



**Municipal Client Advisory
August 2014**

**Within the Crosshairs of Reform:
Bill Aimed at Expanding Gun Control in Massachusetts
Enacted**

Proposed in the wake of gun violence incidents nationwide, on July 31, 2014, the Massachusetts Legislature passed “An Act Relative to the Reduction of Gun Violence” (Act). The Act, which is now awaiting the Governor’s approval, will make significant changes to the authority of local licensing authorities over firearms licensing.

Firearms Identification Cards

The Act expands the authority of local licensing authorities over the issuance of a firearms identification card (FID Card), which is required for a rifle or shotgun. Previously, suitability determinations did not factor into the FID Card process and the FID Card was issued as long as the applicant was not automatically disqualified; the local licensing authority had no discretion at all.

Under the Act, however, a local licensing authority can now deny, revoke or suspend an FID Card if an applicant is deemed unsuitable, involving the following requirements:

- The local licensing authority must file a petition in the local district court, which describes the specific evidence supporting the suitability decision, along with a statement of supporting reasons. The suitability decision is made by the district court.
- A suitability hearing must occur in the district court within ninety days if the petition involves the issuance or renewal of the FID Card. Issuance or renewal of the FID Card is stayed until a decision is issued. However, if the district court does not issue a judgment that the applicant is unsuitable within this ninety day period, the court must enter a judgment that the applicant is deemed suitable.
- On the other hand, there is a two step process for the suspension or revocation of an FID Card based on unsuitability. An initial determination of whether sufficient evidence of unsuitability exists must occur in the district court within fifteen days if the petition involves the suspension or revocation of the



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FID Card. The suspension or revocation will be effective pending the court's decision.

- If the district court determines that there was insufficient evidence of unsuitability to suspend or revoke, the local licensing authority is barred from filing another petition against the same applicant for 75 days of the filing of the prior petition.
- If the district court determines that there is sufficient evidence of unsuitability to suspend or revoke, the district court has 75 days to conduct a suitability hearing, during which time the suspension or revocation remains effective. However, if the district court does not issue a judgment that the applicant is unsuitable within this 75 day period, the court must enter a judgment that the applicant is deemed suitable.
- The court may determine that the person is not "suitable" in two circumstances, based on a preponderance of the evidence: (1) there is "reliable, articulable, and credible information that the applicant has exhibited or engaged in behavior to suggest the applicant could potentially create a risk to public safety"; or (2) "existing factors that suggest that the applicable could potentially create a risk to public safety."

The Act now includes eleven categories of automatic disqualifiers for FID Cards. An individual is considered a "prohibited person" if any of these categories apply.

Licenses to Carry Firearms

The Act continues to require individuals to hold a license to carry firearms (LTC) in order to acquire, possess and carry firearms, including handguns, large capacity firearms, and rifles and shotguns, including large capacity weapons, and related feeding devices and ammunition. To be eligible for receive and continue to hold an LTC, an individual must not be a prohibited person (meaning that none of the ten categories of automatic disqualifiers apply) and the individual is not deemed unsuitable by the local licensing authority.

The Act imposes two alternative requirements for determining that an individual is unsuitable: (1) "reliable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or



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licensee may create a risk to public safety”; or (2) “existing factors that suggest that, if issued a license, the applicant or licensee may create a risk to public safety.” Prior to the Act, there were no statutory standards for suitability.

A local licensing authority can continue to make a determination that an individual is unsuitable, but the individual must receive the specific reasons for the determination. This determination is reviewable in the local district court, provided that the individual seeks judicial review within ninety days of receiving the denial, revocation or suspension decision or within ninety days after the expiration of the deadline for the local licensing authority to respond to the applicant. The district court can order issuance or reinstatement of the LTC.

Impact

For local licensing authorities, the principal result of these changes (apart from the hopefully achieved goal of increased public safety) likely will be increased firearm licensing litigation in the state district courts, and additional administrative burdens. As Attorney Moss notes in his article cited below, one can already see this trend following the 2008 and 2010 decisions of the United State Supreme Court in which the Court ruled that there is a constitutional right under the Second Amendment to the United States Constitution to possess and bear firearms – at least in the home - subject to reasonable regulation by state and local authorities.

Further Information

Attorney Brandon H. Moss recently authored “Suitability Challenged: The Judicial Creation of Suitability Standards for Firearms Licensing,” which was published in the June 2014 edition of the Massachusetts Bar Association Lawyers Journal. This article is available [here](#). In addition, the firm has handled a number of LTC “suitability” appeals for various municipalities recently, and Geoff Wermuth recently prevailed in a Superior Court appeal of a Chief’s revocation of a police officer’s LTC. You can read that decision [here](#).

The state Chiefs of Police Association, led by Town of Norwood Chief of Police, William G. Brooks, III, will undoubtedly also be providing you with information about the new legislation and its impact on local licensing authorities.



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For questions about the firearms licensing, please contact Attorneys Geoffrey P. Wermuth, Brandon H. Moss or Michael C. Lehane at (617) 479-5000, or your attorney. Murphy, Hesse, Toomey & Lehane, LLP has defended local licensing authorities in state and federal court matters involving firearms decisions. The firm maintains a full-service practice, with offices in Quincy, Boston, and Springfield, Massachusetts.

For a discussion of these and other issues, please visit the update on our website at www.mhtl.com. To receive legal updates via email, contact information@mhtl.com.

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