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## NOTES

### WIELDING THE CONSUMER PROTECTION SHIELD: SENSIBLE HANDGUN REGULATION IN MASSACHUSETTS

#### A PARADIGM FOR A NATIONAL MODEL?\*

##### INTRODUCTION

Three children under fifteen years of age fell victim to accidental gun shootings in Massachusetts during an eight-day span in March, 1996.<sup>1</sup> A two-year-old victim in Lynnfield was accidentally killed by his fourteen-year-old half-brother who was playing with his parents' handgun in the kitchen of their home; a twelve-year-old was shot and killed while he and another sixth-grader played with a semiautomatic .22-caliber pistol that they thought was unloaded; another fourteen-year-old boy was killed by his thirteen-year-old best friend who was playing with a .38-caliber revolver owned by the victim's grandfather.<sup>2</sup> Tragically, shootings like these have become a common, routine occurrence in homes throughout the United States.

On July 29, 1996, at the annual meeting of the Association of Trial Lawyers of America, Massachusetts Attorney General Scott Harshbarger unveiled a first-in-the-nation proposal for state consumer protection regulations that ban the sale of "Saturday Night Specials"<sup>3</sup> in Massachusetts and mandate that all handguns

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\* The author dedicates this Note in honor of his brother Samuel Bejar, a seventeen-year veteran police officer whose integrity and dedication in upholding the law inspired the author to attend law school. The author thanks Joshua Kantor, Reference Assistant of the Boston University School of Law Pappas Law Library, for his invaluable assistance in procuring requested sources through Intra-Library Loan. The author also is grateful to various Assistant Attorneys General at the Consumer Protection Bureau of the Massachusetts Attorney General's office for providing insight on the Handgun Regulations.

<sup>1</sup> See Eileen McNamara, *The Awful Cost of Guns at Home*, BOSTON GLOBE, Mar. 23, 1996, at 19.

<sup>2</sup> See *id.*

<sup>3</sup> A "Saturday Night Special" is a general term used to identify cheaply manufactured, stamped-metal handguns with no firing pin safety mechanism, no sporting purpose and a barrel length of four inches or less. See generally JOSH SUGARMAN & KRISTEN RAND, CEASE FIRE: A COMPREHENSIVE STRATEGY TO REDUCE FIREARMS VIOLENCE 20 (1994) (defining Saturday Night Specials as "inexpensive, short-barreled handguns made from inferior materials lacking sporting purpose"). See also WAYNE LAPIERRE, GUNS, CRIME, AND

sold in the Commonwealth employ tamper-resistant serial numbers and child-proof safety features.<sup>4</sup> According to Attorney General Harshbarger, the goal of these regulations is to "stem the tide of handgun violence in [the] Commonwealth, and help make handguns safer for use by law-abiding citizens who purchase them to protect themselves, their families and their property."<sup>5</sup>

This Note analyzes the proposed regulations in detail. Section I discusses the general lack of health, safety, and welfare regulation of firearms and the need for such regulation given the significant incidence and associated economic impact of handgun-related violence, injuries, and deaths. Section II specifically focuses on consumer protection regulation of firearms by examining the purpose of the Massachusetts Consumer Protection Act<sup>6</sup> and analyzing the proposed regulations in detail. Section II also discusses potential challenges to the regulations from a legal and economic perspective. Finally, Section III addresses whether such sensible gun regulations are nevertheless part of a losing battle, given the gun-lobby's political power and influence over many state and national legislators.

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FREEDOM 91-92 (1994).

<sup>4</sup> See *Harshbarger Moves to Ban Sale of Saturday Night Specials; Proposes Regulations on Handgun Tracing & Childproofing*, NEWS RELEASE (Off. of the Att'y Gen., Mass.), July 29, 1996 [hereinafter JULY 29 NEWS RELEASE].

A similar *federal* bill was proposed by Sen. Barbara Boxer (D-Cal.), "banning the domestic manufacture, transfer and possession of so-called 'junk guns', . . . guns [which] are inaccurate, poorly constructed and lack important safety features . . . [and which are] also known as Saturday [N]ight [S]pecials." Henry K. Lee, *Boxer Wants 'Junk Guns' Banned in U.S.*, S.F. CHRON., Apr. 3, 1996, at A11.

A handgun is "[a] weapon designed to fire a small projectile from one or more barrels when held in one hand with a short stock designed to be gripped by one hand." MARIANNE W. ZAWITZ, U.S. DEP'T OF JUSTICE, GUNS USED IN CRIME 2 (1995) [hereinafter GUNS USED IN CRIME]. Caliber is "[t]he size of the ammunition that a weapon is designed to shoot, as measured by the bullet's approximate diameter in inches." *Id.*

<sup>5</sup> JULY 29 NEWS RELEASE, *supra* note 4. Public hearings on the proposed regulations were held on November 26, 1996 at the Massachusetts State House in Boston, with written commentary accepted through December 13, 1996. See generally 804 Mass. Reg. 23, 25 (Nov. 15, 1996). The regulations, codified at MASS. REGS. CODE tit. 940, §§ 16.00-16.09 (1997), are discussed in detail *infra* Section II.B. The revised regulations received preliminary approval on June 4, 1997. See *Harshbarger Bans Sale of 'Saturday Night Specials'; Issues Regs on Gun Childproofing & Serial Numbers*, NEWS RELEASE (Off. of the Att'y Gen., Mass.), June 4, 1997 [hereinafter JUNE 4 NEWS RELEASE]. The regulations were published in the Massachusetts Register on October 31, 1997 and will be phased into effect from January 15, 1998 through September 30, 1998. See generally title 940, § 16.09.

<sup>6</sup> MASS. GEN. LAWS ch. 93A (1996). Chapter 93A was added by Stat. 1967, ch. 813, § 1.

## I. LACK OF HEALTH, SAFETY, AND WELFARE REGULATION OF FIREARMS

The Violence Policy Center in Washington, D.C., notes that firearms remain practically unregulated and that American gun manufacturers enjoy a "carte blanche to produce *virtually any gun with only a few minor limitations.*"<sup>7</sup> "[T]here are no safety requirements for U.S.-made [sic] guns, giving them the status of one of the least-regulated hazardous products in America."<sup>8</sup> Additionally, the Bureau of Alcohol, Tobacco, and Firearms ("ATF")<sup>9</sup> currently has no regulatory power to issue recalls, approve designs, or set standards as is normally accorded to other regulatory and administrative agencies.<sup>10</sup>

Indeed, the Consumer Product Safety Act ("CPSA"),<sup>11</sup> enacted in response to Congressional findings that consumer exposure to product-related hazards was excessive,<sup>12</sup> specifically exempts firearms and ammunition from regulation by the Consumer Product Safety Commission ("CPSC"), the agency charged with protecting the public from unreasonable risk of injury.<sup>13</sup> Sadly, children's toys are subject to stricter regulations than guns, despite the fact that so many children are killed by guns each year.<sup>14</sup>

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<sup>7</sup> SUGARMAN & RAND, *supra* note 3, at 17 (emphasis added).

<sup>8</sup> Alix M. Freedman, *Fire Power: Behind the Cheap Guns Flooding the Cities is a California Family*, WALL ST. J., Feb. 28, 1992, at A1.

<sup>9</sup> The ATF, a branch of the Treasury Department, is responsible for the regulatory, taxation, and law enforcement aspects of firearms. STATISTICS ON WEAPONS & VIOLENCE 3 (Timothy L. Gall & Daniel M. Lucas eds., 1996).

<sup>10</sup> See SUGARMAN & RAND, *supra* note 3, at 17. The Violence Policy Center advocates recognizing firearms as "inherently dangerous consumer products" under a "comprehensive regulatory approach" to address the issue of firearm violence. See *id.* at 2. This scheme would grant the ATF power to regulate firearms and ammunition, including the authority to issue recalls, establish safety standards, and ban specific classes of firearms that "present an unreasonable risk of injury or death [that] no feasible safety standard would adequately reduce . . ." *Id.* at 24-26, 29.

<sup>11</sup> Pub. L. No. 92-573, 86 Stat. 1207 (1972) (codified at 15 U.S.C. §§ 2051-84 (1994)).

<sup>12</sup> See SUGARMAN & RAND, *supra* note 3, at 27. Congress specifically found that an unacceptable number of consumer products presented "unreasonable risks of injury" and that the public should be protected from such risks. See 15 U.S.C. § 2051(a)(1), (3).

<sup>13</sup> See 15 U.S.C. § 2052(a)(1)(E). This section excludes from the definition of consumer product any article subject to the tax imposed under 26 U.S.C. § 4181 (1994) — the excise tax on handguns, firearms, shells, and cartridges. The CPSC regulates virtually every consumer product used for household or recreational purposes (approximately 15,000 different consumer products). See SUGARMAN & RAND, *supra* note 3, at 26. "When the agency was created in 1972, the enabling legislation that passed the Senate included firearms and ammunition . . . . The House bill, however, specifically exempted firearms and ammunition and this version was adopted by the conference committee." *Id.* at 27. Ironically, the CPSC retains regulatory power over air and pellet guns. See *id.* at 26-27.

<sup>14</sup> See 140 CONG. REC. E1655 (Aug. 4, 1994) (statement of Rep. Owens). In fiscal year 1996, the CPSC acted on 116 toys and children's products that failed to meet safety standards or posed a safety hazard. See Bruce Mohl, *Lawyers Warn of Season's Risky Toys*,

“[T]he gun industry provides yet another example of corporate welfare. It is exempt from the product safety laws which cover every other industry. This special treatment must stop.”<sup>15</sup> “The firearms industry is where the auto industry was 20 years ago: It is essentially unregulated, and its products are extremely unsafe. But unlike automobiles, many firearms are designed to injure and kill. Legislators, silent until recently, have begun to propose preventive laws.”<sup>16</sup>

#### A. *The Need for Preventive Regulation: Children, Violence, and the Economic Impact*

The need for preventive regulation is evident. An estimated 1.2 million children under fourteen years of age have access to firearms in their homes.<sup>17</sup> A Harvard School of Public Health survey indicated that 25% of middle and high school children had handled a gun without adult knowledge or supervision; 21% had fired a gun; and 39% could get a gun if they wanted one.<sup>18</sup> In 1990, the Centers for Disease Control and Prevention (“CDC”) found that four percent of high school students had carried a gun at least once in the previous month.<sup>19</sup> In 1991, this lethal combination of children and guns resulted in 551 accidental shooting deaths.<sup>20</sup>

Shootings are a leading cause of death for both Caucasian and African-American teenage boys.<sup>21</sup> In 1992, firearm-related injuries were the ninth leading

BOSTON GLOBE, Nov. 20, 1996, at B3.

<sup>15</sup> 141 CONG. REC. E750 (Mar. 31, 1995) (statement of Rep. Owens).

<sup>16</sup> Richard C. Miller, *A Call to Arms: Trends in Firearms Litigation*, TRIAL, Nov. 1993, at 28.

<sup>17</sup> See *id.* at 26.

<sup>18</sup> See Linda Matchan, *Learning to Live with Guns*, BOSTON GLOBE, July 2, 1995, at 1. The survey was of 320 seventh and tenth-graders in six Boston middle and high schools. See *id.*

<sup>19</sup> See Ronald Henkoff, *Kids are Killing, Dying, Bleeding*, FORTUNE, Aug. 10, 1992, at 63. A 1995-1996 \$24 million comprehensive national study of teenagers, funded in part by the National Institute of Child Health and Human Development, found that nearly 25% of the 12,000 teenagers surveyed had access to guns at home and 12% had carried a gun during the previous thirty days. See Judy Foreman, *Study Links Parental Bond to Teenage Well-Being*, BOSTON GLOBE, Sept. 10, 1997, at A1.

<sup>20</sup> See Dennis A. Henigan, *Victims' Litigation Targets Gun Violence*, TRIAL, Feb. 1995, at 50. The Department of Justice estimates that 100,000 children take guns to school every day; another 160,000 students stay away from school because of fears for their safety. See *Polls Find Broad Public Support for Tougher Controls on Handguns, Assault Weapons*, LAW ENFORCEMENT NEWS, June 15, 1993, at 1, 9 [hereinafter *Tougher Controls*].

<sup>21</sup> See Miller, *supra* note 16, at 26. Though racial disparity in firearm-related injury is beyond the scope of this Note, in Boston, as in most large metropolitan cities, African-American teenage males incur a much higher incidence of firearm-related injuries than do Caucasian teenage males. See *Study Details Boston Assault Rates-Says 1 in 38 Black Male Youths Injured in '94*, BOSTON GLOBE, Nov. 2, 1996, at A6. The Massachusetts Department of Public Health (“MDPH”) Weapon-Related Injury Surveillance System

cause of death for children between ages one and four and the fifth leading cause of death for children between ages five and nine.<sup>22</sup> According to the National Center for Health Statistics ("NCHS"), more than 200 children under age fifteen are killed each year in gun-related accidents; over 4,000 children are killed in gun-related homicides and suicides.<sup>23</sup> A CDC study found homicide rates five times higher and firearm death rates twelve times higher for children in the United States than in twenty-five other industrialized nations with similar economies and a population of at least one-million.<sup>24</sup> The Children's Defense Fund estimated that one American youth died *every ninety-two minutes* from gunfire in 1993 — an average of over fifteen kids each day.<sup>25</sup> Moreover, between 1979 and 1991, nearly 50,000 American children were killed by guns — more than the number of American soldiers killed in the Vietnam War.<sup>26</sup>

[T]he Government has done too little to keep guns away from schools and children . . . . "The morally unthinkable killing of children has . . . become routine . . . . What will it take for parents and religious community and political leaders to stand up and say, 'Enough?'"<sup>27</sup>

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("WRISS") reports that "Massachusetts' rate of nonfatal firearm assault injuries among blacks in 1994 was 159.3 per 100,000. For whites, [the rate was] 2.9 per 100,000." *Id.* Homicide is the leading cause of death for African-American males between ages fifteen and thirty-four and the second leading cause of death for all people between ages fifteen and twenty-four. *See* NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, CTRS. FOR DISEASE CONTROL AND PREVENTION, DOC. NO. 900010, INJURY CONTROL 1 (1994) [hereinafter INJURY CONTROL].

<sup>22</sup> CTRS. FOR DISEASE CONTROL AND PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., 10 LEADING CAUSES OF DEATH BY AGE GROUP - 1992.

<sup>23</sup> *See* McNamara, *supra* note 1, at 19. In 1993, 9.8% of all fatal accidental shootings involved children under age 15; 40.8% involved persons between ages 15 and 24. *See* STATISTICS ON WEAPONS & VIOLENCE, *supra* note 9, at 57. "Most children accidentally killed with guns found the firearms within their homes." *Id.* According to the NCHS, suicides accounted for 48.8% of all deaths caused by firearms in 1993; homicides accounted for 46%; and accidents accounted for 4.3%. *See id.* at 55. A 1997 CDC study found that guns were the top method of suicide in every region of the United States between 1990 and 1994, accounting for nearly 45% of the suicides in the Northeast. *See Western States have Highest Suicide Rate*, BOSTON GLOBE, Aug. 29, 1997, at A12. Massachusetts, however, incurred one of the lowest rates of suicide in the Northeast at 7.7 per 100,000 people. *See id.*

<sup>24</sup> *See U.S. Children Face High Risk of Violent Death*, (Feb. 7, 1997) <<http://cnn.com/US/9702/07/crime.children/index.html>>. The overall accidental shooting rate for the United States is nine times higher than the twenty-five other nations combined. *See* Timothy Egan, *Struggle Over Gun Control Laws Shifts to States and Tests N.R.A.*, N.Y. TIMES, Oct. 13, 1997, at A1.

<sup>25</sup> *See Studies Assess Lethal Toll of Gun Violence*, LAW ENFORCEMENT NEWS, Apr. 15, 1996, at 5. Data compiled by the NCHS indicates that of the 5,751 gunfire deaths of children in 1993, 957 of those killed were under age 15. *See id.*

<sup>26</sup> *See* GEOFFREY CANADA, FIST STICK KNIFE GUN 67 (1995).

<sup>27</sup> *Studies Assess Lethal Toll of Gun Violence*, *supra* note 25.

The Massachusetts Department of Public Health ("MDPH") established the Weapon-Related Injury Surveillance System ("WRISS") in 1990 to gather and track statistics on weapon-related injuries in the Commonwealth.<sup>28</sup> The system bases its data on reports from eighty-five state-wide hospital emergency treatment centers.<sup>29</sup> WRISS, which has a \$200,000 annual operating cost, is the first program of its kind in the nation and is credited with helping to reduce firearm-related violence in Massachusetts.<sup>30</sup> According to WRISS, the 1995 overall state incidence rate for firearm assaults on residents between ages fifteen and twenty-four was 31.9 per 100,000.<sup>31</sup> Another MDPH report indicates that seventy-seven children under age fifteen and 275 children between ages fifteen and nineteen were injured either deliberately or accidentally by guns during 1994.<sup>32</sup>

Alarming, half of these accidental shootings occurred in the home.<sup>33</sup> "Guns kept loaded at home frequently are the cause of accidental firearms injuries. Approximately nine out of every ten guns kept loaded at home are handguns."<sup>34</sup> One national survey found that over one-third of gun owners kept their guns loaded in their household and more than half kept them unsecured.<sup>35</sup>

Guns have become so prevalent and commonplace throughout the United States that the American Academy of Pediatrics now recommends that pediatricians ask parents at routine pediatric visits whether they keep firearms in the home.<sup>36</sup> The Department of Justice estimates that fifty percent of American

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<sup>28</sup> For an excellent and concise overview of WRISS, its data sources, and its findings, see Catherine W. Barber et al., *When Bullets Don't Kill*, 3 PUB. HEALTH REP. 482 (Nov/Dec. 1996).

<sup>29</sup> See *id.* at 489. Based on record reviews, MDPH estimates that hospitals report 75% of their emergency room cases involving violent gunshot and stabbing incidents to MDPH. See *id.*

<sup>30</sup> See Dolores Kong, *State to Fund Gun-Injury-Tracking Program*, BOSTON GLOBE, Sept. 28, 1997, at B7.

<sup>31</sup> See MASS. DEP'T OF PUB. HEALTH, WEAPON INJURY DATA, MASSACHUSETTS VICTIMS OF GUNSHOT AND STABBING INCIDENTS (Sept. 1996). Twenty-nine percent of the 984 reported violence-related weapon injuries to residents between the ages of fifteen and twenty-four were gunshot wounds. See *id.* "Statewide, this age group has the highest weapon injury rate." *Id.* To exemplify the magnitude of the problem nation-wide, though these figures seem high, Massachusetts has the second-lowest firearm death rate. See *Study Details Boston Assault Rates*, *supra* note 21.

<sup>32</sup> See Matchan, *supra* note 18, at 16. The MDPH also reports that twenty-eight children under age fifteen were killed by gunshots between 1990 and 1993. See *id.*

<sup>33</sup> See McNamara, *supra* note 1.

<sup>34</sup> STATISTICS ON WEAPONS & VIOLENCE, *supra* note 9, at 59.

<sup>35</sup> See Henigan, *supra* note 20 (citing Douglas S. Weil & David Hemenway, *Loaded Guns in the Home—Analysis of a National Random Survey of Gun Owners*, 267 JAMA 22 (1992)).

<sup>36</sup> See Matchan, *supra* note 18, at 1. "From a safety standpoint, the official position of the American Academy of Pediatrics is that guns should not be kept in homes with children." *Id.* at 16.

households have one or more firearms.<sup>37</sup> The Executive Office of Public Safety in Massachusetts estimates that 200,000 people are licensed to carry handguns and that a total of 1.6 million Firearms Identification Cards, good for life, have been issued by local police departments for longer guns.<sup>38</sup>

The ATF estimates that between 1899 and 1993, 223 million firearms were manufactured or made available in the United States; 77 million of these were handguns.<sup>39</sup> More than half of the guns made available during 1993 were handguns.<sup>40</sup> Alarming, the ATF reports that the number of available handguns has increased 3100% since 1946.<sup>41</sup> "Every ten seconds, a new firearm rolls off an American assembly line; every eleven seconds, a foreign made firearm clears customs; and every thirteen seconds, someone in this country purchases one of these weapons."<sup>42</sup> The National Crime Victimization Survey ("NCVS") reports that twenty-five percent of the victims of violent crime in 1993 faced an offender armed with a handgun.<sup>43</sup>

The economic impact of firearm violence, measured by the costs of hospitalization, rehabilitation, and lost wages, is staggering. In 1990, firearm injuries cost society approximately \$20.4 billion.<sup>44</sup> A 1992 study estimated the overall cost of firearm-related injury and death at \$63.4 billion.<sup>45</sup> "The cost per firearm fatality is higher than for any other type of fatal injury or for any of the other four lead-

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<sup>37</sup> See *id.*; Henigan, *supra* note 20, at 50.

<sup>38</sup> See Matchan, *supra* note 18, at 16.

<sup>39</sup> See GUNS USED IN CRIME, *supra* note 4, at 2.

<sup>40</sup> See *id.* Over 40 million handguns have been produced in the United States since 1973. See *id.* at 3. On average nearly 5,500 handguns are produced *per day*. Over 80% of the available guns in the United States are manufactured nationally. See *id.*

<sup>41</sup> See STATISTICS ON WEAPONS & VIOLENCE, *supra* note 9, at 5 (citing DEP'T OF THE TREASURY, ATF FACTS (Nov. 1994)). There were 3.9 million handguns available for sale in 1993. See *id.* Although the ATF is prohibited from compiling a national registry of firearms ownership and does not collect firearms sales data, the ATF estimates that licensed firearms dealers sell about 3.5 million handguns per year. See *id.*

<sup>42</sup> Daniel J. French, Note, *Biting the Bullet: Shifting the Paradigm from Law Enforcement to Epidemiology; A Public Health Approach to Firearm Violence in America*, 45 SYRACUSE L. REV. 1073, 1074 (1995) (citations omitted).

<sup>43</sup> See GUNS USED IN CRIME, *supra* note 4, at 2. This figure amounts to 1.1 million of the total 4.4 million violent crimes of rape, sexual assault, robbery, and aggravated assault committed in 1993. See *id.* at 1-2. This figure also excludes the 13,980 (57% of the total) murders committed with handguns in 1993. See *id.*

<sup>44</sup> See VIOLENCE POLICY CENTER, WHO DIES? A LOOK AT FIREARMS DEATH AND INJURY IN AMERICA 9 (1996) [hereinafter WHO DIES?]. Eighty-five percent of the cost, or \$17.4 billion, was for fatal injuries. See *id.* This amount also accounts for the value of productivity lost as a result of premature death. The CDC estimates the annual financial cost of all injury, including direct medical care, rehabilitation costs and individual lost wages and productivity, at over \$224 billion. See INJURY CONTROL, *supra* note 21, at 1.

<sup>45</sup> See MARIANNE W. ZAWITZ, U.S. DEP'T OF JUSTICE, FIREARM INJURY FROM CRIME 4, (1996) [hereinafter FIREARM INJURY FROM CRIME]. This figure included costs such as medical treatment, emergency transport, police services, insurance administration, and pain, suffering, and reduced quality of life. See *id.*

ing causes of death."<sup>46</sup> The CDC estimates the average cost per firearm fatality at \$373,000, the highest of any injury-related death.<sup>47</sup> While public sources finance approximately twenty-eight percent of the cost of all injuries,<sup>48</sup> approximately eighty percent of the economic cost of treating firearm injuries is financed by taxpayers.<sup>49</sup>

The economic and social costs of firearm-related injuries and deaths place a significant burden on the nation's health-care system. In 1991, the District of Columbia Hospital Association found that over forty-two percent of criminal firearm violence victims lacked health insurance.<sup>50</sup> Consequently, their unpaid bills were met through a combination of tax dollars and cost-shifting to insured patients.<sup>51</sup> As a result, several hospitals and trauma centers have ceased operations or refuse victims of gun-shot wounds due to a lack of financial resources.<sup>52</sup> A 1993 national hospital survey reported that cost was a factor in four out of the five leading reasons why sixty-one hospitals terminated their trauma centers.<sup>53</sup>

Social welfare and health costs associated with firearm-related injuries also impact the populace via premature death and disability. In 1991, firearms were the fourth leading cause of Years of Potential Life Lost before age sixty-five ("YPLL-65") — accounting for over one million YPLL-65.<sup>54</sup> Additionally, firearm-related injuries were the second leading cause of Valued Years of Potential Life Lost ("VYPLL"), a measure of the net economic gains and losses experienced by society as a result of each death.<sup>55</sup>

## II. CONSUMER PROTECTION REGULATION OF FIREARMS

Aside from the violence-prevention and socio-economic justifications for regulating firearms, there is ample support for regulating firearms as a consumer

<sup>46</sup> WHO DIES?, *supra* note 44, at 9.

<sup>47</sup> See Larry S. Stewart, *America's Ignored Epidemic*, TRIAL, Oct. 1994, at 7. The estimated cost of treating and rehabilitating a gunshot victim is approximately \$33,000. See Dolores Kong, *State Loses Funds to Track Gun Injuries*, BOSTON GLOBE, Sept. 25, 1997, at B2.

<sup>48</sup> See INJURY CONTROL, *supra* note 21, at 1. The federal government pays approximately \$18.4 billion annually in disability and death benefits. See *id.*

<sup>49</sup> See NAT'L CTR. FOR INJURY PREVENTION AND CONTROL, CTRS. FOR DISEASE CONTROL AND PREVENTION, FIREARM INJURIES AND FATALITIES (1994).

<sup>50</sup> See SUGARMAN & RAND, *supra* note 3, at 1.

<sup>51</sup> See *id.*

<sup>52</sup> See WHO DIES?, *supra* note 44, at 9. "A study at a Los Angeles trauma center of patients admitted with intentional injuries [one to two-thirds of which were gunshot wounds] found that 75 percent of their hospital costs were uncompensated. Such a financial burden is forcing hospital centers to close the doors of their trauma care centers." *Id.*

<sup>53</sup> See *id.*

<sup>54</sup> See *Firearm-Related Years of Potential Life Lost before age 65 Years—United States, 1980-1991*, 43 MORBIDITY AND MORTALITY WKLY. REP. (CENTERS FOR DISEASE CONTROL), No. 33, at 609 (Aug. 26, 1994). By comparison, heart diseases accounted for slightly over 1.3 million YPLL-65 in 1991. See *id.*

<sup>55</sup> See *id.* at 611.

product. "Firearms are the second leading cause of traumatic death related to a consumer product in the United States and are the second most frequent cause of death overall for Americans ages [fifteen] to [twenty-four]."<sup>56</sup> Firearms account for nearly 40,000 deaths per year in the United States.<sup>57</sup> Incredibly, only motor vehicles outpace firearms as a cause of fatal injury by a consumer product.<sup>58</sup> According to CDC estimates, firearms will surpass motor vehicles as the leading cause of consumer product related death by the year 2003.<sup>59</sup> Six states already have a higher incidence of firearm-related fatalities than motor vehicle-related fatalities.<sup>60</sup>

"[F]irearms violence . . . stems not from 'guns in the wrong hands,' but from the virtually unregulated distribution of an inherently dangerous consumer product . . . particularly prone to misuse."<sup>61</sup> A 1991 General Accounting Office report on accidental gunshot deaths recommended that Congress bring firearms, exempt from regulation as a consumer product since the CPSC's inception in 1972, under the purview of the CPSC.<sup>62</sup> Ironically, Massachusetts consumer protection regulations covered toy-gun caps and fireworks but not handguns.<sup>63</sup>

#### A. Purpose of the Massachusetts Consumer Protection Act

The Regulation of Business Practices for Consumers Protection, enacted under Massachusetts General Laws chapter 93A, broadly covers the regulation of "any trade or commerce directly or indirectly affecting the people of [Massachusetts]."<sup>64</sup> "[Chapter] 93A is a comprehensive statute for the regulation of consumer and business transactions."<sup>65</sup> This broad consumer protection statute was "not designed to limit [consumers] pre-existing rights and remedies, or to create obstacles to their pursuit, . . . [but rather] to ensure latitude in the manner, be it legal or equitable, in which the statute is enforced to protect consumers."<sup>66</sup> The Attorney General possesses the power to restrain and prevent unfair and de-

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<sup>56</sup> WHO DIES?, *supra* note 44, at 1 (emphasis added).

<sup>57</sup> See Kong, *supra* note 47.

<sup>58</sup> See WHO DIES?, *supra* note 44, at 1.

<sup>59</sup> See *id.* (citing *Deaths Resulting from Firearm and Motor Vehicle Related Injuries - United States, 1968-1991*, 43 MORBIDITY AND MORTALITY WKLY. REP. (CENTERS FOR DISEASE CONTROL), No. 3 (Jan. 28, 1994)).

<sup>60</sup> See ALICE C. ANDREWS & JAMES W. FONSECA, *THE ATLAS OF AMERICAN SOCIETY* 168 (1995). The national ratio of firearm deaths to motor vehicle deaths is 0.88, but the death rates are rapidly converging. See *id.*

<sup>61</sup> WHO DIES?, *supra* note 44, at 1.

<sup>62</sup> See Erik Larson, *Wild West Legacy: Ruger Gun Often Fires if Dropped, But Firm Sees No Need for Recall*, WALL ST. J., June 24, 1993, at A1.

<sup>63</sup> See generally MASS. REGS. CODE tit. 527, § 2.02 (1993).

<sup>64</sup> MASS. GEN. LAWS ch. 93A, § 1(b) (1996).

<sup>65</sup> *Purity Supreme, Inc. v. Attorney General*, 407 N.E.2d 297, 300 (Mass. 1980).

<sup>66</sup> *Greenfield Country Estates Tenants Ass'n, Inc. v. Deep*, 666 N.E.2d 988, 993 (Mass. 1996) (internal quotation omitted).

ceptive acts as well as to redress wrongs already committed.<sup>67</sup>

Section 2(a) declares “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” unlawful.<sup>68</sup> Section 2(c) authorizes the Attorney General to make rules and regulations interpreting the provisions of section 2(a) — namely, to define what constitutes an “unfair and deceptive act.”<sup>69</sup> Furthermore, the Attorney General may identify particular business practices falling within the scope of “unfair” and “deceptive.”<sup>70</sup> Promulgating regulations prohibiting the sale of handguns that fail to meet minimum safety and performance criteria falls squarely within the Attorney General’s statutory authority.

The only limitations on the Attorney General’s chapter 93A authority are that the regulations promulgated not be inconsistent with Federal Trade Commission (“FTC”) and federal court decisions.<sup>71</sup> According to the FTC, the fundamental thrust in the “unfairness” doctrine is “unjustified consumer injury.”<sup>72</sup> The three factors identified by the FTC for consideration in determining the “fairness” of a business practice are: (1) injury to consumers; (2) violation of public policy; and (3) unethical or unscrupulous practices.<sup>73</sup> As discussed below, regulating handguns of inferior quality and manufacture that are prone to accidental discharge or even explode during ordinary use by the consumer touch on all three fairness factors.

The economic incentive for compliance with chapter 93A laws and regulations is great. For actions brought by the attorney general, section 4 authorizes the imposition of reasonable litigation costs, attorneys’ fees, and a civil fine of up to \$5,000 for each violation constituting an unfair or deceptive act or practice.<sup>74</sup> In civil actions, section 9(3) authorizes, at the court’s discretion, treble damages for a willful and knowing violation of chapter 93A or of regulations promulgated under its authority.<sup>75</sup> The court may order injunctions or other equitable relief as it deems necessary and proper.<sup>76</sup> Moreover, chapter 93A does not require the exhaustion of administrative remedies prior to seeking redress.<sup>77</sup>

<sup>67</sup> See *id.* at 993.

<sup>68</sup> Ch. 93A, § 2(a).

<sup>69</sup> *Id.* § 2(c). “[T]he Legislature has . . . delegated to the Attorney General the power to promulgate rules and regulations defining with specificity acts and practices which violate G. L. c. 93A, § 2(a).” *Purity Supreme*, 407 N.E.2d at 306.

<sup>70</sup> See *Purity Supreme*, 407 N.E.2d at 303. In addition, section 7A authorizes the Attorney General to enforce compliance with chapter 93A provisions. See ch. 93A, § 7A.

<sup>71</sup> See *Purity Supreme*, 407 N.E.2d at 303.

<sup>72</sup> MASS. GEN. LAWS ANN. ch. 93A, § 1 (West 1996) commentary at 152.

<sup>73</sup> See *id.*

<sup>74</sup> See ch. 93A, § 4.

<sup>75</sup> See *id.* § 9(3). The damages subject to tripling include the amount of judgment on all claims arising out of the same and underlying transaction or occurrence. See *id.*

<sup>76</sup> See *id.*

<sup>77</sup> See *id.* § 9(6).

## B. Massachusetts Consumer Protection Handgun Sales Regulations

The Massachusetts consumer protection handgun sales regulations prohibit five principal unfair or deceptive practices related to handgun sales. These practices are: (1) failing to comply with existing consumer protection laws regulating the sales of handguns; (2) selling handguns without "tamper-resistant" serial numbers; (3) selling handguns made from inferior materials; (4) selling handguns without "child-proofing" or safety devices; and (5) selling handguns without written safety warning disclosures.<sup>78</sup>

### 1. General Unfair or Deceptive Practices

The regulations deem it an unfair or deceptive practice for any "handgun-purveyor"<sup>79</sup> to fail to comply with the regulations or any other existing consumer protection law in conjunction with the transfer<sup>80</sup> of a handgun<sup>81</sup> to a Massachusetts consumer.<sup>82</sup> Such laws include those which: prohibit the sale of handguns to juveniles, addicts, or mental incompetents;<sup>83</sup> prohibit the sale of silencers, armor-penetrating bullets, or machine-guns where possession is unlawful;<sup>84</sup> require sellers to keep and make records of gun sales available to law enforcement officials investigating crimes;<sup>85</sup> prohibit the delivery or transportation

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<sup>78</sup> See generally MASS. REGS. CODE tit. 940, §§ 16.02-16.06 (1997). In addition, section 16.07 regulates the sale of used handguns manufactured prior to the enforcement dates of the five major provisions. See *id.* § 16.07.

<sup>79</sup> "Handgun-purveyor" is defined as "any person or entity that transfers handguns to a customer located within the Commonwealth of Massachusetts." *Id.* § 16.01. The definition specifically excludes supply museums, educational collectors, supply or surrender of handguns to military or law enforcement personnel, sales of antique firearms as defined in 18 U.S.C. § 921 (1994), and transfers of less than five handguns per year. See *id.* For simplicity and clarity throughout the Note, a "handgun-purveyor" will be referred to as a "seller."

<sup>80</sup> "Transfer" includes selling, renting, or leasing but specifically excludes "a sale to a . . . firearm wholesaler, so long as the sale . . . prohibits . . . reselling the handgun to a . . . retailer or consumer in the Commonwealth." *Id.* For simplicity, a handgun "transfer" will be referred to as a handgun "sale" throughout the Note.

<sup>81</sup> A handgun is a weapon "designed to be fired by the use of a single hand . . . and which has . . . a barrel less than 18 inches long . . . [or] an overall weapon length of less than 26 inches . . ." *Id.*

<sup>82</sup> See *id.* § 16.02(1). Section 16.02 applies to acts committed or practices in force as of January 15, 1998. See *id.* § 16.09(1).

<sup>83</sup> See generally MASS. GEN. LAWS ch. 140, §§ 122 & 131 (1996). In addition, Massachusetts law prohibits the issuance of firearm possession licenses and firearm identification cards to any individual subject to a temporary or emergency domestic restraining order. See generally *id.* §§ 129B & 131. Chapter 209A, section 3B allows a court to order the immediate suspension and surrender of firearm licenses and identification cards upon a showing of a "substantial likelihood of immediate danger of abuse." Chapter 209A, § 3B.

<sup>84</sup> See ch. 269, § 10A; ch. 140, § 123.

<sup>85</sup> See ch. 140, § 123; MASS. REGS. CODE tit 520, § 7.03(3) (1997).

of loaded guns;<sup>86</sup> and prohibit the sale of a handgun whose serial number has been defaced.<sup>87</sup>

The regulations supplement these laws by regulating the conditions of handgun sales, requiring the disclosure of handgun safety information to consumers, and ensuring the satisfactory condition and non-contraband status of the handgun offered for sale.<sup>88</sup> Additionally, the regulations prohibit the seller from making "material misrepresentations or . . . false certifications regarding any handgun offered for transfer."<sup>89</sup> The objective of the regulations is well within the traditional purpose of consumer protection—the prevention of unjustified consumer injury as a result of unfair or deceptive trade practices.<sup>90</sup>

## 2. "Tamper-Resistant" Serial Numbers

Section 16.03 of the regulations prohibits the sale of handguns with a serial number placed solely in a location making the serial number "susceptible to eradication."<sup>91</sup> A serial number is deemed *not* susceptible to eradication if it is placed on the interior of the handgun, for example inside the barrel, and the seller informs law enforcement officials upon request of the serial number's location.<sup>92</sup> Alternatively, the serial number may be placed on the exterior of the handgun in a way that is visible only with the aid of an infrared detector or other device.<sup>93</sup> Such placement would make it practically impossible for criminals to eradicate handgun serial numbers.

Serial numbers significantly aid police investigations of handgun crimes by enabling police to trace subsequent sales and ultimate ownership of a handgun used in a crime.<sup>94</sup> Criminals often obliterate the handgun serial number to lessen

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<sup>86</sup> See ch. 140, § 123.

<sup>87</sup> See ch. 269, § 11C. In addition, Massachusetts law prohibits a licensed firearm dealership from displaying any firearm where it can readily be seen from the outside. See ch. 140, § 123.

<sup>88</sup> See MASS. REGS. CODE tit. 940, § 16.02(1) (1997).

<sup>89</sup> *Id.* § 16.02(2).

<sup>90</sup> See *supra* notes 72-73 and accompanying text.

<sup>91</sup> See title 940, § 16.03. Section 16.03 applies to acts committed or practices in force as of September 30, 1998. See *id.* § 16.09(3). Massachusetts law requires all firearms manufactured or delivered within the Commonwealth to "bear serial numbers permanently inscribed on a visible metal area." MASS. GEN. LAWS ch. 269, § 11E (1996). Additionally, the removal or mutilation of a firearm's serial number or the receipt of a firearm with knowledge that its serial number has been removed or altered is also prohibited. See *id.* § 11C.

<sup>92</sup> See title 940, § 16.03(1).

<sup>93</sup> See *id.* § 16.03(2). In addition, the seller is required to provide the location of the nonvisible serial number or information regarding the method by which it can be viewed to law enforcement officials upon request. See *id.*

<sup>94</sup> The ATF National Tracing Center traces firearms to their original point of sale upon request from police agencies. The police can use this information to aid in identifying suspects, providing evidence for subsequent prosecution, establishing stolen status, and proving ownership. See GUNS USED IN CRIME, *supra* note 4, at 4.

the possibility of police tracing the weapon after its use in a crime. A 1995 study conducted in Massachusetts by the ATF and the Boston Police Department found that nearly one in four guns seized from Boston gang members between 1991 and 1994 had obliterated serial numbers.<sup>95</sup> The serial number requirement would also aid in returning the more than 500 handguns stolen annually from legitimate Massachusetts gun owners.<sup>96</sup>

### 3. Handguns Made from Inferior Materials

Section 16.04 of the regulations, primarily directed at preventing the sale of "Saturday Night Specials,"<sup>97</sup> prohibits the sale of any handgun that fails to meet specific objective criteria related to the handgun's quality of materials and durability during use.<sup>98</sup> A handgun is "made from inferior materials" if the frame, barrel, cylinder, slide or breechblock of the handgun is: composed of any metal with a melting point of less than 900 degrees Fahrenheit;<sup>99</sup> composed of any material unable to withstand a minimum pressure of 55,000 pounds per square

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<sup>95</sup> See *Letter from the Attorney General*, LAW ENFORCEMENT NEWSL., (Off. of the Att'y Gen., Mass.), Aug./Sept., 1996. The Boston Police and State Police crime labs conduct all ballistics evidence investigations for the state. See Barber, *supra* note 28, at 491. Data compiled by WRISS, see *supra* notes 28-31 and accompanying text, for the years 1985, 1988, 1991, and 1994 indicate that handguns accounted for 72% of cases investigated by the Boston lab and 65% of cases investigated by the State lab. Only cases likely to involve injury were included such as fatalities, assaults, accidents, and suicide attempts. See generally Barber, *supra* note 28, at 492.

<sup>96</sup> See *Letter from the Attorney General*, *supra* note 95. Nearly 60% of the FBI's 2 million stolen gun files are handguns. See GUNS USED IN CRIME, *supra* note 4, at 3.

<sup>97</sup> See *supra* note 3 and accompanying text.

<sup>98</sup> See generally title 940, § 16.04(1), (2). Section 16.04 applies to acts committed or practices in force as of June 30, 1998. See *id.* § 16.09(2). Section 16.04, as initially proposed, prohibited a seller from transferring, transporting, advertising, or publicly displaying "any handgun that is defective or unsafe." *Id.* § 11.04 (proposed July 29, 1996). "Defective" was defined as "less likely to perform as anticipated than a reasonable consumer, informed of the industry practice and the technology available to ensure proper performance, would expect." *Id.* § 16.01(5) (proposed Oct. 16, 1996). "Unsafe" was defined as the existence of a "discernible danger that proper use of the handgun can result in unintended injury to the user or others." *Id.* § 16.01(6) (proposed Oct. 16, 1996). The redraft of the regulations deleted these broad and ambiguous terms as "inferior materials" criteria.

<sup>99</sup> See *id.* § 16.04(1)(a). Four other states have statutes prohibiting the sale of junk guns composed of inferior metals with low melting points. See HAW. REV. STAT. § 134-15(a) (1996) (die-cast zinc alloy, 800 degrees Fahrenheit); 720 ILL. COMP. STAT. ANN. 5/24-3(h) (West 1996) (same); MINN. STAT. ANN. § 624.712(4) (West 1996) (1000 degrees Fahrenheit); S.C. CODE ANN. § 23-31-180 (Law Co-op. 1995) (die-cast metal alloy, 800 degrees Fahrenheit).

The zinc alloy used in most "Saturday Night Specials" begins to distort at 700 degrees Fahrenheit. By comparison, the stainless steel used in quality guns has a melting point of 2,400 degrees Fahrenheit. See Freedman, *supra* note 8.

inch;<sup>100</sup> or composed of any powdered metal with a density of less than 7.5 grams per cubic centimeter.<sup>101</sup> A handgun with these properties may be sold, however, if it meets "make and model performance requirements."<sup>102</sup>

The make and model performance requirements necessitate three new handguns of the same make and model to pass an objective "handgun performance test" to obtain performance certification.<sup>103</sup> The handgun performance test entails the firing of 600 rounds from each of three handguns of the same make and model as the handgun seeking certification.<sup>104</sup> The performance test requires that each of the three handguns fire the first twenty rounds without a malfunction and fire the total 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."<sup>105</sup>

Other characteristics of handguns considered made from inferior materials — all common attributes of "Saturday Night Specials" — include handguns which are prone to accidental discharge, repeated discharge on a single pull of the trigger, or explosion during discharge.<sup>106</sup> A handgun is "prone to accidental discharge" if any of five handguns of the same make and model being tested fire during any successive "drop test" whereby the handgun is dropped onto a solid slab of concrete from a height of one meter in six different positions.<sup>107</sup>

Section 16.04 currently would preclude the sale of approximately thirty common models of .22 and .25-caliber "Saturday Night Specials," primarily manufactured by the so-called "Ring of Fire" companies in the Los Angeles, Califor-

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<sup>100</sup> See title 940, § 16.04(1)(b).

<sup>101</sup> See *id.* § 16.04(1)(c).

<sup>102</sup> See *id.* § 16.04(3).

<sup>103</sup> See generally *id.* §§ 16.01, 16.04(3). If the seller performed the test, the Attorney General may require the seller to provide "sworn certification" that the handgun met the performance test requirements and may require the retesting of the handgun by an independent testing entity chosen by the Attorney General. See *id.* § 16.04(3).

<sup>104</sup> See *id.* § 16.01. The tester will stop firing the handgun after every 100 rounds to tighten any loose screws and to clean the gun if so required by the handgun's user manual. See *id.*

<sup>105</sup> *Id.* A "malfunction" is defined generally as any failure which prevents the handgun from firing or being capable of firing the next round properly. See *id.* Compare this objective performance criteria with the subjective statutory criteria used in Maryland. The Maryland statute lists a number of factors for consideration by a "Handgun Roster Board," comprised of pro-gun and gun-control representatives, industry and state officials, and citizens, to determine whether certain handguns should or should not be banned. See MD. ANN. CODE art. 27, § 36J (1996). Only those handguns placed on the Roster are legal and considered "useful for legitimate sporting, self-protection, or law enforcement purposes." *Id.* § 36J(b)(1). The Board, however, is not required to test any handgun prior to placement on the Roster. See *id.* § 36J(f)(6).

<sup>106</sup> See title 940, § 16.04(2).

<sup>107</sup> See *id.* § 16.01. The handgun is dropped in the normal firing position, upside down, on the grip, on the muzzle, on either side, and on the exposed hammer or striker successively to test whether it will accidentally discharge. See *id.*

nia area.<sup>108</sup> It is estimated that over one million "Saturday Night Specials" are manufactured in the United States annually.<sup>109</sup>

"Saturday Night Specials, which account for an estimated 70 percent of the country's gun crimes, rarely cost more than \$50. [By comparison], [t]he least expensive Smith & Wesson gun sells for about \$380."<sup>110</sup> Although these guns typically retail for approximately fifty dollars, they cost less than twenty dollars to produce due to their inferior manufacturing and materials — resulting in sizable profits to the manufacturers.<sup>111</sup> Additionally, this "allows black-market gun runners to make an easy profit, selling them for less than \$100 on the street."<sup>112</sup> The regulations would economically force the supply of inferior handguns down by driving up the average retail price of handguns as well as the street price of "Saturday Night Specials," thereby making them "less marketable as bargain-basement firearms."<sup>113</sup>

Numerous studies and reports provide ample support for this section of the regulations. "Cheap junk guns remain very much the despised 'rejects' of street weapons, the pathetic choice of unsophisticated criminals . . . [and] appear to be volume leaders in crime guns sold in recent years . . . ."<sup>114</sup> "[T]hese are the

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<sup>108</sup> See JULY 29 NEWS RELEASE, *supra* note 4, at 2. The majority of junk "Saturday Night Specials" are manufactured by five southern California companies labeled the "Ring of Fire" by Dr. Garen Wintemute, an emergency room surgeon and director of the Violence Prevention Research Program at the University of California at Davis. See Lynda Gorov, *California Gun Battle: 'Junk' Weapons Ban Divides Towns*, BOSTON GLOBE, Apr. 18, 1997 at A1. "Southern California is acknowledged as the unofficial capital of the junk gun industry." Duke Helfand, *Two-Pronged Attack on Guns Launched*, L.A. TIMES, Apr. 3, 1996, at B1. For an excellent historical overview of the creation and subsequent monopolization of the junk gun industry, see Freedman, *supra* note 8 (describing the "volatile family empire that built itself on . . . low-cost manufacturing and high-volume distribution and thrives on . . . government protectionism and de facto oligopoly.").

<sup>109</sup> See *Letter from the Attorney General*, *supra* note 95. The landmark Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (1968) (codified as amended at 18 U.S.C. §§ 921-928 (1996)), enacted in response to the assassinations of Robert F. Kennedy and Martin Luther King, banned the importation of foreign-manufactured "Saturday Night Specials," instantly creating a vast market for American manufacturers to exploit. See David C. Anderson, *Street Guns - A Consumer Guide*, N.Y. TIMES MAGAZINE, Feb. 14, 1993, at 21.

<sup>110</sup> Michael Grunwald, *AG Mulls Changes in Handgun Proposal, Smith & Wesson Threatens Pullout*, BOSTON GLOBE, Nov. 18, 1996, at B2.

<sup>111</sup> See Anderson, *supra* note 109, at 21-22. It is estimated that the top three "Saturday Night Special" manufacturers, Raven Arms, Davis Industries, and Jennings Firearms, have better than 100% gross profit margins. See Freedman, *supra* note 8.

<sup>112</sup> See Anderson, *supra* note 109, at 22. For example, an eleventh-grader made \$4,000 selling fifty Saturday Night Specials in one year. See Freedman, *supra* note 8.

<sup>113</sup> Jocelyn Meek, *Group to Back Safe-Gun Measure*, BOSTON GLOBE, Nov. 25, 1996, at B1.

<sup>114</sup> See Anderson, *supra* note 109, at 21. John Hinckley attempted to assassinate President Ronald Reagan on March 30, 1981 with a .22-caliber "Saturday Night Special" that

starter guns for the fearful, the criminal and, increasingly, the very young. To a startling degree, they also figure disproportionately in robberies and murders . . . ."<sup>115</sup>

[D]ata compiled by [WRISS] indicates that three of the top five types of pistols submitted for ballistics testing in criminal cases in Massachusetts are "Saturday Night Specials." . . . [A 1995] study of illegal weapons conducted by the Boston Police and the [ATF] found that "Saturday Night Specials" were the "handgun of choice for juveniles" in Boston from 1991 through 1994.<sup>116</sup>

According to Citizens for Safety, a group that runs a Boston gun buy-back program, most of the 3,000 guns collected in the past four years were "Saturday Night Specials."<sup>117</sup> Furthermore, a recent ATF report indicated that "eight of every [ten] guns traced to crime scenes in 1995 were so-called junk guns."<sup>118</sup>

Moreover, these cheap "junk guns" are extremely unreliable and can cause injury to consumers even when used appropriately.<sup>119</sup> "Low-quality materials and a lack of security devices cause the guns to discharge at will and even explode when fired . . . ."<sup>120</sup> Most "Saturday Night Specials" are made from cheap die-cast zinc-alloy compared to stainless steel for standard guns.<sup>121</sup> Furthermore, this low-cost manufacturing enables high-volume production. For example, the manufacture of one Colt .45-caliber takes approximately thirty minutes compared to three minutes to make a typical "Saturday Night Special."<sup>122</sup> Lastly, though not banned for domestic manufacture, "Saturday Night Specials" do not meet ATF importation standards.<sup>123</sup> It is precisely these kinds of industry practices that consumer protection regulations are devised to prohibit. "There is no justification for the manufacture or sale of so-called Saturday Night Specials, whose only purpose is use in the commission of violent crimes."<sup>124</sup>

he purchased in a Dallas, Texas pawn shop. See LAPIERRE, *supra* note 3, at 40-41.

<sup>115</sup> Freedman, *supra* note 8.

<sup>116</sup> Letter from the Attorney General, *supra* note 95.

<sup>117</sup> See Meek, *supra* note 113, at B10.

<sup>118</sup> Helfand, *supra* note 108. Six of the seven most frequently traced guns in 1994 were "Saturday Night Specials." See GUNS USED IN CRIME, *supra* note 4, at 5.

<sup>119</sup> See *supra* notes 72-73 and accompanying text.

<sup>120</sup> Helfand, *supra* note 108. Numerous independent and objective gun tests have shown the quality, dependability, and safety of this class of handguns is extremely suspect because of unreliable materials and manufacturing defects. See Letter from the Attorney General, *supra* note 95.

<sup>121</sup> See Freedman, *supra* note 8; see also *supra* note 99.

<sup>122</sup> See *id.*

<sup>123</sup> See Letter from the Attorney General, *supra* note 95. The ATF's so-called "drop test," whereby a handgun's safety device must withstand the impact of the gun's own weight dropped from a distance of three feet on the gun's hammer five successive times, is incorporated by the regulations' definition of *prone to accidental detonation*. See *supra* text accompanying note 107; see also ATF, U.S. DEP'T OF THE TREASURY, FORM NO. 4590 (7570.5), FACTORING CRITERIA FOR WEAPONS.

<sup>124</sup> Stewart, *supra* note 47.

Massachusetts is not the only state attempting to prohibit the sale of junk guns. Four other states have similar "inferior material" legislation which effectively precludes "Saturday Night Specials" from being sold.<sup>125</sup> Additionally, nearly three dozen California municipalities have banned the sale of junk guns and another twenty are considering similar proposals.<sup>126</sup> One court recently rejected a challenge to the first such local "Saturday Night Special" ban in West Hollywood, California.<sup>127</sup> Given the objectivity of the regulations' provisions on inferior material handguns, it is very likely that these provisions will withstand any legal challenges.

#### 4. Handguns without "Child-proofing" or Safety Devices

Another major provision of the regulations proscribes the sale of handguns lacking safety and "child-proof" mechanisms.<sup>128</sup> Under section 16.05, handguns sold within the Commonwealth will require either a detachable or built-in mechanism to prevent the handgun's unauthorized use.<sup>129</sup> Examples of such safety mechanisms include key-activated trigger locks,<sup>130</sup> combination handle locks,<sup>131</sup> solenoid use-limitation devices,<sup>132</sup> and passive use-limitation devices.<sup>133</sup> Nine major gun manufacturers recently announced, at the behest of the Clinton administration, that they will provide child-proof trigger locks on all handguns manufactured.<sup>134</sup>

Additionally, section 16.05 requires that handguns employ a mechanism to effectively preclude an "average five year old child" from operating the hand-

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<sup>125</sup> See *supra* note 99 and accompanying text. In addition, "Saturday Night Specials" are not on the approved Handgun Roster in Maryland. See *supra* note 105.

<sup>126</sup> See Gorov, *supra* note 108, at A1.

<sup>127</sup> See *id.*

<sup>128</sup> See MASS. REGS. CODE tit. 940, § 16.05 (1997). Section 16.05 applies to acts committed or practices in force as of September 30, 1998. See *id.* § 16.09(3).

<sup>129</sup> See *id.* § 16.05(1). In a similar federal proposal, President Clinton's recently announced anti-juvenile crime plan would require, among other things, safety locks on handguns. See Ann Scales, *Clinton Offers Crime Plan, Cites Boston Effort in Push for \$500m in Youth Programs*, BOSTON GLOBE, Feb. 20, 1997, at A1.

<sup>130</sup> A key-activated trigger lock is "a device that when locked in place by means of a key, prevents a potential user from pulling the trigger . . ." Title 940, § 16.01.

<sup>131</sup> A combination handle lock is "a device which precludes the use of the handgun unless the combination tumblers are properly aligned." *Id.*

<sup>132</sup> A "solenoid use-limitation device" prevents the firing of the handgun unless a magnet of the appropriate strength, embedded in a ring worn on the user's gun hand and attached by a wire to the handgun, is placed in proximity to the gun's handle. See *id.*

<sup>133</sup> A "passive use-limitation device" prevents the firing of the handgun and "automatically resets itself" after use. See *id.* Such a device provides a safety measure superior to use-limitation devices which require manual resetting after use.

<sup>134</sup> See Terence Hunt, *Manufacturers Agree to Handgun Trigger Locks*, BOSTON GLOBE, Oct. 10, 1997, at A3. "The gunmakers' promise was negotiated after Clinton threatened . . . to press for legislation requiring child locks on handguns." *Id.*

gun.<sup>135</sup> This requirement may be met by increasing the required trigger resistance to at least a ten-pound pull, enlarging the firing mechanism so that the hand of an average five-year-old child is too small to operate the handgun, or by requiring a series of multiple motions to fire the handgun.<sup>136</sup> Given the subjectiveness of the term "average five-year-old," the increased trigger resistance or the series of multiple motions, analogous to "safe" cigarette lighters, probably are the most effective option.

Lastly, handguns that load bullets via a magazine will need to be equipped with a load indicator or magazine safety disconnect device.<sup>137</sup> A load indicator is a device which "plainly indicates" that a bullet is in the firing chamber of the handgun.<sup>138</sup> A magazine safety disconnect is a device that prevents the handgun from firing when the magazine is detached from the handgun.<sup>139</sup>

At least fifteen states have passed laws requiring trigger locks or safe storage of handguns.<sup>140</sup> CDC studies have determined that "[t]he addition of child-proof safety devices would prevent children aged [six years and younger] from discharging a firearm, and the use of loading indicators could prevent an estimated 23% of all unintentional firearm-related deaths."<sup>141</sup> The handgun safety devices required by section 16.05 would effectively preclude a child from firing a gun which was surreptitiously obtained. "There is no defensible reason why guns today do not have child-proof safeties, load indicators, and magazine safeties to prevent accidental firing."<sup>142</sup> Attorney General Harshbarger notes that while the "handgun child-proofing regulations" will not absolve gun owners of personal responsibility for gun safety in their homes,<sup>143</sup> they will serve to remind manufacturers of their corporate responsibility.<sup>144</sup>

Safe storage of handguns is also crucial to reducing the incidence of accidental shootings involving children. Several studies indicate that most unintentional firearm-related deaths involving children occur at a residence and involve inappropriately stored weapons.<sup>145</sup> Another study found that unintentional shooting

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<sup>135</sup> See title 940, § 16.05(2). Section 16.05(2) is inapplicable to handguns equipped with a "hammer deactivation device." See *id.* § 16.05(4). A "hammer deactivation device" is a built-in device or an extension of the hammer which allows the handgun's hammer to be manually disengaged and which must be "manually re-toggled in order to recock the hammer before the handgun can be fired." *Id.* § 16.01.

<sup>136</sup> See *id.* § 16.05(2).

<sup>137</sup> See *id.* § 16.05(3), (4).

<sup>138</sup> See *id.* § 16.01.

<sup>139</sup> See *id.*

<sup>140</sup> See Egan, *supra* note 24.

<sup>141</sup> *Unintentional Firearm-Related Fatalities Among Children and Teenagers—United States, 1982-1988*, 41 MORBIDITY AND MORTALITY WKLY. REP. (CENTERS FOR DISEASE CONTROL), No. 25, at 445 (June 26, 1992) [hereinafter *Unintentional Firearm-Related Fatalities*].

<sup>142</sup> Stewart, *supra* note 47.

<sup>143</sup> See *infra* notes 150, 156, 169-176 and accompanying text.

<sup>144</sup> See *Letter from the Attorney General, supra* note 95.

<sup>145</sup> See *Unintentional Firearm-Related Fatalities, supra* note 141, at 444. Accordingly,

deaths among children under fifteen years of age were reduced by twenty-three percent in states with safe storage laws.<sup>146</sup> "Reduction of morbidity and mortality from unintentional firearm-related injuries among children and teenagers must emphasize limiting access to loaded weapons."<sup>147</sup>

### 5. Safety Warning Disclosures

The final major provision of the regulations requires that any handgun sold without a passive use-limitation device<sup>148</sup> must be accompanied by a specific written warning included within the gun's packaging.<sup>149</sup> The warning reads in pertinent part:

**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. [T]here are more than a thousand suicides each year by [juveniles] who get access to firearms. Hundreds more die from accidental discharge. . . . In order to limit the chance of such misuse, it is imperative that you keep this weapon locked in a secure place . . . . 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.<sup>150</sup>

Astutely, the regulations also deem it an unfair or deceptive practice for a seller to sell a handgun to a retail consumer "without demonstrating how to load, unload, and safely store the handgun, and how to engage and disengage all safety devices . . . ."<sup>151</sup> The seller is also required to notify the consumer of the

one of the CDC's national health objectives for the year 2000 is to reduce the proportion of households with inappropriately stored weapons by 20%. *See id.* "Appropriate storage should include locked and separate storage of weapons and ammunition." *Id.* at 444-45.

<sup>146</sup> *See* Larry Tye, *Gun Laws are Linked to a Decline in Deaths*, BOSTON GLOBE, Oct. 2, 1997, at A10. The study estimates that if safe storage laws were in place throughout the nation, some 216 children might not have died in unintentional shootings. *See id.*

<sup>147</sup> *Unintentional Firearm-Related Fatalities*, *supra* note 141, at 444.

<sup>148</sup> *See supra* note 133 and accompanying text on compliance with section 16.05(1).

<sup>149</sup> *See* MASS. REGS. CODE tit. 940, § 16.06(1) (1997). Section 16.06(1) applies to acts committed or practices in force as of January 15, 1998. *See id.* § 16.09(1).

<sup>150</sup> *Id.* § 16.06(1). Proposed Massachusetts Senate Bill number 148 includes an amendment, punishable by a fine of not more than \$5,000 or imprisonment in a house of correction for not more than one year or both, for any licensed handgun retailer or wholesaler who fails to post at each purchase counter and give a written notice of the following warning:

**IT IS UNLAWFUL TO STORE OR KEEP A FIREARM . . . IN ANY PLACE ACCESSIBLE TO A PERSON UNDER 18 YEARS OF AGE UNLESS THAT WEAPON IS EQUIPPED WITH A TRIGGER LOCK OR IS STORED OR KEPT IN A SECURELY LOCKED CONTAINER.**

*See* S. 148 § 12, 181st Gen. Ct., 1997 Mass. Acts (introduced Jan. 1, 1997).

<sup>151</sup> Title 940, § 16.06(2). The seller must also explain the circumstances under which the safety devices will prevent the firing of the handgun. *See id.* Section 16.06(2) applies

absence of a load indicator, magazine safety disconnect or an internal safety such as an automatic firing pin safety.<sup>152</sup>

Additionally, a seller may not sell a handgun with a barrel length shorter than three inches unless the seller discloses to the consumer the accuracy limitations of the handgun.<sup>153</sup> Prior to the sale, the seller must disclose in writing to the purchaser the limits of the handgun's accuracy when test firing five consecutive rounds of the handgun's make and model at a target seven, fourteen, and twenty-one yards away.<sup>154</sup> This "group diameter test" measures the largest spread in inches between the centers of any of the holes made in the test target after firing the five consecutive rounds.<sup>155</sup> Obviously, the larger the spread, the lower the accuracy of the gun. Consumers of handguns should be informed by sellers if a handgun is unlikely to hit its target accurately because of its poor quality and manufacture — especially if the handgun is purchased for protection. *Caveat emptor* is too dangerous a policy for the sale of a handgun.

### C. Potential Additional Provisions

Although the regulations provide comprehensive consumer protection against inherently dangerous firearms, additional provisions might enhance the regulations' effectiveness. For example, purchasers of handguns might be required to attend firearm use and safety courses taught by qualified instructors. Firearm licenses might be made renewable and subject to a skills and knowledge examination analogous to a driver's license.<sup>156</sup> The additional administrative costs could be shifted to the consumer as an analogous use tax.

Moreover, a portion of the fine revenue generated from enforcement of the regulations should be designated to help defray the public financing of trauma victims' medical costs. Gun retailers might be required to carry liability insurance to cover the cost of negligent injuries caused by the firearms they sell.<sup>157</sup>

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to acts committed or practices in force as of January 15, 1998. *See id.* § 16.09(1).

<sup>152</sup> *See id.* § 16.06(2).

<sup>153</sup> *See id.* § 16.06(3). Section 16.06(3) applies to acts committed or practices in force as of June 30, 1998. *See id.* § 16.09(2).

<sup>154</sup> *See id.* § 16.06(3).

<sup>155</sup> *See id.* § 16.01.

<sup>156</sup> Currently, only Connecticut requires a combination of a skills exam, license, and trigger lock for lawful gun possession. *See Egan, supra* note 24. A voter initiative requiring trigger locks and passage of a safety and skills exam to obtain a license to possess a handgun was defeated recently in Washington state, aided in part by a \$2 million opposition campaign by the National Rifle Association. *See Peter Callaghan, Election '97 - Initiative Roundup: Voters Just Say No to Initiatives*, MORNING NEWS TRIB. (Wash.), Nov. 5, 1997, at A1, available in 1997 WL 3464189; *see also Egan, supra* note 24. Another key factor which may have contributed to the initiative's defeat was the lack of a handgun safe-storage or "child access prevention" requirement. *See Editorial, Reject I-676; Then Work on Safety Law*, SEATTLE POST-INTELLIGENCER, Oct. 26, 1997, at E2, available in 1997 WL 3211588.

<sup>157</sup> *See Richard Chacón, Menino Again Pushing Legislation to Hold Gun Manufactur-*

#### D. Other Justifications

An increasing number of negligence claims and damages suits are being directed at handgun manufacturers and retailers. "A number of civil cases are trying to hold gun makers responsible for deaths and accidents . . . in the same way that other lawsuits have tried to hold tobacco companies or automobile manufacturers liable."<sup>158</sup> The city of Philadelphia may sue gun manufacturers to recoup expenditures made on the health effects of handgun violence.<sup>159</sup> Such litigation directly attacks the bottom-line profits of these business entities and creates an unacceptable market risk which threatens their viability. Compliance with the regulations may establish an affirmative defense against such claims.

Some lawsuits claim that guns which work properly are nonetheless defective because they do not include safety mechanisms.<sup>160</sup> The Pennsylvania Superior Court affirmed a \$125,000 jury award to a plaintiff who sued a gun manufacturer under strict liability for the injury that resulted when his pistol accidentally discharged in his pocket.<sup>161</sup> The plaintiff alleged that the gun was unreasonably dangerous and was defective in its design because other similar models included safety devices which would have prevented the gun from discharging.<sup>162</sup> In 1993, a California Court of Appeals reversed a summary judgment and remanded for trial a wrongful death and negligence suit against a gun retailer by the family of a man shot with a gun purchased at the store.<sup>163</sup> The court held that the prohibition on firearms sales to persons under twenty-one years of age "may be invoked to hold a licensed firearms dealer liable for the negligent sale and entrustment of concealable firearms . . . ."<sup>164</sup> Two federal lawsuits filed in Massachusetts, however, have rejected defective design suits under state law where the guns operated as intended but lacked safety devices.<sup>165</sup>

Another federal lawsuit seeks to hold forty-seven handgun manufacturers liable under "market share liability" for their coordinated efforts in "negligently

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*ers Liable*, BOSTON GLOBE, Feb. 21, 1997, at B5. Boston Mayor Thomas Menino recently introduced legislation that would hold handgun manufacturers and dealers liable for damages resulting from shootings. The proposal would allow suits against gun makers, importers, distributors and retailers to recover medical costs and damages resulting from a gunshot wound, but would exempt handguns with safety devices. *See id.*

<sup>158</sup> Egan, *supra* note 24.

<sup>159</sup> *See* Aaron Zitner, *Groups Aim Lawsuits at Gun Industry*, BOSTON GLOBE, Oct. 9, 1997, at A7.

<sup>160</sup> *See id.*

<sup>161</sup> *See* DiFrancesco v. Excam, Inc., 642 A.2d 529 (Pa. Super. Ct. 1994).

<sup>162</sup> *See id.* at 532.

<sup>163</sup> *See* Hoosier v. Randa, 17 Cal. Rptr. 2d 518, 521 (Cal. Ct. App. 1993).

<sup>164</sup> *Id.* at 522.

<sup>165</sup> *See* Wasylow v. Glock, Inc., No. CIV.A.94-11073-DPW, 1996 WL 911209, at \*6-\*7 (D. Mass. Apr. 4, 1996) (holding that adequate safety warnings, intended functional purpose, and careless misuse preclude a defective design claim); Bolduc v. Colt's Mfg. Co., Inc., 968 F. Supp. 16, 18 (D. Mass. 1997) (holding deliberate misuse and substantial interference with functionality defeat a negligent design claim).

and knowingly perpetuating a distribution system that results in the proliferation of handguns among children."<sup>166</sup> The suit asserts that gun manufacturers are not taking adequate measures to ensure that their products do not flow "into the criminal black market and thus onto the streets."<sup>167</sup> One aim of the \$54 million damages suit " 'is to make the situation for gun manufacturers so expensive and intolerable that they either get out of the business or come begging for federal regulation.' "<sup>168</sup>

Private citizens also face lawsuits, fines, and prosecution for negligent storage of a firearm.<sup>169</sup> In these negligence actions, the two most important factors in establishing owner's liability are the storage of a loaded firearm and the ease of access by children.<sup>170</sup> Twelve states have laws that make gun owners criminally liable if someone is injured because of an unsupervised child gaining access to the gun.<sup>171</sup> Some courts have permitted recovery of negligent entrustment damages by families of children injured with guns which were stored carelessly.<sup>172</sup> A Georgia Court of Appeals held that leaving a loaded pistol in an unlocked drawer accessible to a twelve-year-old was actionable negligence.<sup>173</sup> Several state

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<sup>166</sup> Nicholas Varchaver, *Gunning For an Industry*, THE AMERICAN LAWYER, Oct. 1995, at 28; see *Hamilton v. Accu-Tek, Inc.*, No. CV-95-0049, 935 F. Supp. 1307 (E.D.N.Y. Aug. 12, 1996). Senior District Judge Jack B. Weinstein granted partial summary judgment to the defendant gun manufacturers, dismissing the plaintiffs' product liability and fraud claims, but denied the defendants summary judgment on the plaintiffs' collective liability negligence claim and ordered completion of discovery. See *Hamilton*, 935 F. Supp. at 1332-33.

<sup>167</sup> Mike Dorning, *Gun Victim's Mother Files Lawsuit that could Trouble Manufacturers*, LAS VEGAS REV. J., Apr. 3, 1996, at B14, available in 1996 WL 2338269. A former firearms industry top executive, recruited by the plaintiffs as a whistle-blower, "notes that some 600,000 guns per year are confiscated . . . but only about 300,000 per year are reported stolen. 'Where do you think the rest come from?' " *Id.*

<sup>168</sup> Jacob Sullum, *Weapons & Tactics*, REASON, Jan. 1997, at 19, available in <<http://www.reasonmag.com/9701/citings.html#WT>>.

<sup>169</sup> Proposed Massachusetts Senate Bill number 148 includes an amendment, punishable by a fine of \$1,000 or imprisonment in a house of correction for not more than two years or both, for any person who fails to store a firearm, where a minor may gain access, without securely locking the firearm in a container or without equipping the firearm with a trigger lock. See S. 148 § 11, 181st Gen. Ct., 1997 Mass. Acts (introduced Jan. 1, 1997). If as a result of this violation, the minor proximately causes serious bodily injury or death, the punishment is increased to a fine of not more than \$10,000 or imprisonment in state prison for not more than five years or both. See *id.*

<sup>170</sup> See Henigan, *supra* note 20, at 50-51. "However, storage of an unloaded gun under lock and key does not necessarily save the owner from liability. . . . Courts also have found that gun owners could be liable . . . even though they placed firearms in a relatively inaccessible place and instructed children to stay away from them." *Id.* at 51.

<sup>171</sup> See Tye, *supra* note 146.

<sup>172</sup> See Henigan, *supra* note 20, at 50. Henigan notes that § 308 of the Restatement (Second) of Torts, which covers negligent entrustment, clearly includes negligently leaving a gun accessible to a child. See *id.*

<sup>173</sup> See *Jacobs v. Tyson*, 407 S.E.2d 62, 63-64 (Ga. Ct. App. 1991).

courts have imposed liability on parents who left a gun within a child's access.<sup>174</sup> In Maryland, for example, a five-year-old boy took his mother's loaded .380-caliber handgun to his elementary school.<sup>175</sup> The subsequent report to the police led to two misdemeanor charges and a \$1,000 fine on each count against the boy's mother under the state's Access to Firearms by Minors law.<sup>176</sup>

The regulations establish consumer expectations of the minimum safety standards that manufacturers must meet to be in accord with the law. The regulations, therefore, provide the firearms industry with a shield against potentially ruinous litigation by establishing prospective and objective legal standards for "safe" handguns. "This is not an issue of controlling guns. It's merely an issue of creating safer guns."<sup>177</sup>

An array of civic leaders, public interest groups, state and national criminal justice experts, and public health officials endorse the regulations. For example, the Violence Policy Center hailed the regulations as a "precedent-setting effort to subject firearms . . . to the same consumer protection standards as other consumer products."<sup>178</sup> Additionally, the Massachusetts College of Emergency Physicians support the regulations as an injury prevention measure.<sup>179</sup> "It's a good public safety measure if it reduces the number of gunshot wounds in the ER."<sup>180</sup> Among others who endorsed the regulations are: former Reagan Presidential Press Secretary, James Brady; Dean of Northeastern University's College of Criminal Justice, James Alan Fox; Deputy Director of Harvard School of Public Health Injury Control Center, Dr. David Hemenway; and Director of John Hopkins Center for Gun Policy Research, Stephen Teret.<sup>181</sup>

### E. Potential Challenges

One challenge leveled by the firearms industry is that the use-limitation requirements of the regulations<sup>182</sup> are not technologically feasible. The vice president of Smith & Wesson, the world's largest gun manufacturer, headquartered in

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<sup>174</sup> See Miller, *supra* note 16, at 26.

<sup>175</sup> See *Parents in P-G County Now Told: Safeguard Guns or Pay the Price*, LAW ENFORCEMENT NEWS, Feb. 28, 1995, at 7.

<sup>176</sup> See *id.* The State Attorney noted that although " 'in Maryland you have a right to have a weapon in your home, . . . the law imposes on all citizens a duty to store the weapon in a safe manner where juveniles do not have access.' " *Id.*

<sup>177</sup> Meek, *supra* note 113, at B1.

<sup>178</sup> *Massachusetts Proposal to Regulate Handgun Sales First in the Nation to Treat Guns as Consumer Products*, PRESS RELEASE (Violence Policy Ctr., Wash., D.C.), Nov. 25, 1996.

<sup>179</sup> See Meek, *supra* note 113, at B1.

<sup>180</sup> *Id.*

<sup>181</sup> See JUNE 4 NEWS RELEASE, *supra* note 5. Even former Massachusetts Governor William F. Weld expressed support for the regulations, describing them as a " 'brilliant' use of . . . regulatory powers to control the proliferation of guns." Meg Vaillancourt, *Weld Supports AG's Strategy Against Pistols*, BOSTON GLOBE, Dec. 12, 1996, at B13.

<sup>182</sup> See discussion *supra* on section 16.05 of the regulations.

Springfield, Massachusetts, claimed that "the present technology . . . cannot satisfy the safety, reliability and dependability criteria necessary to firearms design."<sup>183</sup>

The technology necessary to meet the regulations' requirements, however, does exist in some form today. "Smith and Wesson's own corporate history notes that they made a gun that could not be operated by a young child in the 1880s, and they manufactured a half a million of these guns, up until the 1940s."<sup>184</sup> Additionally, a research project conducted by Sandia National Laboratories to determine the technological feasibility for preventing unauthorized firearm use found that, while there currently is not a "perfect smart gun technology," many existing technologies meet some "smart gun" requirements.<sup>185</sup> Still, the 140-year-old manufacturer and major city of Springfield employer threatened to leave Massachusetts unless the regulations were modified to its satisfaction.<sup>186</sup>

Critics may also argue that the regulations are paternalistic and inappropriately impose an economic burden affecting a local manufacturer's ability to compete in the national market. "[I]t follows from . . . principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States."<sup>187</sup> Any economic penalties imposed by a state, therefore, "must be supported by the State's interest in protecting its own consumers and its own economy."<sup>188</sup> The regulations do have a clear interest in protecting Massachusetts consumers and only affect handguns offered for sale within the state. The regulations will not affect handguns manufactured locally and sold outside of the state's jurisdiction.<sup>189</sup>

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<sup>183</sup> Meg Vaillancourt, *Gun Makers, Users Rip Proposed Rules*, BOSTON GLOBE, Nov. 27, 1996, at A3.

<sup>184</sup> *Id.* at A3.

<sup>185</sup> DOUGLAS R. WEISS, SANDIA NAT'L LABORATORIES, SMART GUN TECHNOLOGY PROJECT FINAL REPORT 1 (1995).

<sup>186</sup> See Grunwald, *supra* note 110, at B2. The regulations were modified from their initial proposal as part of a compromise to make it easier for gun manufacturers to comply. See Doris Sue Wong, *Harshbarger Set to Enforce Ban on Sale of Poorly Made Handguns*, BOSTON GLOBE, June 5, 1997, at B8. For example, the definition of "transfer" was modified to "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." MASS. REGS. CODE tit. 940, § 16.01 (1997). This modification essentially allows Smith & Wesson to continue to manufacture handguns not complying with the regulations so long as they are not sold within Massachusetts. Consequently, Smith & Wesson announced a one-million dollar deal with Master Lock in August, 1997 to provide keyed trigger locks on all its handguns. See *Smith & Wesson Guns to Have Safety Locks*, PATRIOT LEDGER (Mass.), Aug. 12, 1997, at 6, available in 1997 WL 8188282.

<sup>187</sup> *BMW, Inc. v. Gore*, 116 S. Ct. 1589, 1597 (1996).

<sup>188</sup> *Id.*

<sup>189</sup> A state may not impose sanctions to deter conduct that is lawful in other jurisdictions. See *id.* at 1598; see also *supra* text accompanying note 186.

Constitutional challenges based on the vagueness, overbreadth, or arbitrariness of the proposed regulations are also possible. For instance, the Gun Owners' Action League ("GOAL") called the regulations "ill-conceived and unnecessarily complicated" and claimed that the Attorney General "overstepped his limits" because he "should not be allowed to enact gun bans without legislative consent."<sup>190</sup> The regulations do not enact a *per se* gun ban.<sup>191</sup> Rather, they provide objective, scientific performance criteria and set a minimal standard for handgun product safety — actions well within the scope of consumer protection regulation. Claiming that such regulations enact a gun ban is akin to claiming that CPSC regulations requiring an electrical product certification by United Laboratories enact a hairdryer ban.

In order to survive a due process challenge, the regulations " 'must be rationally related to the promotion of public safety . . . [and] the means chosen to effectuate the legislative purpose must be reasonable.' "<sup>192</sup> However, because a regulation "is not drawn with 'mathematical precision,' or a better means of protection might be available or the regulation 'is not perfectly consistent with the desired result' " does not imply that the regulation is fatally flawed.<sup>193</sup> The question for judicial consideration is not whether the regulation is good policy "but whether the regulation bears a reasonable relation to the goal of consumer protection."<sup>194</sup> The regulations easily meet this standard. There is a clear and reasonable relation between the regulations' intent to prevent accidental shootings by unauthorized users and children and the promotion of public safety. Similarly, there is also a reasonable relation between consumer safety and the required disclosure of a handgun's inaccuracy and poor quality of manufacture.

Moreover, a vagueness challenge to the regulations on handguns made from inferior materials<sup>195</sup> would not succeed. " '[C]riminal conduct must be delineated with a reasonable degree of definiteness' . . . [and] will be treated as void for vagueness if it 'fails to give a person of ordinary intelligence fair notice that his contemplated action is forbidden.' "<sup>196</sup> The regulations give to handgun manufac-

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<sup>190</sup> See <<http://www.goal.org>> (Legislative Action Hotline entry posted June 10, 1997) (visited Sept. 5, 1997). GOAL is the official state firearms association of Massachusetts. Seemingly conceding the weakness of its argument, GOAL also instructed its members to "[k]eep your powder dry and your pencils sharp. It may be a long hot summer." *Id.*

<sup>191</sup> Compare, for example, proposed Massachusetts Senate Bill No. 148, prohibiting the sale and possession of thirteen specific semiautomatic weapons or their copies. See S. 148, 181st Gen. Ct., 1997 Mass. Acts (introduced Jan. 1, 1997).

<sup>192</sup> *Commonwealth v. B & W Transp., Inc.*, 448 N.E.2d 728, 732 (Mass. 1983) (quoting *Consolidated Cigar Corp. v. Department of Pub. Health*, 364 N.E.2d 1202, 1207 (Mass. 1977)).

<sup>193</sup> *Id.* (internal quotation omitted). "Courts do not substitute their judgment for that of the agency nor do they assess the effectiveness of alternative means." *Id.* at 733.

<sup>194</sup> *Grocery Mfrs. of Am., Inc. v. Department of Pub. Health*, 393 N.E.2d 881, 892 (Mass. 1979).

<sup>195</sup> See discussion *supra* on section 16.04 of the regulations.

<sup>196</sup> *B & W Transp.*, 448 N.E.2d at 733 (internal quotations omitted).

turers specific and precise notice of minimal quality and safety standards that must be met in the interest of consumer protection.

Efforts to ban the sale of "Saturday Night Specials," however, have been criticized by the gun lobby as economic class discrimination.<sup>197</sup> Despite the overwhelming proof of junk guns' unreliability and proclivity for use in crime,<sup>198</sup> critics claim that a sales ban will not prevent gun violence but only "deny poor people the means to defend themselves against criminals."<sup>199</sup> Consequently, some critics erroneously claim that melting-point laws<sup>200</sup> violate the Equal Protection clause.<sup>201</sup> Furthermore, unabashed "Saturday Night Special" manufacturers make the specious claim their customers are "just regular, everyday people who don't have the finances to buy higher-priced guns."<sup>202</sup>

#### F. *A Paradigm for a National Model?*

The argument in favor of national recognition and treatment of firearms as a consumer product is compelling. Indeed, even representatives of the gun-lobby implicitly consider guns a consumer product:

Safety with guns is no different from safety with other *products* . . . pesticides and cleaning solutions under the sink . . . plastic bags lying in a closet . . . matches on the table. These are just some of the *common household items* that could lead to the tragic injury or even death of a child.<sup>203</sup>

The need for uniformity among states' gun regulations provides a strong justification for the enactment of federal consumer protection regulation of handguns. "The differences in laws among states create a powerful motive for gun running."<sup>204</sup> Legislation, known as "one-gun-a-month" laws, limiting the quantity

<sup>197</sup> A National Rifle Association spokesman decried Senator Boxer's bill to ban nationally the manufacture of "Saturday Night Specials" as "a form of economic class warfare [and] repulsive." Jeffrey Miller, *Mission Viejo Couple Join Boxer in Seeking Ban on Cheap Pistols*, ORANGE COUNTY REG. (Cal.), Apr. 3, 1996, at A16, available in 1996 WL 7020237. Ironically, the National Rifle Association once questioned the need for Saturday Night Specials. "The February 1968 *American Rifleman* urged that the Johnson administration ban by executive action the import of 'these miserably-made, potentially defective arms that contribute so much to rising violence.'" SUGARMAN & RAND, *supra* note 3, at 20.

<sup>198</sup> See *supra* notes 110-127 and accompanying text.

<sup>199</sup> Miller, *supra* note 197.

<sup>200</sup> See *supra* note 99 and accompanying text.

<sup>201</sup> See Brian Doherty, *Gun Poor*, REASON, Mar. 1996, at 18, available in <<http://www.reasonmag.com/9603/trdbdgun.html>>. Strict scrutiny is inapplicable to statutes having a disparate impact on the poor because wealth is not a suspect classification. See, e.g., *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 457-58 (1988); *Harris v. McRae*, 448 U.S. 297, 322-23 (1980); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-18 (1973); *James v. Valtierra*, 402 U.S. 137, 142-43 (1971).

<sup>202</sup> See Freedman, *supra* note 8.

<sup>203</sup> LAPIERRE, *supra* note 3, at 80 (emphasis added).

<sup>204</sup> Anderson, *supra* note 109, at 23. Gun running typically involves so-called "straw

of gun purchases per individual per transaction is an effective method for preventing gun running. A study conducted by the Center to Prevent Handgun Violence found that, after passage of Virginia's one-gun-a-month law, there was a sixty-six percent decrease in the likelihood that a gun, recovered in the 'North-east Corridor' and traced by the ATF in a criminal investigation, was purchased initially in Virginia.<sup>205</sup> Maryland recently joined Virginia and South Carolina as the only states that currently limit handgun purchases to one per month.<sup>206</sup> At the first ever gun-control summit in Florida, a minority of legislators proposed measures to address the state's increasing handgun violence, including: one-gun-per-month, upgrading gun possession by a juvenile to a felony, and mandatory trigger locks.<sup>207</sup>

Without uniform federal regulations, however, the burden will remain on each state to protect its citizens from these dangerous consumer products. "The best efforts of any one state will never be enough . . . [O]nly by cooperating can states control illegal gun sales, and decrease gun violence."<sup>208</sup> For example, in 1993, Maryland, Delaware, Virginia, and New Jersey signed a joint anti-gun running pact aimed at stemming the flow of illegal firearms across state lines.<sup>209</sup>

Attorney General Harshbarger is urging other states and Congress to follow Massachusetts' lead "by taking sensible steps to improve handgun safety . . . throughout the nation."<sup>210</sup> A 1993 survey by the Harvard School of Public Health found broad national support for measures to limit gun violence and deep concern about the impact of gun violence on American children.<sup>211</sup> Seventy-

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purchases," a lucrative black-market scheme whereby a gun smuggler travels to a state with lax gun laws and, with the aid of a "straw man" who can document local residence, purchases several guns to transport and illegally sell in a state with strict gun laws. See *id.*

<sup>205</sup> See Douglas S. Weil et al., *Evaluating the Impact of Virginia's One-Gun-A-Month Law*, CENTER TO PREVENT HANDGUN VIOLENCE, reprinted in 141 CONG. REC. S11201-03, at S11209, available in 1995 WL 458462 (Cong.Rec.). The study concluded that "restricting handgun purchases to one per month per individual is an effective means of disrupting the illegal interstate transfer of firearms." *Id.*

<sup>206</sup> In December, 1995, Maryland Governor Parris N. Glendening proposed gun regulations which would require finger-print checks, firearm safety courses, and limit purchases to one per month. See *Tighter Control on Handgun Sales in Md.*, CORRECTIONS TODAY, Feb. 1996, at 24. Maryland's one-gun-a-month law was enacted in April, 1996. See MD. ANN. CODE art. 27, § 442A (1996).

<sup>207</sup> See Gail Epstein, *Gun Summit Takes Aim at Violence*, THE MIAMI HERALD, Aug. 16, 1997, at 1A. In addition, Metro-Dade County officials said that over 100 billboards with gun-safety messages directed at youths would be erected around Dade County beginning in October. See *id.*

<sup>208</sup> *Maryland, Delaware, Virginia, N.J. Sign Gun-Running Pact*, CRIME CONTROL DIG., Aug. 23, 1993, at 5.

<sup>209</sup> See *id.* at 5. Under the plan, state police units of each state participate in joint investigations to trace illegal firearms and prosecute illegal gun trafficking. See *id.* at 6.

<sup>210</sup> JUNE 4 NEWS RELEASE, *supra* note 5.

<sup>211</sup> See *Americans Increasingly Concerned about Children and Gun Violence*, JUV. JUST.

seven percent of those surveyed believed children's safety is endangered by the proliferation of guns, while only twenty-nine percent felt that most children are safe from violence in schools.<sup>212</sup>

### III. GUN REGULATION: A LOSING BATTLE TO POWER POLITICS?

Despite yearly opinion polls consistently showing that Americans favor tougher restrictions on gun availability,<sup>213</sup> "powerful lobbying has created an almost impenetrable barrier" to the enactment of gun legislation such as the Brady Act.<sup>214</sup> The Federal Election Commission estimated that the National Rifle Association ("NRA") spent over \$2.9 million on lobbying efforts between January 1991 and June 1993.<sup>215</sup> "The NRA's lobbying clout is considerable because of the gun lobby's free-spending ways. Common Cause, a public interest group, counted \$3.6 million from the NRA political action committee ("PAC") contributed to congressmen who voted to repeal the federal ban on assault weapons."<sup>216</sup> In the 1994 Congressional elections, the majority of this PAC money went to

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FIG., June 16, 1993, at 1.

<sup>212</sup> See *id.* at 1, 3. The study surveyed a nationwide cross-section of 1,250 adults, with a margin of error of plus or minus three percent. See *id.* at 5.

<sup>213</sup> For example, a recent poll conducted by an independent research firm found that more than half of all Americans favor some form of gun control and 90% support a waiting period for handgun purchases. See *Tougher Controls*, *supra* note 20, at 1. Another survey, conducted three months earlier, found increasing support for gun control measures even among gun owners who, "historically, have been among the most vociferous opponents of firearms restrictions." *Id.* This survey found that, among gun owners, 88% support the Brady Act, 60% support a total ban on possession of assault weapons, and 60% favor laws limiting gun purchases to one a month. See *id.* at 9. Not surprisingly, the National Rifle Association disagreed with the results of the polls. See *id.*

<sup>214</sup> Stewart, *supra* note 47, at 7. Indeed, even recent Supreme Court decisions have invalidated sensible gun legislation at the federal level. For example, in *United States v. Lopez*, 514 U.S. 549, 551 (1995), the Court struck down federal law 18 U.S.C. § 922(q)(1)(A) prohibiting possession of a firearm within 1000 feet of a school zone as outside the scope of Congress' Commerce Clause power. In the 1996-97 Term, the Court struck down 18 U.S.C. § 922(s)(2), the provision of the Brady Act that required chief law enforcement officers ("CLEOs") to conduct background checks on applicants for gun permits, as a violation of the Tenth Amendment. See *Printz v. United States*, 117 S. Ct. 2365, 2384 (1997). Fortunately, despite the Court's ruling, background checks have continued in most of the twenty-three states that lack their own background-check law. See *Checks Blocked 70,000 From Guns*, BOSTON GLOBE, Sept. 5, 1997, at A10 [hereinafter "*Checks Blocked*"].

<sup>215</sup> See EARL R. KRUSCHKE, GUN CONTROL: A REFERENCE HANDBOOK 184 (1995). During the same period, Handgun Control, Inc., a gun-control lobbying group established by Sarah Brady, wife of former White House Press Secretary James S. Brady — shot and severely injured during the 1981 assassination attempt on President Reagan — spent slightly over \$287,000 on lobbying. See *id.*

<sup>216</sup> David Nyhan, *Gun Lobbies Loaded for Bear in Maine Race*, BOSTON GLOBE, Oct. 13, 1996, at D4.

Republican candidates.<sup>217</sup>

The gun lobby's financial contributions have proven quite effective at influencing those politicians willing to accept these venal funds. For example, in July 1996, the Republican-led Congress stripped the CDC of \$2.6 million for handgun-injury studies, charging that "the centers' [sic] firearms tracking studies were being used to push for gun control."<sup>218</sup> More recently, Dr. David Satcher, head of the CDC since 1993 and President Clinton's nominee for Surgeon General, was questioned by Republicans at his confirmation hearings about allegations that the CDC had "lobbied for gun control and that researchers had launched an investigation of violence as a public health problem 'with the foregone conclusion that guns are bad.'"<sup>219</sup> In March 1996, the Republican-controlled House delivered on a promise to the NRA and voted to repeal the federal assault weapons ban — despite polls showing that two-thirds of the public supported the ban.<sup>220</sup> In 1995, Congress invited the NRA to participate in the Judiciary Committee hearings on Waco.<sup>221</sup> Incredibly, despite the NRA openly referring to federal law enforcement agents as "jackbooted government thugs who harass, intimidate, even *murder* law-abiding citizens," Republican House Speaker Newt Gingrich wrote to an NRA lobbyist that, so long as he remained Speaker, "no gun control legislation is going to move in committee or on the floor of this House."<sup>222</sup> "[T]he NRA has a gun at the head of this Congress . . . . The gun reaches into the pocketbook . . . . It is the power of the purse used to pervert and to twist the intentions of the American people . . . ."<sup>223</sup>

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<sup>217</sup> See Chris Black, *House Votes to Repeal Weapons Ban, Clinton Vows Veto*, BOSTON GLOBE, Mar. 23, 1996, at 1.

<sup>218</sup> Doris Sue Wong, *In Dorchester, Kerry Tackles Handgun Issue, Weld Ad*, BOSTON GLOBE, Aug. 14, 1996, at B4. Sen. Kerry noted that "the NRA . . . [doesn't] want the information out there, they don't want people to know the levels of violence, they don't want people to know that things might be done." *Id.* Congress reappropriated the majority of the \$2.6 million firearms injury research budget to studies on traumatic brain injury, leaving only approximately \$500,000 for gun-related research. See Kong, *supra* note 47. As a result, WRISS, which had been funded by the CDC since its inception, was forced to seek state funding to remain in operation. See Kong, *supra* note 30.

<sup>219</sup> *Surgeon General Nominee Testifies*, BOSTON GLOBE, Oct. 9, 1997, at C14. Dr. Satcher stated in response that the CDC had never lobbied for gun control or premised an anti-gun bias, but simply showed the relationship between firearms and injury. See *id.*

<sup>220</sup> See Black, *supra* note 217, at 1.

<sup>221</sup> "Hearings where the actions of law enforcement agents were called into question . . . [h]earings where laws combating the dangerous proliferation of guns are a central issue—the same laws that the NRA wants to wipe off the books." 141 CONG. REC. H7562-03 (July 25, 1995) (statement of Rep. Gutierrez). "I thought that the gun lobby had too large a role to play in the backrooms of Congress. Now, it's obvious that they've moved from the backrooms to the committee rooms." *Id.*

<sup>222</sup> Editorial, *Police Take Notice*, BOSTON GLOBE, Sept. 17, 1996, at A14 (emphasis added).

<sup>223</sup> 141 CONG. REC. S4324-02, S4325 (Mar. 22, 1995) (statement of Sen. Lautenberg).

Despite the disturbing statistics of gun-related deaths and injuries among children, the NRA claims that education, and not regulation, is the only solution for preventing these tragedies.<sup>224</sup> "Education and responsible parenting are the keys to prevent[ion] . . . not emotional rhetoric designed to drive a hidden agenda."<sup>225</sup> The gun-lobby pompously charges that gun-control advocates "continue to sensationalize the trauma suffered by families involved in an accident in order to push their *agenda* of removing firearms from the home."<sup>226</sup>

While recognizing that "careless adults" leaving unsecured firearms where children can easily obtain access is an entirely separate issue from illegal gun possession and use by gang members, the gun-lobby still favors "gun safety awareness" over gun safety devices.<sup>227</sup> Gun supporters criticize laws requiring trigger locks or safety training and licensing as blanket mandates that will not be effective in every case.<sup>228</sup> Instead, the NRA touts its "Eddie Eagle Gun Safety Program"<sup>229</sup> as necessary gun safety education for preschool through sixth grade children to effectively prevent accidental shootings.<sup>230</sup> It claims that "[e]veryone must surely recognize that a significant percentage of firearms accidents could be prevented if children were taught to eliminate situations in which accidents occur . . . ."<sup>231</sup> It is difficult to imagine how such "education" by itself could effectively forestall the curiosity of a child confronting an 'attractive' handgun. "It is sometimes irresistible for children . . . 'in the excitement of winning a new friend, to pull out mom's or dad's handgun. . . . [F]irearms do represent a kind of power . . . that is often left out of the equation.'" <sup>232</sup> CDC studies have shown that specific behavioral characteristics associated with adolescence, such as curiosity about firearms, place adolescents at particularly high risk for fire-arm-related injuries.<sup>233</sup>

Additionally, many states have recently eased their laws for carrying concealed weapon ("CCW") permits. "[T]he number of states with liberalized handgun policies shot up to [thirty-one], with an additional [twelve] states granting licenses at the discretion of law enforcement authorities . . . ."<sup>234</sup> These laws

<sup>224</sup> See generally LAPIERRE, *supra* note 3, at 74-82. "Youngsters who grow up around firearms and are taught safety and respect for firearms are not the problem. It's the 'TV-educated' juveniles who emulate the gratuitous violence in the media [and certainly not the guns themselves] that are causing the problem." *Id.* at 77.

<sup>225</sup> *Id.* at 80.

<sup>226</sup> *Id.* (emphasis added).

<sup>227</sup> See generally *id.* at 78-80.

<sup>228</sup> See Egan, *supra* note 24.

<sup>229</sup> According to the NRA, "[t]he program is simple, straightforward, and effective. Utilizing the 'No. Go. Tell.' concept, the program teaches young children in K-6 that if they see a gun, they must STOP! DON'T TOUCH! LEAVE THE AREA! TELL AN ADULT!" LAPIERRE, *supra* note 3, at 79.

<sup>230</sup> See *id.* at 78-79.

<sup>231</sup> *Id.* at 81.

<sup>232</sup> Matchan, *supra* note 18, at 16.

<sup>233</sup> See *Unintentional Firearm-Related Fatalities*, *supra* note 141, at 444.

<sup>234</sup> Richard Dahl, *Packing Heat*, A.B.A. J., Aug. 1996, at 72.

are leading many employers to draft no-gun policies at the work place in an attempt to shield themselves from potential liability.<sup>235</sup> Municipalities are also responding in kind by passing so-called "check your gun at the door" laws that ban possession of firearms within public buildings.<sup>236</sup> Even more troubling is a study finding that gun deaths rose significantly in four of five urban areas following relaxation of CCW permit requirements.<sup>237</sup> The study refutes the gun-lobby's claim that easing CCW laws would lower the overall crime and homicide rate.<sup>238</sup>

Any legislative restrictions on carrying firearms are characterized by the gun-lobby as distrust, ideology, or elitism on the part of government.<sup>239</sup> Expounding a kill-or-be-killed mentality, the gun-lobby claims that "the most effective deterrent to criminal attack is the criminal's fear that the prospective victim is armed . . . ."<sup>240</sup> The gun-lobby's purported solution to violent crime prevention is an armed populace, "the basic and fundamental right of every citizen to self-defense."<sup>241</sup> They expound gun *proliferation* — not *regulation*. Such zealot logic is premised on the fallacy that if everyone were armed — no one would ever be attacked.

Still, despite such exorbitant expenditures, political influence, cynicism, and logical fallacies from the gun-lobby, a combination of sensible legislation, violence prevention programs and community policing is making a difference. "People are coming to the conclusion that . . . the gun lobby can no longer dictate the terms of our lives."<sup>242</sup> The Brady Act, for example, has been credited with the prevention of 173,000 illegal handgun sales since its enactment in 1994 through 1996.<sup>243</sup> According to the Boston Police Department, the dramatic decrease in gun-related murders in 1996 approached a ten-year low.<sup>244</sup> Additionally,

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<sup>235</sup> See *id.* at 73.

<sup>236</sup> See *id.* at 73-74.

<sup>237</sup> See *Study Links Rise in Gun Deaths to Eased Controls on Concealed Weapons*, LAW ENFORCEMENT NEWS, Apr. 15, 1995, at 7.

<sup>238</sup> See generally LAPIERRE, *supra* note 3, at 29-39.

<sup>239</sup> See *id.* at 31-33. For example, an NRA spokesperson claims that gun control advocacy groups only pretend to be interested in public safety as a guise to their ultimate objective of banning all handguns, even if they have to do it illegally. See Gorov, *supra* note 108.

<sup>240</sup> LAPIERRE, *supra* note 3, at 33.

<sup>241</sup> *Id.* The statistics belie the NRA's position. Nationally, in 1995, the FBI reported 11,198 murders by handgun compared with 179 justifiable homicides with a handgun. See Egan, *supra* note 24.

<sup>242</sup> Gorov, *supra* note 108.

<sup>243</sup> See *Checks Blocked*, *supra* note 214. In 1996 alone, background checks of the 2.6 million applicants seeking to buy a firearm prevented the sales of 70,000 guns — 47,000 (67.8%) of which involved applicants convicted of or charged with a felony. See *id.*

<sup>244</sup> See Beverly Ford, *Hub Cops Winning the War on Guns*, BOSTON HERALD, Nov. 12, 1996, at 1. Authorities attribute the decrease to an innovative crime-fighting program — which recently garnered national recognition from U.S. Attorney General Janet Reno — that allows community leaders to work in conjunction with law enforcement agencies to

Boston's overall crime rate in 1997 dropped to its lowest level since 1968.<sup>245</sup> Law enforcement specialists credit the decrease to a "multi-faceted attack on juvenile crime that stresses prevention, intervention and tough, coordinated law enforcement."<sup>246</sup> Intensive federal, state, and local law enforcement campaigns against illegal guns are among the programs successful elements.<sup>247</sup>

Other measures, such as violence prevention curriculums in grade schools and public health education campaigns against gun violence, have also had a positive impact. Violence prevention programs aided by WRISS data helped reduce gunshot wounds by forty-one percent state wide between 1994 and 1996.<sup>248</sup> Successful local solutions include "expanded opportunities for youths in high-crime areas . . . and recreation opportunities in the after-school, predinner hours when half the juvenile crimes are committed."<sup>249</sup> Operation Cease Fire, a Boston juvenile violence prevention program, won a national award and \$100,000 in prize money for dramatically curbing teen violence.<sup>250</sup> In a 1996 poll conducted by Northeastern University's Center for Criminal Justice Research, police chiefs identified improved schools and after-school programs as the best way to reduce youth crime.<sup>251</sup> A 1996 federal report on youth gun-violence prevention determined that "early intervention[,] a strong focus on law enforcement and a comprehensive system of graduated sanctions are crucial . . . ."<sup>252</sup>

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address and target local problems. *See id.*

<sup>245</sup> See Alexis Chiu, *Crime Rate at 29-year Low in City*, BOSTON GLOBE, Aug. 28, 1997, at A1.

<sup>246</sup> Ric Kahn, *Youth Homicide Rate Plummets, As City Touts Record, Some Residents Say Efforts have Paid Off*, BOSTON GLOBE, Nov. 2, 1996, at B1.

<sup>247</sup> *See id.* Among these programs is the Boston Gun Project ("BGP"), developed in coordination with federal and local authorities, which devised a comprehensive strategy for dealing with gangs and the illegal gun market. *See* MASSINC, CRIMINAL JUSTICE IN MASSACHUSETTS: PUTTING CRIME CONTROL FIRST 74-75 (1996). Through gun tracing research, the BGP found that "1[%] of the 160,000 federally licensed gun dealers provide 51[%] of the firearms that are used in juvenile crimes." *Id.* at 76. President Clinton recently announced a pilot federal program for seventeen cities, based on the BGP, to track illegal gun sales to juveniles with the aid of a federal computer system run by the ATF to prosecute gun traffickers. *See id.* at 75; *see also* *Federal Program to Track Guns Sold to Youths*, BOSTON GLOBE, July 8, 1996, at 9.

<sup>248</sup> *See* Kong, *supra* note 30.

<sup>249</sup> David S. Broder, *Confronting Juvenile Crime, Local Programs like Boston's have Proved Their Worth*, BOSTON GLOBE, Feb. 26, 1997, at A12.

<sup>250</sup> *See* Chris Black, *Boston Honored for Success in Cutting Teenage Gun Use*, BOSTON GLOBE, Oct. 9, 1997, at A6. The program features a collaborative effort among community leaders, police and city officials that emphasizes a zero-tolerance policy to any juvenile violence, " 'creat[ing] an atmosphere in the city where kids don't have to carry guns.' " *Id.*

<sup>251</sup> *See* Derrick Z. Jackson, *No Wonder We're Afraid of Youths*, BOSTON GLOBE (Op-Ed), Sept. 10, 1997, at A15.

<sup>252</sup> OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, REDUCING YOUTH GUN VIOLENCE: AN OVERVIEW OF PROGRAMS AND INITIATIVES 1 (1996). Aspects of preventive solutions include youth services, education, drug treatment and the

## CONCLUSION

The consumer protection handgun sale regulations are not a panacea and will not end handgun crime or violence in Massachusetts. They are, however, a common sense approach to addressing the absurd proliferation of available handguns as well as the violence and socio-economic havoc they perpetrate.

“Legitimate handgun owners who believe in gun safety should have no quarrel with . . . [these] basic consumer protection [regulations].”<sup>253</sup> The regulations bring handguns within the purview of consumer protection by appropriately treating handguns as consumer products which can and do cause “unjustified consumer injury.” The regulations establish objective minimal quality product standards and performance criteria to ensure the safety and reliability of handguns for the consumer. As the recent tobacco litigation has shown, it is time to stop catering to the narrow interests of zealous industry lobbyists and start protecting the citizenry from harmful, unfair and deceptive practices. It is indeed time we all stood up and said, “Enough!”.

*Benjamin Bejar*

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fostering of safe community environments. *See id.* at 7-8.

<sup>253</sup> *Letter from the Attorney General, supra* note 95.

