

By Senator Holzendorf

2-569-98

See HB

1 A bill to be entitled
2 An act relating to firearms; amending s.
3 790.001, F.S.; defining the term "locking
4 device"; amending s. 790.174, F.S.; providing
5 that a locking device may be used for the
6 purpose of lawfully storing a firearm within
7 access of a minor, as defined; requiring a
8 person to secure a firearm with a locking
9 device under specified circumstances when the
10 firearm is left or stored on premises where
11 such minor resides; providing penalties for
12 failure to store or leave the firearm in the
13 required manner, under specified circumstances;
14 creating s. 790.0657, F.S., relating to
15 purchase and delivery of handguns; providing
16 definitions; prohibiting a person who is not a
17 licensed firearms dealer from purchasing more
18 than one handgun within a 30-day period;
19 providing penalties; providing exceptions to
20 the limitation on the number of handguns
21 purchasable by nondealers within the 30-day
22 period; providing for special application
23 procedures under exceptional circumstances;
24 providing duties of the Department of Law
25 Enforcement and prospective purchasers;
26 providing for adoption of rules; providing for
27 nonapplicability of specified provisions to
28 certain persons or entities authorized or
29 licensed to perform law enforcement,
30 correctional, or private security duties;
31 providing for nonapplicability of the

1 provisions to purchase of antique firearms or
2 to replacement of stolen or lost handguns;
3 providing an effective date.

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5 Be It Enacted by the Legislature of the State of Florida:

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7 Section 1. Subsection (19) is added to section
8 790.001, Florida Statutes, to read:

9 790.001 Definitions.--As used in this chapter, except
10 where the context otherwise requires:

11 (19) "Locking device" means a device that when
12 installed on a firearm and secured by means of a key or a
13 mechanically or electronically operated combination lock
14 prevents the firearm from being discharged without first
15 deactivating or removing the device by means of a key or a
16 mechanically or electronically operated combination lock.

17 Section 2. Section 790.174, Florida Statutes, is
18 amended to read:

19 790.174 Safe storage of firearms required.--

20 (1) A person who stores or leaves, on a premise under
21 his or her control, a loaded firearm, as defined in s.
22 790.001, and who knows or reasonably should know that a minor
23 is likely to gain access to the firearm without the lawful
24 permission of the minor's parent or the person having charge
25 of the minor, or without the supervision required by law,
26 shall keep the firearm in a securely locked box or container
27 or in a location that ~~which~~ a reasonable person would believe
28 to be secure or shall secure it with a trigger lock or a
29 locking device, except when the person is carrying the firearm
30 on his or her body or within such close proximity thereto that
31 he or she can retrieve and use it as easily and quickly as if

1 he or she carried it on his or her body. However, if the
2 person stores or leaves the firearm on any premises where the
3 person knows or reasonably should know that a minor is
4 temporarily or permanently residing, the person must in all
5 cases secure the firearm with an activated locking device, in
6 addition to keeping the firearm in a secure location, except
7 when the person is carrying the firearm on his or her body or
8 within such close proximity thereto that he or she can
9 retrieve it and use it as easily and quickly as if he or she
10 carried it on his or her body.

11 (2) It is a misdemeanor of the second degree,
12 punishable as provided in s. 775.082 or s. 775.083, if a
13 person violates subsection (1) by failing to store or leave a
14 firearm in the required manner and as a result thereof a minor
15 gains access to the firearm, without the lawful permission of
16 the minor's parent or the person having charge of the minor,
17 and possesses or exhibits it, without the supervision required
18 by law:

19 (a) In a public place; or

20 (b) In a rude, careless, angry, or threatening manner
21 in violation of s. 790.10.

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23 This subsection does not apply if the minor obtains the
24 firearm as a result of an unlawful entry by any person.

25 (3) As used in this act, the term "minor" means any
26 person under the age of 16.

27 Section 3. Section 790.0657, Florida Statutes, is
28 created to read:

29 790.0657 Purchase and delivery of handguns; purchase
30 limited to one handgun per 30 days; exceptions; penalties.--

31 (1) As used in this section, the term:

1 (a) "Handgun" means a firearm capable of being carried
2 and used by one hand, such as a pistol or revolver.

3 (b) "Purchase" means the transfer of money or other
4 valuable consideration to a retailer, as defined in s.
5 790.0655, except that the term "purchase" as used in this
6 section does not include the exchange or replacement of a
7 handgun by a retailer for a handgun purchased from such
8 retailer by the same person seeking the exchange or
9 replacement within the 30-day period immediately preceding the
10 date of exchange or replacement. The term "purchase" as used
11 in this section includes, but is not limited to, lawful
12 purchases pursuant to s. 790.065 of more than one handgun
13 within a 30-day period, by a person who is not a licensed
14 firearms dealer.

15 (2) Except as provided in this section, it is unlawful
16 for any person who is not a licensed firearms dealer to
17 purchase more than one handgun within any 30-day period. Any
18 person who violates this subsection commits a misdemeanor of
19 the first degree, punishable as provided in s. 775.082 or s.
20 775.083.

21 (a) Purchases in excess of one handgun within a 30-day
22 period may be made upon completion of a criminal history
23 record check, as required by s. 790.065, by special
24 application to the Department of Law Enforcement listing the
25 number and type of handguns to be purchased and transferred
26 for lawful business or personal use, in a collector series,
27 for collections, as a bulk purchase from estate sales, and for
28 similar purposes. Such applications shall be signed under oath
29 by the applicant on forms provided by the Department of Law
30 Enforcement, shall state the purpose for the purchase above
31 the limit, and shall require satisfactory proof of residency

1 and identity. Such application shall be in addition to the
2 firearms sales report required by the Federal Bureau of
3 Alcohol, Tobacco and Firearms. The executive director of the
4 Department of Law Enforcement shall adopt rules for the
5 implementation of an application process for purchases of
6 handguns above the limit. Upon being satisfied that these
7 requirements have been met, the Department of Law Enforcement
8 shall forthwith issue to the applicant a nontransferable
9 certificate which shall be valid for 7 days from the date of
10 issue. The certificate shall be surrendered to the dealer by
11 the prospective purchaser prior to the consummation of such
12 sale and shall be kept on file at the dealer's place of
13 business for inspection for a period of not less than 2 years.
14 Upon request of any local law enforcement agency, and pursuant
15 to its regulations, the department may certify such local law
16 enforcement agency to serve as its agent to receive
17 applications and, upon authorization by the department, issue
18 certificates pursuant to this section. Applications and
19 certificates issued under this section shall be maintained as
20 records as provided in s. 790.065.

- 21 (b) The provisions of this section do not apply to:
22 1. A law enforcement agency;
23 2. An agency duly authorized to perform law
24 enforcement duties;
25 3. State and local correctional facilities;
26 4. A private security agency licensed to do business
27 within the state;
28 5. The purchase of antique firearms as defined by s.
29 790.001(1); or
30 6. A person whose handgun is stolen or irretrievably
31 lost who deems it essential that such handgun be replaced

1 immediately. Such person may purchase another handgun, even
2 if the person has previously purchased a handgun within a
3 30-day period, provided:

4 (I) The person provides the firearms dealer with a
5 copy of the official police report or a summary thereof, on
6 forms provided by the Department of Law Enforcement, from the
7 law enforcement agency that took the report of the lost or
8 stolen handgun;

9 (II) The official police report or summary thereof
10 contains the name and address of the handgun owner, the
11 description of the handgun, the location of the loss or theft,
12 the date of the loss or theft, and the date the loss or theft
13 was reported to the law enforcement agency; and

14 (III) The date of the loss or theft as shown on the
15 official police report or summary thereof occurred within 30
16 days of the person's attempt to replace the handgun. The
17 firearms dealer shall attach a copy of the official police
18 report or summary thereof to the original copy of the firearms
19 transaction report completed for the transaction and retain it
20 for the period prescribed by the Department of Law
21 Enforcement.

22 Section 4. Section 790.065, Florida Statutes, reads:

23 790.065 Sale and delivery of firearms.--

24 (1) No licensed importer, licensed manufacturer, or
25 licensed dealer shall sell or deliver from her or his
26 inventory at her or his licensed premises any firearm to
27 another person, other than a licensed importer, licensed
28 manufacturer, licensed dealer, or licensed collector, until
29 she or he has:

30 (a) Obtained a completed form from the potential buyer
31 or transferee, which form shall have been promulgated by the

1 Department of Law Enforcement and provided by the licensed
2 importer, licensed manufacturer, or licensed dealer, which
3 shall include the name, date of birth, gender, race, and
4 social security number or other identification number of such
5 potential buyer or transferee and has inspected proper
6 identification including an identification containing a
7 photograph of the potential buyer or transferee.

8 (b) Collected a fee from the potential buyer for
9 processing the criminal history check of the potential buyer.
10 The fee shall be \$8. The Department of Law Enforcement shall,
11 by rule, establish procedures for the fees to be transmitted
12 by the licensee to the Department of Law Enforcement. All such
13 fees shall be deposited into the Department of Law Enforcement
14 Operating Trust Fund, but shall be segregated from all other
15 funds deposited into such trust fund and must be accounted for
16 separately. Such segregated funds must not be used for any
17 purpose other than the operation of the criminal history
18 checks required by this section. The Department of Law
19 Enforcement, each year prior to February 1, shall make a full
20 accounting of all receipts and expenditures of such funds to
21 the President of the Senate, the Speaker of the House of
22 Representatives, the majority and minority leaders of each
23 house of the Legislature, and the chairs of the appropriations
24 committees of each house of the Legislature. In the event
25 that the cumulative amount of funds collected exceeds the
26 cumulative amount of expenditures by more than \$2.5 million,
27 excess funds may be used for the purpose of purchasing soft
28 body armor for law enforcement officers.

29 (c) Requested, by means of a toll-free telephone call,
30 the Department of Law Enforcement to conduct a check of the
31 information as reported and reflected in the Florida Crime

1 Information Center and National Crime Information Center
2 systems as of the date of the request.

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

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7 However, if the person purchasing, or receiving delivery of,
8 the firearm is a holder of a valid concealed weapons or
9 firearms license pursuant to the provisions of s. 790.06 or
10 holds an active certification from the Criminal Justice
11 Standards and Training Commission as a "law enforcement
12 officer," a "correctional officer," or a "correctional
13 probation officer" as defined in s. 943.10(1), (2), (3), (6),
14 (7), (8), or (9), the provisions of this subsection do not
15 apply.

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

19 (a) Review criminal history records to determine if
20 the potential buyer or transferee has been convicted of a
21 felony and is prohibited from receipt or possession of a
22 firearm pursuant to s. 790.23 or has had adjudication of guilt
23 withheld or imposition of sentence suspended on any felony
24 unless 3 years have elapsed since probation or any other
25 conditions set by the court have been fulfilled or expunction
26 has occurred.

27 (b) Inform the licensee making the inquiry either that
28 records demonstrate that the buyer or transferee is so
29 prohibited and provide the licensee a nonapproval number, or
30 provide the licensee with a unique approval number.

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1 (c)1. Review any records available to it to determine
2 whether the potential buyer or transferee has been indicted or
3 has had an information filed against her or him for an offense
4 that is a felony under either state or federal law, or, as
5 mandated by federal law, has had an injunction for protection
6 against domestic violence entered against the potential buyer
7 or transferee under s. 741.30, has had an injunction for
8 protection against repeat violence entered against the
9 potential buyer or transferee under s. 784.046, or has been
10 arrested for a dangerous crime as specified in s.

11 907.041(4)(a) or for any of the following enumerated offenses:

- 12 a. Criminal anarchy under ss. 876.01 and 876.02.
- 13 b. Extortion under s. 836.05.
- 14 c. Explosives violations under s. 552.22(1) and (2).
- 15 d. Controlled substances violations under chapter 893.
- 16 e. Resisting an officer with violence under s. 843.01.
- 17 f. Weapons and firearms violations under this chapter.
- 18 g. Treason under s. 876.32.
- 19 h. Assisting self-murder under s. 782.08.
- 20 i. Sabotage under s. 876.38.
- 21 j. Stalking or aggravated stalking under s. 784.048.

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23 If the review indicates any such indictment, information, or
24 arrest, the department shall provide to the licensee a
25 conditional nonapproval number.

26 2. Within 24 working hours, the department shall
27 determine the disposition of the indictment, information, or
28 arrest and inform the licensee as to whether the potential
29 buyer is prohibited from receiving or possessing a firearm.
30 For purposes of this paragraph, "working hours" means the

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1 hours from 8 a.m. to 5 p.m. Monday through Friday, excluding
2 legal holidays.

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

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

11 5. If the potential buyer is not so prohibited, or if
12 the department cannot determine the disposition information
13 within the allotted time period, the department shall provide
14 the licensee with a conditional approval number.

15 6. If the buyer is so prohibited, the conditional
16 nonapproval number shall become a nonapproval number.

17 7. The department shall continue its attempts to
18 obtain the disposition information and may retain a record of
19 all approval numbers granted without sufficient disposition
20 information. If the department later obtains disposition
21 information which indicates:

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

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

28 8. During the time that disposition of the indictment,
29 information, or arrest is pending and until the department is
30 notified by the potential buyer that there has been a final
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1 disposition of the indictment, information, or arrest, the
2 conditional nonapproval number shall remain in effect.

3 (3) In the event of scheduled computer downtime,
4 electronic failure, or similar emergency beyond the control of
5 the Department of Law Enforcement, the department shall
6 immediately notify the licensee of the reason for, and
7 estimated length of, such delay. After such notification, the
8 department shall forthwith, and in no event later than the end
9 of the next business day of the licensee, either inform the
10 requesting licensee if its records demonstrate that the buyer
11 or transferee is prohibited from receipt or possession of a
12 firearm pursuant to Florida and Federal law or provide the
13 licensee with a unique approval number. Unless notified by the
14 end of said next business day that the buyer or transferee is
15 so prohibited, and without regard to whether she or he has
16 received a unique approval number, the licensee may complete
17 the sale or transfer and shall not be deemed in violation of
18 this section with respect to such sale or transfer.

19 (4)(a) Any records containing any of the information
20 set forth in subsection (1) pertaining to a buyer or
21 transferee who is not found to be prohibited from receipt or
22 transfer of a firearm by reason of Florida and federal law
23 which records are created by the Department of Law Enforcement
24 to conduct the criminal history record check shall be
25 confidential and exempt from the provisions of s. 119.07(1)
26 and may not be disclosed by the Department of Law Enforcement
27 or any officer or employee thereof to any person or to another
28 agency. The Department of Law Enforcement shall destroy any
29 such records forthwith after it communicates the approval and
30 nonapproval numbers to the licensee and, in any event, such

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1 records shall be destroyed within 48 hours after the day of
2 the response to the licensee's request.

3 (b) Notwithstanding the provisions of this subsection,
4 the Department of Law Enforcement may maintain records of NCIC
5 transactions to the extent required by the Federal Government,
6 and may maintain a log of dates of requests for criminal
7 history records checks, unique approval and nonapproval
8 numbers, license identification numbers, and transaction
9 numbers corresponding to such dates for a period of not longer
10 than 2 years or as otherwise required by law.

11 (c) Nothing in this chapter shall be construed to
12 allow the State of Florida to maintain records containing the
13 names of purchasers or transferees who receive unique approval
14 numbers or to maintain records of firearm transactions.

15 (d) Any officer or employee, or former officer or
16 employee of the Department of Law Enforcement or law
17 enforcement agency who intentionally and maliciously violates
18 the provisions of this subsection commits a felony of the
19 third degree punishable as provided in s. 775.082 or s.
20 775.083.

21 (5) The Department of Law Enforcement shall establish
22 a toll-free telephone number which shall be operational 7 days
23 a week with the exception of Christmas Day and New Year's Day,
24 for a period of 12 hours a day beginning at 9 a.m. and ending
25 at 9 p.m., for purposes of responding to inquiries as
26 described in this section from licensed manufacturers,
27 licensed importers, and licensed dealers. The Department of
28 Law Enforcement shall employ and train such personnel as are
29 necessary expeditiously to administer the provisions of this
30 section.

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1 (6) Any person who is denied the right to receive or
2 purchase a firearm as a result of the procedures established
3 by this section may request a criminal history records review
4 and correction in accordance with the rules promulgated by the
5 Department of Law Enforcement.

6 (7) It shall be unlawful for any licensed dealer,
7 licensed manufacturer, or licensed importer willfully and
8 intentionally to request criminal history record information
9 under false pretenses, or willfully and intentionally to
10 disseminate criminal history record information to any person
11 other than the subject of such information. Any person
12 convicted of a violation of this subsection commits a felony
13 of the third degree punishable as provided in s. 775.082 or s.
14 775.083.

15 (8) The Department of Law Enforcement shall promulgate
16 regulations to ensure the identity, confidentiality, and
17 security of all records and data provided pursuant to this
18 section.

19 (9) This section shall become effective at such time
20 as the Department of Law Enforcement has notified all licensed
21 importers, licensed manufacturers, and licensed dealers in
22 writing that the procedures and toll-free number described in
23 this section are operational. This section shall remain in
24 effect only during such times as the procedures described in
25 subsection (2) remain operational.

26 (10) A licensed importer, licensed manufacturer, or
27 licensed dealer is not required to comply with the
28 requirements of this section in the event of:

29 (a) Unavailability of telephone service at the
30 licensed premises due to the failure of the entity which
31 provides telephone service in the state, region, or other

1 geographical area in which the licensee is located to provide
2 telephone service to the premises of the licensee due to the
3 location of said premises; or the interruption of telephone
4 service by reason of hurricane, tornado, flood, natural
5 disaster, or other act of God, war, invasion, insurrection,
6 riot, or other bona fide emergency, or other reason beyond the
7 control of the licensee; or

8 (b) Failure of the Department of Law Enforcement to
9 comply with the requirements of subsections (2) and (3).

10 (11) Compliance with the provisions of this chapter
11 shall be a complete defense to any claim or cause of action
12 under the laws of any state for liability for damages arising
13 from the importation or manufacture, or the subsequent sale or
14 transfer to any person who has been convicted in any court of
15 a crime punishable by imprisonment for a term exceeding 1
16 year, of any firearm which has been shipped or transported in
17 interstate or foreign commerce. The Department of Law
18 Enforcement, its agents and employees shall not be liable for
19 any claim or cause of action under the laws of any state for
20 liability for damages arising from its actions in lawful
21 compliance with this section.

22 (12)(a) Any potential buyer or transferee who
23 willfully and knowingly provides false information or false or
24 fraudulent identification commits a felony of the third degree
25 punishable as provided in s. 775.082 or s. 775.083.

26 (b) Any licensed importer, licensed manufacturer, or
27 licensed dealer who violates the provisions of subsection (1)
28 commits a felony of the third degree punishable as provided in
29 s. 775.082 or s. 775.083.

30 (c) Any employee or agency of a licensed importer,
31 licensed manufacturer, or licensed dealer who violates the

1 provisions of subsection (1) commits a felony of the third
2 degree punishable as provided in s. 775.082 or s. 775.083.

3 (d) Any person who knowingly acquires a firearm
4 through purchase or transfer intended for the use of a person
5 who is prohibited by state or federal law from possessing or
6 receiving a firearm commits a felony of the third degree,
7 punishable as provided in s. 775.082 or s. 775.083.

8 (13) This section does not apply to employees of
9 sheriff's offices, municipal police departments, correctional
10 facilities or agencies, or other criminal justice or
11 governmental agencies when the purchases or transfers are made
12 on behalf of an employing agency for official law enforcement
13 purposes.

14 Section 5. This act shall take effect October 1 of the
15 year in which enacted.

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HOUSE SUMMARY

Defines the term "locking device" with respect to specified provisions relating to firearms. Provides that a locking device may be used for the purpose of lawfully storing a firearm within access of a minor under a specified age. Requires a person to secure a firearm with a locking device under specified circumstances when the firearm is left or stored on premises where a minor resides. Provides penalties for failure to store or leave the firearm in the required manner, under specified circumstances.

Prohibits a person who is not a licensed firearms dealer from purchasing more than one handgun within a 30-day period. Provides penalties. Provides definitions. Provides exceptions to the limitation on the number of handguns purchasable by nondealers within the 30-day period and provides for special application procedures. Prescribes duties of the Department of Law Enforcement and prospective purchasers. Provides for adoption of rules. Provides for nonapplicability of specified provisions to certain persons or entities authorized or licensed to perform law enforcement, correctional, or private security duties, and provides for nonapplicability to purchase of antique firearms or replacement of stolen or lost handguns.