

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, civil proceedings relating to the  
 170 surrender or seizure of firearms including protective  
 171 injunctions, Baker Act commitments, and sheriff's levies  
 172 pursuant to court judgments, and voluntary surrender by the  
 173 owner or custodian of the firearm.

174        (q) Paper documents relating to firearms involved in  
 175 criminal cases, criminal investigations, and criminal  
 176 prosecutions, civil proceedings relating to the surrender or  
 177 seizure of firearms including protective injunctions, Baker Act  
 178 commitments, and sheriff's levies pursuant to court judgments,  
 179 and voluntary surrender by the owner or custodian of the  
 180 firearm.

181        (r) Non-criminal records relating to the receipt, storage  
 182 or return of firearms, including, but not limited to, records  
 183 relating to firearms impounded for storage or safekeeping,  
 184 receipts proving that a firearm was returned to the rightful  
 185 owner and supporting records of identification and proof of  
 186 ownership, or records relating to firearms impounded pursuant to  
 187 levies or court orders, provided, however, that such records  
 188 shall not be compiled, sorted, or otherwise arranged into any  
 189 lists, indexes, or registries of firearms or firearms owners.

190        (4) PENALTIES.--

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

194        (b) Except as required by the provisions of s. 16, Art. I  
195 of the State Constitution or the Sixth Amendment to the United  
196 States Constitution, no public funds shall be used to defend the  
197 unlawful conduct of any person charged with a violation of this  
198 section, unless the charges against such person are dismissed or  
199 such person is determined to be not guilty at trial.  
200 Notwithstanding this paragraph, public funds may be expended to  
201 provide the services of the office of public defender or court-  
202 appointed conflict counsel as provided by law.

203        (c) The governmental entity, or the designee of such  
204 governmental entity, in whose service or employ a list, record,  
205 or registry was compiled in violation of this section may be  
206 assessed a fine of not more than \$5 million, if the court  
207 determines that the evidence shows that the list, record, or  
208 registry was compiled or maintained with the knowledge or  
209 complicity of the management of the governmental entity. The  
210 Attorney General may bring a civil cause of action to enforce  
211 the fines assessed under this paragraph.

212        (d) The state attorney in the appropriate jurisdiction  
213 shall investigate complaints of criminal violations of this  
214 section and, where evidence indicates a violation may have  
215 occurred, shall prosecute violators.

216        (5) CONSTRUCTION.--This section shall be construed to  
217 effectuate its remedial and deterrent purposes. This section may  
218 not be construed to grant any substantive, procedural privacy  
219 right or civil claim to any criminal defendant, and a violation  
220 of this section may not be grounds for the suppression of  
221 evidence in any criminal case.



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

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