

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Harrington offered the following:

Amendment (with title amendment)

Remove the entire body and insert:

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

790.335 Prohibition of registration of firearms.--

(1) LEGISLATIVE FINDINGS AND INTENT.--

(a) The Legislature finds and declares that:

1. The right of individuals to keep and bear arms is guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.

2. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and

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18 exercise their Second Amendment right to keep and bear arms as
19 guaranteed under the United States Constitution. Further, such a
20 list, record, or registry has the potential to fall into the
21 wrong hands and become a shopping list for thieves.

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

29 4. Law-abiding firearm owners whose names have been
30 illegally recorded in a list, record, or registry are entitled
31 to redress.

32 (b) The Legislature intends through the provisions of this
33 section to:

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

37 2. Protect the privacy rights of law-abiding firearm
38 owners.

39 (2) PROHIBITIONS.--No state governmental agency or local
40 government, special district, or other political subdivision or
41 official, agent, or employee of such state or other governmental
42 entity or any other person, public or private, shall knowingly
43 and willfully keep or cause to be kept any list, record, or
44 registry of privately owned firearms or any list, record, or
45 registry of the owners of those firearms.

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

48 (a) Records of firearms that have been used in committing
49 any crime.

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

52 (c) Records of firearms that have been reported stolen
53 that are retained for a period not in excess of 10 days after
54 such firearms are recovered. Official documentation recording
55 the theft of a recovered weapon may be maintained no longer than
56 the balance of the year entered, plus 2 years.

57 (d) Firearm records that must be retained by firearm
58 dealers under federal law, including copies of such records
59 transmitted to law enforcement agencies. However, no state
60 governmental agency or local government, special district, or
61 other political subdivision or official, agent, or employee of
62 such state or other governmental entity or any other person,
63 private or public, shall accumulate, compile, computerize, or
64 otherwise collect or convert such written records into any form
65 of list, registry, or database for any purpose.

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

71 2. Nothing in this paragraph shall be construed to allow
72 the maintaining of records containing the names of purchasers or
73 transferees who receive unique approval numbers or the
74 maintaining of records of firearm transactions.

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75 (f) Firearm records, including paper pawn transaction
76 forms and contracts on firearm transactions, required by
77 chapters 538 and 539.

78 1. Electronic firearm records held pursuant to chapter 538
79 may only be kept by a secondhand dealer for 30 days after the
80 date of the purchase of the firearm by the secondhand dealer.

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

84 3. Except as required by federal law, any firearm records
85 kept pursuant to chapter 538 or chapter 539 shall not, at any
86 time, be electronically transferred to any public or private
87 entity, agency, business, or enterprise, nor shall any such
88 records be copied or transferred for purposes of accumulation of
89 such records into lists, registries, or databases.

90 4. Notwithstanding subparagraph 3., secondhand dealers and
91 pawnbrokers may electronically submit firearm transaction
92 records to the appropriate law enforcement agencies as required
93 by chapters 538 and 539; however, the law enforcement agencies
94 may not electronically submit such records to any other person
95 or entity and must destroy such records within 60 days after
96 receipt of such records.

97 5. Notwithstanding subparagraph 3., secondhand dealers and
98 pawnbrokers may electronically submit limited firearms records
99 consisting solely of the manufacturer, model, serial number, and
100 caliber of pawned or purchased firearms to a third-party private
101 provider that is exclusively incorporated, exclusively owned,
102 and exclusively operated in the United States and that restricts
103 access to such information to only appropriate law enforcement

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104 agencies for legitimate law enforcement purposes. Such records
105 must be destroyed within 30 days by the third-party provider. As
106 a condition of receipt of such records, the third-party provider
107 must agree in writing to comply with the requirements of this
108 section. Any pawnbroker or secondhand dealer who contracts with
109 a third-party provider other than as provided in this act or
110 electronically transmits any records of firearms transactions to
111 any third-party provider other than the records specifically
112 allowed by this paragraph commits a felony of the second degree,
113 punishable as provided in s. 775.082 or s. 775.083.

114 (g) Records kept by the Department of Law Enforcement of
115 NCIC transactions to the extent required by federal law and a
116 log of dates of requests for criminal history record checks,
117 unique approval and nonapproval numbers, license identification
118 numbers, and transaction numbers corresponding to such dates.

119 (h) Records of an insurer that, as a condition to
120 providing insurance against theft or loss of a firearm, identify
121 such firearm. Such records may not be sold, commingled with
122 records relating to other firearms, or transferred to any other
123 person or entity. The insurer may not keep a record of such
124 firearm more than 60 days after the policy of insurance expires
125 or after notification by the insured that the insured is no
126 longer the owner of such firearm.

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

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

136 (k) Personal records of firearms maintained by the owner
137 of such firearms.

138 (l) Records maintained by a business that stores or acts
139 as the selling agent of firearms on behalf of the lawful owner
140 of the firearms.

141 (m) Membership lists of organizations comprised of firearm
142 owners.

143 (n) Records maintained by an employer or contracting
144 entity of the firearms owned by its officers, employees, or
145 agents, if such firearms are used in the course of business
146 performed on behalf of the employer.

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

150 (p) Records of firearms involved in criminal
151 investigations, criminal prosecutions, criminal appeals, and
152 postconviction motions.

153 (q) Paper documents relating to firearms involved in
154 criminal cases, criminal investigations, and criminal
155 prosecutions.

156 (4) PENALTIES.--

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

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

166 Notwithstanding this paragraph, public funds may be expended to
167 provide the services of the office of public defender or court-
168 appointed conflict counsel as provided by law.

169 (c) The governmental entity, or the designee of such
170 governmental entity, in whose service or employ a list, record,
171 or registry was compiled in violation of this section may be
172 assessed a fine of not more than \$5 million, if the court
173 determines that the evidence shows that the list, record, or
174 registry was compiled or maintained with the knowledge or
175 complicity of the management of the governmental entity. The
176 Attorney General may bring a civil cause of action to enforce
177 the fines assessed under this paragraph.

178 (d) The state attorney in the appropriate jurisdiction
179 shall investigate complaints of criminal violations of this
180 section and, where evidence indicates a violation may have
181 occurred, shall prosecute violators.

182 (5) CONSTRUCTION.--This section shall be construed to
183 effectuate its remedial and deterrent purposes.

184 Section 2. Any list, record, or registry maintained or
185 under construction on the effective date of this act shall be
186 destroyed, unless prohibited by law, within 60 calendar days
187 after this act becomes law. Thereafter, failure to destroy any

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188 such list, record, or registry may result in prosecution under
189 this act.

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

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192 ===== T I T L E A M E N D M E N T =====

193 Remove the entire title and insert:

194
195 A bill to be entitled
196 An act relating to firearm records; creating s. 790.335,
197 F.S.; providing legislative findings and intent;
198 prohibiting the knowing and willful creation or
199 maintenance of any list, record, or registry of privately
200 owned firearms or any list, record, or registry of the
201 owners of those firearms; providing exceptions; providing
202 criminal penalties for a violation of the act; providing
203 for the imposition of civil fines on certain governmental
204 entities; authorizing the Attorney General to enforce the
205 civil penalties against governmental agencies; requiring
206 the state attorney to prosecute criminal violators of this
207 act; prohibiting the expenditure of public funds for
208 defense counsel for persons charged with a violation of
209 this act; providing exceptions; providing for liberal
210 construction of the act; providing for application to
211 records already in existence; providing an effective date.