

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

18
 19 Be It Enacted by the Legislature of the State of Florida:

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

23 790.335 Prohibition of registration of firearms.--

24 (1) LEGISLATIVE FINDINGS AND INTENT.--

25 (a) The Legislature finds and declares that:

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

29 2. A list, record, or registry of legally owned firearms
 30 or law-abiding firearm owners is not a law enforcement tool and
 31 can become an instrument for profiling, harassing, or abusing
 32 law-abiding citizens based on their choice to own a firearm and
 33 exercise their Second Amendment right to keep and bear arms as
 34 guaranteed under the United States Constitution. Further, such a
 35 list, record, or registry has the potential to fall into the
 36 wrong hands and become a shopping list for thieves.

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

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

47 (b) The Legislature intends through the provisions of this
 48 section to:

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

52 2. Protect the privacy rights of law-abiding firearm
 53 owners.

54 (2) PROHIBITIONS.--No state governmental agency or local
 55 government, special district, or other political subdivision or
 56 official, agent, or employee of such state or other governmental

57 entity or any other person, public or private, shall knowingly
 58 and willfully keep or cause to be kept any list, record, or
 59 registry of privately owned firearms or any list, record, or
 60 registry of the owners of those firearms.

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

63 (a) Records of firearms that have been used in committing
 64 any crime.

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

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

72 (d) Firearm records that must be retained by firearm
 73 dealers under federal law, including copies of such records
 74 transmitted to law enforcement agencies. However, no state
 75 governmental agency or local government, special district, or
 76 other political subdivision or official, agent, or employee of
 77 such state or other governmental entity or any other person,
 78 private or public, shall accumulate, compile, computerize, or
 79 otherwise collect or convert such written records into any form
 80 of list, registry, or database for any purpose.

81 (e)1. Records kept pursuant to the recordkeeping
 82 provisions of s. 790.065; however, nothing in this section shall
 83 be construed to authorize the public release or inspection of

84 records that are made confidential and exempt from the
85 provisions of s. 119.07(1) by s. 790.065(4)(a).

86 2. Nothing in this paragraph shall be construed to allow
87 the maintaining of records containing the names of purchasers or
88 transferees who receive unique approval numbers or the
89 maintaining of records of firearm transactions.

90 (f) Firearm records, including paper pawn transaction
91 forms and contracts on firearm transactions, required by
92 chapters 538 and 539.

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

96 2. Electronic firearm records held pursuant to chapter 539
97 may only be kept by a pawnbroker for 30 days after the
98 expiration of the loan that is secured by a firearm or 30 days
99 after the date of purchase of a firearm, whichever is
100 applicable.

101 3. Except as required by federal law, any firearm records
102 kept pursuant to chapter 538 or chapter 539 shall not, at any
103 time, be electronically transferred to any public or private
104 entity, agency, business, or enterprise, nor shall any such
105 records be copied or transferred for purposes of accumulation of
106 such records into lists, registries, or databases.

107 4. Notwithstanding subparagraph 3., secondhand dealers and
108 pawnbrokers may electronically submit firearm transaction
109 records to the appropriate law enforcement agencies as required
110 by chapters 538 and 539; however, the law enforcement agencies
111 may not electronically submit such records to any other person

112 or entity and must destroy such records within 60 days after
113 receipt of such records.

114 5. Notwithstanding subparagraph 3., secondhand dealers and
115 pawnbrokers may electronically submit limited firearms records
116 consisting solely of the manufacturer, model, serial number, and
117 caliber of pawned or purchased firearms to a third-party private
118 provider that is exclusively incorporated, exclusively owned,
119 and exclusively operated in the United States and that restricts
120 access to such information to only appropriate law enforcement
121 agencies for legitimate law enforcement purposes. Such records
122 must be destroyed within 30 days by the third-party provider. As
123 a condition of receipt of such records, the third-party provider
124 must agree in writing to comply with the requirements of this
125 section. Any pawnbroker or secondhand dealer who contracts with
126 a third-party provider other than as provided in this act or
127 electronically transmits any records of firearms transactions to
128 any third-party provider other than the records specifically
129 allowed by this paragraph commits a felony of the second degree,
130 punishable as provided in s. 775.082 or s. 775.083.

131 (g) Records kept by the Department of Law Enforcement of
132 NCIC transactions to the extent required by federal law and a
133 log of dates of requests for criminal history record checks,
134 unique approval and nonapproval numbers, license identification
135 numbers, and transaction numbers corresponding to such dates.

136 (h) Records of an insurer that, as a condition to
137 providing insurance against theft or loss of a firearm, identify
138 such firearm. Such records may not be sold, commingled with
139 records relating to other firearms, or transferred to any other

140 person or entity. The insurer may not keep a record of such
141 firearm more than 60 days after the policy of insurance expires
142 or after notification by the insured that the insured is no
143 longer the owner of such firearm.

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

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

153 (k) Personal records of firearms maintained by the owner
154 of such firearms.

155 (l) Records maintained by a business that stores or acts
156 as the selling agent of firearms on behalf of the lawful owner
157 of the firearms.

158 (m) Membership lists of organizations comprised of firearm
159 owners.

160 (n) Records maintained by an employer or contracting
161 entity of the firearms owned by its officers, employees, or
162 agents, if such firearms are used in the course of business
163 performed on behalf of the employer.

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

167 (p) Records of firearms involved in criminal
168 investigations, criminal prosecutions, criminal appeals, and
169 postconviction motions.

170 (q) Paper documents relating to firearms involved in
171 criminal cases, criminal investigations, and criminal
172 prosecutions.

173 (4) PENALTIES.--

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

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

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

186 (c) The governmental entity, or the designee of such
187 governmental entity, in whose service or employ a list, record,
188 or registry was compiled in violation of this section may be
189 assessed a fine of not more than \$5 million, if the court
190 determines that the evidence shows that the list, record, or
191 registry was compiled or maintained with the knowledge or
192 complicity of the management of the governmental entity. The
193 Attorney General may bring a civil cause of action to enforce
194 the fines assessed under this paragraph.

195 (d) The state attorney in the appropriate jurisdiction
196 shall investigate complaints of criminal violations of this
197 section and, where evidence indicates a violation may have
198 occurred, shall prosecute violators.

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

201 Section 2. Any list, record, or registry maintained or
202 under construction on the effective date of this act shall be
203 destroyed, unless prohibited by law, within 60 calendar days
204 after this act becomes law. Thereafter, failure to destroy any
205 such list, record, or registry may result in prosecution under
206 this act.

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