

940 CMR 16.00: HANDGUN SALES

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The Attorney General of the Commonwealth of Massachusetts promulgates 940 CMR 16.00 pursuant to authority granted to him under M.G.L. c. 93A, § 2(c). 940 CMR 16.00 defines certain unfair acts or practices but is not intended to describe all types of practices prohibited by M.G.L. c. 93A, § 2. 940 CMR 16.00 does not legitimize acts that are not specifically prohibited by 940 CMR 16.00, and does not alter or amend common law rights and remedies available to consumers. 940 CMR 16.00 is designed to supplement existing statutes and regulations. References to statutes and other regulations shall include amendments thereto from time to time.

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.

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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.

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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.

16.02: Unfair or Deceptive Practices: General

(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.

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- (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.

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.

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 900°F,
 - (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.

16.05: Sale of Handguns Without Childproofing or Safety Devices

- (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

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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.

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.

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.

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(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.

16.08: Severability

If any section or subsection of 940 CMR 16.00 shall be held invalid, the validity of the remainder of 940 CMR 16.00 shall not be affected thereby. If the application of any section or subsection of 940 CMR 16.00 to any person or circumstance shall be held invalid, the applicability of such section or subsection to any other person or circumstance shall not be affected thereby.

16.09: Enforcement Dates

940 CMR 16.00 shall apply as follows:

- (1) 940 CMR 16.01, 16.02, and 16.08, and 940 CMR 16.06(1) and (2) shall apply to acts committed or practices in force as of January 15, 1998;
- (2) 940 CMR 16.04 and 940 CMR 16.06(3), 16.07(2), (3) and (4) shall apply to acts committed or practices in force as of June 30, 1998; and
- (3) 940 CMR 16.03 and 16.05, and 940 CMR 16.07(1) shall apply to acts committed or practices in force as of September 30, 1998.

REGULATORY AUTHORITY

940 CMR 16.00: M.G.L. c. 93A, § 2(c).

(PAGES 125 THROUGH 130 ARE RESERVED FOR FUTURE USE.)