

By the Committee on Crime & Punishment and Representatives
Lynn, Chestnut, Heyman and Crow

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

1 a specified period and is not enjoined from
2 committing acts of domestic violence or repeat
3 violence; requiring denial or revocation of
4 such license under specified circumstances;
5 requiring that the department suspend such
6 license, or the processing of the license
7 application, if the licensee or applicant is
8 issued an injunction against committing acts of
9 domestic violence or acts of repeat violence;
10 amending s. 790.065, F.S.; removing obsolete
11 provisions; requiring that the Department of
12 Law Enforcement determine if a potential buyer
13 or transferee of a firearm has been convicted
14 of a misdemeanor crime of domestic violence or
15 had adjudication of guilt withheld or
16 imposition of sentence suspended for committing
17 a misdemeanor crime of domestic violence;
18 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 restraining that person
30 from committing acts of domestic violence, issued under s.
31 741.30.

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, 1996 Supplement, 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, 1996 Supplement, 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
31 s. 741.30, by:

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 ~~commits is guilty of~~ a misdemeanor of the first degree,
17 punishable as provided in s. 775.082 or s. 775.083.
18 **(b)1. It is a violation of s. 790.233, and a**
19 **misdemeanor of the first degree, punishable as provided in s.**
20 **775.082 or s. 775.083, for a person to violate a final**
21 **injunction for protection against domestic violence by having**
22 **in his or her care, custody, possession, or control any**
23 **firearm or ammunition.**
24 **2. It is the intent of the Legislature that the**
25 **disabilities regarding possession of firearms and ammunition**
26 **are consistent with federal law. Accordingly, this paragraph**
27 **shall not apply to state or local law enforcement officers who**
28 **receive or possess a firearm or ammunition for use in**
29 **performing official duties on behalf of that state or local**
30 **law enforcement agency, unless prohibited by that law**
31 **enforcement officer's agency.**

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

3 901.15 When arrest by officer without warrant is
4 lawful.--A law enforcement officer may arrest a person without
5 a warrant when:

6 (6) There is probable cause to believe that the person
7 has committed a criminal act according to s. 790.233 or to s.
8 741.31 or s. 784.047 which violates an injunction for
9 protection entered pursuant to s. 741.30 or s. 784.046, over
10 the objection of the petitioner, if necessary.

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

13 790.06 License to carry concealed weapon or firearm.--

14 (2) The Department of State shall issue a license if
15 the applicant:

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

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

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

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

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

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

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

17 (h) Demonstrates competence with a firearm by any one
18 of the following:

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

22 2. Completion of any National Rifle Association
23 firearms safety or training course;

24 3. Completion of any firearms safety or training
25 course or class available to the general public offered by a
26 law enforcement, junior college, college, or private or public
27 institution or organization or firearms training school,
28 utilizing instructors certified by the National Rifle
29 Association, Criminal Justice Standards and Training
30 Commission, or the Department of State;

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

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

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

11 7. Completion of any firearms training or safety
12 course or class conducted by a state-certified or National
13 Rifle Association certified firearms instructor;

14
15 A photocopy of a certificate of completion of any of the
16 courses or classes; or an affidavit from the instructor,
17 school, club, organization, or group that conducted or taught
18 said course or class attesting to the completion of the course
19 or class by the applicant; or a copy of any document which
20 shows completion of the course or class or evidences
21 participation in firearms competition shall constitute
22 evidence of qualification under this paragraph;

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

27 (j) Has not been committed to a mental institution
28 under chapter 394, or similar laws of any other state, unless
29 the applicant produces a certificate from a licensed
30 psychiatrist that he has not suffered from disability for at
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1 least 5 years prior to the date of submission of the
2 application; ~~and~~
3 (k) Has not had adjudication of guilt withheld or
4 imposition of sentence suspended on any felony or misdemeanor
5 crime of domestic violence unless 3 years have elapsed since
6 probation or any other conditions set by the court have been
7 fulfilled, or the record has been sealed or expunged; ~~and-~~
8 (l) Has not been issued an injunction that is
9 currently in force and effect and that restrains the applicant
10 from committing acts of domestic violence or acts of repeat
11 violence.
12 (3) The Department of State shall ~~may~~ deny a license
13 if the applicant has been found guilty of, had adjudication of
14 guilt withheld for, or had imposition of sentence suspended
15 for one or more crimes of violence constituting a misdemeanor,
16 unless 3 years have elapsed since probation or any other
17 conditions set by the court have been fulfilled, ~~or~~ the record
18 has been sealed or expunged. The Department of State shall, ~~or~~
19 ~~may~~ revoke a license if the licensee has been found guilty of,
20 had adjudication of guilt withheld for, or had imposition of
21 sentence suspended for one or more crimes of violence within
22 the preceding 3 years. The department shall, upon
23 notification by a law enforcement agency, a court, or the
24 Florida Department of Law Enforcement and subsequent written
25 verification, suspend a license or the processing of an
26 application for a license if the licensee or applicant is
27 arrested or formally charged with a crime that ~~which~~ would
28 disqualify such person from having a license under this
29 section, until final disposition of the case. The department
30 shall suspend a license or the processing of an application
31 for a license if the licensee or applicant is issued an

1 injunction that restrains the licensee or applicant from
2 committing acts of domestic violence or acts of repeat
3 violence.

4 Section 6. Subsections (1) and (2) of section 790.065,
5 Florida Statutes, 1996 Supplement, are amended to read:

6 790.065 Sale and delivery of firearms.--

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

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

21 (b) ~~†~~ Collected a fee from the potential buyer for
22 processing the criminal history check of the potential buyer.
23 The fee shall be \$8. The Department of Law Enforcement shall,
24 by rule, establish procedures for the fees to be transmitted
25 by the licensee to the Department of Law Enforcement. All such
26 fees shall be deposited into the Department of Law Enforcement
27 Operating Trust Fund, but shall be segregated from all other
28 funds deposited into such trust fund and must be accounted for
29 separately. Such segregated funds must not be used for any
30 purpose other than the operation of the criminal history
31 checks required by this section. The Department of Law

1 Enforcement, each year prior to February 1, shall make a full
2 accounting of all receipts and expenditures of such funds to
3 the President of the Senate, the Speaker of the House of
4 Representatives, the majority and minority leaders of each
5 house of the Legislature, and the chairs of the appropriations
6 committees of each house of the Legislature. In the event
7 that the cumulative amount of funds collected exceeds the
8 cumulative amount of expenditures by more than \$2.5 million,
9 excess funds may be used for the purpose of purchasing soft
10 body armor for law enforcement officers.

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

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

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

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25 However, if the person purchasing, or receiving delivery of,
26 the firearm is a holder of a valid concealed weapons or
27 firearms license pursuant to the provisions of s. 790.06 or
28 holds an active certification from the Criminal Justice
29 Standards and Training Commission as a "law enforcement
30 officer," a "correctional officer," or a "correctional
31 probation officer" as defined in s. 943.10(1), (2), (3), (6),

1 (7), (8), or (9), the provisions of this subsection do not
2 apply.

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

6 (a) Review criminal history records to determine if
7 the potential buyer or transferee has been convicted of a
8 felony or misdemeanor crime of domestic violence and is
9 prohibited from receipt or possession of a firearm pursuant to
10 s. 790.23 or has had adjudication of guilt withheld or
11 imposition of sentence suspended on any felony or misdemeanor
12 crime of domestic violence unless 3 years have elapsed since
13 probation or any other conditions set by the court have been
14 fulfilled or expunction has occurred.

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

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

29 907.041(4)(a) or for any of the following enumerated offenses:

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

31 b. Extortion under s. 836.05.

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

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

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

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

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

28 5. If the potential buyer is not so prohibited, or if
29 the department cannot determine the disposition information
30 within the allotted time period, the department shall provide
31 the licensee with a conditional approval number.

1 6. If the buyer is so prohibited, the conditional
2 nonapproval number shall become a nonapproval number.

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

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

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

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

19 Section 7. This act shall take effect July 1, 1997.
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