HOUSE . . . . . No. 3742

By Ms. Haddad of Somerset (by request), a petition (subject to Joint Rule 12) (accompanied by bill, House, No. [BILL NUMBER]) of Patrick Higgins and Michael J. Rodrigues relative to the regulation and licensing of locksmiths. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to locksmith licensing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Preamble.

In order to protect the public of this state from the abuse and misuse of locksmithing supplies, manuals, or equipment resulting in violation of public safety and security, locksmiths should be licensed and regulated by this state. Locksmiths operate in the public trust to secure and protect property and persons and should have the knowledge and tools to bypass or neutralize security devices; locksmiths should be trained in the applicable regulations and laws pertinent to the profession such as the ADA code, building codes, fire and life safety codes as well as training in proper installation and maintenance of security devices for the public well-being. The regulations or laws of this state currently do not protect its citizens from the unscrupulous use and abuse of the tools and knowledge of the locksmithing profession by the untrained person or persons who have criminal intent. Therefore, the regulation and licensing of locksmiths in this state is necessary.

Section1. Definitions

For the purposes of this Act, the following terms shall have the meanings indicated:

(a) "Building Permit", a permit issued by the authority of jurisdiction regarding the regulation of building construction, remodeling, and other physical changes to property.

(b) "Certificate", a document issued by the Division as proof that a license or permit has been granted.

19 (c) "Certification", the process whereby the Division or any regulatory board issues a
20 certificate on behalf of this state to a person signifying that he/she possesses the character and
21 minimum skills to engage properly in the profession of locksmithing.

22 (d) "Codebook", a compilation, in any form, of key codes.

23 (e) "Division" the Division of Professional Licensure.

24 (f) "Emergency", a life-threatening situation involving a person.

25 (g) "Hearing", the process for discharge of contested cases as described in the
26 Administrative Procedure Act.

27 (h) "Inspection", a method of regulation whereby a state agency periodically examines
28 the activities and premises of practitioners of an occupation or profession to ascertain if the
29 practitioner is carrying out his profession or occupation in a manner consistent with the public
30 health, safety and welfare.

31 (i) "Key Duplication Machine", any device which is capable of copying or reproducing
32 keys.

33 (j) "Licensure", a method of regulation whereby this state, through the issuance of a
34 license, authorizes a person possessing the character and minimum skills to engage in the
35 practice of the locksmith profession or occupation, which is unlawful to practice without a
36 license.

37 (k) "Locksmith", a person, or security professional who performs locksmith and access
38 control services to the public for any type of compensation and has received a license pursuant to
39 this Act.

40 (l) "Locksmithing Tool", any tool that is designed, or intended by the user to be used, to
41 open a mechanical or electrical locking device by a means other than that which is intended by
42 the manufacturer of such device for normal operation.

43 (m) "Locksmith License", a license granted to a locksmith pursuant to Section 7 of this
44 Act.

45 (n) "Locksmith Services" means:

46 (i) Servicing or installing:

47 (1) Repairing, rebuilding, rekeying, repinning, servicing, adjusting or installing locks,
48 mechanical or electronic security devices, safes, vaults or safe deposit boxes;

49 (2) Operating a mechanical or electrical security device, safe or vault by a means other
50 than those intended by the manufacturer of such locking devices, safes or vaults.

51 (o) "Organization", any entity other than a natural person, including but not limited to, a
52 corporation, partnership, sole proprietorship or association.

53 (p) "Photo Identification Card", a document with a photograph of the licensee on its face
54 issued by the Division as proof that license has been granted.

55 (q) "Regulatory Board" means the Board of Locksmiths.

56 (r) "Registration", a method of regulation whereby any practitioner of a profession or
57 occupation may be required to submit information concerning the location, nature, and operation
58 of his/her practice.

59 (s) "Safe-Opening Tool", any tool that is designed, or intended by the user to be used, to
60 open a safe, safe deposit box or similar object by means other than that which is intended by the
61 manufacturer of such safe, vault, safe deposit box or similar object for normal opening.

62 (t) "Director", the Director of the Division of Professional Licensure.

63 Section 2. Board of Locksmiths

64 (a) A regulatory board, the Board of Locksmiths, shall be established to administer a
65 system of certification and licensure. The Board of Locksmiths shall consist of members
66 appointed by the Director as follows: locksmiths and "citizen members." Of the occupational
67 members, all shall have at least five years' experience in the locksmith industry and be currently
68 engaged in that industry. The Director's appointees shall all reside in this state and represent the
69 various geographic areas of this state.

70 (b) The terms of the Board members shall be years. Of those members first appointed,
71 three shall be appointed to -year terms, three for three-year terms, and three for two-year terms.
72 Any vacancy occurring other than by expiration of terms shall be filled for the unexpired term by
73 appointment by the Director. No member shall serve more than two successive full terms.

74 (c) A "citizen member" of the Board shall be a person who (1) is not by training or
75 experience a locksmith, (2) is not a spouse, parent, child, or sibling of a locksmith, and (3) has no
76 direct or indirect financial interest, except as a consumer, in the locksmith profession.

77 (d) The Board shall annually elect from its membership a chairman and vice-chairman.
78 Five (5) members of the Board shall constitute a quorum.

79 (e) The powers and duties of the Board shall be as follows:

80 (i) To establish the qualification for certification or licensure to ensure competence and
81 integrity to engage in the profession;

82 (ii) To examine, or cause to be examined, the qualification of each applicant for
83 certification or licensure including, when necessary, the preparation, administration and grading
84 of examinations;

85 (iii) To certify or license qualified applicants regulated by this Board;

86 (iv) To levy and collect fees for certification or licensure and renewal that are sufficient
87 to cover all expenses for the administration and operation of the regulatory board and a
88 proportionate share of the expenses of the Division of Professional Licensure of Professional and
89 Occupational Regulation;

90 (v) To promulgate regulations in accordance with the Administrative Procedure Act
91 necessary to ensure continued competency, to prevent deceptive or misleading practices by
92 practitioners and to effectively administer the regulatory system administered by this regulatory
93 board;

94 (vi) To receive complaints concerning the conduct of any person whose activities are
95 regulated by the regulatory board and to take appropriate disciplinary action if necessary;

96 (vii) To ensure that inspections are conducted relating to the operations in this trade to
97 ensure competency and lawful compliance;

98 (viii)To revoke, suspend, or fail to renew a certificate or license for just causes as
99 enumerated in the regulations of the Board;

100 (ix) To promulgate cannons of ethics under which the professional activities of person
101 regulated shall be conducted.

102 Section 3. Monetary Penalty.

103 Any person licensed or certified by a regulatory Board who violates any statute or
104 regulation pertaining to that regulatory board who is not criminally prosecuted shall be subject to
105 the monetary penalty provided in the section. If a regulatory Board determines that a respondent
106 is guilty of the violation complained of, the Board shall determine the amount of the monetary
107 penalty for the violation, which shall not exceed $ for each violation. The penalty may be sued
108 for and recovered.

109 Section 4. Recovery of Cost After Grant of Formal Fact-Finding.

110 After a formal fact-finding, wherein a sanction is imposed to fine, suspend, revoke, or
111 deny renewal of license, certificate or registration, the regulatory Board or the Division may
112 assess the holder thereof the cost of conducting such a fact-finding when the Board or Division
113 has final authority to grant license, certificate or registration, unless the Board or Division
114 determines that the offense inadvertent or done in a good faith belief that such act did not violate

115 a statute or regulation. The cost shall be limited to (1) the reasonable hourly rate for the hearing
116 officer, and (2) the actual cost of recording the proceedings.

117 Section 5. Promulgation of Regulations and Standards.

118 (a) The Board shall promulgate regulations and standards for the training and licensing of
119 locksmiths. The Board shall examine and license locksmiths and may establish classifications of
120 training and licensing.

121 (b) Locksmith competency standards and any changes thereto shall be established by
122 Division regulations after a public hearing and consultation with licensed locksmiths who are
123 knowledgeable regarding locksmithing services.

124 (c) The Board or its designee is authorized to evaluate the competency of applicants for
125 locksmith licenses. The Board may develop and administer an examination to evaluate
126 competency, or rely on an examination developed and administered by a professional locksmith
127 association such as the Associated Locksmiths of America's Proficiency Registration Program.

128 (d) The Board may waive examination requirements for:

129 (i) Any person who has been issued a locksmith license within the previous three years
130 from another state which the Board has determined requires proof of competency standards
131 equivalent to those established pursuant to Section 5 as a prerequisite for granting its locksmiths
132 license if the license is applied for within three months of the effective date of this act.

133 (e) Any person applying for a license under this act who does not otherwise qualify shall
134 serve an apprenticeship under a licensed locksmith or under the Board for a period of two years
135 and shall:

136 (i) Complete 32 hours of continuing education per year of Board- approved classes;

137 (ii) Identify his/her self as an "apprentice locksmith" in all advertising.

138 Section 6. Prohibited Activities.

139 (a) No person shall act as, or offer to act as, a locksmith unless he or she has a locksmith
140 license which has not expired or been revoked or suspended.

141 (b) No organization shall provide or offer the services of a locksmith unless such services
142 are, or can be, provided by an employee of such organization who has a locksmith license which
143 has not expired or been revoked or suspended.

144 (c) It shall be unlawful and a Class 1 misdemeanor for any person not licensed under the
145 provisions of this act to advertise that he/she is in the locksmith business or to hold
146 himself/herself out to the public as a locksmith.

147 (d) It shall be unlawful for any person to obtain ownership or possession of locksmithing
148 tools, safe-opening tools, manuals or codebooks, either in person or through an intermediary or
149 through mail order or other remote-procurement method, unless he or she has a locksmith license
150 which has not expired, been revoked or suspended. It shall be unlawful for any organization to
151 obtain ownership or possession of locksmithing tools, safe-opening tools, manuals or codebooks
152 by means of an employee, officer or other person who violates this subsection.

153 (e) Nothing in this section shall prohibit the emergency opening services by members of
154 police departments, fire departments, or other government agencies in their official line of duty,
155 nor shall sales representatives who are not licensed be prohibited from making bona fide sales
156 demonstrations to locksmiths.

157 (f) No apprentice locksmiths may have a registered locksmith working under his/her
158 supervision.

159 (g) Nothing in this section shall prohibit the acquisition or use of any key duplication
160 machine or key blanks.

161 (h) Nothing in this section shall prohibit the performance of servicing, installing,
162 repairing, rebuilding of automotive locks by automotive service dealers, lock manufacturers, or
163 manufacturers agents.

164 (i) Nothing in this section shall prohibit the installation of locks or locking devices by
165 building trades personnel on projects that require a "building permit".

166 (j) If any person has in his/her possession any locksmithing tools, implements or outfit
167 with intent to commit burglary, robbery or larceny, upon conviction thereof he/she shall be guilty
168 of a Class 3 felony. The possession of such locksmithing tools, implements or outfit by any
169 person other than a bona fide dealer, licensed locksmith, automotive repossessor, locking device
170 manufacturer, or such manufacturer's agent, who have a reasonable need to possess locksmithing
171 tools for demonstration, testing and research purposes shall be prima facie evidence of an intent
172 to commit burglary, robbery or larceny.

173 (k) it shall be unlawful for any person or organization to engage in any of the following
174 acts:

175 (i) Making use of any designation provided by statute or regulation to denote a standard
176 of professional or occupational competence without being duly certified or licensed;

177 (ii) Making use of any title, words, letters or abbreviations which may reasonably be
178 confused with a designation provided by statute or regulation to denote a standard of professional
179 or occupational competence without being duly certified or licensed;

180 (iii) Providing material misrepresenting facts in an application for licensure, certification
181 or registration;

182 (iv) Willfully refusing to furnish a regulatory board information or records required or
183 requested pursuant to statute or regulation;

184 (v) Any person who willfully engages in any unlawful act enumerated in this section shall
185 be guilty of a Class 1* misdemeanor. The third of any subsequent conviction for violating this
186 section during a 36-month period shall constitute a Class 6* felony.

187 (l) The Division may institute proceedings in equity to enjoin any person, partnership,
188 corporation or any other entity from engaging in any unlawful act enumerated in this section.
189 Such proceedings shall be brought in the name of this state by the appropriate Department in the
190 circuit court of the city or county in which the unlawful act occurred or in which the defendant
191 resides.

192 Section 7. Licensure.

193 (a) The Board of Locksmiths or their designee shall be authorized to issue locksmith
194 licenses to all qualified individuals in accordance with regulations established by the Division.

195 (b) Effective January 1, 2012 , no locksmith shall do business in this state without having
196 obtained the proper locksmith license from the Board of Locksmiths. The license shall not be
197 transferred or assigned and is valid only with respect to the person to whom it is issued. No
198 license shall be granted if the applicant has an unpardoned felony in his/her criminal record or
199 had any prior license to do business revoked for fraud, misrepresentation or any other act that
200 would constitute a violation of this section.

201 (c) The terms of each license shall be no longer than years, with all licenses expiring on
202 their anniversary unless renewed or revoked.

203 (d) Any individual shall have available the photo identification card at all times when
204 providing locksmithing services.

205 (e) An organization shall display at its normal place of business and in a manner easily
206 readable by the general public a certificate for the licensed locksmith.

207 (f) Any individual licensed or registered under this act must show in all advertising
208 his/her license number.

209 (g) Any applicant for licensure who provides documentation that he/she has practiced as
210 a locksmith for at least two consecutive years immediately preceding his/her date of application
211 and is still engaged in the trade shall be exempt from the examination requirements contained in
212 this Act and promulgated by the Board if he/she applies to the board prior to January 1, 2012.

(h) A nonresident of this state may be licensed as a locksmith by meeting on of the following requirements:

(i) Conform to the provisions of this Act and the regulations of the Board; or,

(ii) Hold a valid locksmith license in another state with which reciprocity has been established by the Board.

(i) Nonresident applicants shall also file with the Board an irrevocable consent that service of process upon the Director of the Division of Professional Licensure as valid and binding as service of process upon the applicant. The Director shall notify or cause to be notified by certified mail, the nonresident licensee named in a service, at the licensee's address of record.

Section 8. Qualifications of Applicants.

(a) An applicant for a locksmith license shall:

(i) Be at least 18 years of age;

(ii) Comply with the competency requirements as established by the Board;

(iii) Pay a license fee as established by Division regulations;

(iv) Comply with the insurance requirements;

(v) A person shall not be refused a license, certificate or registration to practice, pursue, or engage in any regulated occupation or profession solely because of a prior criminal conviction, unless the criminal conviction directly relates to the occupation or profession for which the license, certificate or registration is sought. However, the regulatory board shall have the authority to refuse a license, certificate or registration if, based on all the information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in such occupation or profession;

(vi) Complete all application requirements pursuant to Division regulations.

(b) The Board or its designee shall consult with appropriate state of federal law enforcement authorities to verify whether an applicant has a criminal record prior to granting any license and, as an aid to this duty, each applicant shall be required to provide his/her fingerprints and complete an affidavit or his/her criminal record, if any, as a part of the application. The Board or its designee shall periodically consult with state and federal law enforcement officials to determine whether current licensees have new criminal convictions.

(c) The form of application, certificate, photo identification card and method to obtain and renew photographs shall be established by the regulations and administered by the Board or its designee.

245 Section 9. Employee Requirements.

246 All employees of a locksmith who perform locksmithing services as defined by Section 1
247 of this Act shall be registered with the Division. The holder of a locksmith license issued under
248 this Act may employ in the conduct of the organization's business employees under the following
249 provisions:

250 (a) No person shall be registered employee of a licensed locksmith who:

251 (i) Is not a citizen or legal resident alien;

252 (ii) Has been determined by the Division to be unfit by reason of conviction of a felony
253 or misdemeanor offense in this or in another state or convicted of any crime related to the
254 practice of locksmithing. The Division shall promulgate rules for procedures by which those
255 circumstances shall be determined and that afford the applicant due process of law;

256 (iii) Has had an employee registration refused, denied, suspended, or revoked under this
257 Act;

258 (iv) No person may be employed by a licensed locksmith until he/she has executed and
259 furnished to the employer, on forms approved by the Division , a verified statement to be known
260 as "Employee's Statement" setting forth:

261 (1) The person's full name, date of birth and residence address;

262 (2) The name of the country of which the person is a citizen; and if the person is not a
263 citizen of the United States, proof that the person is a legal resident alien;

264 (3) The business or occupation engaged in for the five years immediately before the date
265 of the execution of the statement, the place where the business or occupation was engaged in,
266 and the names of employers, if any;

267 (4) That the person has not had a license or employee registration refused, revoked, or
268 suspended under this Act;

269 (5) Any conviction for a felony as it relates to Section 8 (a) (v) of this Act;

270 (6) Any other information as may be required by the Division to show the good character,
271 competency, and integrity of the person executing the statement.

272 (b) Each licensed locksmith shall submit to the Division, with the applicable fees, on
273 fingerprint cards furnished by the Division , two complete sets of fingerprints that are verified to
274 be those of the applicant. If an applicant's fingerprint cards are returned to the Division as
275 unclassified by the screening agency, the agency has 30 days after notification is sent by the
276 Division to resubmit such fingerprints taken by a different technician.

277 (c) Upon receipt of the verified fingerprint cards, the Division shall cause the fingerprints
278 to compared with fingerprints of criminals now or hereafter filed with the Division. The Division
279 may also cause the fingerprints to be checked against the fingerprints of criminals now or
280 hereafter filed in the records of other official fingerprint files within or without this state. The
281 Division shall notify the submitting licensed locksmith within 10 days upon the invoking of a
282 procedure to deny registration.

283 (d) Within five days of the receipt of the application materials, the Division shall institute
284 an investigation for a criminal record by checking the applicant's name with immediately
285 available criminal history information systems.

286 (e) Each licensed locksmith shall maintain a record of each registered employee. The
287 record shall contain the following information:

288 (i) A photograph taken within 10 days of the date that the employee begins employment
289 with the licensed agency. The photograph shall be replaced with a current photograph every
290 three calendar years;

291 (ii) The employee's statement specified in this Section;

292 (iii) A record of all Board-approved classes taken by the employee together with the
293 dates. Each employee must take a minimum of 16 hours of continuing education per year.

294 (f) A duly authorized representative of the Division shall be allowed complete access to
295 all records to be kept under this Section upon three days advance notice in writing provided to
296 the licensed locksmith.

297 Section 10. Expiration and Renewal.

298 (a) Any license granted pursuant to this Act shall expire at the end of its term unless it is
299 renewed pursuant to regulations established by the Division or revoked.

300 (b) All individuals licensed under this Act must complete a minimum of 16 hours of
301 continuing education per year of classes approved by the Board in order to renew his/her license
302 and provide documentation thereof.

303 (c) An affirmative vote of a majority of those serving on the board who are qualified shall
304 be required before any action to suspend or revoke a license, or to impose a sanction on a license.
305 A board member shall disqualify himself and withdraw from any case in which he cannot accord
306 fair and impartial consideration. However, an affirmative vote of a majority of a quorum of the
307 regulatory board shall be sufficient for summary suspension pursuant to specific statutory
308 authority.

309 Section 11. Licensed Locksmith Requirements.

310 No licensed locksmith may employ any person who performs locksmithing services
311 under this Act unless the locksmith:

312 (a) Submits to the Division the name, address, date of birth, and such other information
313 sufficient to identify the individual, as the Division shall require by rule, including fingerprint
314 cards and fees.

315 (b) Exercises due diligence to ensure that the person is qualified under the requirements
316 of the Act to be a registered employee of a licensed locksmith.

317 (c) Maintains a separate roster of the names of all employees hired and whose
318 employment was terminated within the previous month and submits the roster to the Division on
319 or before the 10th of the month. Rosters are to be maintained by the locksmith for a period of at
320 least 24 months. The locksmith is not required to submit a roster for any month during which no
321 new employees were hired and the employment of no employee was terminated. Failure to
322 maintain and submit the specified rosters is grounds for discipline under this Act. The Division
323 may by rule prescribe further record requirements.

324 (d) Failure of a locksmith to notify the Division when a new employee is hired and to
325 submit fingerprint cards and fees required before scheduling the person for work shall result in a
326 fine in an amount up to $ or other disciplinary action being imposed against the locksmith.

327 (e) If information is discovered affecting the registration of a person whose fingerprints
328 were submitted under this Section, the Division shall so notify the locksmith that submitted the
329 fingerprints on behalf of that person.

330 (f) Every locksmith shall furnish an employee identification card to each of its registered
331 employees on an identification card, the form of which shall be designated by the Division. The
332 employee identification card shall contain a recent photograph of the employee, the employee's
333 name, the name and license number of the licensed locksmith, the employee's personal
334 description, the signature of the employee, the date of issuance and an employee identification
335 card number which shall be the licensed locksmith's license number followed by a unique suffix
336 for each employee.

337 (g) No employer may issue an employee identification card to any person who is not
338 employed by the employer in accordance with this Section or falsely state or represent that a
339 person is or has been in his or her employ. It is unlawful for an applicant for registered
340 employment to file with the Division the fingerprints of a person other than himself/herself, or
341 for a licensed locksmith to fail to exercise diligence in resubmitting replacement fingerprints for
342 those employees who have had original fingerprint submissions returned as unclassified.

343 (h) Every employer shall make a reasonable effort to obtain the identification card of
344 every employee who terminates employment with him/her.

Section 12. List of Locksmiths.

The Division shall maintain a list of the names and addresses of all locksmiths licensed under this Act. Such lists shall also be mailed by the Division to any person upon request and payment of the required fee.

Section 13. Insurance.

A locksmith shall maintain an insurance policy sufficient for the purpose of paying claims or judgments for damages which may occur as a result of negligence of said locksmith or his employees.

Section 14. Customer Identification.

(a) Any licensed locksmith who knowingly and willfully opens any residential or commercial establishment for another by any method, whether or not for compensation, shall make a reasonable attempt to obtain correct information regarding the street address of the resident or commercial establishment and the signature of the person for whom the residence or commercial establishment was opened on a work order form and the following information regarding the person requesting entry to the resident or commercial property: name, address, telephone number, date of birth, and driver's license or identification number. A copy of each work order shall be retained for one year. It shall include the name and license number of the locksmith (performing the service and shall be open for inspection by any peace officer or by the Division during business hours or submitted to the Division upon request.

(b) Any licensed locksmith who opens a motor vehicle or personal property registered under the vehicle code for another by any method, whether or not for compensation, shall attempt to obtain the name, address, telephone number, and driver's license number and the identification of the person requesting entrance, and the registration or identification number of the vehicle or personal property, registered under the vehicle code for which entrance is requested. Such information, together with the date the service was performed and the signature of the person requesting entrance, shall be set forth on a work order. A copy of each work order form shall be retained for one year and include the name and license number of the locksmith performing the service and shall be open for inspection by any peace officer or by the Division during business hours or submitted to the Division upon request.

Section 15. Effective Date.

The effective date of this Act shall be January 1, 2012.