

HB 0155

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1 A bill to be entitled

2 An act relating to firearm records; creating s. 790.335,
3 F.S.; providing legislative findings and intent;
4 prohibiting the creation or maintenance of any list,
5 record, or registry of privately owned firearms or any
6 list, record, or registry of the owners of those firearms;
7 providing exceptions; providing criminal penalties for a
8 violation of the act; providing for the imposition of
9 fines on certain governmental entities; requiring the
10 state attorney to vigorously prosecute violators of this
11 act; prohibiting the expenditure of public funds for
12 defense counsel for persons charged with a violation of
13 this act; providing exceptions; requiring liberal
14 construction of the act; providing for severability;
15 providing for application to records already in existence;
16 providing an effective date.

17
18 WHEREAS, the United States Supreme Court has ruled that
19 since felons are prohibited from owning firearms, compelling
20 them to register their firearms would violate their Fifth
21 Amendment rights against self-incrimination (*Haynes v. U.S.*, 390
22 U.S. 85 (1968)) and, as a consequence, criminals may not be
23 forced to register firearms and may not be prosecuted for
24 failure to register firearms, and

25 WHEREAS, 18 U.S.C. s. 926, the Firearms Owner's Protection
26 Act, prohibits the establishment of "any system of registration
27 of firearms, firearms owners, or firearms transactions or
28 dispositions," and

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29 WHEREAS, the Firearms Owner's Protection Act prohibits any
 30 rule or regulation that may require that records required to be
 31 maintained by firearms dealers under federal law or any portion
 32 of the contents of such firearms records from being recorded at
 33 or transferred to a facility owned, managed, or controlled by
 34 the United States or any state or political subdivision thereof,
 35 and

36 WHEREAS, history has shown that the registration of
 37 firearms in Cuba enabled Fidel Castro to confiscate firearms and
 38 render the disarmed population helpless under his tyranny, and

39 WHEREAS, history has also shown that the registration of
 40 firearms in Nazi Germany enabled Adolph Hitler to confiscate
 41 firearms and render the disarmed population helpless in the face
 42 of Nazi atrocities, and

43 WHEREAS, firearm registration lists have led to gun
 44 confiscation in Australia, Bermuda, Cuba, Germany, Great
 45 Britain, Greece, Ireland, Jamaica, the former Soviet Union, and
 46 other countries, and

47 WHEREAS, history has shown that registration of firearms in
 48 California, New York City, Chicago, and Washington, D.C., has
 49 led to the banning and confiscation of firearms, and

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

55
 56 Be It Enacted by the Legislature of the State of Florida:
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58 Section 1. Section 790.335, Florida Statutes, is created
59 to read:

60 790.335 Prohibition of registration of firearms.--

61 (1) LEGISLATIVE FINDINGS AND INTENT.--

62 (a) The Legislature finds and declares that:

63 1. The right of individuals to keep and bear arms is
64 guaranteed under both the Second Amendment to the United States
65 Constitution and s. 8, Art. I of the State Constitution, and
66 keeping a list, record, or registry of those exercising that
67 right is not only a violation of the right to keep and bear
68 arms, but also a violation of the firearm owner's right to
69 privacy.

70 2. A list, record, or registry of legally owned firearms
71 or law-abiding firearm owners is not a law enforcement tool and
72 can become an instrument for profiling, harassing, or abusing
73 law-abiding citizens based on their choice to own a firearm and
74 exercise their Second Amendment right to keep and bear arms as
75 guaranteed under the United States Constitution. Further, such a
76 list, record, or registry has the potential to fall into the
77 wrong hands and become a shopping list for thieves.

78 3. A list, record, or registry of legally owned firearms
79 or law-abiding firearm owners is not a tool for fighting
80 terrorism, but rather is an instrument that can be used as a
81 means to profile innocent citizens using terrorism as a phony
82 excuse to harass and abuse American citizens based solely on
83 their choice to own firearms and exercise their Second Amendment
84 right to keep and bear arms as guaranteed under the United
85 States Constitution.

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86 4. Any government official compiling such a list, record,
 87 or registry is violating the privacy of the law-abiding firearm
 88 owners and the public trust.

89 5. Law-abiding firearm owners whose names have been
 90 recorded in a list, record, or registry are entitled to redress.

91 (b) The Legislature intends through the provisions of this
 92 section to:

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

96 2. Protect the privacy rights of law-abiding firearm
 97 owners.

98 3. Provide an absolute, unequivocal prohibition of any
 99 form of registration of law-abiding firearm owners or their
 100 firearms.

101 (2) PROHIBITIONS.--No state governmental agency or local
 102 government, special district, or other political subdivision or
 103 official, agent, or employee of such state or other governmental
 104 entities or any other person, public or private, shall keep or
 105 cause to be kept any list, record, or registry of privately
 106 owned firearms or any list, record, or registry of the owners of
 107 those firearms.

108 (3) EXCEPTIONS.--

109 (a) The provisions of this section shall not apply to:

110 1.a. Firearms which have been used in committing any crime
 111 of violence.

112 b. Any person who has been convicted of a crime of
 113 violence.

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114 c. Records of a firearm that has been reported stolen
115 which are retained for a period not in excess of 30 days after
116 such firearm is recovered.

117 2. The keeping of federally required firearm records which
118 must be retained by firearm dealers under federal law, including
119 copies of such records transmitted to law enforcement agencies.
120 However, no state governmental agency or local government,
121 special district, or other political subdivision or official,
122 agent, or employee of such state or other governmental entities
123 or any other person, private or public, shall accumulate,
124 compile, computerize, or otherwise collect or convert such
125 written records into any form of list, registry, or database for
126 any purpose.

127 3.a. The record keeping provisions of s. 790.065, except
128 that any records containing any of the information set forth in
129 s. 790.065(1) pertaining to a buyer or transferee who is not
130 found to be prohibited from receipt or transfer of a firearm by
131 reason of state or federal law, which records are created by the
132 Department of Law Enforcement to conduct the criminal history
133 record check, shall be confidential and exempt from the
134 provisions of s. 119.07(1) and may not be disclosed by the
135 Department of Law Enforcement, or any officer or employee
136 thereof, to any person or to another agency. The Department of
137 Law Enforcement shall destroy any such records forthwith after
138 it communicates the approval and nonapproval numbers to the
139 licensee and, in any event, such records shall be destroyed
140 within 48 hours after the day of the response to the licensee's
141 request.

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142 b. Nothing in this subparagraph shall be construed to
143 allow the maintaining of records containing the names of
144 purchasers or transferees who receive unique approval numbers or
145 the maintaining of records of firearm transactions.

146 4. The firearms records required in chapter 539 may be
147 kept until the expiration of the loan which is secured by a
148 firearm. Except as required by federal law, any such firearms
149 records shall not, at any time, be electronically transferred to
150 any public or private entity, agency, business, or enterprise,
151 nor shall any such records be copied or transferred for purposes
152 of accumulation of such records into lists, registries, or
153 databases.

154 5. The Department of Law Enforcement may maintain records
155 of NCIC transactions to the extent required by federal law and
156 may maintain a log of dates of requests for criminal history
157 records checks, unique approval and nonapproval numbers, license
158 identification numbers, and transaction numbers corresponding to
159 such dates.

160 6. An insurer may, as a condition to providing insurance
161 against theft or loss of a firearm, require the insured to
162 identify such firearm. Such record may not be sold, commingled
163 with records relating to other firearms, or transferred to any
164 other person or entity. The insurer may not keep a record of
165 such firearm more than 60 days after the policy of insurance
166 expires or after notification by the insured that the insured is
167 no longer the owner of such firearm.

168 7. The maintenance of a list of customers of a firearm
169 dealer by such dealer, provided that such list does not disclose
170 the particular firearms purchased. Such list, or any part

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171 thereof, may not be sold, commingled with records relating to
 172 other firearms, or transferred to any other person or entity.

173 8. The maintenance of sales receipts by the seller of
 174 firearms or by a person providing credit for such purchase,
 175 provided that such receipts shall not serve as or be used for
 176 the creation of a database for registration of firearms.

177 9. Personal records of firearms maintained by the owner of
 178 such firearms.

179 10. Records maintained by a business which stores or acts
 180 as the selling agent of firearms on behalf of the lawful owner
 181 of the firearms.

182 11. Membership lists of organizations comprised of firearm
 183 owners.

184 12. Records maintained by an employer or contracting
 185 entity of the firearms owned by its officers, employees, or
 186 agents, if such firearms are used in the course of business
 187 performed on behalf of the employer.

188 13. Records maintained pursuant to s. 790.06 by the
 189 Department of Agriculture and Consumer Services of a person who
 190 was a licensee within the prior 2 years.

191 (4) PENALTIES.--

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

195 (b) Any person who is an employee of state or local
 196 government who violates a provision of this section and who knew
 197 or reasonably should have known that such action was in
 198 violation of this section shall be subject to immediate
 199 dismissal from such employment. Except as required by the

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200 provisions of s. 16, Art. I of the State Constitution or the
 201 Sixth Amendment to the United States Constitution, no public
 202 funds shall be used to defend the unlawful conduct of any person
 203 charged with a violation of this section, unless the charges
 204 against such person are dismissed or such person is determined
 205 to be not guilty at trial.

206 (c) The governmental entity, or the designee of such
 207 governmental entity, in whose service or employ a list, record,
 208 or registry was compiled in violation of this section shall be
 209 assessed a fine of not less than \$250,000 nor more than \$5
 210 million, if the court determines that the evidence shows that
 211 the list, record, or registry was compiled or maintained with
 212 the knowledge or complicity of the management of the
 213 governmental entity.

214 (d) The state attorney in the appropriate jurisdiction
 215 shall investigate complaints of violations of this section and,
 216 where evidence indicates a violation may have occurred, shall
 217 bring a cause of action and vigorously prosecute violators.

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

220 Section 2. Any list, record, or registry maintained or
 221 under construction on the effective date of this act shall be
 222 destroyed, unless prohibited by law, within 60 calendar days
 223 after this act becomes law. Thereafter, failure to destroy any
 224 such list, record, or registry may result in prosecution under
 225 this act.

226 Section 3. If any provision of this act or its application
 227 to any particular person or circumstance is held invalid, that

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228 provision or its application is severable and does not affect
229 the validity of other provisions or applications of this act.

230 Section 4. This act shall take effect upon becoming a law.