

HOUSE No. 03569

(House – [Enter text], 07/06/2011)



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND ELEVEN

To the Honorable Senate and House of Representatives:

I am filing for your consideration legislation entitled, "An Act Relative to the Transmission of Firearms Background Check Information." Enactment of this legislation will bring Massachusetts into compliance with the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, a federal law passed in the aftermath of the Virginia Tech shooting tragedy. Among other provisions, this bill will require that the courts of the Commonwealth transmit all required mental health orders and adjudications to the state's criminal justice information system to be provided to the Attorney General of the United States exclusively for the purpose of firearms licensing.

The legislation also creates a federally mandated "relief from disabilities" program, which allows individuals who have been adjudicated as "mentally defective" or committed to mental institutions to once again become eligible for gun ownership by showing that they are not likely to act in a manner dangerous to public safety.

In addition to enhancing public safety, passage of this legislation will protect the Commonwealth from the loss of federal funding as a penalty for failure to comply with the NICS Act and permit the Commonwealth to qualify for other federal funding opportunities.

Accordingly, I respectfully urge your prompt consideration and enactment of this bill.

Sincerely,

DEVAL L. PATRICK,

Governor.

HOUSE No. 03569

The Commonwealth of Massachusetts

PRESENTED BY:

Deval Patrick

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

AN ACT RELATIVE TO THE TRANSMISSION OF FIREARMS BACKGROUND CHECK INFORMATION.

PETITION OF:

NAME: _____ | DISTRICT/ADDRESS: _____

HOUSE No. 03569

A message from His Excellency the Governor recommending legislation relative to the transmission of firearms background check information.

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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AN ACT RELATIVE TO THE TRANSMISSION OF FIREARMS BACKGROUND CHECK INFORMATION.

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 167A of chapter 6 of the General Laws, as inserted by section 8 of chapter
2 256 of the acts of 2010, is hereby amended by inserting the following paragraph:-

3 (h) Notwithstanding any general or special law or court order, including an order of
4 impoundment, to the contrary, the department shall transmit to the Attorney General of the
5 United States any information in its control required or permitted under federal law to be
6 included in the National Instant Background Check System or any successor system maintained
7 for the purpose of conducting background checks for firearms sales or licensing. No more
8 information than is necessary for the purposes stated above shall be transmitted, and such
9 information shall not be considered a public record under section 7 of chapter 4.

10 SECTION 2. Section 35 of chapter 123 of the General Laws, as appearing in the 2008 Official
11 Edition, is hereby amended by inserting after the word “days.”, in line 38, the following words:-

12 The court in its order shall specify whether such commitment is based upon a finding that said
13 person is an alcoholic, a substance abuser, or both, and this information shall be entered in the
14 record to permit transmission to the department of criminal justice information services for the
15 purposes and under the conditions set forth in the second paragraph of section 36A.

16 SECTION 3. Section 36A of chapter 123, as so appearing, is hereby amended by inserting after
17 the first paragraph the following paragraph:-

18 Notwithstanding the foregoing, the administrative office of the trial court shall transmit
19 information contained in court records maintained under this section to the department of
20 criminal justice information services for the purposes of (a) providing licensing authorities as
21 defined under section 121 of chapter 140 with information required or permitted to be considered
22 under state or federal law for the purpose of conducting background checks for firearms sales or
23 licensing and (b) providing the Attorney General of the United States with information required
24 or permitted under federal law to be included in the National Instant Criminal Background Check
25 System or any successor system maintained for the purpose of conducting background checks for
26 firearms sales or licensing. The commissioner of the department of criminal justice information
27 services shall determine which court records shall be transmitted for said purposes, provided that
28 the commissioner shall require no more information than is necessary to be transmitted, and such
29 information shall not be considered a public record under section 7 of chapter 4.

30 SECTION 4. Section 129B of chapter 140 of the General Laws, as so appearing, is hereby
31 amended by striking out, in line 85, the words “department of mental health.”.

32 SECTION 5. Section 130B of chapter 140 of the General Laws, as so appearing, is hereby
33 amended by inserting the following subsection:-

34 (h) There shall be, within the firearm licensing review board, a relief from disabilities
35 subcommittee comprised of 3 members, designated from time to time, as follows: 1 member of
36 the firearm licensing review board designated by the chair, 1 person designated by the
37 commissioner of the department of mental health, and 1 person designated by the secretary of
38 public safety and security, who shall chair the subcommittee.

39 An applicant who has been formally adjudicated as mentally defective in the commonwealth or
40 committed involuntarily to a mental institution in the commonwealth, within the meaning of 18
41 U.S.C. § 922, may petition the subcommittee for relief from the firearms prohibitions or
42 disabilities imposed by federal law as the result of such adjudication or commitment.

43 The applicant shall have the opportunity to submit evidence to the subcommittee and to be heard
44 by the subcommittee in support of the application. All hearings shall be conducted in an
45 informal manner, but otherwise according to the rules of evidence, and all witnesses shall be
46 sworn by the subcommittee chair. If requested by the petitioner and payment for stenographic
47 services, as determined by the subcommittee, accompanies such request, the subcommittee shall
48 cause a verbatim transcript of the hearing to be made. The subcommittee's decisions and
49 findings of facts shall be communicated in writing to the petitioner and to the licensing authority
50 to which the petitioner has applied or intends to apply within 60 days of rendering a decision.

51 The subcommittee shall maintain the records of its proceedings and of all materials submitted or
52 considered by the subcommittee for the purposes of judicial review for a minimum of 3 years
53 following the date of its decision. The records of the subcommittee shall not be considered a
54 public record under section 7 of chapter 4.

55 If the majority of the subcommittee determines that the applicant has shown by clear and
56 convincing evidence that the applicant will not be likely to act in a manner dangerous to public
57 safety and that granting relief will not be contrary to the public interest, the subcommittee may
58 grant relief and direct the department of criminal justice information services to notify the
59 Attorney General of the United States and to remove the record of the prohibition or disability
60 from any database that the department of criminal justice information services, the
61 commonwealth or the federal government maintains and makes available to the National Instant
62 Criminal Background Check System or any successor system maintained for the purpose of
63 conducting background checks for firearms sales or licensing.

64 In determining whether to grant relief, the subcommittee shall consider the circumstances
65 regarding the firearms disabilities imposed; the applicant's record, including the applicant's
66 mental health and criminal history records; and the applicant's reputation developed, at a
67 minimum, through character witness statements, testimony, or other character evidence. The
68 applicant shall have the burden to produce evidence concerning these matters and the burden of
69 persuading the subcommittee to grant relief. The subcommittee may promulgate regulations
70 governing the application process and the conduct of its hearings.

71 The decision of the subcommittee shall be a final decision. An applicant who is denied relief by
72 the subcommittee may, within 30 days of the receipt of the denial, seek review of the
73 subcommittee's decision by filing a complaint in the district court. The district court's review of
74 the subcommittee's decision shall be de novo, and the court may in its discretion receive
75 additional evidence necessary to conduct an adequate review.

76 The firearm licensing review board shall establish a fee to file an application for relief under this
77 section, which fees shall be retained by the department of criminal justice information services.

78 SECTION 6. Section 131 of chapter 140 of the General Laws, as so appearing, is hereby
79 amended by striking out, in lines 155-157, the words “The colonel shall inquire of the
80 commissioner of the department of mental health relative to whether the applicant is disqualified
81 from being so licensed.”

82 SECTION 7. Chapter 265 of the General Laws is hereby amended by inserting after section
83 13M the following section:-

84 Section 13N. Upon entry of a conviction for any misdemeanor offense that has as an element the
85 use or attempted use of physical force, or the threatened use of a deadly weapon, the court shall
86 determine whether the victim or intended victim was a family or household member of the
87 defendant, as defined in section 1 of chapter 209A. If the victim or intended victim was a family
88 or household member of the defendant, the court shall enter the offense, the chapter, section and
89 subsection, if any, of the offense, and the relationship of the defendant to the victim upon the
90 record, and this entry shall be forwarded to the department of criminal justice information
91 services for inclusion in the criminal justice information system and for the purpose of providing
92 the Attorney General of the United States with information required or permitted under federal
93 law to be included in the National Instant Criminal Background Check System or any successor
94 system maintained for the purpose of conducting background checks for firearms sales or
95 licensing.

96 SECTION 8. Notwithstanding any general or special law or court order, including an order of
97 impoundment, to the contrary, the administrative office of the trial court shall transmit any order

98 of the probate court appointing a guardian or conservator for an incapacitated person under part 3
99 or part 4 of article V of the Massachusetts Uniform Probate Code on the ground that the person
100 lacks the mental capacity to contract or manage his or her own affairs, and any subsequent order
101 terminating or rescinding such appointment, to the department of criminal justice information
102 services for the purpose of providing the Attorney General of the United States with information
103 required or permitted under federal law to be included in the National Instant Criminal
104 Background Check System or any successor system maintained for the purpose of conducting
105 background checks for firearms sales or licensing. The department of criminal justice
106 information services shall transmit no more information than is necessary for the purpose stated
107 above, and such information shall not be considered a public record under section 7 of chapter 4.

108 SECTION 9. Notwithstanding section 36 of chapter 123 of the General Laws, and for the sole
109 purposes of providing licensing authorities as defined under section 121 of chapter 140 of the
110 General Laws with information required or permitted to be considered under state law for the
111 purpose of conducting background checks for firearms sales or licensing and of providing the
112 Attorney General of the United States with information required or permitted under federal law
113 to be included in the National Instant Criminal Background Check System or any successor
114 system maintained for the purpose of conducting background checks for firearms sales or
115 licensing:

116 (a) No later than 6 months from the effective date of this act, the department of mental health
117 shall transmit to the department of criminal justice information services sufficient information to
118 identify all persons known to the department of mental health who have been confined to any
119 hospital or institution for mental illness within 20 years of the effective date or who are so
120 confined at the time of transmission; and

121 (b) Thereafter, the department of mental health shall transmit such information to the department
122 of criminal justice information services on a quarterly basis concerning individuals who have
123 been so confined in the 3-month period preceding the date of each transmission.

124 The department of criminal justice information services shall provide such licensing authorities
125 or transmit no more information than is necessary for the purpose stated above and such
126 information shall not be considered a public record under section 7 of chapter 4.

127 SECTION 10. Sections 4 and 6 shall take effect 6 months after the effective date of this act.