

By Senators Kurth and Grant

15-118A-98

See HB

1 A bill to be entitled
2 An act relating to weapons and firearms;
3 creating s. 790.233, F.S.; prohibiting a person
4 who has been issued a currently effective final
5 injunction against committing acts of domestic
6 violence from possessing any firearm or
7 ammunition; providing penalties; providing an
8 exception for law enforcement officers;
9 amending s. 741.30, F.S.; requiring that a
10 final injunction for protection against
11 domestic violence indicate that possessing any
12 firearm or ammunition is prohibited; amending
13 s. 741.31, F.S.; providing that it is a first
14 degree misdemeanor to violate a final
15 injunction by possessing a firearm or
16 ammunition; providing an exception for law
17 enforcement officers; amending s. 901.15, F.S.;
18 providing for arrest without warrant under
19 certain circumstances when there is probable
20 cause to believe that the person has committed
21 a crime in violation of specified provisions
22 prohibiting possession of firearm or ammunition
23 by person restrained by final injunction from
24 committing acts of domestic violence; amending
25 s. 790.06, F.S., relating to issuance by the
26 Department of State of license to carry a
27 concealed weapon or firearm; revising
28 qualifications for such license to include
29 restrictions that the applicant has not had
30 adjudication of guilt withheld or imposition of
31 sentence suspended for committing a misdemeanor

1 crime of domestic violence within a specified
2 period and is not enjoined from committing acts
3 of domestic violence or repeat violence;
4 requiring denial or revocation of such license
5 under specified circumstances; requiring that
6 the department suspend such license, or the
7 processing of the license application, if the
8 licensee or applicant is issued an injunction
9 against committing acts of domestic violence or
10 acts of repeat violence; amending s. 790.065,
11 F.S.; removing obsolete provisions; requiring
12 that the Department of Law Enforcement
13 determine if a potential buyer or transferee of
14 a firearm has been convicted of a misdemeanor
15 crime of domestic violence or had adjudication
16 of guilt withheld or imposition of sentence
17 suspended for committing a misdemeanor crime of
18 domestic violence; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 790.233, Florida Statutes, is
23 created to read:

24 790.233 Possession of firearm or ammunition prohibited
25 when person is subject to an injunction against committing
26 acts of domestic violence; penalties.--

27 (1) A person may not have in his or her care, custody,
28 possession, or control any firearm or ammunition if the person
29 has been issued a final injunction that is currently in force
30 and effect, restraining that person from committing acts of
31 domestic violence, and that has been issued under s. 741.30.

1 (2) A person who violates subsection (1) commits a
2 misdemeanor of the first degree, punishable as provided in s.
3 775.082 or s. 775.083.

4 (3) It is the intent of the Legislature that the
5 disabilities regarding possession of firearms and ammunition
6 are consistent with federal law. Accordingly, this section
7 shall not apply to state or local law enforcement officers who
8 receive or possess a firearm or ammunition for use in
9 performing official duties on behalf of that state or local
10 law enforcement agency, unless prohibited by that law
11 enforcement officer's agency.

12 Section 2. Paragraph (f) is added to subsection (6) of
13 section 741.30, Florida Statutes, to read:

14 741.30 Domestic violence; injunction; powers and
15 duties of court and clerk; petition; notice and hearing;
16 temporary injunction; issuance of injunction; statewide
17 verification system; enforcement.--

18 (6)

19 (f) A final judgment on injunction for protection
20 against domestic violence entered pursuant to this section
21 must, on its face, indicate that it is a violation of s.
22 790.233, and a first degree misdemeanor, for the respondent to
23 have in his or her care, custody, possession, or control any
24 firearm or ammunition.

25 Section 3. Subsection (4) of section 741.31, Florida
26 Statutes, is amended to read:

27 741.31 Violation of an injunction for protection
28 against domestic violence.--

29 (4)(a) A person who willfully violates an injunction
30 for protection against domestic violence issued pursuant to s.
31

1 741.30, or a foreign protection order accorded full faith and
2 credit pursuant to s. 741.315, by:

3 1.(a) Refusing to vacate the dwelling that the parties
4 share;

5 2.(b) Going to the petitioner's residence, school,
6 place of employment, or a specified place frequented regularly
7 by the petitioner and any named family or household member;

8 3.(c) Committing an act of domestic violence against
9 the petitioner;

10 4.(d) Committing any other violation of the injunction
11 through an intentional unlawful threat, word, or act to do
12 violence to the petitioner; or

13 5.(e) Telephoning, contacting, or otherwise
14 communicating with the petitioner directly or indirectly,
15 unless the injunction specifically allows indirect contact
16 through a third party

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18 ~~commits is guilty of~~ a misdemeanor of the first degree,
19 punishable as provided in s. 775.082 or s. 775.083.

20 (b)1. It is a violation of s. 790.233, and a
21 misdemeanor of the first degree, punishable as provided in s.
22 775.082 or s. 775.083, for a person to violate a final
23 injunction for protection against domestic violence by having
24 in his or her care, custody, possession, or control any
25 firearm or ammunition.

26 2. It is the intent of the Legislature that the
27 disabilities regarding possession of firearms and ammunition
28 are consistent with federal law. Accordingly, this paragraph
29 shall not apply to state or local law enforcement officers who
30 receive or possess a firearm or ammunition for use in
31 performing official duties on behalf of that state or local

1 law enforcement agency, unless prohibited by that law
2 enforcement officer's agency.

3 Section 4. Subsection (6) of section 901.15, Florida
4 Statutes, is amended to read:

5 901.15 When arrest by officer without warrant is
6 lawful.--A law enforcement officer may arrest a person without
7 a warrant when:

8 (6) There is probable cause to believe that the person
9 has committed a criminal act according to s. 790.233 or
10 according to s. 741.31 or s. 784.047 which violates an
11 injunction for protection entered pursuant to s. 741.30 or s.
12 784.046, or a foreign protection order accorded full faith and
13 credit pursuant to s. 741.315, over the objection of the
14 petitioner, if necessary.

15 Section 5. Subsections (2) and (3) of section 790.06,
16 Florida Statutes, are amended to read:

17 790.06 License to carry concealed weapon or firearm.--

18 (2) The Department of State shall issue a license if
19 the applicant:

20 (a) Is a resident of the United States or is a
21 consular security official of a foreign government that
22 maintains diplomatic relations and treaties of commerce,
23 friendship, and navigation with the United States and is
24 certified as such by the foreign government and by the
25 appropriate embassy in this country;

26 (b) Is 21 years of age or older;

27 (c) Does not suffer from a physical infirmity which
28 prevents the safe handling of a weapon or firearm;

29 (d) Is not ineligible to possess a firearm pursuant to
30 s. 790.23 by virtue of having been convicted of a felony;

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1 (e) Has not been committed for the abuse of a
2 controlled substance or been found guilty of a crime under the
3 provisions of chapter 893 or similar laws of any other state
4 relating to controlled substances within a 3-year period
5 immediately preceding the date on which the application is
6 submitted;

7 (f) Does not chronically and habitually use alcoholic
8 beverages or other substances to the extent that his or her
9 normal faculties are impaired. It shall be presumed that an
10 applicant chronically and habitually uses alcoholic beverages
11 or other substances to the extent that his or her normal
12 faculties are impaired if the applicant has been committed
13 under chapter 397 or under the provisions of former chapter
14 396 or has been convicted under s. 790.151 or has been deemed
15 a habitual offender under s. 856.011(3), or has had two or
16 more convictions under s. 316.193 or similar laws of any other
17 state, within the 3-year period immediately preceding the date
18 on which the application is submitted;

19 (g) Desires a legal means to carry a concealed weapon
20 or firearm for lawful self-defense;

21 (h) Demonstrates competence with a firearm by any one
22 of the following:

23 1. Completion of any hunter education or hunter safety
24 course approved by the Game and Fresh Water Fish Commission or
25 a similar agency of another state;

26 2. Completion of any National Rifle Association
27 firearms safety or training course;

28 3. Completion of any firearms safety or training
29 course or class available to the general public offered by a
30 law enforcement, junior college, college, or private or public
31 institution or organization or firearms training school,

1 utilizing instructors certified by the National Rifle
2 Association, Criminal Justice Standards and Training
3 Commission, or the Department of State;

4 4. Completion of any law enforcement firearms safety
5 or training course or class offered for security guards,
6 investigators, special deputies, or any division or
7 subdivision of law enforcement or security enforcement;

8 5. Presents evidence of equivalent experience with a
9 firearm through participation in organized shooting
10 competition or military service;

11 6. Is licensed or has been licensed to carry a firearm
12 in this state or a county or municipality of this state,
13 unless such license has been revoked for cause; or

14 7. Completion of any firearms training or safety
15 course or class conducted by a state-certified or National
16 Rifle Association certified firearms instructor;

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18 A photocopy of a certificate of completion of any of the
19 courses or classes; or an affidavit from the instructor,
20 school, club, organization, or group that conducted or taught
21 said course or class attesting to the completion of the course
22 or class by the applicant; or a copy of any document which
23 shows completion of the course or class or evidences
24 participation in firearms competition shall constitute
25 evidence of qualification under this paragraph;

26 (i) Has not been adjudicated an incapacitated person
27 under s. 744.331, or similar laws of any other state, unless 5
28 years have elapsed since the applicant's restoration to
29 capacity by court order;

30 (j) Has not been committed to a mental institution
31 under chapter 394, or similar laws of any other state, unless

1 the applicant produces a certificate from a licensed
2 psychiatrist that he or she has not suffered from disability
3 for at least 5 years prior to the date of submission of the
4 application; ~~and~~

5 (k) Has not had adjudication of guilt withheld or
6 imposition of sentence suspended on any felony or misdemeanor
7 crime of domestic violence unless 3 years have elapsed since
8 probation or any other conditions set by the court have been
9 fulfilled, or the record has been sealed or expunged; ~~and-~~

10 (l) Has not been issued an injunction that is
11 currently in force and effect and that restrains the applicant
12 from committing acts of domestic violence or acts of repeat
13 violence.

14 (3) The Department of State shall ~~may~~ deny a license
15 if the applicant has been found guilty of, had adjudication of
16 guilt withheld for, or had imposition of sentence suspended
17 for one or more crimes of violence constituting a misdemeanor,
18 unless 3 years have elapsed since probation or any other
19 conditions set by the court have been fulfilled, ~~or~~ the record
20 has been sealed or expunged. The Department of State shall, ~~or~~
21 ~~may~~ revoke a license if the licensee has been found guilty of,
22 had adjudication of guilt withheld for, or had imposition of
23 sentence suspended for one or more crimes of violence within
24 the preceding 3 years. The department shall, upon
25 notification by a law enforcement agency, a court, or the
26 Florida Department of Law Enforcement and subsequent written
27 verification, suspend a license or the processing of an
28 application for a license if the licensee or applicant is
29 arrested or formally charged with a crime that ~~which~~ would
30 disqualify such person from having a license under this
31 section, until final disposition of the case. The department

1 shall suspend a license or the processing of an application
2 for a license if the licensee or applicant is issued an
3 injunction that restrains the licensee or applicant from
4 committing acts of domestic violence or acts of repeat
5 violence.

6 Section 6. Subsections (1) and (2) of section 790.065,
7 Florida Statutes, are amended to read:

8 790.065 Sale and delivery of firearms.--

9 (1) A ~~No~~ licensed importer, licensed manufacturer, or
10 licensed dealer may not ~~shall~~ sell or deliver from her or his
11 inventory at her or his licensed premises any firearm to
12 another person, other than a licensed importer, licensed
13 manufacturer, licensed dealer, or licensed collector, until
14 she or he has:

15 (a) Obtained a completed form from the potential buyer
16 or transferee, which form shall have been promulgated by the
17 Department of Law Enforcement and provided by the licensed
18 importer, licensed manufacturer, or licensed dealer, which
19 shall include the name, date of birth, gender, race, and
20 social security number or other identification number of such
21 potential buyer or transferee and has inspected proper
22 identification including an identification containing a
23 photograph of the potential buyer or transferee.

24 (b) Collected a fee from the potential buyer for
25 processing the criminal history check of the potential buyer.
26 The fee shall be \$8. The Department of Law Enforcement shall,
27 by rule, establish procedures for the fees to be transmitted
28 by the licensee to the Department of Law Enforcement. All such
29 fees shall be deposited into the Department of Law Enforcement
30 Operating Trust Fund, but shall be segregated from all other
31 funds deposited into such trust fund and must be accounted for

1 separately. Such segregated funds must not be used for any
2 purpose other than the operation of the criminal history
3 checks required by this section. The Department of Law
4 Enforcement, each year prior to February 1, shall make a full
5 accounting of all receipts and expenditures of such funds to
6 the President of the Senate, the Speaker of the House of
7 Representatives, the majority and minority leaders of each
8 house of the Legislature, and the chairs of the appropriations
9 committees of each house of the Legislature. In the event
10 that the cumulative amount of funds collected exceeds the
11 cumulative amount of expenditures by more than \$2.5 million,
12 excess funds may be used for the purpose of purchasing soft
13 body armor for law enforcement officers.

14 (c) Requested, by means of a toll-free telephone call,
15 the Department of Law Enforcement to conduct a check of the
16 information as reported and reflected in the Florida Crime
17 Information Center and National Crime Information Center
18 systems as of the date of the request.

19 (d) Received a unique approval number for that inquiry
20 from the Department of Law Enforcement, and recorded the date
21 and such number on the consent form.

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23 However, if the person purchasing, or receiving delivery of,
24 the firearm is a holder of a valid concealed weapons or
25 firearms license pursuant to the provisions of s. 790.06 or
26 holds an active certification from the Criminal Justice
27 Standards and Training Commission as a "law enforcement
28 officer," a "correctional officer," or a "correctional
29 probation officer" as defined in s. 943.10(1), (2), (3), (6),
30 (7), (8), or (9), the provisions of this subsection do not
31 apply.

1 (2) Upon receipt of a request for a criminal history
2 record check, the Department of Law Enforcement shall, during
3 the licensee's call or by return call, forthwith:

4 (a) Review criminal history records to determine if
5 the potential buyer or transferee:

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

8 2. Has been convicted of a misdemeanor crime of
9 domestic violence, and therefore is prohibited from purchasing
10 a firearm; or

11 3. Has had adjudication of guilt withheld or
12 imposition of sentence suspended on any felony or misdemeanor
13 crime of domestic violence unless 3 years have elapsed since
14 probation or any other conditions set by the court have been
15 fulfilled or expunction has occurred.

16 (b) Inform the licensee making the inquiry either that
17 records demonstrate that the buyer or transferee is so
18 prohibited and provide the licensee a nonapproval number, or
19 provide the licensee with a unique approval number.

20 (c)1. Review any records available to it to determine
21 whether the potential buyer or transferee has been indicted or
22 has had an information filed against her or him for an offense
23 that is a felony under either state or federal law, or, as
24 mandated by federal law, has had an injunction for protection
25 against domestic violence entered against the potential buyer
26 or transferee under s. 741.30, has had an injunction for
27 protection against repeat violence entered against the
28 potential buyer or transferee under s. 784.046, or has been
29 arrested for a dangerous crime as specified in s.

30 907.041(4)(a) or for any of the following enumerated offenses:

31 a. Criminal anarchy under ss. 876.01 and 876.02.

- 1 b. Extortion under s. 836.05.
2 c. Explosives violations under s. 552.22(1) and (2).
3 d. Controlled substances violations under chapter 893.
4 e. Resisting an officer with violence under s. 843.01.
5 f. Weapons and firearms violations under this chapter.
6 g. Treason under s. 876.32.
7 h. Assisting self-murder under s. 782.08.
8 i. Sabotage under s. 876.38.
9 j. Stalking or aggravated stalking under s. 784.048.

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11 If the review indicates any such indictment, information, or
12 arrest, the department shall provide to the licensee a
13 conditional nonapproval number.

14 2. Within 24 working hours, the department shall
15 determine the disposition of the indictment, information, or
16 arrest and inform the licensee as to whether the potential
17 buyer is prohibited from receiving or possessing a firearm.
18 For purposes of this paragraph, "working hours" means the
19 hours from 8 a.m. to 5 p.m. Monday through Friday, excluding
20 legal holidays.

21 3. The office of the clerk of court, at no charge to
22 the department, shall respond to any department request for
23 data on the disposition of the indictment, information, or
24 arrest as soon as possible, but in no event later than 8
25 working hours.

26 4. The department shall determine as quickly as
27 possible within the allotted time period whether the potential
28 buyer is prohibited from receiving or possessing a firearm.

29 5. If the potential buyer is not so prohibited, or if
30 the department cannot determine the disposition information

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1 within the allotted time period, the department shall provide
2 the licensee with a conditional approval number.

3 6. If the buyer is so prohibited, the conditional
4 nonapproval number shall become a nonapproval number.

5 7. The department shall continue its attempts to
6 obtain the disposition information and may retain a record of
7 all approval numbers granted without sufficient disposition
8 information. If the department later obtains disposition
9 information which indicates:

10 a. That the potential buyer is not prohibited from
11 owning a firearm, it shall treat the record of the transaction
12 in accordance with this section; or

13 b. That the potential buyer is prohibited from owning
14 a firearm, it shall immediately revoke the conditional
15 approval number and notify local law enforcement.

16 8. During the time that disposition of the indictment,
17 information, or arrest is pending and until the department is
18 notified by the potential buyer that there has been a final
19 disposition of the indictment, information, or arrest, the
20 conditional nonapproval number shall remain in effect.

21 Section 7. This act shall take effect July 1 of the
22 year in which enacted.

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LEGISLATIVE SUMMARY

Provides that it is a first-degree misdemeanor for a person to have a firearm or any ammunition in his or her care, custody, possession, or control after having been issued a final injunction that restrains the person from committing acts of domestic violence. Provides an exception for state or local law enforcement officers. Requires that a final injunction state, on its face, that possessing a firearm or ammunition is prohibited. Authorizes an arrest without a warrant if a law enforcement officer has probable cause to believe that a person has violated a final injunction by possessing a firearm or ammunition. Provides that the Department of State may not issue a license to carry a concealed weapon or firearm to a person who has been issued a final injunction against committing acts of domestic violence or acts of repeat violence. Provides that the department may not issue a license to carry a concealed weapon or firearm to a person who has had adjudication of guilt withheld or imposition of sentence suspended for a felony, or for any act of domestic violence which is a misdemeanor, within the past 3 years. Requires that the department suspend a license to carry a concealed weapon or firearm, or the processing of an application for such a license, if the licensee or applicant has been issued a final injunction against committing acts of domestic violence or acts of repeat violence.