

By the Committee on Criminal Justice

307-1030A-04

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A bill to be entitled
An act relating to the sale and delivery of
firearms; amending s. 790.065, F.S.; delaying,
until October 1, 2009, the repeal of provisions
requiring a criminal history record check by
the Department of Law Enforcement prior to the
sale or delivery of a firearm to a person other
than a licensed importer, manufacturer, dealer,
or collector; providing an effective date.

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

Section 1. Section 790.065, Florida Statutes, is
amended to read:

790.065 Sale and delivery of firearms.--

(1) A licensed importer, licensed manufacturer, or
licensed dealer may not sell or deliver from her or his
inventory at her or his licensed premises any firearm to
another person, other than a licensed importer, licensed
manufacturer, licensed dealer, or licensed collector, until
she or he has:

(a) Obtained a completed form from the potential buyer
or transferee, which form shall have been promulgated by the
Department of Law Enforcement and provided by the licensed
importer, licensed manufacturer, or licensed dealer, which
shall include the name, date of birth, gender, race, and
social security number or other identification number of such
potential buyer or transferee and has inspected proper
identification including an identification containing a
photograph of the potential buyer or transferee.

1 (b) Collected a fee from the potential buyer for
2 processing the criminal history check of the potential buyer.
3 The fee shall be established by the Department of Law
4 Enforcement and may not exceed \$8 per transaction. The
5 Department of Law Enforcement may reduce, or suspend
6 collection of, the fee to reflect payment received from the
7 Federal Government applied to the cost of maintaining the
8 criminal history check system established by this section as a
9 means of facilitating or supplementing the National Instant
10 Criminal Background Check System. The Department of Law
11 Enforcement shall, by rule, establish procedures for the fees
12 to be transmitted by the licensee to the Department of Law
13 Enforcement. All such fees shall be deposited into the
14 Department of Law Enforcement Operating Trust Fund, but shall
15 be segregated from all other funds deposited into such trust
16 fund and must be accounted for separately. Such segregated
17 funds must not be used for any purpose other than the
18 operation of the criminal history checks required by this
19 section. The Department of Law Enforcement, each year prior to
20 February 1, shall make a full accounting of all receipts and
21 expenditures of such funds to the President of the Senate, the
22 Speaker of the House of Representatives, the majority and
23 minority leaders of each house of the Legislature, and the
24 chairs of the appropriations committees of each house of the
25 Legislature. In the event that the cumulative amount of funds
26 collected exceeds the cumulative amount of expenditures by
27 more than \$2.5 million, excess funds may be used for the
28 purpose of purchasing soft body armor for law enforcement
29 officers.

30 (c) Requested, by means of a toll-free telephone call,
31 the Department of Law Enforcement to conduct a check of the

1 information as reported and reflected in the Florida Crime
2 Information Center and National Crime Information Center
3 systems as of the date of the request.

4 (d) Received a unique approval number for that inquiry
5 from the Department of Law Enforcement, and recorded the date
6 and such number on the consent form.

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8 However, if the person purchasing, or receiving delivery of,
9 the firearm is a holder of a valid concealed weapons or
10 firearms license pursuant to the provisions of s. 790.06 or
11 holds an active certification from the Criminal Justice
12 Standards and Training Commission as a "law enforcement
13 officer," a "correctional officer," or a "correctional
14 probation officer" as defined in s. 943.10(1), (2), (3), (6),
15 (7), (8), or (9), the provisions of this subsection do not
16 apply.

17 (2) Upon receipt of a request for a criminal history
18 record check, the Department of Law Enforcement shall, during
19 the licensee's call or by return call, forthwith:

20 (a) Review criminal history records to determine if
21 the potential buyer or transferee:

22 1. Has been convicted of a felony and is prohibited
23 from receipt or possession of a firearm pursuant to s. 790.23;

24 2. Has been convicted of a misdemeanor crime of
25 domestic violence, and therefore is prohibited from purchasing
26 a firearm; or

27 3. Has had adjudication of guilt withheld or
28 imposition of sentence suspended on any felony or misdemeanor
29 crime of domestic violence unless 3 years have elapsed since
30 probation or any other conditions set by the court have been
31 fulfilled or expunction has occurred.

1 (b) Inform the licensee making the inquiry either that
2 records demonstrate that the buyer or transferee is so
3 prohibited and provide the licensee a nonapproval number, or
4 provide the licensee with a unique approval number.

5 (c)1. Review any records available to it to determine
6 whether the potential buyer or transferee has been indicted or
7 has had an information filed against her or him for an offense
8 that is a felony under either state or federal law, or, as
9 mandated by federal law, has had an injunction for protection
10 against domestic violence entered against the potential buyer
11 or transferee under s. 741.30, has had an injunction for
12 protection against repeat violence entered against the
13 potential buyer or transferee under s. 784.046, or has been
14 arrested for a dangerous crime as specified in s.

15 907.041(4)(a) or for any of the following enumerated offenses:

- 16 a. Criminal anarchy under ss. 876.01 and 876.02.
- 17 b. Extortion under s. 836.05.
- 18 c. Explosives violations under s. 552.22(1) and (2).
- 19 d. Controlled substances violations under chapter 893.
- 20 e. Resisting an officer with violence under s. 843.01.
- 21 f. Weapons and firearms violations under this chapter.
- 22 g. Treason under s. 876.32.
- 23 h. Assisting self-murder under s. 782.08.
- 24 i. Sabotage under s. 876.38.
- 25 j. Stalking or aggravated stalking under s. 784.048.

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27 If the review indicates any such indictment, information, or
28 arrest, the department shall provide to the licensee a
29 conditional nonapproval number.

30 2. Within 24 working hours, the department shall
31 determine the disposition of the indictment, information, or

1 arrest and inform the licensee as to whether the potential
2 buyer is prohibited from receiving or possessing a firearm.
3 For purposes of this paragraph, "working hours" means the
4 hours from 8 a.m. to 5 p.m. Monday through Friday, excluding
5 legal holidays.

6 3. The office of the clerk of court, at no charge to
7 the department, shall respond to any department request for
8 data on the disposition of the indictment, information, or
9 arrest as soon as possible, but in no event later than 8
10 working hours.

11 4. The department shall determine as quickly as
12 possible within the allotted time period whether the potential
13 buyer is prohibited from receiving or possessing a firearm.

14 5. If the potential buyer is not so prohibited, or if
15 the department cannot determine the disposition information
16 within the allotted time period, the department shall provide
17 the licensee with a conditional approval number.

18 6. If the buyer is so prohibited, the conditional
19 nonapproval number shall become a nonapproval number.

20 7. The department shall continue its attempts to
21 obtain the disposition information and may retain a record of
22 all approval numbers granted without sufficient disposition
23 information. If the department later obtains disposition
24 information which indicates:

25 a. That the potential buyer is not prohibited from
26 owning a firearm, it shall treat the record of the transaction
27 in accordance with this section; or

28 b. That the potential buyer is prohibited from owning
29 a firearm, it shall immediately revoke the conditional
30 approval number and notify local law enforcement.

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1 8. During the time that disposition of the indictment,
2 information, or arrest is pending and until the department is
3 notified by the potential buyer that there has been a final
4 disposition of the indictment, information, or arrest, the
5 conditional nonapproval number shall remain in effect.

6 (3) In the event of scheduled computer downtime,
7 electronic failure, or similar emergency beyond the control of
8 the Department of Law Enforcement, the department shall
9 immediately notify the licensee of the reason for, and
10 estimated length of, such delay. After such notification, the
11 department shall forthwith, and in no event later than the end
12 of the next business day of the licensee, either inform the
13 requesting licensee if its records demonstrate that the buyer
14 or transferee is prohibited from receipt or possession of a
15 firearm pursuant to Florida and Federal law or provide the
16 licensee with a unique approval number. Unless notified by the
17 end of said next business day that the buyer or transferee is
18 so prohibited, and without regard to whether she or he has
19 received a unique approval number, the licensee may complete
20 the sale or transfer and shall not be deemed in violation of
21 this section with respect to such sale or transfer.

22 (4)(a) Any records containing any of the information
23 set forth in subsection (1) pertaining to a buyer or
24 transferee who is not found to be prohibited from receipt or
25 transfer of a firearm by reason of Florida and federal law
26 which records are created by the Department of Law Enforcement
27 to conduct the criminal history record check shall be
28 confidential and exempt from the provisions of s. 119.07(1)
29 and may not be disclosed by the Department of Law Enforcement
30 or any officer or employee thereof to any person or to another
31 agency. The Department of Law Enforcement shall destroy any

1 such records forthwith after it communicates the approval and
2 nonapproval numbers to the licensee and, in any event, such
3 records shall be destroyed within 48 hours after the day of
4 the response to the licensee's request.

5 (b) Notwithstanding the provisions of this subsection,
6 the Department of Law Enforcement may maintain records of NCIC
7 transactions to the extent required by the Federal Government,
8 and may maintain a log of dates of requests for criminal
9 history records checks, unique approval and nonapproval
10 numbers, license identification numbers, and transaction
11 numbers corresponding to such dates for a period of not longer
12 than 2 years or as otherwise required by law.

13 (c) Nothing in this chapter shall be construed to
14 allow the State of Florida to maintain records containing the
15 names of purchasers or transferees who receive unique approval
16 numbers or to maintain records of firearm transactions.

17 (d) Any officer or employee, or former officer or
18 employee of the Department of Law Enforcement or law
19 enforcement agency who intentionally and maliciously violates
20 the provisions of this subsection commits a felony of the
21 third degree punishable as provided in s. 775.082 or s.
22 775.083.

23 (5) The Department of Law Enforcement shall establish
24 a toll-free telephone number which shall be operational 7 days
25 a week with the exception of Christmas Day and New Year's Day,
26 for a period of 12 hours a day beginning at 9 a.m. and ending
27 at 9 p.m., for purposes of responding to inquiries as
28 described in this section from licensed manufacturers,
29 licensed importers, and licensed dealers. The Department of
30 Law Enforcement shall employ and train such personnel as are
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1 necessary expeditiously to administer the provisions of this
2 section.

3 (6) Any person who is denied the right to receive or
4 purchase a firearm as a result of the procedures established
5 by this section may request a criminal history records review
6 and correction in accordance with the rules promulgated by the
7 Department of Law Enforcement.

8 (7) It shall be unlawful for any licensed dealer,
9 licensed manufacturer, or licensed importer willfully and
10 intentionally to request criminal history record information
11 under false pretenses, or willfully and intentionally to
12 disseminate criminal history record information to any person
13 other than the subject of such information. Any person
14 convicted of a violation of this subsection commits a felony
15 of the third degree punishable as provided in s. 775.082 or s.
16 775.083.

17 (8) The Department of Law Enforcement shall promulgate
18 regulations to ensure the identity, confidentiality, and
19 security of all records and data provided pursuant to this
20 section.

21 (9) This section shall become effective at such time
22 as the Department of Law Enforcement has notified all licensed
23 importers, licensed manufacturers, and licensed dealers in
24 writing that the procedures and toll-free number described in
25 this section are operational. This section shall remain in
26 effect only during such times as the procedures described in
27 subsection (2) remain operational.

28 (10) A licensed importer, licensed manufacturer, or
29 licensed dealer is not required to comply with the
30 requirements of this section in the event of:
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1 (a) Unavailability of telephone service at the
2 licensed premises due to the failure of the entity which
3 provides telephone service in the state, region, or other
4 geographical area in which the licensee is located to provide
5 telephone service to the premises of the licensee due to the
6 location of said premises; or the interruption of telephone
7 service by reason of hurricane, tornado, flood, natural
8 disaster, or other act of God, war, invasion, insurrection,
9 riot, or other bona fide emergency, or other reason beyond the
10 control of the licensee; or

11 (b) Failure of the Department of Law Enforcement to
12 comply with the requirements of subsections (2) and (3).

13 (11) Compliance with the provisions of this chapter
14 shall be a complete defense to any claim or cause of action
15 under the laws of any state for liability for damages arising
16 from the importation or manufacture, or the subsequent sale or
17 transfer to any person who has been convicted in any court of
18 a crime punishable by imprisonment for a term exceeding 1
19 year, of any firearm which has been shipped or transported in
20 interstate or foreign commerce. The Department of Law
21 Enforcement, its agents and employees shall not be liable for
22 any claim or cause of action under the laws of any state for
23 liability for damages arising from its actions in lawful
24 compliance with this section.

25 (12)(a) Any potential buyer or transferee who
26 willfully and knowingly provides false information or false or
27 fraudulent identification commits a felony of the third degree
28 punishable as provided in s. 775.082 or s. 775.083.

29 (b) Any licensed importer, licensed manufacturer, or
30 licensed dealer who violates the provisions of subsection (1)

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1 commits a felony of the third degree punishable as provided in
2 s. 775.082 or s. 775.083.

3 (c) Any employee or agency of a licensed importer,
4 licensed manufacturer, or licensed dealer who violates the
5 provisions of subsection (1) commits a felony of the third
6 degree punishable as provided in s. 775.082 or s. 775.083.

7 (d) Any person who knowingly acquires a firearm
8 through purchase or transfer intended for the use of a person
9 who is prohibited by state or federal law from possessing or
10 receiving a firearm commits a felony of the third degree,
11 punishable as provided in s. 775.082 or s. 775.083.

12 (13) This section does not apply to employees of
13 sheriff's offices, municipal police departments, correctional
14 facilities or agencies, or other criminal justice or
15 governmental agencies when the purchases or transfers are made
16 on behalf of an employing agency for official law enforcement
17 purposes.

18 (14) This section is repealed effective October 1,
19 2009 ~~June 1, 2004~~.

20 Section 2. This act shall take effect upon becoming a
21 law.

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24 SENATE SUMMARY

25 Delays, until October 1, 2009, the repeal previously
26 scheduled on June 1, 2004, of section 790.065, Florida
27 Statutes, which requires a potential buyer or transferee
28 of a firearm to undergo a criminal history record check.
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