

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 19, 1998 Revised: _____

Subject: Firearms Sales

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Miller	Miller	CJ	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 2090 clarifies that the state laws dealing with the sale and delivery of firearms apply at gun shows, exhibitions, and flea markets, or on their premises. The legislation defines the terms “dealer,” “licensed firearms dealer,” “pawnbroker,” and “engaged in the business.”

Consistent with current state law, unlicensed persons who sell firearms, regardless of the sale location, will not be required to seek a criminal history background check on the potential buyer nor delay the delivery of a handgun for 3 days upon its sale. However, these sales must be either occasional or from the seller’s personal collection.

This bill creates the following section of the Florida Statutes: 790.0657.

II. Present Situation:

3-day Waiting Period

On November 6, 1990, the electorate passed by an overwhelming majority (84.3 percent) a constitutional amendment for a 3-day waiting period for handgun purchases. The constitutional amendment amends section 8 of article I of the Florida Constitution to require a mandatory 3 days, excluding weekends and legal holidays, between the purchase and delivery of a handgun sold by a retailer. The amendment required the Legislature to pass legislation making a violation of the waiting period a felony. The waiting period became effective on October 1, 1991.

A “handgun” is statutorily defined as a firearm capable of being carried and used by one hand, such as a pistol or revolver. “Purchase” means the transfer of money or other valuable consideration to the retailer.

“Retailers” who must comply with the waiting period include persons engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(14), F.S. (Redesignated as s. 212.02(13) to conform to the repeal of subsection (12) by s. 31, ch. 95-146 L.O.F.) Chapter 212, F.S., regulates the collection of sales tax on sales of tangible personal property.

Those persons exempt from the provisions of this law include concealed weapons permit holders and those trading a handgun. The 3-day waiting period is intended to apply only to those persons who are commonly understood to be retailers by engaging in the business of selling tangible personal property for private or public gain, benefit, or advantage, either directly or indirectly. Therefore, exempt from the 3-day waiting period are those who are unlicensed collectors, conduct isolated sales of handguns, sell guns as part of a “personal collection,” and do not hold themselves out as engaged in the business of selling tangible personal property.

The law provides that it is a third degree felony, punishable by imprisonment not to exceed 5 years and up to a \$5,000 fine to obtain delivery of a handgun by fraud, false pretense, or false representation, or for a retailer, employee, or agent to violate the 3-day waiting period.

Background Checks

Section 790.065, F.S., mandated a Firearm Purchase Program (FPP or “instant check” program) to be conducted by the Florida Department of Law Enforcement (FDLE). The program was created in 1989 and became operational on February 1, 1991. According to the Dealer’s Manual, the purpose of the program is “to screen out those individual buyers who are not eligible by federal or state law to purchase firearms in Florida based on their criminal history records.”

Before transferring a firearm to a non-licensed individual, all federally licensed firearm dealers, manufacturers, and importers in Florida must verify the buyer’s identity by photo identification and then call FDLE on a toll-free telephone number. State and national criminal history records are checked to ensure that the prospective buyer is eligible to possess firearms. FDLE then informs the firearm dealer whether the transfer is approved, not approved, or conditionally approved. A conditional non-approval number is given when FDLE needs further information and will require additional time to ascertain that information. The entire process takes approximately three to five minutes in most cases. Prospective buyers have the right to appeal if they believe they have been incorrectly non-approved to purchase a firearm.

There is an \$8 non-refundable processing fee for conducting these record checks. Fees received are deposited into FDLE’s Operating Trust Fund and are used to support this program.
s. 790.065 (b), F.S.

Records kept by the FPP indicate the following statistics for 1996, 1997, and January - February 1998:

	1996	1997	1998
Approvals	205,391	190,108	28,628
Non-approvals	6,168	6,806	1,096
Conditional non-approvals	9,523	9,759	1,623
• conditionals becoming approvals	6,773	6,357	1,087
• conditionals becoming non-approvals	1,535	1,791	335
• conditionals becoming conditional approvals	993	1,466	179
• conditionals becoming pending non-approvals	222	145	22
Pending non-approvals	576	542	85

Federal Law

Congress enacted the “Gun Control Act of 1968” for the purpose of providing “support to federal, state, and local law enforcement officials in their fight against crime and violence.” Public Law 90-618. The Gun Control Act, which is administered by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, provides federal licensing standards for firearms businesses (i.e., manufacturers, importers, and dealers). A federal firearms license is issued for a permanent premise in the state in which the licensee intends to do business. However, the license also authorizes the Florida license holder to conduct business at “traveling” gun shows located in Florida. It is unlawful for the federally licensed manufacturer, importer, or dealer to sell or deliver any firearm to any person if the purchase or possession would be in violation of Florida law.

Pawnbrokers and certain collectors of firearms are also regulated under the Gun Control Act for the disposition of firearms.

Generally, transactions for the purchase and delivery of a firearm conducted by federally licensed importers, licensed manufacturers, or licensed dealers, and persons engaged in the business of making sales at retail, for distribution, use, consumption, or storage, as specified, are currently regulated by Florida and federal law. That is, they must possess a current federal license and they must abide by the 3-day waiting period for the purchase of *handguns* and they must participate in the Firearm Purchase Program for the purchase and delivery of *firearms*.

III. Effect of Proposed Changes:

Senate Bill 2090 clarifies that state laws dealing with the purchase and delivery of firearms apply at gun shows, exhibitions, flea markets, and on their premises. The bill’s definitions, which are substantially similar to existing definitions in federal law, are set forth as follows:

- ▶ “Dealer” means a person engaged in the business of selling firearms at wholesale or retail or a pawnbroker;

- ▶ “Licensed firearms dealer” means any dealer who is licensed to sell firearms under the provisions of federal law;
- ▶ “Pawnbroker” means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money; and
- ▶ “Engaged in the business” means a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.

Specifically, the term “engaged in the business” excludes persons who make “occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a personal collection of firearms.”

Consistent with current state law, *unlicensed* persons who sell firearms, *regardless of the sale location*, will not be required to seek a criminal history background check through the Firearm Purchase Program on the potential buyer *nor* delay the delivery of a handgun for 3 days upon its sale. These sales must be either occasional or from the seller’s personal collection.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In his 1998 State of the State address, Governor Chiles called for waiting periods and background checks for firearms purchased at gun shows. Additionally, proposed amendment 167 to the Florida Constitution, which has been filed by the Constitution Revision Commission, provides a local option for the regulation of firearms. The electors of a county would be able to regulate the possession, purchase, and sale of firearms but could not prohibit the possession, purchase, and sale of firearms and ammunition. The commission vote on proposal 167 (engrossed) was 20 - 9 in favor of the measure but 22 commission votes are needed to place the amendment on the ballot in November 1998. The intent of the proposed amendment is to broaden regulation of the purchase and delivery of firearms to encompass "unlicensed persons selling or trading their 'personal inventory' of firearms sold at gun shows throughout the state." Staff of Constitution Revision Commission, CRC Proposal 167 (1998), Staff Analysis, page 3 (December 8, 1997) (on file with comm.).

VIII. Amendments:

None.