

By Representative Lynn

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 an injunction against
5 committing acts of domestic violence or repeat
6 violence from possessing any firearm or
7 ammunition; providing a penalty; amending s.
8 741.30, F.S.; requiring that an injunction for
9 protection against domestic violence indicate
10 that possessing any firearm or ammunition is
11 prohibited; amending s. 741.31, F.S.; providing
12 that it is a third-degree felony to possess a
13 firearm or ammunition following actual notice
14 of the injunction; amending s. 784.046, F.S.;
15 requiring that an injunction for protection
16 against repeat violence indicate that the
17 injunction is enforceable by law enforcement
18 officers in all counties and that possessing
19 any firearm or ammunition is prohibited;
20 amending s. 784.047, F.S.; providing that it is
21 a third-degree felony to possess a firearm or
22 ammunition following actual notice of the
23 injunction; reenacting s. 901.15(6), F.S.,
24 relating to lawful arrest by a law enforcement
25 officer without a warrant, to incorporate the
26 amendments to ss. 741.31, 784.047, F.S, in
27 references thereto; amending s. 790.06, F.S.;
28 providing that the Department of State may
29 issue a license to carry a concealed weapon or
30 firearm if the applicant has not had
31 adjudication of guilt withheld or imposition of

1 sentence suspended for committing a violent
2 misdemeanor; authorizing the department to
3 issue such a license if the applicant has not
4 been issued an injunction against committing
5 acts of domestic violence or acts of repeat
6 violence; requiring that the department suspend
7 such a license, or the processing of a license
8 application, if the licensee or applicant is
9 issued an injunction against committing acts of
10 domestic violence or acts of repeat violence;
11 amending s. 790.065, F.S.; requiring that the
12 Department of Law Enforcement determine if a
13 potential buyer or transferee of a firearm has
14 been convicted of a violent misdemeanor or had
15 adjudication of guilt withheld or imposition of
16 sentence suspended for committing a violent
17 misdemeanor; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

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

23 790.233 Possession of firearm and ammunition
24 prohibited if person is subject to an injunction against
25 committing acts of violence; penalty.--

26 (1) A person may not have in his or her care, custody,
27 possession, or control any firearm or ammunition if the person
28 has been issued a temporary or final injunction against
29 committing acts of:

30 (a) Domestic violence, issued under s. 741.30; or
31 (b) Repeat violence, issued under s. 784.046.

1 (2) A person who violates subsection (1) after
2 receiving actual notice of the injunction, regardless of
3 whether the injunction is issued ex parte, commits a felony of
4 the third degree, punishable as provided under s. 775.082, s.
5 775.083, or s. 775.084.

6 Section 2. Paragraph (c) of subsection (6) of section
7 741.30, Florida Statutes, 1996 Supplement, is amended to read:

8 741.30 Domestic violence; injunction; powers and
9 duties of court and clerk; petition; notice and hearing;
10 temporary injunction; issuance of injunction; statewide
11 verification system; enforcement.--

12 (6)

13 (c) A temporary or final judgment on injunction for
14 protection against domestic violence entered pursuant to this
15 section must ~~shall~~, on its face, indicate that:

16 1. The injunction is valid and enforceable in all
17 counties of the State of Florida.

18 2. Law enforcement officers may use their arrest
19 powers pursuant to s. 901.15(6) to enforce the terms of the
20 injunction.

21 3. It is a violation of s. 790.233, and a third-degree
22 felony, for the respondent to have in his or her care,
23 custody, possession, or control any firearm or ammunition.

24 Section 3. Subsection (4) of section 741.31, Florida
25 Statutes, 1996 Supplement, is amended to read:

26 741.31 Violation of an injunction for protection
27 against domestic violence.--

28 (4)(a) A person who willfully violates an injunction
29 for protection against domestic violence, issued pursuant to
30 s. 741.30, by:

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1 ~~1.(a)~~ Refusing to vacate the dwelling that the parties
2 share;
3 ~~2.(b)~~ Going to the petitioner's residence, school,
4 place of employment, or a specified place frequented regularly
5 by the petitioner and any named family or household member;
6 ~~3.(c)~~ Committing an act of domestic violence against
7 the petitioner;
8 ~~4.(d)~~ Committing any other violation of the injunction
9 through an intentional unlawful threat, word, or act to do
10 violence to the petitioner; or
11 ~~5.(e)~~ Telephoning, contacting, or otherwise
12 communicating with the petitioner directly or indirectly,
13 unless the injunction specifically allows indirect contact
14 through a third party
15
16 is guilty of a misdemeanor of the first degree, punishable as
17 provided in s. 775.082 or s. 775.083.

18 (b) It is a violation of s. 790.233, and a felony of
19 the third degree, punishable as provided in s. 775.082, s.
20 775.083, or s. 775.084, for a person to violate a temporary or
21 final injunction for protection against domestic violence by
22 having in his or her care, custody, possession, or control any
23 firearm or ammunition, after having received actual notice of
24 the injunction.

25 Section 4. Paragraph (d) is added to subsection (6) of
26 section 784.046, Florida Statutes, to read:

27 784.046 Action by victim of repeat violence for
28 protective injunction; powers and duties of court and clerk of
29 court; filing and form of petition; notice and hearing;
30 temporary injunction; issuance; statewide verification system;
31 enforcement.--

1 (6)

2 (d) A temporary or final injunction for protection
3 against repeat violence entered under this section must, on
4 its face, indicate that:

5 1. The injunction is valid and enforceable in all
6 counties of the State of Florida.

7 2. Law enforcement officers may use their arrest
8 powers pursuant to s. 901.15(6) to enforce the terms of the
9 injunction.

10 3. It is a violation of s. 790.233, and a third-degree
11 felony, for the respondent to have in his or her care,
12 custody, possession, or control any firearm or ammunition.

13 Section 5. Section 784.047, Florida Statutes, is
14 amended to read:

15 784.047 Penalties for violating protective injunction
16 against repeat violators.--

17 (1) A person who willfully violates an injunction for
18 protection against repeat violence, issued pursuant to s.
19 784.046, by:

20 (a)~~(1)~~ Refusing to vacate the dwelling that the
21 parties share;

22 (b)~~(2)~~ Going to the petitioner's residence, school,
23 place of employment, or a specified place frequented regularly
24 by the petitioner and any named family or household member;

25 (c)~~(3)~~ Committing an act of repeat violence against
26 the petitioner;

27 (d)~~(4)~~ Committing any other violation of the
28 injunction through an intentional unlawful threat, word, or
29 act to do violence to the petitioner; or

30 (e)~~(5)~~ Telephoning, contacting, or otherwise
31 communicating with the petitioner directly or indirectly,

1 unless the injunction specifically allows indirect contact
2 through a third party;

3
4 is guilty of a misdemeanor of the first degree, punishable as
5 provided in s. 775.082 or s. 775.083.

6 (2) It is a violation of s. 790.233, and a felony of
7 the third degree, punishable as provided in s. 775.082, s.
8 775.083, or s. 775.084, for a person to violate a temporary or
9 final injunction for protection against repeat violence by
10 having in his or her care, custody, possession, or control any
11 firearm or ammunition, after having received actual notice of
12 the injunction.

13 Section 6. For the purpose of incorporating the
14 amendments made by this act to section 741.31, Florida
15 Statutes, 1996 Supplement, and section 784.047, Florida
16 Statutes, in references thereto, subsection (6) of section
17 901.15, Florida Statutes, 1996 Supplement, is reenacted to
18 read:

19 901.15 When arrest by officer without warrant is
20 lawful.--A law enforcement officer may arrest a person without
21 a warrant when:

22 (6) There is probable cause to believe that the person
23 has committed a criminal act according to s. 741.31 or s.
24 784.047 which violates an injunction for protection entered
25 pursuant to s. 741.30 or s. 784.046, over the objection of the
26 petitioner, if necessary.

27 Section 7. Subsections (2) and (3) of section 790.06,
28 Florida Statutes, are amended to read:

29 790.06 License to carry concealed weapon or firearm.--

30 (2) The Department of State shall issue a license if
31 the applicant:

1 (a) Is a resident of the United States or is a
2 consular security official of a foreign government that
3 maintains diplomatic relations and treaties of commerce,
4 friendship, and navigation with the United States and is
5 certified as such by the foreign government and by the
6 appropriate embassy in this country;

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

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

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

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

18 (f) Does not chronically and habitually use alcoholic
19 beverages or other substances to the extent that his normal
20 faculties are impaired. It shall be presumed that an
21 applicant chronically and habitually uses alcoholic beverages
22 or other substances to the extent that his normal faculties
23 are impaired if the applicant has been committed under chapter
24 397 or under the provisions of former chapter 396 or has been
25 convicted under s. 790.151 or has been deemed a habitual
26 offender under s. 856.011(3), or has had two or more
27 convictions under s. 316.193 or similar laws of any other
28 state, within the 3-year period immediately preceding the date
29 on which the application is submitted;

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

1 (h) Demonstrates competence with a firearm by any one
2 of the following:
3 1. Completion of any hunter education or hunter safety
4 course approved by the Game and Fresh Water Fish Commission or
5 a similar agency of another state;
6 2. Completion of any National Rifle Association
7 firearms safety or training course;
8 3. Completion of any firearms safety or training
9 course or class available to the general public offered by a
10 law enforcement, junior college, college, or private or public
11 institution or organization or firearms training school,
12 utilizing instructors certified by the National Rifle
13 Association, Criminal Justice Standards and Training
14 Commission, or the Department of State;
15 4. Completion of any law enforcement firearms safety
16 or training course or class offered for security guards,
17 investigators, special deputies, or any division or
18 subdivision of law enforcement or security enforcement;
19 5. Presents evidence of equivalent experience with a
20 firearm through participation in organized shooting
21 competition or military service;
22 6. Is licensed or has been licensed to carry a firearm
23 in this state or a county or municipality of this state,
24 unless such license has been revoked for cause; or
25 7. Completion of any firearms training or safety
26 course or class conducted by a state-certified or National
27 Rifle Association certified firearms instructor;
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29 A photocopy of a certificate of completion of any of the
30 courses or classes; or an affidavit from the instructor,
31 school, club, organization, or group that conducted or taught

1 said course or class attesting to the completion of the course
2 or class by the applicant; or a copy of any document which
3 shows completion of the course or class or evidences
4 participation in firearms competition shall constitute
5 evidence of qualification under this paragraph;

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

10 (j) Has not been committed to a mental institution
11 under chapter 394, or similar laws of any other state, unless
12 the applicant produces a certificate from a licensed
13 psychiatrist that he has not suffered from disability for at
14 least 5 years prior to the date of submission of the
15 application; ~~and~~

16 (k) Has not had adjudication of guilt withheld or
17 imposition of sentence suspended on any felony or violent
18 misdemeanor unless 3 years have elapsed since probation or any
19 other conditions set by the court have been fulfilled, or the
20 record has been sealed or expunged; ~~and~~.

21 (l) Has not been issued an injunction that is
22 currently in force and effect and that restrains the applicant
23 from committing acts of domestic violence or acts of repeat
24 violence.

25 (3) The Department of State shall ~~may~~ deny a license
26 if the applicant has been found guilty of, had adjudication of
27 guilt withheld for, or had imposition of sentence suspended
28 for one or more crimes of violence constituting a misdemeanor,
29 unless 3 years have elapsed since probation or any other
30 conditions set by the court have been fulfilled, ~~or the record~~
31 has been sealed or expunged. The Department of State shall, ~~or~~

1 may revoke a license if the licensee has been found guilty of,
2 had adjudication of guilt withheld for, or had imposition of
3 sentence suspended for one or more crimes of violence within
4 the preceding 3 years. The department shall, upon
5 notification by a law enforcement agency, a court, or the
6 Florida Department of Law Enforcement and subsequent written
7 verification, suspend a license or the processing of an
8 application for a license if the licensee or applicant is
9 arrested or formally charged with a crime that ~~which~~ would
10 disqualify such person from having a license under this
11 section, until final disposition of the case. The department
12 shall suspend a license or the processing of an application
13 for a license if the licensee or applicant is issued an
14 injunction that restrains the licensee or applicant from
15 committing acts of domestic violence or acts of repeat
16 violence.

17 Section 8. Subsections (1) and (2) of section 790.065,
18 Florida Statutes, 1996 Supplement, are amended to read:

19 790.065 Sale and delivery of firearms.--

20 (1) A ~~No~~ licensed importer, licensed manufacturer, or
21 licensed dealer may not ~~shall~~ sell or deliver from his
22 inventory at his licensed premises any firearm to another
23 person, other than a licensed importer, licensed manufacturer,
24 licensed dealer, or licensed collector, until he has:

25 (a) Obtained a completed form from the potential buyer
26 or transferee, which form shall have been promulgated by the
27 Department of Law Enforcement and provided by the licensed
28 importer, licensed manufacturer, or licensed dealer, which
29 shall include the name, date of birth, gender, race, and
30 social security number or other identification number of such
31 potential buyer or transferee and has inspected proper

1 identification including an identification containing a
2 photograph of the potential buyer or transferee.

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

24 ~~2. For the 1995-1996 fiscal year only, if the~~
25 ~~cumulative amount of funds collected exceeds the cumulative~~
26 ~~amount of expenditures by more than \$2.5 million, \$1.5 million~~
27 ~~of such excess funds may be transferred to the General Revenue~~
28 ~~Fund. This subparagraph is repealed on July 1, 1996.~~

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 or violent misdemeanor and is prohibited from receipt
22 or possession of a firearm pursuant to s. 790.23 or has had
23 adjudication of guilt withheld or imposition of sentence
24 suspended on any felony or violent misdemeanor unless 3 years
25 have elapsed since probation or any other conditions set by
26 the court have been fulfilled or expunction 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 him for an offense that
4 is a felony under either state or federal law, or, as mandated
5 by federal law, has had an injunction for protection against
6 domestic violence entered against the potential buyer or
7 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 Section 9. This act shall take effect July 1, 1997.

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SENATE SUMMARY

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Prohibits possessing or having within one's control a
firearm or ammunition after being issued a temporary or
final injunction against committing acts of domestic
violence or acts of repeat violence. Provides that it is
a third-degree felony to possess or have control of a
firearm or ammunition after receiving actual notice of
the injunction. Requires that any such injunction must
state, on its face, that possessing a firearm or
ammunition is prohibited. 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 an 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 violent
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
an injunction against committing acts of domestic
violence or acts of repeat violence.