

**HOUSE . . . . . No. 3254**

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The Commonwealth of Massachusetts

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PRESENTED BY:

***Brian R. Mannal***

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*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 sale and possession of body armor.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>

**HOUSE . . . . . No. 3254**

By Mr. Mannel of Barnstable, a petition (accompanied by bill, House, No. 3254) of Brian R. Mannel and others for legislation to further regulate the sale and possession of body armor. Public Safety and Homeland Security.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act relative to the sale and possession of body armor.

*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, as appearing in the 2010  
2 Official Edition, is hereby amended by inserting after the definition of “assault weapon” the  
3 following definition:-

4   
5  "Body armor", means any product sold or offered for sale as personal protective body covering  
6 intended to protect the wearer against gunfire, regardless of whether the product is to be worn  
7 alone or is sold as a complement to another product or garment.

8   
9  SECTION 2. Chapter 140 of the General Laws, as appearing in the 2010 Official Edition, is  
10 hereby amended by adding the following section:-

11   
12  Section 122C. No person shall sell body armor in the commonwealth unless duly licensed. The  
13 chief of police or the board or officer having control of the police in a city or town, or persons  
14 authorized by them, may, after an investigation into the criminal history of the applicant to  
15 determine eligibility to be licensed under this section, grant a license to any person, except an  
16 alien, a minor, a person who has been adjudicated a youthful offender, as defined in section 52 of  
17 chapter 119, including those who have not received an adult sentence or a person who has been  
18 convicted of a felony in any state or federal jurisdiction, or of the unlawful use, possession or  
19 sale of narcotic or harmful drugs, to sell body armor. Every license shall specify the street and  
20 number, if any, of the building where the business is to be carried on. The licensing authority to  
21 whom such application is made shall cause 1 copy of the application to be forwarded to the  
22 commissioner of the department of criminal justice information services, who shall within a

23 reasonable time thereafter advise such authority in writing of any criminal record disqualifying  
24 the applicant. The fee for an application for a license to sell body armor shall be \$100, which  
25 shall be payable to the licensing authority and shall not be prorated or refunded in case of  
26 revocation or denial. The licensing authority shall retain \$25 of the fee; \$50 of the fee shall be  
27 deposited into the general fund of the commonwealth; and \$25 of the fee shall be deposited in  
28 the Firearms Fingerprint Identity Verification Trust Fund. The licensing authority to whom such  
29 application is made shall cause one copy of any approved application to be forwarded to the  
30 commissioner of the department of criminal justice information services.

31

32  Any lawfully incorporated sporting or shooting club shall, upon application, be licensed to sell  
33 or supply body armor for regulated use on their premises, as for skeet, target or trap shooting;  
34 provided, however, that such club license shall, in behalf of said club, be issued to and exercised  
35 by an officer or duly authorized member of the club who himself possesses a firearm  
36 identification card or a license to carry a firearm and who would not be disqualified to receive a  
37 license to sell body armor in his own right. The licensing authority may revoke or suspend a  
38 license to sell body armor for violation of any provision of this chapter.

39

40  The secretary of the executive office of public safety may establish such rules and regulations  
41 as he may deem necessary to carry out the provisions of this section.

42

43  Any person refused a license under this section or any person whose license is suspended or  
44 revoked under this section may obtain a judicial review of such refusal, suspension or revocation  
45 by filing within 30 days of such refusal, suspension or revocation a petition for review thereof in  
46 the district court having jurisdiction in the city or town in which the applicant filed for such  
47 license. A justice of said court, after a hearing, may direct that a license be issued to the applicant  
48 if the court is satisfied that there was no reasonable ground for refusing such license and that the  
49 applicant was not prohibited by law from holding the license.

50  Whoever not being licensed sells body armor within the commonwealth shall be punished by a  
51 fine of not less than \$500 but not more than \$1000 or by imprisonment for not less than 6 months  
52 but not more than 2 years.

53

54  SECTION 3. Chapter 140 of the General Laws, as appearing in the 2010 Official Edition, is  
55 hereby amended by striking out section 123 and inserting place thereof the following section:-

56

57  Section 123. A license granted under section 122 shall be expressed to be and shall be subject  
58 to the following conditions:— First, That the provisions in regard to the nature of the license and  
59 the building in which the business may be carried on under it shall be strictly adhered to. Second,  
60 That every licensee shall, before delivery of a firearm, body armor, rifle or shotgun, make or  
61 cause to be made a true, legible entry in a sales record book to be furnished by the commissioner  
62 of the department of criminal justice information services and to be kept for that purpose,

63 specifying the complete description of the firearm, body armor, rifle or shotgun, including the  
64 make, serial number, if any, type of firearm, body armor, rifle or shotgun, and designation as a  
65 large capacity weapon, if applicable, whether sold, rented or leased, the date of each sale, rental  
66 or lease, the license to carry firearms number or permit to purchase number and the identification  
67 card number in the case of a firearm or the identification card number or the license to carry  
68 firearms number in the case of body armor or a rifle or shotgun, the sex, residence and  
69 occupation of the purchaser, renter or lessee, and shall before delivery, as aforesaid, require the  
70 purchaser, renter or lessee personally to write in said sales record book his full name. Said book  
71 shall be open at all times to the inspection of the police. Third, That the license or a copy thereof,  
72 certified by the official issuing the same, shall be displayed on the premises in a position where it  
73 can easily be read. Fourth, That no body armor, firearm, rifle or shotgun, or machine gun shall be  
74 displayed in any outer window of said premises or in any other place where it can readily be seen  
75 from the outside. Fifth, That the licensee shall submit a record of all sales, rentals and leases  
76 forthwith at the time of such sale, rental or lease via electronic communication link to the  
77 commissioner of the department of criminal justice information services. Sixth, That every  
78 firearm, rifle or shotgun shall be unloaded when delivered. Seventh, That no delivery of a  
79 firearm or body armor shall be made to any person not having a license to carry firearms issued  
80 under the provisions of section 131 nor shall any delivery of body armor or a rifle or shotgun or  
81 ammunition be made to any minor nor to any person not having a license to carry firearms issued  
82 under the provisions of section 131 or a firearm identification card issued under the provisions of  
83 section 129 B nor shall any body armor or large capacity firearm or large capacity feeding device  
84 therefor be delivered to any person not having a Class A license to carry firearms issued under  
85 section 131 nor shall any body armor or large capacity rifle or shotgun or large capacity feeding  
86 device therefor be delivered to any person not having a Class A or Class B license to carry  
87 firearms issued under said section 131; provided, however, that delivery of a firearm or body  
88 armor by a licensee to a person possessing a valid permit to purchase said firearm issued under  
89 the provisions of section 131 A and a valid firearm identification card issued under section 129 B  
90 may be made by the licensee to the purchaser's residence or place of business, subject to the  
91 restrictions imposed upon such permits as provided under section 131A. Eighth, That no firearm  
92 shall be sold, rented or leased to a minor or a person who has not a permit then in force to  
93 purchase, rent or lease the same issued under section 131A, and a firearm identification card  
94 issued under the provisions of section 129B, or unless such person has a license to carry firearms  
95 issued under the provisions of section 131; nor shall any body armor or rifle or shotgun be sold,  
96 rented or leased to a person who has not a valid firearm identification card as provided for in  
97 section 129 B, or has a license to carry firearms as provided in section 131; that no body armor  
98 or large capacity firearm nor large capacity feeding device therefor shall be sold, rented, leased  
99 or transferred to any person not having (i) a Class A license to carry firearms issued under  
100 section 131 or (ii) a proper permit issued under section 131A and a firearm identification card  
101 issued under section 129B; that no body armor or large capacity rifle or shotgun nor large  
102 capacity feeding device therefor shall be sold to any person not having a Class A or Class B

103 license to carry firearms issued under said section 131; and that no body armor or machine gun  
104 shall be sold, rented or leased to any person who has not a license to possess the same issued  
105 under section 131. Ninth, That upon the sale, rental or lease of body armor or a firearm, subject  
106 to a permit to purchase issued under the provisions of section 131A, the licensee under section  
107 122 shall take up such permit to purchase and shall endorse upon it the date and place of said  
108 sale, rental or lease, and shall transmit the same to the executive director of the criminal history  
109 systems board; and that upon the sale, rental or lease of body armor or a machine gun shall  
110 endorse upon the license to possess the same the date and place of said sale, rental or lease, and  
111 shall within 7 days transmit a notice thereof to said executive director. In case of a sale under the  
112 provisions of section 131 E the licensee under section 122 shall write in the sales record book the  
113 number of the license to carry firearms issued the purchaser under the provisions of section 131,  
114 or the number of the firearm identification card issued the purchaser under the provisions of  
115 section 129 B, whichever is applicable under the provisions of condition Eighth of this section.  
116 Tenth, That this license shall be subject to forfeiture as provided in section 125 for breach of any  
117 of its conditions, and that, if the licensee hereunder is convicted of a violation of any such  
118 conditions, this license shall thereupon become void. Eleventh, That the Second, Fifth, Eighth  
119 and Ninth conditions shall not apply to a gunsmith with regard to repair or remodeling or  
120 servicing of firearms, rifles or shotguns unless said gunsmith has manufactured a firearm, rifle or  
121 shotgun for the purchaser, but said gunsmith shall keep records of the work done by him together  
122 with the names and addresses of his customers. Such records shall be kept open for inspection by  
123 the police at all times. Twelfth, That any licensee shall keep records of each sale, rental or lease  
124 of body armor or a rifle or shotgun, specifying the description of said body armor, rifle or  
125 shotgun, together with the name and address of the purchaser, renter or lessee, and the date of  
126 such transaction. Thirteenth, That the current validity of any firearm identification card, license  
127 to carry firearms or permit to purchase, rent or lease firearms presented, and that the person  
128 presenting said card, license or permit is the lawful holder thereof, shall be verified by the  
129 licensee prior to any sale, rental or lease of body armor or a rifle, shotgun, firearm or large  
130 capacity feeding device; and, upon being presented with such card or license that is expired,  
131 suspended or revoked, the licensee shall notify the licensing authority of the presentment of such  
132 expired, suspended or revoked card, license or permit; and further, the licensee may take  
133 possession of such card or license provided that, in such case, such licensee shall: (i) issue a  
134 receipt, in a form provided by the commissioner of the department of criminal justice  
135 information services, to the holder thereof which shall state that the holder's card or license is  
136 expired, suspended or revoked, was taken by such licensee and forwarded to the licensing  
137 authority by whom it was issued and such receipt shall be valid for the date of issuance for the  
138 purpose of providing immunity from prosecution under section 10 of chapter 269 for unlawfully  
139 possessing a firearm, rifle or shotgun or large capacity weapon; (ii) notify the cardholder or  
140 licensee of his requirement to renew said card or license; and (iii) forward such expired card or  
141 license to the licensing authority forthwith; provided, however, that such licensee shall be  
142 immune from civil and criminal liability for good faith compliance with the provisions herein.

143 Fourteenth, That the licensee shall conspicuously post at each purchase counter the following  
144 warning in bold type not less than one inch in height: “IT IS UNLAWFUL TO STORE OR  
145 KEEP A FIREARM, RIFLE, SHOTGUN OR MACHINE GUN IN ANY PLACE UNLESS  
146 THAT WEAPON IS EQUIPPED WITH A TAMPER-RESISTANT SAFETY DEVICE OR IS  
147 STORED OR KEPT IN A SECURELY LOCKED CONTAINER.”, and that such licensee shall  
148 provide said warning, in writing, to the purchaser or transferee of any firearm, rifle, shotgun or  
149 machine gun in bold type not less than one-quarter inch in height. Fifteenth, That all licensees  
150 shall maintain a permanent place of business that is not a residence or dwelling wherein all  
151 transactions described in this section shall be conducted and wherein all records required to be  
152 kept under this section shall be so kept. Sixteenth, That no licensee shall sell, lease, rent, transfer  
153 or deliver or offer for sale, lease, rent, transfer or delivery to any person any assault weapon or  
154 large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994.  
155 Seventeenth, That any licensee from whom body armor, a rifle, shotgun, firearm or machine gun  
156 is lost or stolen shall report such loss or theft to the licensing authority and the executive director  
157 of the criminal history systems board forthwith. Such report shall include a complete description  
158 of the body armor or weapon, including the make, model, serial number and caliber and whether  
159 such weapon is a large capacity weapon. Eighteenth, That no licensee shall sell, rent, lease,  
160 transfer or deliver or offer for sale, lease, transfer or delivery any firearm, to any purchaser in the  
161 commonwealth unless such sale is to a business entity that is primarily a firearm wholesaler and  
162 the sale, by its terms, prohibits the purchaser from reselling such firearm to a firearm retailer or  
163 consumer in the commonwealth if such firearm has a frame, barrel, cylinder, slide or  
164 breechblock that is composed of: (i) any metal having a melting point of less than 900 degrees  
165 Fahrenheit; (ii) any metal having an ultimate tensile strength of less than 55,000 pounds per  
166 square inch; or (iii) any powdered metal having a density of less than 7.5 grams per cubic  
167 centimeter. This clause shall not apply to any make and model of firearm for which a sample of  
168 three firearms in new condition all pass the following test: Each of the three samples shall fire  
169 600 rounds, stopping every 100 rounds to tighten any loose screws and to clean the gun if  
170 required by the cleaning schedule in the user manual, and as needed to refill the empty magazine  
171 or cylinder to capacity before continuing. For any firearm that is loaded in a manner other than  
172 via a detachable magazine, the tester shall also pause every 50 rounds for 10 minutes. The  
173 ammunition used shall be the type recommended by the firearm manufacturer in its user manual  
174 or, if none is recommended, any standard ammunition of the correct caliber in new condition. A  
175 firearm shall pass this test if it fires the first 20 rounds without a malfunction, fires the full 600  
176 rounds with not more than six malfunctions and completes the test without any crack or breakage  
177 of an operating part of the firearm. The term “crack” or “breakage” shall not include a crack or  
178 breakage that does not increase the danger of injury to the user. For purposes of evaluating the  
179 results of this test, malfunction shall mean any failure to feed, chamber, fire, extract or eject a  
180 round or any failure to accept or eject a magazine or any other failure which prevents the firearm,  
181 without manual intervention beyond that needed for routine firing and periodic reloading, from  
182 firing the chambered round or moving a new round into position so that the firearm is capable of

183 firing the new round properly. “Malfunction” shall not include a misfire caused by a faulty  
184 cartridge the primer of which fails to detonate when properly struck by the firearm’s firing  
185 mechanism. Nineteenth, That no licensee shall sell, rent, lease, transfer or deliver or offer for  
186 sale, lease, transfer or delivery any firearm to any purchaser in the commonwealth unless such  
187 sale is to a business entity that is primarily a firearms wholesaler, and the sale, by its terms,  
188 prohibits such purchaser from reselling such firearm to a firearm retailer or consumer in the  
189 commonwealth if such firearm is prone to accidental discharge which, for purposes of this  
190 clause, shall mean any make and model of firearm for which a sample of 5 firearms in new  
191 condition all undergo, and none discharge during, the following test: Each of the five sample  
192 firearms shall be: (a) test loaded; (b) set so that the firearm is in a condition such that pulling the  
193 trigger and taking any action that must simultaneously accompany the pulling of the trigger as  
194 part of the firing procedure would fire the handgun; and (c) dropped onto a solid slab of concrete  
195 from a height of 1 meter from each of the following positions: (i) normal firing position; (ii)  
196 upside down; (iii) on grip; (iv) on the muzzle; (v) on either side; and (vi) on the exposed hammer  
197 or striker or, if there is no exposed hammer or striker, the rearmost part of the firearm. If the  
198 firearm is designed so that its hammer or striker may be set in other positions, each sample  
199 firearm shall be tested as above with the hammer or striker in each such position but otherwise in  
200 such condition that pulling the trigger, and taking any action that must simultaneously  
201 accompany the pulling of the trigger as part of the firing procedure, would fire the firearm.  
202 Alternatively, the tester may use additional sample firearms of the same make and model, in a  
203 similar condition, for the test of each of these hammer striker settings. Twentieth, That no  
204 licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery, any  
205 firearm to any purchaser in the commonwealth unless such sale is to a business entity that is  
206 primarily a firearm wholesaler, and the sale, by its terms, prohibits the purchaser from reselling  
207 such firearm to a firearm retailer or consumer in the commonwealth if such firearm is prone to:  
208 (i) firing more than once per pull of the trigger; or (ii) explosion during firing. Twenty-first, That  
209 no licensee shall sell, rent, lease, transfer or deliver or offer for sale, lease, transfer or delivery  
210 any firearm to any purchaser in the commonwealth unless such sale is to a business entity that is  
211 primarily a firearm wholesaler and the sale, by its terms, prohibits the purchaser from reselling  
212 such firearm to a firearm retailer or consumer in the commonwealth if such firearm has a barrel  
213 less than 3 inches in length, unless the licensee discloses in writing, prior to the transaction, to the  
214 prospective buyer, lessee, deliverer or transferee the limitations of the accuracy of the particular  
215 make and model of the subject firearm, by disclosing the make and model’s average group  
216 diameter test result at 7 yards, average group diameter test result at 14 yards and average group  
217 diameter test result at 21 yards. For purposes of this clause, “average group diameter test result”  
218 shall mean the arithmetic mean of three separate trials, each performed as follows on a different  
219 sample firearm in new condition of the make and model at issue. Each firearm shall fire 5 rounds  
220 at a target from a set distance and the largest spread in inches between the centers of any of the  
221 holes made in a test target shall be measured and recorded. This procedure shall be repeated two  
222 more times on the firearm. The arithmetic mean of each of the three recorded results shall be

223 deemed the result of the trial for that particular sample firearm. The ammunition used shall be  
224 the type recommended by the firearm manufacturer in its user manual or, if none is  
225 recommended, any standard ammunition of the correct caliber in new condition. No licensee  
226 shall sell any rifle or shotgun, contrary to the provisions of section 130 or section 131E.

227

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

236

237 No person licensed under the provisions of section 122 or section 122B shall sell, rent, lease,  
238 transfer or deliver any body armor, rifle, shotgun or firearm or ammunition or ammunition  
239 feeding device contrary to the provisions of section 130 or section 131E; and no such licensee  
240 shall sell, rent, lease, transfer or deliver any body armor, rifle, shotgun or firearm or ammunition  
241 or ammunition feeding device to any person who does not have in his possession the required  
242 firearm identification card or proof of exemption therefrom, license to carry firearms or permit to  
243 purchase, rent or lease firearms and who does not present such card, proof, license or permit to  
244 the licensee in person at the time of purchase, rental or lease. No person licensed under the  
245 provisions of section 122 or section 122B shall fill an order for such body armor, weapon,  
246 ammunition or ammunition feeding device that was received by mail, facsimile, telephone or  
247 other telecommunication unless such transaction or transfer includes the in-person presentation  
248 of the required card, proof, license or permit as required herein prior to any sale, delivery or any  
249 form of transfer of possession of the subject weapon, ammunition or ammunition feeding device.  
250 Transactions between persons licensed under section 122 or between federally licensed dealers  
251 shall be exempt from the provisions of this paragraph.

252

253 The licensing authority shall enter, 1 time per calendar year, during regular business hours, the  
254 commercial premises owned or leased by any licensee, wherein such records required to be  
255 maintained under this section are stored or maintained, and inspect, in a reasonable manner, such  
256 records and inventory for the purpose of enforcing the provisions of this section. If such records  
257 and inventory contain evidence of violations of this section, the inspecting officer shall produce  
258 and take possession of copies of such records and, in the event that the licensee subject to  
259 inspection does not possess copying equipment, the inspecting officer shall arrange to have  
260 copied, in a reasonable time and manner, such records that contain evidence of such violations  
261 and the costs for such copying shall be assessed against the owner of such records. Licensees  
262 found to be in violation of this section shall be subject to the suspension or permanent revocation



263 of such license issued under section 122 and to the provisions of section 128. Nothing herein  
264 shall prohibit the licensing authority or the department of state police from conducting such  
265 inspections pursuant to a valid search warrant issued by a court of competent jurisdiction.

266

267 Notwithstanding the provisions of this section, a person licensed under the provisions of  
268 section 122, or section 122 B, may sell or transfer body armor, firearms, rifles, shotguns,  
269 machine guns or ammunition at any regular meeting of an incorporated collectors club or at a  
270 gun show open to the general public; provided, however, that all other provisions of this section  
271 are complied with and that such sale or transfer is in conformity with federal law or regulations  
272 applicable to the transfer or sale of body armor, firearms, rifles, shotguns, machine guns or  
273 ammunition, including the restrictions imposed upon firearm identification cards issued under  
274 section 129B, licenses to carry firearms issued under section 131 and permits to purchase, lease  
275 or rent firearms issued under section 131A.

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