

By the Committee on Criminal Justice; and Senator Peadar

307-1318-04

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 knowing and willful
5 creation or maintenance of any list, record, or
6 registry of privately owned firearms or any
7 list, record, or registry of the owners of
8 those firearms; providing exceptions; providing
9 criminal penalties for a violation of the act;
10 providing for the imposition of civil fines on
11 certain governmental entities; authorizing the
12 Attorney General to enforce the civil penalties
13 against governmental agencies; requiring the
14 state attorney to vigorously prosecute criminal
15 violators of this act; prohibiting the
16 expenditure of public funds for defense counsel
17 for persons charged with a violation of this
18 act; providing exceptions; requiring liberal
19 construction of the act; providing for
20 application to records already in existence;
21 providing an effective date.

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

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25 Section 1. Section 790.335, Florida Statutes, is
26 created to read:

27 790.335 Prohibition of registration of firearms.--

28 (1) LEGISLATIVE FINDINGS AND INTENT.--

29 (a) The Legislature finds and declares that:

30 1. The right of individuals to keep and bear arms is
31 guaranteed under both the Second Amendment to the United

1 States Constitution and s. 8, Art. I of the State
2 Constitution.
3 2. A list, record, or registry of legally owned
4 firearms or law-abiding firearm owners is not a law
5 enforcement tool and can become an instrument for profiling,
6 harassing, or abusing law-abiding citizens based on their
7 choice to own a firearm and exercise their Second Amendment
8 right to keep and bear arms as guaranteed under the United
9 States Constitution. Further, such a list, record, or registry
10 has the potential to fall into the wrong hands and become a
11 shopping list for thieves.
12 3. A list, record, or registry of legally owned
13 firearms or law-abiding firearm owners is not a tool for
14 fighting terrorism, but rather is an instrument that can be
15 used as a means to profile innocent citizens and to harass and
16 abuse American citizens based solely on their choice to own
17 firearms and exercise their Second Amendment right to keep and
18 bear arms as guaranteed under the United States Constitution.
19 4. Law-abiding firearm owners whose names have been
20 illegally recorded in a list, record, or registry are entitled
21 to redress.
22 (b) The Legislature intends through the provisions of
23 this section to:
24 1. Protect the right of individuals to keep and bear
25 arms as guaranteed under both the Second Amendment to the
26 United States Constitution and s. 8, Art. I of the State
27 Constitution.
28 2. Protect the privacy rights of law-abiding firearm
29 owners.
30 (2) PROHIBITIONS.--No state governmental agency or
31 local government, special district, or other political

1 subdivision or official, agent, or employee of such state or
2 other governmental entity or any other person, public or
3 private, shall knowingly and willfully keep or cause to be
4 kept any list, record, or registry of privately owned firearms
5 or any list, record, or registry of the owners of those
6 firearms.

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

9 (a) Records of firearms which have been used in
10 committing any crime.

11 (b) Records relating to any person who has been
12 convicted of a crime.

13 (c) Records of firearms that have been reported stolen
14 which are retained for a period not in excess of 30 days after
15 such firearms are recovered.

16 (d) Firearm records that must be retained by firearm
17 dealers under federal law, including copies of such records
18 transmitted to law enforcement agencies. However, no state
19 governmental agency or local government, special district, or
20 other political subdivision or official, agent, or employee of
21 such state or other governmental entity or any other person,
22 private or public, shall accumulate, compile, computerize, or
23 otherwise collect or convert such written records into any
24 form of list, registry, or database for any purpose.

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

30 2. Nothing in this paragraph shall be construed to
31 allow the maintaining of records containing the names of

1 purchasers or transferees who receive unique approval numbers
2 or the maintaining of records of firearm transactions.

3 (f) Firearm records required by chapters 538 and 539.

4 1. Electronic firearm records held pursuant to chapter
5 538 may only be kept by a secondhand dealer for 30 days after
6 the date of the purchase of the firearm by the secondhand
7 dealer.

8 2. Electronic firearm records held pursuant to chapter
9 539 may only be kept by a pawnbroker for 30 days after the
10 expiration of the loan that is secured by a firearm.

11 3. Except as required by federal law, any firearm
12 records kept pursuant to chapter 538 or chapter 539 shall not,
13 at any time, be electronically transferred to any public or
14 private entity, agency, business, or enterprise, nor shall any
15 such records be copied or transferred for purposes of
16 accumulation of such records into lists, registries, or
17 databases.

18 4. Notwithstanding subparagraph 3., secondhand dealers
19 and pawnbrokers may electronically submit firearm transaction
20 records to the appropriate law enforcement agencies as
21 required by chapters 538 and 539; however, the law enforcement
22 agencies may not electronically submit such records to any
23 other person or entity and must destroy such records within 30
24 days after receipt of such records.

25 (g) Records kept by the Department of Law Enforcement
26 of NCIC transactions to the extent required by federal law and
27 a log of dates of requests for criminal history record checks,
28 unique approval and nonapproval numbers, license
29 identification numbers, and transaction numbers corresponding
30 to such dates.

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1 (h) Records of an insurer which, as a condition to
2 providing insurance against theft or loss of a firearm,
3 identify such firearm. Such records may not be sold,
4 commingled with records relating to other firearms, or
5 transferred to any other person or entity. The insurer may not
6 keep a record of such firearm more than 60 days after the
7 policy of insurance expires or after notification by the
8 insured that the insured is no longer the owner of such
9 firearm.

10 (i) Lists of customers of a firearm dealer retained by
11 such dealer, provided that such lists do not disclose the
12 particular firearms purchased. Such lists, or any parts
13 thereof, may not be sold, commingled with records relating to
14 other firearms, or transferred to any other person or entity.

15 (j) Sales receipts retained by the seller of firearms
16 or by a person providing credit for such purchase, provided
17 that such receipts shall not serve as or be used for the
18 creation of a database for registration of firearms.

19 (k) Personal records of firearms maintained by the
20 owner of such firearms.

21 (l) Records maintained by a business which stores or
22 acts as the selling agent of firearms on behalf of the lawful
23 owner of the firearms.

24 (m) Membership lists of organizations comprised of
25 firearm owners.

26 (n) Records maintained by an employer or contracting
27 entity of the firearms owned by its officers, employees, or
28 agents, if such firearms are used in the course of business
29 performed on behalf of the employer.

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

4 (4) PENALTIES.--

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

8 (b) Except as required by the provisions of s. 16,
9 Art. I of the State Constitution or the Sixth Amendment to the
10 United States Constitution, no public funds shall be used to
11 defend the unlawful conduct of any person charged with a
12 violation of this section, unless the charges against such
13 person are dismissed or such person is determined to be not
14 guilty at trial.

15 (c) The governmental entity, or the designee of such
16 governmental entity, in whose service or employ a list,
17 record, or registry was compiled in violation of this section
18 may be assessed a fine of not more than \$5 million, if the
19 court determines that the evidence shows that the list,
20 record, or registry was compiled or maintained with the
21 knowledge or complicity of the management of the governmental
22 entity. The Attorney General may bring a civil cause of action
23 to enforce the fines assessed under this paragraph.

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

28 (5) LIBERAL CONSTRUCTION.--This section shall be
29 liberally construed to effectuate its remedial and deterrent
30 purposes.

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1 Section 2. Any list, record, or registry maintained or
2 under construction on the effective date of this act shall be
3 destroyed, unless prohibited by law, within 60 calendar days
4 after this act becomes law. Thereafter, failure to destroy any
5 such list, record, or registry may result in prosecution under
6 this act.

7 Section 3. This act shall take effect upon becoming a
8 law.

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10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 SB 1152

- 13 - The "whereas" clauses are deleted from the bill.
14 - The Legislative Findings in Section 1 are amended by the
15 CS as follows: deletes the finding that keeping a list,
16 record, or registry of firearm owners is a violation of
the constitutionally protected right to keep and bear
arms and the right to privacy.
17 - Section 1 is further amended to require the proof of a
18 knowing and willful violation of the list-keeping
prohibition set forth in the bill.