

By the Committees on Judiciary; Criminal Justice; and Senator Peaden

308-1968-04

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.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
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 10 days after
15 such firearms are recovered. Official documentation recording
16 the theft of a recovered weapon may be maintained no longer
17 than the balance of the year entered, plus 2 years.

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

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

1 2. Nothing in this paragraph shall be construed to
2 allow the maintaining of records containing the names of
3 purchasers or transferees who receive unique approval numbers
4 or the maintaining of records of firearm transactions.

5 (f) Firearm records, including paper pawn transaction
6 forms and contracts on firearm transactions, required by
7 chapters 538 and 539.

8 1. Electronic firearm records held pursuant to chapter
9 538 may only be kept by a secondhand dealer for 30 days after
10 the date of the purchase of the firearm by the secondhand
11 dealer.

12 2. Electronic firearm records held pursuant to chapter
13 539 may only be kept by a pawnbroker for 30 days after the
14 expiration of the loan that is secured by a firearm.

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

22 4. Notwithstanding subparagraph 3., secondhand dealers
23 and pawnbrokers may electronically submit firearm transaction
24 records to the appropriate law enforcement agencies as
25 required by chapters 538 and 539; however, the law enforcement
26 agencies may not electronically submit such records to any
27 other person or entity and must destroy such records within 60
28 days after receipt of such records.

29 5. Notwithstanding subparagraph 3., secondhand dealers
30 and pawnbrokers may electronically submit limited firearms
31 records consisting solely of the manufacturer, model, serial

1 number, and caliber of pawned or purchased firearms to a
2 third-party private provider that is exclusively incorporated,
3 exclusively owned, and exclusively operated in the United
4 States and that restricts access to such information to only
5 appropriate law enforcement agencies for legitimate law
6 enforcement purposes. Such records must be destroyed within 30
7 days by the third-party provider. As a condition of receipt of
8 such records, the third-party provider must agree in writing
9 to comply with the requirements of this section. Any
10 pawnbroker or secondhand dealer who contracts with a
11 third-party provider other than as provided in this act or
12 electronically transmits any records of firearms transactions
13 to any third-party provider other than the records
14 specifically allowed by this paragraph commits a felony of the
15 second degree, punishable as provided in s. 775.082 or s.
16 775.083.

17 (g) Records kept by the Department of Law Enforcement
18 of NCIC transactions to the extent required by federal law and
19 a log of dates of requests for criminal history record checks,
20 unique approval and nonapproval numbers, license
21 identification numbers, and transaction numbers corresponding
22 to such dates.

23 (h) Records of an insurer which, as a condition to
24 providing insurance against theft or loss of a firearm,
25 identify such firearm. Such records may not be sold,
26 commingled with records relating to other firearms, or
27 transferred to any other person or entity. The insurer may not
28 keep a record of such firearm more than 60 days after the
29 policy of insurance expires or after notification by the
30 insured that the insured is no longer the owner of such
31 firearm.

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

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

10 (k) Personal records of firearms maintained by the
11 owner of such firearms.

12 (l) Records maintained by a business which stores or
13 acts as the selling agent of firearms on behalf of the lawful
14 owner of the firearms.

15 (m) Membership lists of organizations comprised of
16 firearm owners.

17 (n) Records maintained by an employer or contracting
18 entity of the firearms owned by its officers, employees, or
19 agents, if such firearms are used in the course of business
20 performed on behalf of the employer.

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

24 (p) Records of firearms involved in criminal
25 investigations, criminal prosecutions, criminal appeals, and
26 postconviction motions.

27 (q) Paper documents relating to firearms involved in
28 criminal cases, criminal investigations, and criminal
29 prosecutions.

30 (4) PENALTIES.--
31

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

4 (b) Except as required by the provisions of s. 16,
5 Art. I of the State Constitution or the Sixth Amendment to the
6 United States Constitution, no public funds shall be used to
7 defend the unlawful conduct of any person charged with a
8 violation of this section, unless the charges against such
9 person are dismissed or such person is determined to be not
10 guilty at trial. Notwithstanding this paragraph, public funds
11 may be expended to provide the services of the office of
12 public defender or court-appointed conflict counsel as
13 provided by law.

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

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

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

30 Section 2. Any list, record, or registry maintained or
31 under construction on the effective date of this act shall be

1 destroyed, unless prohibited by law, within 60 calendar days
2 after this act becomes law. Thereafter, failure to destroy any
3 such list, record, or registry may result in prosecution under
4 this act.

5 Section 3. This act shall take effect upon becoming a
6 law.

7
8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 CS/SB 1152

11 - Decreases from 30 days to 10 days the period during which
12 records of stolen firearms can be retained after the
13 firearms are recovered but adds that the official
14 documentation recording the theft of a recovered weapon
can be kept for the remainder of the year in which the
recording was made plus 2 years.

15 - Clarifies that the exemption for records of firearm
16 transactions required to be kept by secondhand dealers
and pawnshop brokers includes paper pawn transaction
forms and contracts.

17 - Increases from 30 days to 60 days the period during which
18 law enforcement may maintain certain electronically
19 transferred firearm records from secondhand and pawnshop
dealers.

20 - Exempts from the prohibition against firearm ownership
21 and transaction recordkeeping those firearm records
connected with criminal investigations, prosecutions,
appeals, and post conviction motions.

22 - Exempts from the prohibition against firearm ownership
23 and transaction recordkeeping those paper documents
relating to firearms involved in criminal cases,
24 investigations and prosecutions.

25 - Clarifies that the prohibition against use of public
26 funds in the defense of someone who violates the firearm
records law does not preclude the use of public funds for
27 the services of a public defender or court-appointed
counsel as provided by law.