

HB 1355

2013

1 A bill to be entitled

2 An act relating to the purchase of firearms by
3 mentally ill persons; amending and reenacting s.
4 790.065, F.S.; providing conditions under which a
5 person who has been voluntarily admitted to a mental
6 institution for treatment and has undergone an
7 involuntary examination under the Baker Act may be
8 prohibited by federal law from purchasing a firearm;
9 providing requirements for the examining physician;
10 providing for judicial review of certain findings;
11 providing specified notice requirements; providing
12 form and contents of notice; providing requirements
13 with respect to the filing of specified records with
14 the court and presentation of such records to a judge
15 or magistrate; providing lawful authority of a judge
16 or magistrate to review specified records and submit
17 such records to the Department of Law Enforcement;
18 providing a timeframe for submission of records to the
19 department upon approval of a record by a judge or
20 magistrate; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraph (a) of subsection (2) of section
25 790.065, Florida Statutes, is amended to read:

26 790.065 Sale and delivery of firearms.—

27 (2) Upon receipt of a request for a criminal history
28 record check, the Department of Law Enforcement shall, during

HB 1355

2013

29 | the licensee's call or by return call, forthwith:

30 | (a) Review any records available to determine if the
31 | potential buyer or transferee:

32 | 1. Has been convicted of a felony and is prohibited from
33 | receipt or possession of a firearm pursuant to s. 790.23;

34 | 2. Has been convicted of a misdemeanor crime of domestic
35 | violence, and therefore is prohibited from purchasing a firearm;

36 | 3. Has had adjudication of guilt withheld or imposition of
37 | sentence suspended on any felony or misdemeanor crime of
38 | domestic violence unless 3 years have elapsed since probation or
39 | any other conditions set by the court have been fulfilled or
40 | expunction has occurred; or

41 | 4. Has been adjudicated mentally defective or has been
42 | committed to a mental institution by a court and as a result is
43 | prohibited by federal law from purchasing a firearm.

44 | a. As used in this subparagraph, "adjudicated mentally
45 | defective" means a determination by a court that a person, as a
46 | result of marked subnormal intelligence, or mental illness,
47 | incompetency, condition, or disease, is a danger to himself or
48 | herself or to others or lacks the mental capacity to contract or
49 | manage his or her own affairs. The phrase includes a judicial
50 | finding of incapacity under s. 744.331(6)(a), an acquittal by
51 | reason of insanity of a person charged with a criminal offense,
52 | and a judicial finding that a criminal defendant is not
53 | competent to stand trial.

54 | b. As used in this subparagraph, "committed to a mental
55 | institution" means involuntary commitment, commitment for mental
56 | defectiveness or mental illness, and commitment for substance

HB 1355

2013

57 | abuse. The phrase includes involuntary inpatient placement as
58 | defined in s. 394.467, involuntary outpatient placement as
59 | defined in s. 394.4655, involuntary assessment and stabilization
60 | under s. 397.6818, and involuntary substance abuse treatment
61 | under s. 397.6957, but does not include a person in a mental
62 | institution for observation or discharged from a mental
63 | institution based upon the initial review by the physician or a
64 | voluntary admission to a mental institution, unless the
65 | voluntary admission was for outpatient or inpatient treatment of
66 | a person who had an involuntary examination under s. 394.463,
67 | and:

68 | (I) The examining physician found that the person is an
69 | imminent danger to himself or herself or others;

70 | (II) The examining physician certified that if the person
71 | did not agree to voluntary treatment, a petition for involuntary
72 | outpatient or inpatient treatment would have been filed under s.
73 | 394.463(2)(i)4.;

74 | (III) Before agreeing to voluntary treatment, the person
75 | received written notice of that finding and certification, and
76 | written notice that as a result of such finding, he or she would
77 | be prohibited from purchasing a firearm, and would not be
78 | eligible to apply for or retain a concealed weapon or firearms
79 | license under s. 790.06 and the person acknowledged such notice
80 | in writing, in substantially the following form:

81 |
82 | "I understand that the doctor who examined me believes
83 | I am a danger to myself or to others. I understand
84 | that if I do not agree to voluntary treatment, the

85 doctor will file a petition in court to require me to
86 receive involuntary treatment. I understand that if
87 that petition is filed, I have the right to contest
88 it. I understand that by agreeing to voluntary
89 treatment in this situation, I will be prohibited from
90 buying firearms and from applying for or retaining a
91 concealed weapons or firearms license until I apply
92 for and receive relief from that restriction under
93 Florida law."

94
95 (IV) Within 24 hours after the person's agreement to
96 voluntary admission, a record of the finding, certification,
97 notice, and written acknowledgement is filed with the clerk of
98 the court for the county in which the involuntary examination
99 under s. 394.463 occurred and the clerk presented the records to
100 a judge or magistrate within 24 hours after receipt of the
101 records.

102 (V) A judge or a magistrate has the lawful authority to
103 review the record classifying the person as an imminent danger
104 to himself or herself or others, and to approve the record for
105 submittal to the department. If a judge or magistrate approves
106 the submittal of the records to the department, it must be
107 submitted to the department within 24 hours.

108 c. In order to check for these conditions, the department
109 shall compile and maintain an automated database of persons who
110 are prohibited from purchasing a firearm based on court records
111 of adjudications of mental defectiveness or commitments to
112 mental institutions. Clerks of court shall submit these records

HB 1355

2013

113 | to the department within 1 month after the rendition of the
114 | adjudication or commitment. Reports shall be submitted in an
115 | automated format. The reports must, at a minimum, include the
116 | name, along with any known alias or former name, the sex, and
117 | the date of birth of the subject.

118 | d. A person who has been adjudicated mentally defective or
119 | committed to a mental institution, as those terms are defined in
120 | this paragraph, may petition the circuit court that made the
121 | adjudication or commitment for relief from the firearm
122 | disabilities imposed by such adjudication or commitment. A copy
123 | of the petition shall be served on the state attorney for the
124 | county in which the person was adjudicated or committed. The
125 | state attorney may object to and present evidence relevant to
126 | the relief sought by the petition. The hearing on the petition
127 | may be open or closed as the petitioner may choose. The
128 | petitioner may present evidence and subpoena witnesses to appear
129 | at the hearing on the petition. The petitioner may confront and
130 | cross-examine witnesses called by the state attorney. A record
131 | of the hearing shall be made by a certified court reporter or by
132 | court-approved electronic means. The court shall make written
133 | findings of fact and conclusions of law on the issues before it
134 | and issue a final order. The court shall grant the relief
135 | requested in the petition if the court finds, based on the
136 | evidence presented with respect to the petitioner's reputation,
137 | the petitioner's mental health record and, if applicable,
138 | criminal history record, the circumstances surrounding the
139 | firearm disability, and any other evidence in the record, that
140 | the petitioner will not be likely to act in a manner that is

HB 1355

2013

141 dangerous to public safety and that granting the relief would
142 not be contrary to the public interest. If the final order
143 denies relief, the petitioner may not petition again for relief
144 from firearm disabilities until 1 year after the date of the
145 final order. The petitioner may seek judicial review of a final
146 order denying relief in the district court of appeal having
147 jurisdiction over the court that issued the order. The review
148 shall be conducted de novo. Relief from a firearm disability
149 granted under this sub-subparagraph has no effect on the loss of
150 civil rights, including firearm rights, for any reason other
151 than the particular adjudication of mental defectiveness or
152 commitment to a mental institution from which relief is granted.

153 e. Upon receipt of proper notice of relief from firearm
154 disabilities granted under sub-subparagraph d., the department
155 shall delete any mental health record of the person granted
156 relief from the automated database of persons who are prohibited
157 from purchasing a firearm based on court records of
158 adjudications of mental defectiveness or commitments to mental
159 institutions.

160 f. The department is authorized to disclose the collected
161 data to agencies of the Federal Government and other states for
162 use exclusively in determining the lawfulness of a firearm sale
163 or transfer. The department is also authorized to disclose any
164 collected data to the Department of Agriculture and Consumer
165 Services for purposes of determining eligibility for issuance of
166 a concealed weapons or concealed firearms license and for
167 determining whether a basis exists for revoking or suspending a
168 previously issued license pursuant to s. 790.06(10). When a

HB 1355

2013

169 | potential buyer or transferee appeals a nonapproval based on
170 | these records, the clerks of court and mental institutions
171 | shall, upon request by the department, provide information to
172 | help determine whether the potential buyer or transferee is the
173 | same person as the subject of the record. Photographs and any
174 | other data that could confirm or negate identity must be made
175 | available to the department for such purposes, notwithstanding
176 | any other provision of state law to the contrary. Any such
177 | information that is made confidential or exempt from disclosure
178 | by law shall retain such confidential or exempt status when
179 | transferred to the department.

180 | Section 2. This act shall take effect July 1, 2013.