 10 shall be  
74 punished by imprisonment in the state prison for not less than 15  
75 years nor more than 20 years.

76 The sentences imposed upon such persons shall not be reduced  
77 to less than the minimum, nor suspended, nor shall persons con-  
78 victed under this section be eligible for probation, parole, fur-  
79 lough, work release or receive any deduction from his sentence for  
80 good conduct until he shall have served the minimum number of  
81 years of such sentence; provided, however, that the commissioner  
82 of correction may, on the recommendation of the warden, superin-  
83 tendent or other person in charge of a correctional institution or  
84 the administrator of a county correctional institution, grant to said  
85 offender a temporary release in the custody of an officer of such  
86 institution for the following purposes only: (i) to attend the  
87 funeral of a spouse or next of kin; (ii) to visit a critically ill close  
88 relative or spouse; or (iii) to obtain emergency medical services  
89 unavailable at said institution. Prosecutions commenced under this  
90 section shall neither be continued without a finding nor placed on  
91 file. The provisions of section 87 of chapter 276 relative to the

92 power of the court to place certain offenders on probation shall  
93 not apply to any person 17 years of age or over charged with a  
94 violation of this section.

95 For the purposes of this section, 'serious drug offense' shall  
96 mean an offense under the federal Controlled Substances Act 21  
97 USC 801, et seq., the federal Controlled Substances Import and  
98 Export Act 21 USC 951, et seq. or the federal Maritime Drug Law  
99 Enforcement Act 46 USC App. 1901, et seq. for which a max-  
100 imum term of imprisonment for ten years or more is prescribed by  
101 law, or an offense under chapter 94C involving the manufacture,  
102 distribution or possession with intent to manufacture or distribute  
103 a controlled substance, as defined in Section 802 of the federal  
104 Controlled Substances Act or chapter 94C, for which a maximum  
105 term of ten years or more is prescribed by law.

106 Section 10H. Whoever, having in effect a license to carry  
107 firearms issued under section 131 or 131F of chapter 140 or a  
108 firearm identification card issued under section 129B of said  
109 chapter 140, carries on his person, or has under his control in  
110 a vehicle, a loaded firearm, as defined in section 121 of said  
111 chapter 140, while under the influence of intoxicating liquor or  
112 drugs shall be punished by a fine of not more than \$5,000 or by  
113 imprisonment in a jail or house of correction for not more than  
114 two and one-half years, or both such fine and imprisonment.

1 SECTION 53. Section 12D of said chapter 269, as appearing in  
2 the 1996 Official Edition, is hereby amended by striking out the  
3 first and second sentences and inserting in place thereof the  
4 following two subsections:—

5 (a) No person shall carry on any public way a rifle or shotgun  
6 having cartridges or shells in either the magazine or chamber  
7 thereof, unless such person is engaged in hunting and is the holder  
8 of a valid license issued under sections 6 to 9, inclusive or sec-  
9 tion 51 of chapter 131. Whoever violates this subsection shall be  
10 punished by a fine of not less than \$500 nor more than \$5,000 or  
11 by imprisonment for not more than two years, or both such fine or  
12 imprisonment, and may be arrested without a warrant; provided,  
13 however, that where such rifle or shotgun is a large capacity  
14 weapon, as defined in section 121 of chapter 140, and said person  
15 is simultaneously in possession of a fully or partially loaded large

16 capacity feeding device, as defined in section 121 of chapter 140,  
 17 whether or not said feeding device is detached from said weapon.  
 18 said person shall be punished by a fine of not less than \$1,000 nor  
 19 more than \$10,000 or by imprisonment for not less than one year  
 20 nor more than 10 years, or both such fine or imprisonment, and  
 21 may be arrested without a warrant.

22 (b) No person shall carry on any public way an unloaded rifle  
 23 or shotgun, unless such person is engaged in hunting and is the  
 24 holder of a valid license issued under sections 6 to 9, inclusive or  
 25 section 51 of chapter 131, or said rifle or shotgun is enclosed in a  
 26 case. Whoever violates this subsection shall be punished by a fine  
 27 of not less than \$100 nor more than \$1,000, and may be arrested  
 28 without a warrant; provided, however, that where such unloaded  
 29 rifle or shotgun is a large capacity weapon and is carried simulta-  
 30 neously with a fully or partially loaded large capacity feeding  
 31 device, whether or not said feeding device is detached from said  
 32 weapon, the provisions of subsection (a) shall apply.

1 SECTION 54. Notwithstanding any general or special law, rule,  
 2 or regulation to the contrary, the colonel of the state police, in  
 3 conjunction with the secretary of the executive office of public  
 4 safety, shall promulgate rules and regulations implementing a  
 5 state-wide firearms surrender program. In conjunction with this  
 6 program only, any citizen of the commonwealth who complies  
 7 with the policies set forth by the colonel shall not be asked for  
 8 identification and shall be immune from prosecution for posses-  
 9 sion of said firearm; provided, however, that nothing herein shall  
 10 prohibit the prosecution of any person for the unlawful possession  
 11 of a firearm who is not in compliance with the conditions and pro-  
 12 cedures established by the colonel; and provided, further, that  
 13 nothing herein shall prohibit the prosecution of any person for any  
 14 other offense committed within the commonwealth.

15 Any firearm surrendered in accordance with the provisions of  
 16 this program that is reported stolen shall be returned to its lawful  
 17 owner; provided, however, that any firearm suspected to be evi-  
 18 dence of a crime shall remain in the custody and control of the  
 19 department of state police in the same manner as any other such  
 20 firearm lawfully seized by the department of state police. The  
 21 department of state police shall be allowed to test-fire and pre-  
 22 serve any and all firearms voluntarily surrendered. All weapons

23 that have been voluntarily surrendered that are not suspected to be  
 24 evidence of criminal activity and have not been reported stolen  
 25 shall be disposed of in accordance with procedures established by  
 26 the colonel.

1 SECTION 55. Notwithstanding the provisions of any general or  
 2 special law, rule or regulation to the contrary, all firearm identifi-  
 3 cation cards issued under section 129B of chapter 140 of the  
 4 General Laws and all licenses to carry firearms issued under  
 5 section 131 of said chapter 140 prior to the effective date of this  
 6 act shall expire on the following schedule: if a person's anniver-  
 7 sary of birth is between July 1 and December 31, inclusive, said  
 8 card or license shall expire on the cardholder's anniversary  
 9 of birth in 1999; if a person's anniversary of birth is between  
 10 January 1 and June 30, inclusive, said card or license shall expire  
 11 on the holder's anniversary of birth in 2000. Any such card or  
 12 license issued to an applicant born on February 29, for the pur-  
 13 poses described herein, shall expire on March first. Upon the expi-  
 14 ration of such card or license, the cardholder shall apply for a new  
 15 Class A or Class B card under said section 129B or new Class A  
 16 or Class B license under said section 131, or both such card and  
 17 license; provided, however, that any person who holds a license to  
 18 carry firearms that is expired under the provisions herein shall  
 19 receive an abatement against the required fee for the next card or  
 20 license issued equal to \$5 per full year remaining before the orig-  
 21 inal expiration date of said license; provided, further, that not  
 22 more than \$10 shall be deducted from either of said fees; and pro-  
 23 vided, further, that the licensing authority shall retain \$15 of such  
 24 fee in the case of a Class A card or license and \$10 in case of a  
 25 Class B card or license. Any firearm identification card lawfully  
 26 possessed on the effective date of this act by a person in lawful  
 27 possession of a large capacity rifle or shotgun on the effective  
 28 date of this act shall be deemed a Class A card, and any license to  
 29 carry firearms lawfully possessed on the effective date of this act  
 30 by a person in lawful possession of a large capacity firearm on the  
 31 date of passage of this act shall be deemed a Class A license.

32 Any person who lawfully owns or possesses a large capacity  
 33 rifle, shotgun or ammunition feeding device, as defined in sec-  
 34 tion 121 of said chapter 140, on the effective date of this act shall,

35 unless such person transfers said rifle, shotgun and ammunition  
 36 feeding device in accordance with the provisions of said  
 37 chapter 140, apply for a Class A card under the provisions of  
 38 subsection (a) of section 129B of said chapter 140. Said Class A  
 39 card may be issued in accordance with the provisions said sec-  
 40 tion 129B; provided, however, that if said Class A card is not  
 41 issued, all large capacity rifles, shotguns and ammunition feeding  
 42 devices shall be surrendered in accordance with the provisions of  
 43 section 129D of said chapter 140. Any person who acquires own-  
 44 ership or possession of a large capacity rifle or shotgun or large  
 45 capacity feeding device therefor on or after the effective date of  
 46 this act shall hold a valid Class A firearm identification card  
 47 issued under said subsection (a) of said section 129B.

48 Any person who lawfully owns or possesses a rifle, shotgun,  
 49 ammunition or ammunition feeding device that is not a large  
 50 capacity rifle or shotgun or large capacity ammunition feeding  
 51 device on the effective date of this act shall, unless such person  
 52 transfers said rifle, shotgun, ammunition and ammunition feeding  
 53 device in accordance with the provisions of said chapter 140,  
 54 apply for a Class B card under the provisions of subsection (b) of  
 55 said section 129B of said chapter 140. Unless said applicant is  
 56 disqualified under the provisions of said subsection (b), said  
 57 Class B card shall be issued; provided, however, that if said  
 58 Class B card may not be issued, all rifles, shotguns and ammuni-  
 59 tion and ammunition feeding devices shall be surrendered in accor-  
 60 dance with the provisions of section 129D of said chapter 140.

61 Any person who lawfully owns or possesses a large capacity  
 62 firearm or ammunition feeding device, both as defined in sec-  
 63 tion 121 of said chapter 140, on the effective date of this act shall,  
 64 unless such person transfers said firearm and ammunition feeding  
 65 device in accordance with the provisions of said chapter 140,  
 66 apply for a Class A license under the provisions of clause (a) of  
 67 said tenth paragraph. Unless said applicant is disqualified under  
 68 the provisions of subsection (d) of said section 131, and if such  
 69 large capacity firearm or feeding device was owned or possessed  
 70 on the effective date of this act, said Class A license shall be  
 71 issued; provided, however, that if said license may not be issued,  
 72 all firearms, ammunition and ammunition feeding devices therefor  
 73 shall be surrendered in accordance with the provisions of sec-  
 74 tion 129D of said chapter 140.

75 Any person who lawfully owns or possesses a firearm or  
 76 ammunition feeding device therefor that is not a large capacity  
 77 firearm or ammunition feeding device on the effective date of this  
 78 act shall, unless such person transfers said firearm and ammuni-  
 79 tion feeding device in accordance with the provisions of said  
 80 chapter 140, apply for a Class B license under the provisions of  
 81 clause (b) of said tenth paragraph of said section 131 of said  
 82 chapter 140. Unless said applicant is disqualified under the provi-  
 83 sions of clause (d) of said tenth paragraph, said Class B license  
 84 shall be issued; provided, however, that if said license may not be  
 85 issued, all firearms, ammunition and ammunition feeding devices  
 86 therefor shall be surrendered in accordance with the provisions of  
 87 section 129D of said chapter 140.

88 Any person who lawfully owns or possesses a firearm or  
 89 feeding device on the effective date of this act that was purchased  
 90 with a permit issued under section 131A of said chapter 140 shall,  
 91 unless said firearm and feeding device are transferred in accor-  
 92 dance with the provisions of said chapter 140, apply for a Class A  
 93 or Class B firearm identification card as described hereinabove;  
 94 and, if said Class A or Class B card is issued and the person  
 95 would not be disqualified from being issued a license under the  
 96 provisions of said clause (d) of said tenth paragraph, he shall be  
 97 entitled to retain ownership or possession of said firearm or  
 98 feeding device, whether or not such firearm or feeding device is a  
 99 large capacity firearm or feeding device; provided, however, that  
 100 if such person is disqualified under subsection (b) of said sec-  
 101 tion 129B or clause (d) of said tenth paragraph, all firearms,  
 102 ammunition and ammunition feeding devices therefor shall be sur-  
 103 rendered in accordance with the provisions of section 129D of  
 104 said chapter 140; and provided, further, that the requirements for  
 105 obtaining a card under said section 129B shall not apply for such  
 106 person that possesses valid proof of exemption under the provi-  
 107 sions of section 129C of said chapter 140.

108 Any person who acquires ownership or possession of any  
 109 weapon, ammunition or ammunition feeding device on or after the  
 110 effective date of this act must possess the proper card, license,  
 111 card and permit or proof of exemption and permit as provided  
 112 under section 131E of said chapter 140.

113 The secretary of the executive office of public safety is hereby  
 114 authorized and directed to promulgate regulations necessary to

115 implement the provisions of this act, and shall ensure that notice  
 116 be provided through the most effective means possible, including  
 117 but not limited to, through the registry of motor vehicles, to each  
 118 such cardholder and licensee of the upcoming expiration dates of  
 119 such cards and licenses, and instructing said holders with regard  
 120 to renewal procedures, entitlements and restrictions provided  
 121 under this act, including, but not limited to, entitlements and  
 122 restrictions relative to large capacity weapons and ammunition  
 123 feeding devices.

124 The executive director of the criminal history systems board is  
 125 hereby authorized and directed to develop a plan to provide  
 126 licensing authorities with applications and renewal applications  
 127 for Class A and Class B firearm identification cards and Class A  
 128 and Class B licenses to carry firearms at no cost and within a rea-  
 129 sonable time. The secretary of the executive office of public  
 130 safety shall submit said plan to the joint committee on public  
 131 safety, the house and senate committees on ways and means and  
 132 the clerks of the house and senate by March 15, 1999.

1 SECTION 56. The provisions of clause (iv) of subsection (a) of  
 2 section 129B of chapter 140 of the General Laws and clause (iv)  
 3 of subsection (d) of section 131 of said chapter 140 shall not  
 4 apply to any person who is a lawful holder of a firearm identifica-  
 5 tion card or license to carry firearms on the effective date of this  
 6 act for the purpose of possessing rifles, shotguns and firearms  
 7 lawfully owned by such person on said effective date; provided,  
 8 however, that nothing herein shall permit a rifle or shotgun that  
 9 requires a Class A firearm identification card, or any firearm to be  
 10 sold, leased, transferred or delivered to any person less than 21  
 11 years of age.

1 SECTION 57. The provisions of clause Eighteenth of sec-  
 2 tion 123 of chapter 140 of the General Laws shall not apply to any  
 3 firearm lawfully owned or possessed under a license issued under  
 4 said chapter 140 on the effective date of this act.

1 SECTION 58. Within 30 days of the establishment of  
 2 the Firearms Record Keeping Trust Fund, established by  
 3 section 131M of chapter 140 of the General Laws, the governor  
 4 shall appoint a board of trustees, hereinafter referred to as the

5 board. The governor may also appoint a director to assist in  
 6 administration of said trust fund. All expenditures from said trust  
 7 fund shall be made at the direction of the secretary, with the  
 8 advice and consent of the board; provided, however, that expendi-  
 9 tures of funds other than the \$300,000 principal appropriated by  
 10 this section shall also require approval from the board. The board  
 11 shall consist of seven individuals, one of whom shall be a member  
 12 of the gun owners action league, one of whom shall be a police  
 13 chief selected from a list of four selected by the police chiefs  
 14 association and one of whom shall be the director of the firearms  
 15 record bureau within the department of public safety. The board  
 16 shall serve without compensation and shall adopt operating rules  
 17 and procedures for its organization and activities.; and by  
 18 striking out the title and inserting in place thereof the following  
 19 title: "An Act relative to the banning and control of assault and  
 20 other large capacity weapons."

[Senate, October 21, 1997 — Substituted by the Senate as amended and changed by the committee on Bills in the Third Reading as a new draft of Senate, No. 148, relative to assault weapons.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT RELATIVE TO CERTAIN PROHIBITED SEMIAUTOMATIC WEAPONS AND LARGE CAPACITY AMMUNITION MAGAZINES.

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 of the General Laws,
- 2 as appearing in the 1996 Official Edition, is hereby amended by
- 3 inserting after the first paragraph the following paragraph:—
- 4 For purposes of this chapter and chapter 269, the following
- 5 terms shall have the following meanings:
- 6 "Assault weapon", (A) rifles, shotguns and firearms sold under
- 7 the following designations:
- 8 (i) Norinco, Mitchell and Poly Technologies Avtomat Kalash-
- 9 nikovs, all models;
- 10 (ii) Action Arms Israeli Military Industries UZI and Galil;
- 11 (iii) Beretta Ar70 (SC-70);
- 12 (iv) Colt AR-15; Olympic Arms OA-93
- 13 (v) Fabrique National FN/FAL, FN/LAR and FNC;
- 14 (vi) SWD M-10, M-11, M-11/9 and M-12;
- 15 (vii) Steyr AUG;
- 16 (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22;
- 17 (ix) AP-9 Assault Pistol, domestic;
- 18 (x) Heckler & Koch SP89 Auto Pistol;
- 19 (xi) F.I.E./Franchi SPAS-12;
- 20 (xii) USAS-12 Auto Shotgun; or
- 21 (xiii) revolving cylinder shotguns, such as, or similar to the
- 22 Street Sweeper and Striker 12; or

- 23 (B) a copy of any such weapon, or a part or combination of  
 24 parts designed or intended to convert a firearm into an assault  
 25 weapon or any combination of parts from which an assault  
 26 weapon may be rapidly assembled; provided, however, that each  
 27 such part is in the possession or under the control of the same  
 28 person; or
- 29 (C) any semiautomatic rifle that has the capability to accept a  
 30 detachable magazine and includes at least two of the following:
- 31 (i) a folding or telescoping stock;
- 32 (ii) a pistol grip that protrudes conspicuously beneath the action  
 33 of the weapon;
- 34 (iii) a bayonet mount;
- 35 (iv) a flash suppressor or threaded barrel designed to accommo-  
 36 date a flash suppressor; or
- 37 (v) a grenade launcher; or
- 38 (D) a semiautomatic pistol that has the capability to accept a  
 39 detachable magazine and includes at least one of the following:
- 40 (i) an ammunition magazine that attaches to the pistol outside  
 41 of the pistol grip, handgrip or silencer;
- 42 (ii) a threaded barrel capable of accepting a barrel extender,  
 43 flash suppressor, forward handgrip, handgrip or silencer; pro-  
 44 vided, however, that this shall not include a nut on the front of a  
 45 threaded barrel to secure the barrel to the frame if the manufac-  
 46 turer receives the written approval of the secretary of public safety  
 47 that such a nut was not designed or intended by the manufacturer  
 48 to facilitate the previously noted attachments; and provided fur-  
 49 ther, that any weapon which uses a nut on the front of a threaded  
 50 barrel to secure the barrel to the frame which is altered after man-  
 51 ufacturing by the consumer with the intention and in a manner  
 52 that would permit utilization of the previously noted attachments  
 53 shall remain prohibited.
- 54 (iii) a shroud that is attached to or partially or completely encir-  
 55 cles the barrel and that permits the shooter to hold the firearm  
 56 with the nontrigger hand without being burned; provided, how-  
 57 ever, that this shall not include an optics mount which partially or  
 58 completely encircles the barrel for the purpose of aiding the  
 59 activity of competitive shooting or hunting if the manufacturer  
 60 receives the written approval of the secretary of public safety that  
 61 such optics mount was not designed or intended by the manufac-
- 62 turer to permit a shooter to hold the firearm with the non-trigger  
 63 hand without being burned;
- 64 (E) a semiautomatic shotgun that includes at least two of the  
 65 following:
- 66 (i) a folding or telescoping stock;
- 67 (ii) a pistol grip that protrudes conspicuously beneath the action  
 68 of the weapon;
- 69 (iii) a fixed magazine capacity in excess of five rounds; or
- 70 (iv) an ability to accept a detachable magazine.
- 71 "Assault weapon" shall not include: (A) a rifle or a shotgun  
 72 which does not employ fixed ammunition; (B) a rifle, shotgun or  
 73 pistol which was manufactured prior to the year 1899; (C) a rifle,  
 74 or shotgun which operates by manual bolt action; (D) a rifle,  
 75 shotgun or pistol which operates by lever action; (E) a rifle or  
 76 shotgun which operates by slide action; (F) a rifle, shotgun or  
 77 pistol which is a single shot weapon; (G) a rifle, shotgun or pistol  
 78 which has been modified so as to render it permanently inoperable  
 79 or so as to render it permanently a device which may not be desig-  
 80 nated as an assault weapon; (H) a rifle, shotgun or pistol which is  
 81 an antique or relic firearm, movie prop or other weapon not  
 82 capable of firing a projectile and not intended for use as a func-  
 83 tional weapon and which cannot be readily converted through a  
 84 combination of available parts into an operable assault weapon;
- 85 (I) any of the firearms or replicas or duplicates of the firearms  
 86 specified in Appendix A to 18 U.S.C. section 922, as amended, as  
 87 such firearms were manufactured on October 1, 1993; and (J)  
 88 Olympic competition target pistols under the designation "Para-  
 89 dimi GP, HP and SP; Walther GSP and OSP; Hammerli 280; and  
 90 Bernelli 490 and 495.
- 91 "Copy", any weapon model with the same bolt and receiver or  
 92 bolt and receiver design, regardless of nomenclature or manufac-  
 93 turer, as any weapon designated as an "assault weapon" in this  
 94 section or with a bolt and receiver design identical or nearly iden-  
 95 tical, regardless of nomenclature or manufacturer, to any such des-  
 96 igned weapon which has been redesigned from, renamed,  
 97 renumbered or patterned after any such designated weapon, regard-  
 98 less of the manufacturer or country of origin; provided, however,  
 99 that the weapon as modified, enhanced, redesigned, renamed,  
 100 renumbered or patterned employs only ammunition of more  
 101 than .22 caliber rimfire.

102 "Large capacity ammunition belt", a belt or strip holding more  
 103 than ten rounds of ammunition to be fed continuously into a semi-  
 104 automatic rifle, shotgun or pistol.

105 "Large capacity magazine", a box, drum or other magazine con-  
 106 tainer which holds more than ten rounds of ammunition to be fed  
 107 continuously into a semi-automatic rifle, shotgun or pistol; pro-  
 108 vided, however, that this shall not restrict the ability of a law  
 109 enforcement officer or military personnel to purchase large  
 110 capacity magazines, so-called, for use in the performance of duty,  
 111 nor shall the definition of large capacity magazines apply to any  
 112 magazine in excess of ten rounds which was manufactured prior to  
 113 September 13, 1994 for sale to law enforcement or military per-  
 114 sonnel".

115 "Semiautomatic", the capability of firing a shot with each  
 116 depression of the trigger without additional slide, bolt or other  
 117 manual action.

1 SECTION 2. Said chapter 140 is hereby further amended by  
 2 inserting after section 121, as so appearing, the following  
 3 section:—

4 Section 121½. The commissioner of public safety is hereby  
 5 authorized to promulgate regulations consistent with the provisions  
 6 of this section and sections 121, 128, 129B and 130, section 18B  
 7 of chapter 265, sections 10F, 10G, 10H, 10I, 10J and 10K of  
 8 chapter 269 and section 7A of chapter 270 to effectuate the pur-  
 9 poses of each said section.

1 SECTION 2A. Section 122 of said chapter 140, as so  
 2 appearing, is hereby amended by inserting after the word "gun-  
 3 smith." in line 9, the following paragraph:—

4 The department of public safety may, after an investigation,  
 5 grant a club license to purchase and possess an assault weapon to  
 6 the owner of a lawfully incorporated shooting gallery for use at  
 7 such shooting gallery so long as the weapons are used only on the  
 8 premises of such shooting gallery for regulated skeet, target or  
 9 trap shooting. Such club license shall be issued to and exercised  
 10 by the owner of the club on behalf of such club, which owner has  
 11 been issued a firearm identification card or a license to carry a  
 12 firearm in his own name and not on behalf of such club and who

13 would not be disqualified from obtaining a license to carry a  
 14 firearm in his own right. Such owner shall annually file a report  
 15 with the secretary of public safety listing all assault weapons  
 16 owned under such license. No assault weapon shall be removed  
 17 from the premises or used for purposes other than those set forth  
 18 in this section. Any assault weapon, as defined in section 121,  
 19 kept on the premises of a lawfully incorporated sporting or  
 20 shooting club shall, when not in use, be kept in a securely locked  
 21 container or in a location which a reasonable person would  
 22 believe to be secure. The licensing authority may revoke or sus-  
 23 pend a license for violations of any provisions of this chapter or of  
 24 chapter 269, relative to assault weapons.

1 SECTION 3. Section 128 of said chapter 140, as so appearing,  
 2 is hereby amended by striking out, in lines 8 to 11, inclusive, the  
 3 words "for the first offense be punished by a fine of not less than  
 4 five hundred nor more than one thousand dollars and for any sub-  
 5 sequent offense by imprisonment in the state prison for not more  
 6 than ten years" and inserting in place thereof the following  
 7 words:— be punished by imprisonment in state prison for not  
 8 more than ten years or by imprisonment in a house of correction  
 9 for not more than two and one-half years or by a fine of not more  
 10 than \$10,000, or both.

1 SECTION 4. Section 129B of said chapter 140, as so  
 2 appearing, is hereby amended by inserting after the word "card,"  
 3 in line 5, the following words:— "or, in the case of a person  
 4 exempted from the provisions of section 10F of chapter 269, as  
 5 provided in said section 10F of said chapter 269, a license to pos-  
 6 sess an assault weapon".

1 SECTION 5. Said section 129B of said chapter 140, as so  
 2 appearing, is hereby further amended by inserting after the word  
 3 "fifteen", in line 24, the following words:—, or eighteen in the  
 4 case of an application for a license to possess an assault weapon.

1 SECTION 7A. Section 1 of chapter 212 of the General Laws,  
 2 as so appearing, is hereby amended by striking out, in line 3, the  
 3 word "seventy-six" and inserting in place thereof the following  
 4 word: seventy-eight.

41 special session, and regardless of the disposition of the charges  
 42 against any other defendant. No continuances or postponements  
 43 shall be granted except for good cause shown, and any such con-  
 44 tinuances or postponement shall be for the shortest practicable  
 45 time.

46 Under no circumstances shall a defendant be permitted to use  
 47 this section as a basis for dismissal of an action.

48 (b) The chief justice for the superior court department shall  
 49 make a biannual report to the governor, the chairs of the joint  
 50 committee on the judiciary and the chief justice for administration  
 51 and management of the number of criminal actions transferred to  
 52 each of the special sessions established by subsection (a), the  
 53 number of criminal actions resolved by trial and the number  
 54 resolved by guilty plea or dismissal, and the number of criminal  
 55 actions pending. With respect to pending actions, said report shall  
 56 also state the number of elapsed days since transfer of the action  
 57 to the special session and whether trial has commenced; with  
 58 respect to guilty pleas, said report shall state the number of  
 59 elapsed days between transfer and the entry of the guilty plea;  
 60 with respect to dismissals, said report shall state the number of  
 61 days between transfer and dismissal; and with respect to com-  
 62 pleted trials, said report shall state the number of elapsed days  
 63 between transfer and the commencement of trial.

1 SECTION 8. Chapter 265 of the General Laws is hereby  
 2 amended by striking out section 18B, as so appearing, and  
 3 inserting in place thereof the following section:—

4 Section 18B. Whoever, while in the commission or the  
 5 attempted commission of an offense which may be punished by  
 6 imprisonment in the state prison, has in his possession or under  
 7 his control a firearm, rifle, shotgun or machine gun shall, in addi-  
 8 tion to the penalty for such offense, be punished by imprisonment  
 9 in the state prison for not less than ten years nor more than 15  
 10 years. Whoever has committed an offense which may be punished  
 11 by imprisonment in the state prison and had in his possession or  
 12 under his control a firearm, rifle, shotgun or machine gun and who  
 13 thereafter, while in the commission or the attempted commission  
 14 of a second or subsequent offense which may be punished by  
 15 imprisonment in the state prison, has in his possession or under  
 16 his control a firearm, rifle, shotgun or machine gun shall, in addi-

1 SECTION 7B. Said chapter 212 is hereby further amended by  
 2 inserting after section 14A, as so appearing, the following  
 3 section:—

4 Section 14G. (a) Notwithstanding the provisions of section 14A  
 5 of this chapter, the chief justice for the superior court department,  
 6 in consultation with the chief justice for administration and man-  
 7 agement, shall establish within the superior court special sessions  
 8 for the class of cases defined in this section and shall assign jus-  
 9 tices of the superior court to such sessions. There shall be a ses-  
 10 sion in each county. These sessions shall have concurrent original  
 11 jurisdiction with any other session of the superior court for the  
 12 hearing, trial and disposition of criminal actions brought pursuan-  
 13 to: sections 121 through 131C, inclusive, 131E, 131H, and 131I  
 14 of chapter 140; sections 10, 10A, 10E, 11B, 11C of chapter 265;  
 15 section 18B of chapter 265; and any other offenses, an element of  
 16 which involves the use, possession or presence of a rifle, shotgun  
 17 or firearm as defined in section 121 of chapter 140.

18 All trials in this special session of the superior court shall be  
 19 scheduled for trial within 30 days after completion of discovery.  
 20 The district attorney or the attorney general may transfer an action  
 21 to the special session by serving notice on the defendant no later  
 22 than the first pretrial conference following the defendant's  
 23 arraignment in superior court. Otherwise, the special session shall  
 24 not have jurisdiction over the action, unless the defendant con-  
 25 sents to such jurisdiction or good cause is shown why notice was  
 26 not served at such first pretrial conference. Any criminal action  
 27 brought pursuant to any law of the commonwealth which is prop-  
 28 erly joined under Rule 9 of the Massachusetts Rules of Criminal  
 29 Procedure with a criminal action over which the special session  
 30 has original jurisdiction may, at the election of the district  
 31 attorney or the attorney general, be transferred to such special ses-  
 32 sion as well. Any defendant may, at the election of the district  
 33 attorney or the attorney general, be prosecuted in such special ses-  
 34 sion for any criminal offense under the laws of the commonwealth.  
 35 so long as properly joined under Rule 9 of the Massachusetts  
 36 Rules of Criminal Procedure, with a defendant charged with an  
 37 offense over which the special session has original jurisdiction.  
 38 Thirty days after transfer of an action to the special session, the  
 39 special session shall retain jurisdiction regardless of the disposi-  
 40 tion of the charges which gave rise to the jurisdiction of the

17 tion to the penalty for such offense, be punished by imprisonment  
18 in the state prison for not less than 20 years.

19 Sentences imposed under this section shall not be reduced nor  
20 suspended, nor shall any person convicted under this section be  
21 eligible for probation, parole, furlough or work release or receive  
22 any deduction from his sentence for good conduct until he shall  
23 have served the minimum term of such additional sentence, nor  
24 shall the term of imprisonment imposed under this section run  
25 concurrently with the term of imprisonment imposed for the predi-  
26 cate felony in which the firearm, rifle, shotgun or machine gun  
27 was possessed or used; provided, however, that the commissioner  
28 of correction may, on the recommendation of the warden, superin-  
29 tendent or other person in charge of a correctional institution or  
30 the administrator of a county correctional institution, grant to said  
31 offender a temporary release in the custody of an officer of such  
32 institution for the following purposes only: to attend the funeral of  
33 a spouse or next of kin; to visit a critically ill close relative or  
34 spouse; or to obtain emergency medical services unavailable at  
35 said institution. Prosecutions commenced under this section shall  
36 neither be continued without a finding nor placed on file. The pro-  
37 visions of section 87 of chapter 276 relative to the power of the  
38 court to place certain offenders on probation shall not apply to any  
39 person 17 years of age or over charged with a violation of this  
40 section. In accordance with the provisions of section 8 of  
41 chapter 279, such sentence shall begin from and after the expira-  
42 tion of any sentence imposed for the predicate felony.

1 SECTION 9. Chapter 269 of the General Laws is hereby  
2 amended by inserting after section 10E, as so appearing, the  
3 following six sections:—

4 Section 10F. (a) The provisions of this section shall not apply to  
5 the possession of an assault weapon by (1) any officer, agent or  
6 employee of the commonwealth or any other state or the United  
7 States, including any federal, state or local law enforcement per-  
8 sonnel; (2) any member of the military or other service of any  
9 state or of the United States; (3) any duly authorized law enforce-  
10 ment officer, agent or employee of any municipality of the com-  
11 monwealth; or (4) any federal, state or local historical society,  
12 museum or institutional collection open to the public; provided,

13 however, that any such person described in clauses (1) to (3),  
14 inclusive, is authorized by a competent authority to acquire, pos-  
15 sess or carry an assault weapon and is acting within the scope of  
16 his duties.

17 The provisions of this section shall not apply to the sale and  
18 possession of an assault weapon or sale of any large capacity mag-  
19 azine or large capacity ammunition belt by gun dealers licensed  
20 pursuant to section 122 of chapter 140, to those persons or entities  
21 authorized by law to possess such weapons or to the possession of  
22 an assault weapon by gunsmiths licensed under applicable federal  
23 law.

24 This section, as it relates to assault weapons, shall not apply to  
25 any person who moves into the commonwealth in lawful posses-  
26 sion of an assault weapon, provided that said person shall, within  
27 60 days, either: (i) render the weapon permanently inoperable;  
28 (ii) sell the weapon to a licensed gun dealer; (iii) transfer the  
29 weapon to a federal, state or local historical society or a museum  
30 or other institutional collection that is open to the public; (iv)  
31 transfer the weapon to a police department; or (v) remove the  
32 weapon from the commonwealth.

33 This section, as it relates to assault weapons, shall not apply to  
34 any person who obtains title to or possession of an assault weapon  
35 in such person's capacity as an executor or administrator or by  
36 bequest, intestate succession, or through similarly legitimate  
37 means; provided, however, that such person maintains any such  
38 assault weapon in a secure location and in an unloaded and  
39 securely packaged condition, complies with all transport require-  
40 ments pursuant to section 10J, and provided further, that within 45  
41 days of obtaining title said person shall either (i) render the  
42 weapon permanently inoperable; (ii) sell the weapon to a licensed  
43 gun dealer; (iii) transfer the weapon to a federal, state or local his-  
44 torical society or a museum or other institutional collection that is  
45 open to the public; (iv) transfer the weapon to a police depart-  
46 ment; or (v) remove the weapon from the commonwealth.

47 Nothing in this section shall prohibit the use, by hunters or  
48 individuals engaged in sport, of double barrel shotguns for the  
49 purpose of clay pigeon shooting, or the continued use of any  
50 firearm historically characteristic of the pursuit of skeet, trap,  
51 sporting clays, target shooting and hunting.

52 (b) Any person who distributes, transports or imports into the  
 53 commonwealth, keeps for sale, or offers or exposes for sale, gives  
 54 or otherwise transfers any assault weapon, large capacity ammuni-  
 55 tion belt, or large capacity ammunition magazine, except as pro-  
 56 vided by this section or chapter 140, shall be punished by  
 57 imprisonment in the state prison for not more than ten years or by  
 58 imprisonment in a house of correction for not more than two and  
 59 one-half years. Any person who commits a second or subsequent  
 60 such crime shall be punished by imprisonment in the state prison  
 61 for not less than one nor more than 15 years. The sentence  
 62 imposed upon such person shall not be reduced to less than one  
 63 year, nor suspended, nor shall any person convicted under this  
 64 subsection be eligible for probation, parole, furlough, work  
 65 release or receive any deduction from his sentence for good con-  
 66 duct until he shall have served one year of such sentence; pro-  
 67 vided, however, that the commissioner of correction may, on the  
 68 recommendation of the warden, superintendent or other person in  
 69 charge of a correctional institution or the administrator of a  
 70 county correctional institution, grant to said offender a temporary  
 71 release in the custody of an officer of such institution for the  
 72 following purposes only: to attend the funeral of a spouse or next  
 73 of kin; to visit a critically ill close relative or spouse; or to obtain  
 74 emergency medical services unavailable at said institution. Prose-  
 75 cutions commenced under this subsection shall neither be con-  
 76 tinued without a finding nor placed on file. The provisions of  
 77 section 87 of chapter 276 relative to the power of the court to  
 78 place certain offenders on probation shall not apply to any person  
 79 17 years of age or over charged with a violation of this subsection.

80 (c) Any person who transfers, sells, lends or gives an assault  
 81 weapon, large capacity ammunition belt or large capacity ammu-  
 82 nition magazine to a person under 18 years of age shall be pun-  
 83 ished by imprisonment in the state prison for not less than two nor  
 84 more than ten years. The sentence imposed upon such person shall  
 85 not be reduced to less than two years, nor suspended, nor shall any  
 86 person convicted under this subsection be eligible for probation,  
 87 parole, furlough, work release or receive any deduction from his  
 88 sentence for good conduct until he shall have served two years of  
 89 such sentence; provided, however, that the commissioner of cor-  
 90 rection may, on the recommendation of the warden, superinten-  
 91 dent or other person in charge of a correctional institution or the

92 administrator of a county correctional institution, grant to said  
 93 offender a temporary release in the custody of an officer of such  
 94 institution for the following purposes only: to attend the funeral of  
 95 a spouse or next of kin; to visit a critically ill close relative or  
 96 spouse; or to obtain emergency medical services unavailable at  
 97 said institution. Prosecutions commenced under this subsection  
 98 shall neither be continued without a finding nor placed on file.  
 99 The provisions of section 87 of chapter 276 relative to the power  
 100 of the court to place certain offenders on probation shall not apply  
 101 to any person 17 years of age or over charged with a violation of  
 102 this subsection.

103 (d) Any person who possesses an assault weapon, except as  
 104 provided in this section or chapter 140, shall be punished by  
 105 imprisonment in the state prison for not less than one nor more  
 106 than ten years or by imprisonment in a house of correction for not  
 107 more than two and one-half years. Said sentence shall not be  
 108 reduced until one year of said sentence has been served nor shall  
 109 the person convicted be eligible for probation, parole, furlough,  
 110 work release or receive any deduction from his sentence for good  
 111 conduct until he shall have served one year of such sentence; pro-  
 112 vided, however, that the commissioner of correction may, on the  
 113 recommendation of the warden, superintendent or other person in  
 114 charge of a correctional institution or the administrator of a  
 115 county correctional institution, grant to said offender a temporary  
 116 release in the custody of an officer of such institution for the  
 117 following purposes only: to attend the funeral of a spouse or next  
 118 of kin; to visit a critically ill close relative or spouse; or to obtain  
 119 emergency medical services unavailable at said institution. Prose-  
 120 cutions commenced under this subsection shall neither be con-  
 121 tinued without a finding nor placed on file. The provisions of  
 122 section 87 of chapter 276 relative to the power of the court to  
 123 place certain offenders on probation shall not apply to any person  
 124 17 years of age or over charged with a violation of this subsection.  
 125 Section 10G. Whoever, having been previously convicted of a  
 126 felony, violates the provisions of paragraph (a), (c) or (h) of  
 127 section 10 or of section 10F shall be punished by imprisonment in  
 128 the state prison for not less than three years nor more than 15  
 129 years.

130 Whoever, having been previously convicted of two felonies  
 131 arising from separate incidences, violates the provisions of para-

132 graph (a), (c) or (h) of section 10 or of section 10F shall be pun-  
 133 ished by imprisonment in the state prison for not less than 10  
 134 years nor more than 15 years.

135 Whoever, having been previously convicted of three felonies  
 136 arising from separate incidences, violates the provisions of para-  
 137 graph (a), (c) or (h) of section 10 or of section 10F shall be pun-  
 138 ished by imprisonment in the state prison for not less than 15  
 139 years nor more than 20 years.

140 The sentences imposed upon such persons shall not be reduced  
 141 to less than the minimum, nor suspended, nor shall persons con-  
 142 victed under this section be eligible for probation, parole, fur-  
 143 lough, work release or receive any deduction from his sentence for  
 144 good conduct until he shall have served the minimum number of  
 145 years of such sentence; provided, however, that the commissioner  
 146 of correction may, on the recommendation of the warden, superin-  
 147 tendent or other person in charge of a correctional institution or  
 148 the administrator of a county correctional institution, grant to said  
 149 offender a temporary release in the custody of an officer of such  
 150 institution for the following purposes only: to attend the funeral of  
 151 a spouse or next of kin; to visit a critically ill close relative or  
 152 spouse; or to obtain emergency medical services unavailable at  
 153 said institution. Prosecutions commenced under this section shall  
 154 neither be continued without a finding nor placed on file. The pro-  
 155 visions of section 87 of chapter 276 relative to the power of the  
 156 court to place certain offenders on probation shall not apply to any  
 157 person 17 years of age or over charged with a violation of this  
 158 section.

159 Section 10H. (a) Whoever stores or keeps a firearm, rifle,  
 160 shotgun, machine gun or assault weapon, in any place that a rea-  
 161 sonable person would believe any person under 18 years of age  
 162 may have access to, without committing an illegal entry onto the  
 163 premises, shall store or keep such weapon in a securely locked  
 164 container or, in the case that such weapon may be equipped with a  
 165 trigger lock, equip such weapon with a trigger lock so as to effec-  
 166 tively render the weapon incapable of operation. For purposes of  
 167 this section, a weapon shall not be considered stored or kept when  
 168 such weapon is carried on the person of anyone in lawful posses-  
 169 sion of such weapon or when such person exercises dominion and  
 170 control over such weapon. Whoever violates the provisions of this  
 171 subsection shall be punished by a fine of \$1,000 or imprisonment

172 in a house of correction for not more than two years or by both  
 173 such fine and imprisonment.

174 (b) Whoever violates the provisions of subsection (a) and such  
 175 violation proximately causes serious bodily injury to a person  
 176 under 18 years of age or the death of a person under 18 years of  
 177 age shall be punished by a fine of not more than \$10,000 or  
 178 imprisonment for not more than five years in state prison or by  
 179 both such fine and imprisonment.

180 The provisions of this section shall not apply if a person  
 181 under 18 years of age obtains a weapon by means of an illegal  
 182 entry on the premises committed by him or another person.

183 Section 10I. Any person who manufactures, possesses, sells or  
 184 uses a laser device for the purpose of aiming a firearm, rifle,  
 185 shotgun, machine gun or other weapon shall be punished by  
 186 imprisonment in a state prison for not more than four years; pro-  
 187 vided, however, that this section shall not apply to a police officer  
 188 or a member of the armed forces in the performance of an official  
 189 duty or to a person or entity who manufactures or sells such laser  
 190 device for use by such police officer or member of the armed  
 191 forces or manufactures such laser device for sale outside the com-  
 192 monwealth.

193 Section 10J. Except as provided in section 10F, no person  
 194 licensed to possess an assault weapon, as defined in section 120 of  
 195 chapter 140, shall carry on his person a loaded assault weapon or  
 196 carry on his person or under his control in a vehicle an assault  
 197 weapon unless such weapon is unloaded and contained within the  
 198 locked trunk of such vehicle or in a locked case or other secure  
 199 container. Any person who violates the provisions of this section  
 200 shall be punished by imprisonment in a house of correction for not  
 201 more than two and one-half years or by a fine of not more than  
 202 \$1,000 or both. The provisions of this section shall not apply to:  
 203 (1) any officer, agent or employee of the commonwealth or any  
 204 other state or the United States; (2) any member of the military or  
 205 other service of any state or of the United States; (3) any duly  
 206 authorized law enforcement officer, agent or employee of any  
 207 municipality of the commonwealth; provided, however, that any  
 208 such person described in clauses (1) to (3), inclusive, is authorized  
 209 by a competent authority to acquire, possess or carry an assault  
 210 weapon and is acting within the scope of his duties.

211 Section 10K. Nothing in this chapter or in chapter 140 shall be  
 212 construed to prohibit any person engaged in the business of manu-  
 213 facturing assault weapons in the commonwealth from manufac-  
 214 turing or transporting assault weapons in the commonwealth for  
 215 sale within the commonwealth in accordance with the provisions  
 216 of this chapter and said chapter 140 or for sale outside the com-  
 217 monwealth; provided, however, that such person complies with  
 218 the transport requirements in section 10J.

1 SECTION 10. Chapter 270 of the General Laws is hereby  
 2 amended by inserting after section 7, as so appearing, the  
 3 following section:—

4 Section 7A. The owner or person in charge of any retail or  
 5 wholesale store or sales outlet licensed to sell weapons pursuant  
 6 to the provisions of section 121 of chapter 140, shall conspicu-  
 7 ously post at each purchase counter the following warning in  
 8 block letters not less than one inch in height: "IT IS UNLAWFUL  
 9 TO STORE OR KEEP A FIREARM, RIFLE, SHOTGUN,  
 10 MACHINE GUN OR ASSAULT WEAPON IN ANY PLACE  
 11 ACCESSIBLE TO A PERSON UNDER 18 YEARS OF AGE  
 12 UNLESS THAT WEAPON IS EQUIPPED WITH A TRIGGER  
 13 LOCK OR IS STORED OR KEPT IN A SECURELY LOCKED  
 14 CONTAINER."

15 Whoever sells or transfers any firearm, rifle, shotgun, machine  
 16 gun or assault weapon, pursuant to a license granted pursuant to  
 17 the provisions of said section 121, shall deliver a written notice to  
 18 the purchaser or transferee the following warning in block letters  
 19 not less than one quarter inch in height: "IT IS UNLAWFUL TO  
 20 STORE OR KEEP A FIREARM, RIFLE, SHOTGUN, MACHINE  
 21 GUN OR ASSAULT WEAPON IN ANY PLACE ACCESSIBLE  
 22 TO A PERSON UNDER 18 YEARS OF AGE UNLESS THAT  
 23 WEAPON IS EQUIPPED WITH A TRIGGER LOCK OR IS  
 24 STORED OR KEPT IN A SECURELY LOCKED CONTAINER."  
 25 Whoever violates the provisions of this section shall be pun-  
 26 ished by a fine of not more than \$5,000 or by imprisonment in a  
 27 house of correction for not more than one year or by both such  
 28 fine and imprisonment.

1 SECTION 10A. Chapter 269 of the General Laws, as appearing  
 2 in the 1996 Official Edition, is hereby amended by inserting after  
 3 section 12E, as so appearing, the following two sections:—

4 Section 12F. Whoever negligently discharges a firearm as  
 5 defined in section 121 of chapter 140, a rifle or shotgun in a  
 6 manner that endangers the safety of any person or property shall  
 7 be punished by imprisonment in the state prison for not more than  
 8 five years or imprisonment in a jail or house of correction for not  
 9 more than two and one-half years or by a fine of not more than  
 10 \$10,000, or by both such fine and imprisonment. The provisions  
 11 of this section shall not apply to any law enforcement officer or  
 12 any member of the military or other service of any state or of the  
 13 United States acting in the discharge of his duties.

14 Section 12G. Whoever recklessly discharges a firearm as  
 15 defined in section 121 of chapter 140, a rifle or shotgun in a  
 16 manner that endangers the safety of any person or property shall  
 17 be punished by imprisonment in the state prison for not less than  
 18 one nor more than five years or imprisonment in a jail or house of  
 19 correction for not less than one nor more than two and one-half  
 20 years, or by a fine of not more than \$20,000, or by both such fine,  
 21 and imprisonment. The provisions of this section shall not apply  
 22 to any law enforcement officer or any member of the military or  
 23 other service of any state or of the United States acting in the dis-  
 24 charge of his duties.

1 SECTION 11. The provisions of section 10F of chapter 269 of  
 2 the General Laws shall not apply to a person in possession of an  
 3 assault weapon who: (1) is at least 18 years of age on the effective  
 4 date of this act; (2) lawfully possessed the assault weapon prior to  
 5 said date; and (3) applies for a license to possess an assault  
 6 weapon in accordance with section 129B of chapter 140 of the  
 7 General Laws on or before August 1, 1998. If such person applies  
 8 for a license to possess an assault weapon, said section 10F of said  
 9 chapter 269 shall not apply to such person pending the outcome of  
 10 the initial application, and for 30 days following a denial of such  
 11 application.

12 Such person may only possess such assault weapon: (1) at his  
 13 residence, place of business or other property owned by such  
 14 person; (2) while on the premises of a target range of a public or  
 15 private club or organization organized for the purpose of prac-  
 16 ticing shooting at targets; (3) while attending any exhibition, dis-  
 17 play or educational project relative to firearms and which is  
 18 sponsored by, conducted under the auspices of, or approved by a

19 law enforcement agency or a nationally or state recognized entity  
 20 that fosters proficiency in, or promotes education about firearms;  
 21 or (4) while transporting the assault weapon pursuant to the  
 22 requirements of section 10J of said chapter 269 between any of  
 23 the places described in this subsection or to any licensed gun  
 24 dealer or gunsmith as defined in section 121 of chapter 140 of the  
 25 General Laws.

1 SECTION 12. Section 3 of chapter 279 of the General Laws,  
 2 as so appearing in the 1996 Official Edition, is hereby amended  
 3 by inserting after the first paragraph the following paragraph:—  
 4 If the probationer is served with notice of surrender for and  
 5 convicted of violating the provisions of sections 10, 10A or 10B  
 6 of chapter 269, the court shall revoke the suspension of the execu-  
 7 tion of his sentence and impose execution of such sentence.

1 SECTION 13. (a) Notwithstanding the provisions of any  
 2 general or special law to the contrary, in the case of a person who  
 3 is at least 18 years of age on the effective date of this act and who  
 4 is in lawful possession of an assault weapon on said date, such  
 5 person may apply for a license to possess such assault weapon to  
 6 the licensing authority, as defined by section 121 of chapter 140 of  
 7 the General Laws, on or before August 1, 1998; provided, how-  
 8 ever, that in the case of a person who, after the effective date of  
 9 this act, obtains title to or possession of an assault weapon in such  
 10 person's capacity as an executor or administrator or by bequest,  
 11 intestate succession or through similarly legitimate means, such  
 12 person may, within 90 days of obtaining title, apply for a license  
 13 to possess such assault weapon to the licensing authority, as  
 14 defined by said section 121 of said chapter 140; provided how-  
 15 ever, that a person who obtains a license pursuant to the provi-  
 16 sions of this paragraph shall continue to comply with the provi-  
 17 sions of section 129B of said chapter 140; and provided fur-  
 18 ther, that such application shall include with such application an  
 19 affidavit attesting to ownership of an assault weapon on the date  
 20 of submission of such application.

21 The provisions of subsection (d) of section 10F of said  
 22 chapter 269 of the General Laws shall not apply to such applicant  
 23 pending the outcome of such application, for 30 days following a

24 denial of such application or if a license to possess an assault  
 25 weapon is granted.

26 Applicants who are granted a license to possess an assault  
 27 weapon pursuant to the provisions of this act may only possess  
 28 such an assault weapon: (1) at his residence, place of business or  
 29 other property owned by such applicant; (2) while on the premises  
 30 of a target range of a public or private club or organization orga-  
 31 nized for the purpose of practicing shooting at targets; (3) while  
 32 attending any exhibition, display or educational project relative to  
 33 firearms and which is sponsored by, conducted under the auspices  
 34 of, or approved by a law enforcement agency or a nationally or  
 35 state recognized entity that fosters proficiency in, or promotes  
 36 education about firearms; or (4) while transporting the assault  
 37 weapon pursuant to the requirements of section 10J of said  
 38 chapter 269 between any of the places described in this subsection  
 39 or to any licensed gun dealer or gunsmith as defined in  
 40 section 121 of chapter 140 of the General Laws.

41 (b) Notwithstanding the provisions of any general or special  
 42 law to the contrary, licensing authorities are hereby authorized to  
 43 grant licenses to possess an assault weapon on or before August 1,  
 44 1998 to a person who is at least 18 years of age on the effective  
 45 date of this act and who has been granted a license to carry a  
 46 firearm or a firearms identification card; provided, however, that  
 47 such assault weapon is lawfully owned by such person on the  
 48 effective date of this act and the license to carry or firearms iden-  
 49 tification card is in effect on said date and such person otherwise  
 50 meets the requirements of section 129B of said chapter 140. The  
 51 secretary of public safety may promulgate regulations consistent  
 52 with this section to effectuate its purpose including, but not lim-  
 53 ited to, regulations relative to uniform affidavit forms attesting to  
 54 ownership of an assault weapon on the date of submission of an  
 55 application for a license to possess an assault weapon.

**940 C.M.R. § 16.01: Definitions**

For purposes of 940 CMR 16.00, the following terms shall have the following meanings:

**Average group diameter test result:** shall mean the arithmetic mean of three separate group diameter test results taken from a set distance.

**Combination handle lock:** shall mean a device which precludes the use of the handgun unless the combination tumblers are properly aligned. This device may, for example, have the numbers for the combination tumblers protrude from the handle of the handgun.

**Educational collector:** shall mean an individual who is properly licensed as a bonafide collector pursuant to 520 CMR 7.00, and whose collection is maintained for purposes of display, research, lecturing, demonstration, or historical significance, as opposed to being maintained for personal enjoyment and/or possible future profit.

**Group diameter test result:** shall mean the largest spread in inches between the centers of any of the holes made in a test target after firing five rounds from the handgun in question at the target from a set distance. The ammunition used shall be the type recommended by the handgun manufacturer in its user manual, or if none is recommended, any standard ammunition of the correct caliber in new condition.

**Hammer deactivation device:** shall mean a built-in device (or an extension of the hammer) which allows a user manually to lower the handgun's hammer into a deactivated position, and which must be manually re-toggled in order to re-cock the hammer before the handgun can be fired.

**Handgun:** shall mean a weapon, designed to be fired by the use of a single hand, from which may be fired or ejected one or more solid projectiles propelled via a chemical ignition, and which has:

- (a) a smooth bore with a barrel less than 18 inches long;
- (b) a smooth bore and an overall weapon length of less than 26 inches; or
- (c) a rifled bore with a barrel less than 16 inches.

**Handgun Drop Test:** shall mean a test in which the handgun in question shall be:

- (a) test loaded;
- (b) set such that the handgun is ready to fire; and
- (c) dropped onto a solid slab of concrete from a height of one meter from each of the following positions:

1. normal firing position,
2. upside down,
3. on grip,
4. on the muzzle,
5. on either side, and
6. on the exposed hammer or striker (or if there is no exposed hammer or striker, then the rearmost part of the firearm).

In addition, if the handgun is designed so that its hammer or striker may be set in other positions, the handgun in question shall be tested with the hammer or striker in each such position (but otherwise ready to fire). Alternatively, the tester may use different handguns of the same make and model, in similar condition, for the test of each of these hammer/striker settings.

**Handgun Performance Test:** shall mean a test in which the handgun in question shall fire 600 rounds, stopping every 100 rounds to tighten any loose screws and to clean the gun (if required by the cleaning schedule in the user manual), and as needed to refill the empty magazine or cylinder to capacity before continuing. For any handgun that loads other than via a detachable magazine, the tester shall also pause every 50 rounds for ten minutes. The ammunition used shall be the type recommended by the handgun manufacturer in its user manual, or if none is recommended, any standard ammunition of the correct caliber in new condition. A handgun shall pass this test if it:

- (a) fires the first 20 rounds without a malfunction, and
- (b) fires the full 600 rounds with no more than six malfunctions and without any crack or breakage of an operating part of the handgun which increases the danger of injury to the user.

**Handgun-purveyor:** shall mean any person or entity that transfers handguns to a customer located within the Commonwealth of Massachusetts. However, handgun-purveyor shall not include any of the aforementioned if:

- (a) the person or entity transfers less than five handguns per year,
- (b) the transfer in question is for the purpose of, and does, directly or indirectly, supply law enforcement officials or United States military personnel with handguns for their official duties,
- (c) the transfer in question is for the purpose of, and does, directly or indirectly, supply museums or educational collectors with the handguns in question,

(d) the transfer in question is undertaken to, and does, result in the surrender of handguns to military or law enforcement personnel,

(e) the transfer in question is of handguns that qualify as antique firearms as defined in 18 U.S.C. § 921, or

(f) the transfer in question is of handguns that are solely designed and sold specifically for formal target shooting competition.

**Key activated trigger lock:** shall mean a device that when locked in place by means of a key, prevents a potential user from pulling the trigger of the handgun without first removing the trigger lock by use of the trigger lock's key.

**Load indicator:** shall mean a device which plainly indicates that a cartridge is in the firing chamber within the handgun.

**Magazine safety disconnect:** shall mean a device that prevents the firing of the handgun when the magazine is detached from the handgun.

**Make and model:** shall mean any group of handguns, all of which are made by a manufacturer by the same method and according to the same design pattern and specifications.

**Make and Model Performance Requirements:** shall mean a test in which three handguns in new condition of the make and model being tested shall each pass the Handgun Performance Test.

**Make and Model's Average Group Diameter Test Result:** shall mean the arithmetic mean of the results of three Average Group Diameter Tests, each performed on a different handgun in new condition of the make and model being tested.

**Malfunction:** shall mean any failure to feed, chamber, fire, extract, or eject a round, or any failure to accept or eject a magazine, or any other failure which prevents the handgun, without manual intervention beyond that needed for routine firing and periodic reloading, from firing the chambered round or moving a new round into position so that the handgun is capable of firing the new round properly. Malfunction shall not include a misfire caused by a faulty cartridge whose primer fails to detonate when properly hit by the handgun's firing mechanism.

**Passive use-limitation device:** shall mean a device that automatically resets itself so that an unauthorized user cannot fire the handgun. As an example, a key activated trigger lock is not a passive use-limitation device because it needs to be re-locked manually after its key is used to unlock it; thus the next user can fire the handgun without having to unlock the handgun.

**Prone to accidental discharge:** shall mean unable to pass the following test: five handguns in new condition of the make and model in question shall each be subjected to, and none shall discharge during, the Handgun Drop Test.

**Ready to fire:** shall mean loaded, and in a condition such that pulling the trigger (and taking any action that must simultaneously accompany the pulling of the trigger as part of the firing procedure) will fire the handgun.

**Serial number:** shall mean the number stamped, inscribed, or placed upon a handgun by a handgun-purveyor pursuant to M.G.L. c. 269, § 11E.

**Solenoid use-limitation device:** shall mean a device which precludes, by use of a magnetically activated relay, the firing of the handgun unless a magnet of the appropriate strength is placed in proximity to the handle of the handgun. Such magnet may be imbedded in a ring which can be worn on the user's gun hand.

**Test loaded:** shall mean loading each chamber of the handgun in question with an empty case with a primer installed.

**Transfer:** shall mean sell, rent, or lease. Transfer shall not include a sale to a business entity that is primarily a firearm wholesaler, so long as the sale, by its terms, prohibits the purchaser from reselling the handgun to a handgun retailer or consumer in the Commonwealth.

#### **940 C.M.R. § 16.02: Unfair or Deceptive Practices**

(1) It shall be an unfair or deceptive practice for any handgun-purveyor, in conjunction with the transfer (or offer to transfer) of a handgun to a consumer in the Commonwealth, to fail to comply with M.G.L. c. 93A, 940 CMR 16.00 *et seq.*, or any other existing local, state, or federal statute, rule or regulation whose implementation serves to protect consumers from unfair and deceptive practices by means including, but not limited to, regulating conditions of sale, precluding the sale of products when such sale will place purchasers in violation of the law, demanding the disclosure of information, and ensuring the satisfactory condition and non-contraband status of goods proffered for sale. Examples of the above include laws, regulations, and rules that:

(a) forbid the sale of handguns to juveniles, addicts, or mentally incompetent individuals,

(b) forbid the sale of silencers, armor penetrating bullets, or machine-gun pistols (when possession by purchasers will be unlawful),

(c) forbid participation in any way in the obliteration of serial numbers from handguns prior to sale,

- (d) forbid the sale of handguns whose serial numbers have been defaced,
  - (e) require sellers to keep records of handgun sales,
  - (f) forbid sellers from delivering or transporting handguns loaded, or
  - (g) forbid the delivery of handguns to the custody of a minor.
- (2) It shall be an unfair or deceptive practice for a handgun-purveyor to make material misrepresentations or make false certifications regarding any handgun offered for transfer.

**940 C.M.R. § 16.03: Tamper-Resistant Serial Numbers**

It shall be an unfair or deceptive practice for a handgun-purveyor to transfer or offer to transfer to any customer located within the Commonwealth any handgun on which the serial number has been placed solely in a location on the handgun that results in the number's susceptibility to eradication. A serial number shall be deemed not susceptible to eradication for purposes of 940 CMR 16.00 if:

- (1) it is placed on the interior of the handgun, and the handgun-purveyor provides information regarding the location of the interior serial number to the Office of the Attorney General and other law enforcement officials upon request; or
- (2) it is placed on the exterior of the handgun in a way that is not visible to the unaided eye, but is visible with the aid of an infrared detector or other device, and the handgun-purveyor provides information regarding the location of the nonvisible serial number or any method by which this number can be made viewable to the Office of the Attorney General and other law enforcement officials upon request.

**940 C.M.R. § 16.04: Sale of Handguns Made From Inferior Materials**

It shall be an unfair or deceptive practice for a handgun-purveyor to transfer or offer to transfer to any customer located within the Commonwealth any make and model of handgun that:

- (1) has a frame, barrel, cylinder, slide or breechblock:
  - (a) composed of any metal having a melting point of less than 900EF,
  - (b) composed of any material having an ultimate tensile strength of less than 55,000 pounds per square inch, or
  - (c) composed of any powdered metal having a density of less than 7.5 grams per cubic centimeter; or

(2) is prone to repeated firing based on a single pull of the trigger, prone to the explosion of the handgun during firing with standard ammunition, or prone to accidental discharge.

(3) 940 CMR 16.04(1) shall not apply to any make and model of handgun which satisfies the Make and Model Performance Requirements. The Attorney General may require that the handgun-purveyor, or the entity testing the make and model in question on behalf of the handgun-purveyor, provide a sworn certification verifying that the make and model met the performance requirements. At the Attorney General's discretion, he may, upon 60 days notice, require that any such test be performed again by an independent testing entity chosen by the Attorney General, upon three test guns of the make and model purchased at retail. In such a case, the prior certification shall be prospectively invalid at the conclusion of the notice period and the make and model in question may henceforth only meet the Make and Model Performance Requirements by obtaining a certification from the independent tester. A handgun-purveyor may resubmit a make and model to the independent tester for testing an unlimited number of times.

#### **940 C.M.R. § 16.05: Sale of Handguns Without Childproofing**

(1) It shall be an unfair or deceptive practice to sell a handgun without a safety device in violation of M.G.L. c. 140, § 131K.

(2) It shall be an unfair or deceptive practice for a handgun-purveyor to transfer or offer to transfer to any customer located within the Commonwealth any handgun which does not contain a mechanism which effectively precludes an average five year old child from operating the handgun when it is ready to fire; such mechanisms shall include, but are not limited to: raising trigger resistance to at least a ten pound pull, altering the firing mechanism so that an average five year old child's hands are too small to operate the handgun, or requiring a series of multiple motions in order to fire the handgun.

(3) It shall be an unfair or deceptive practice for a handgun-purveyor to transfer or offer to transfer to any customer located within the Commonwealth any handgun which does not contain a load indicator or magazine safety disconnect.

(4) 940 CMR 16.05(2) shall not apply to handguns which have a hammer deactivation device. 940 CMR 16.05(3) applies only to handguns that have a mechanism to load cartridges via a magazine.

#### **940 C.M.R. § 16.06: Safety Warning/Disclosures**

(1) It shall be an unfair or deceptive practice for a handgun-purveyor to transfer or offer to transfer to any customer located within the Commonwealth any handgun unless that handgun is accompanied by the following warning, provided on a

separate sheet of paper included within the packaging enclosing the gun, which, in at least 12 point type, states the following:

"WARNING FROM THE MASSACHUSETTS ATTORNEY GENERAL: This handgun is not equipped with a device that fully blocks use by unauthorized users. More than 200,000 firearms like this one are stolen from their owners every year in the United States. In addition, there are more than a thousand suicides each year by younger children and teenagers who get access to firearms. Hundreds more die from accidental discharge. It is likely that many more children sustain serious wounds, or inflict such wounds accidentally on others. In order to limit the chance of such misuse, it is imperative that you keep this weapon locked in a secure place and take other steps necessary to limit the possibility of theft or accident. Failure to take reasonable preventive steps may result in innocent lives being lost, and in some circumstances may result in your liability for these deaths."

Failure to include this warning in the packaging enclosing the gun shall not be a violation of 940 CMR 16.00 if the handgun in question complies with 940 CMR 16.05(1) by means of a built-in passive use-limitation device, including but not limited to a nondetachable solenoid use limitation device.

(2) It shall be an unfair or deceptive practice for a handgun-purveyor to transfer a handgun directly to a retail customer located within the Commonwealth without demonstrating how to load, unload, and safely store the handgun, and how to engage and disengage all safety devices on the handgun. This shall include an explanation of the circumstances for which the safety devices are designed to prevent the firing of the handgun. The handgun-purveyor shall also note for the retail customer the absence, if any, of the following: a load indicator, a magazine safety disconnect or an internal safety.

(3) It shall be an unfair or deceptive practice for a handgun purveyor to transfer to a customer located within the Commonwealth a handgun that has a barrel shorter than three inches, unless the handgun purveyor discloses the limits of the accuracy of the make and model of handgun for sale by providing in writing to the customer (prior to sale) the make and model's average group diameter test result at seven yards, average group diameter test result at 14 yards, and average group diameter test result at 21 yards.

**940 C.M.R. § 16.07: Transfers of Used Handguns**

(1) 940 CMR 16.03 and 16.05(2) and (3) shall not apply to the transfer of (or offer to transfer) any handgun that previously has been sold at retail to a consumer and that was manufactured prior to the enforcement date for those provisions.

(2) 940 CMR 16.06(3) shall not apply to the transfer of (or offer to transfer) any handgun that previously has been sold at retail to a consumer, was manufactured prior to the enforcement date for 940 CMR 16.06(3), and for which the handgun-purveyor discloses the limits of the accuracy of the specific handgun for sale by providing in writing to the customer (prior to sale) the handgun's average group diameter test result at seven yards, average group diameter test result at 14 yards, and average group diameter test result at 21 yards.

(3) 940 CMR 16.04(2), as it pertains to any make and model prone to accidental discharge, shall not apply to the transfer of (or offer to transfer) any handgun that previously has been sold at retail to a consumer, was manufactured prior to the enforcement date for 940 CMR 16.04(2), and for which the handgun-purveyor provides to the buyer a sworn certification that the handgun-purveyor has performed the Handgun Drop Test on the handgun in question in fully cocked position, and on the same handgun (or on other handguns of the same make and model in similar condition) in all other hammer/striker positions, and that there were no discharges during the test.

(4) 940 CMR 16.04(1) shall not apply to the transfer of (or offer to transfer) any handgun that previously has been sold at retail to a consumer, was manufactured prior to the enforcement date for 940 CMR 16.04(1), and for which the handgun-purveyor provides a sworn certification to the buyer that the specific handgun purchased passed the Handgun Performance Test.