

By Senator Peaden

2-724A-04

See HB 155

1                                   A bill to be entitled

2           An act relating to firearm records; creating s.

3           790.335, F.S.; providing legislative findings

4           and intent; prohibiting the creation or

5           maintenance of any list, record, or registry of

6           privately owned firearms or any list, record,

7           or registry of the owners of those firearms;

8           providing exceptions; providing criminal

9           penalties for a violation of the act; providing

10          for the imposition of civil fines on certain

11          governmental entities; authorizing the Attorney

12          General to enforce the civil penalties against

13          governmental agencies; requiring the state

14          attorney to prosecute violators of this act;

15          prohibiting the expenditure of public funds for

16          defense counsel for persons charged with a

17          violation of this act; providing exceptions;

18          requiring liberal construction of the act;

19          providing for application to records already in

20          existence; providing an effective date.

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22           WHEREAS, the United States Supreme Court has ruled that

23   since felons are prohibited from owning firearms, compelling

24   them to register their firearms would violate their Fifth

25   Amendment rights against self-incrimination (Haynes v. U.S.,

26   390 U.S. 85 (1968)) and, as a consequence, criminals may not

27   be forced to register firearms and may not be prosecuted for

28   failure to register firearms, and

29           WHEREAS, 18 U.S.C. s. 926, the Firearms Owner's

30   Protection Act, prohibits the establishment of "any system of

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1 registration of firearms, firearms owners, or firearms  
2 transactions or dispositions," and

3 WHEREAS, the Firearms Owner's Protection Act prohibits  
4 any rule or regulation that may require that records required  
5 to be maintained by firearms dealers under federal law or any  
6 portion of the contents of such firearms records from being  
7 recorded at or transferred to a facility owned, managed, or  
8 controlled by the United States or any state or political  
9 subdivision thereof, and

10 WHEREAS, history has shown that the registration of  
11 firearms in Cuba enabled Fidel Castro to confiscate firearms  
12 and render the disarmed population helpless under his tyranny,  
13 and

14 WHEREAS, history has also shown that the registration  
15 of firearms in Nazi Germany enabled Adolph Hitler to  
16 confiscate firearms and render the disarmed population  
17 helpless in the face of Nazi atrocities, and

18 WHEREAS, firearm registration lists have led to gun  
19 confiscation in Australia, Bermuda, Cuba, Germany, Great  
20 Britain, Greece, Ireland, Jamaica, the former Soviet Union,  
21 and other countries, and

22 WHEREAS, history has shown that registration of  
23 firearms in California, New York City, Chicago, and  
24 Washington, D.C., has led to the banning and confiscation of  
25 firearms, and

26 WHEREAS, repeated attempts to accumulate firearms data  
27 into computerized databases by some of Florida's agencies and  
28 political subdivisions have placed the privacy rights of  
29 law-abiding firearm owners at risk, thereby making legislative  
30 protection necessary, NOW, THEREFORE,

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

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3 Section 1. Section 790.335, Florida Statutes, is  
4 created to read:

5 790.335 Prohibition of registration of firearms.--

6 (1) LEGISLATIVE FINDINGS AND INTENT.--

7 (a) The Legislature finds and declares that:

8 1. The right of individuals to keep and bear arms is  
9 guaranteed under both the Second Amendment to the United  
10 States Constitution and s. 8, Art. I of the State  
11 Constitution, and keeping a list, record, or registry of those  
12 exercising that right is not only a violation of the right to  
13 keep and bear arms, but also a violation of the firearm  
14 owner's right to privacy.

15 2. A list, record, or registry of legally owned  
16 firearms or law-abiding firearm owners is not a law  
17 enforcement tool and can become an instrument for profiling,  
18 harassing, or abusing law-abiding citizens based on their  
19 choice to own a firearm and exercise their Second Amendment  
20 right to keep and bear arms as guaranteed under the United  
21 States Constitution. Further, such a list, record, or registry  
22 has the potential to fall into the wrong hands and become a  
23 shopping list for thieves.

24 3. A list, record, or registry of legally owned  
25 firearms or law-abiding firearm owners is not a tool for  
26 fighting terrorism, but rather is an instrument that can be  
27 used as a means to profile innocent citizens using terrorism  
28 as an excuse to harass and abuse United States citizens based  
29 solely on their choice to own firearms and exercise their  
30 Second Amendment right to keep and bear arms as guaranteed  
31 under the United States Constitution.

1           4. Law-abiding firearm owners whose names have been  
2 recorded in a list, record, or registry are entitled to  
3 redress.

4           (b) The Legislature intends through the provisions of  
5 this section to:

6           1. Protect the right of individuals to keep and bear  
7 arms as guaranteed under both the Second Amendment to the  
8 United States Constitution and s. 8, Art. I of the State  
9 Constitution.

10           2. Protect the privacy rights of law-abiding firearm  
11 owners.

12           (2) PROHIBITIONS.--No state governmental agency or  
13 local government, special district, or other political  
14 subdivision or official, agent, or employee of such state or  
15 other governmental entity or any other person, public or  
16 private, shall keep or cause to be kept any list, record, or  
17 registry of privately owned firearms or any list, record, or  
18 registry of the owners of those firearms.

19           (3) EXCEPTIONS.--The provisions of this section shall  
20 not apply to:

21           (a) Records of firearms that have been used in  
22 committing any crime.

23           (b) Records relating to persons who have been  
24 convicted of a crime.

25           (c) Records of a firearm that has been reported stolen  
26 which are retained for a period not in excess of 30 days after  
27 such firearm is recovered.

28           (d) Firearm records that must be retained by firearm  
29 dealers under federal law, including copies of such records  
30 transmitted to law enforcement agencies. However, no state  
31 governmental agency or local government, special district, or

1 other political subdivision or official, agent, or employee of  
2 such state or other governmental entity or any other person,  
3 private or public, shall accumulate, compile, computerize, or  
4 otherwise collect or convert such written records into any  
5 form of list, registry, or database for any purpose.

6 (e)1. Records kept pursuant to the recordkeeping  
7 provisions of s. 790.065; however, nothing in this section  
8 shall be construed to authorize the public release or  
9 inspection of records that are made confidential and exempt  
10 from the provisions of s. 119.07(1) by s. 790.065(4)(a).

11 2. Nothing in this paragraph shall be construed to  
12 authorize the maintaining of records containing the names of  
13 purchasers or transferees who receive unique approval numbers  
14 or the maintaining of records of firearm transactions.

15 (f) Firearms records required by chapter 538 or  
16 chapter 539.

17 1. Electronic firearms records held pursuant to  
18 chapter 538 may only be kept by a secondhand dealer for 30  
19 days after the date of the purchase of the firearm by the  
20 secondhand dealer.

21 2. Electronic firearms records held pursuant to  
22 chapter 539 may only be kept by a pawnbroker for 30 days after  
23 the expiration of the loan that is secured by a firearm.

24 3. Except as required by federal law, any firearms  
25 records kept pursuant to chapter 538 or chapter 539 shall not,  
26 at any time, be electronically transferred to any public or  
27 private entity, agency, business, or enterprise, nor shall any  
28 such records be copied or transferred for purposes of  
29 accumulation of such records into lists, registries, or  
30 databases.

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1           4. Notwithstanding subparagraph 3., secondhand dealers  
2 and pawnbrokers may electronically submit firearm transaction  
3 records to the appropriate law enforcement agencies as  
4 required by chapter 538 or chapter 539; however, the law  
5 enforcement agency may not electronically submit such record  
6 to any other person or entity and must destroy such record  
7 within 30 days after receipt of such record.

8           (g) Records kept by the Department of Law Enforcement  
9 of NCIC transactions to the extent required by federal law and  
10 a log of dates of requests for criminal history records  
11 checks, unique approval and nonapproval numbers, license  
12 identification numbers, and transaction numbers corresponding  
13 to such dates.

14           (h) Records of an insurer received as a condition to  
15 obtaining insurance against theft or loss of a firearm which  
16 would identify such firearm. Such record may not be sold,  
17 commingled with records relating to other firearms, or  
18 transferred to any other person or entity. The insurer may not  
19 keep a record of such firearm more than 60 days after the  
20 policy of insurance expires or after notification by the  
21 insured that the insured is no longer the owner of such  
22 firearm.

23           (i) Lists of customers of a firearm dealer by such  
24 dealer, provided that such lists do not disclose the  
25 particular firearms purchased. Such lists, or any part  
26 thereof, may not be sold, commingled with records relating to  
27 other firearms, or transferred to any other person or entity.

28           (j) Sales receipts by the seller of firearms or by a  
29 person providing credit for such purchase, provided that such  
30 receipts shall not serve as or be used for the creation of a  
31 database for registration of firearms.

1           (k) Personal records of firearms maintained by the  
2 owner of such firearms.

3           (l) Records maintained by a business that stores or  
4 acts as the selling agent of firearms on behalf of the lawful  
5 owner of the firearms.

6           (m) Membership lists of organizations comprised of  
7 firearm owners.

8           (n) Records maintained by an employer or contracting  
9 entity of the firearms owned by its officers, employees, or  
10 agents, if such firearms are used in the course of business  
11 performed on behalf of the employer.

12           (o) Records maintained pursuant to s. 790.06 by the  
13 Department of Agriculture and Consumer Services of a person  
14 who was a licensee within the prior 2 years.

15           (4) PENALTIES.--

16           (a) Any person who violates a provision of this  
17 section commits a felony of the third degree, punishable as  
18 provided in s. 775.082 or s. 775.083.

19           (b) Except as required by the provisions of s. 16,  
20 Art. I of the State Constitution or the Sixth Amendment to the  
21 United States Constitution, no public funds shall be used to  
22 defend the unlawful conduct of any person charged with a  
23 violation of this section, unless the charges against such  
24 person are dismissed or such person is determined to be not  
25 guilty at trial.

26           (c) The governmental entity, or the designee of such  
27 governmental entity, in whose service or employ a list,  
28 record, or registry was compiled in violation of this section  
29 shall be assessed a fine of up to \$5 million, if the court  
30 determines that the evidence shows that the list, record, or  
31 registry was compiled or maintained with the knowledge or

1 complicity of the management of the governmental entity. The  
2 Attorney General may bring a civil cause of action to enforce  
3 the fines under this paragraph.

4 (d) The state attorney in the appropriate jurisdiction  
5 shall investigate complaints of criminal violations of this  
6 section and, where evidence indicates a violation may have  
7 occurred, shall vigorously prosecute violators.

8 (5) LIBERAL CONSTRUCTION.--This section shall be  
9 liberally construed to effectuate its remedial and deterrent  
10 purposes.

11 Section 2. Any list, record, or registry maintained or  
12 under construction on the effective date of this act shall be  
13 destroyed, unless prohibited by law, within 60 calendar days  
14 after this act becomes law. Thereafter, failure to destroy any  
15 such list, record, or registry may result in prosecution under  
16 this act.

17 Section 3. This act shall take effect upon becoming a  
18 law.

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