

HB 1769

2004

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; reenacting s. 493.6121(6), F.S., relating to enforcement investigations and access by the Department of Agriculture and Consumer Service to certain information maintained by the Department of Law Enforcement, for the purpose of incorporating the amendment to s. 790.065, F.S., in references thereto; 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

HB 1769

2004

30 security number or other identification number of such potential
31 buyer or transferee and has inspected proper identification
32 including an identification containing a photograph of the
33 potential buyer or transferee.

34 (b) Collected a fee from the potential buyer for
35 processing the criminal history check of the potential buyer.
36 The fee shall be established by the Department of Law
37 Enforcement and may not exceed \$8 per transaction. The
38 Department of Law Enforcement may reduce, or suspend collection
39 of, the fee to reflect payment received from the Federal
40 Government applied to the cost of maintaining the criminal
41 history check system established by this section as a means of
42 facilitating or supplementing the National Instant Criminal
43 Background Check System. The Department of Law Enforcement
44 shall, by rule, establish procedures for the fees to be
45 transmitted by the licensee to the Department of Law
46 Enforcement. All such fees shall be deposited into the
47 Department of Law Enforcement Operating Trust Fund, but shall be
48 segregated from all other funds deposited into such trust fund
49 and must be accounted for separately. Such segregated funds must
50 not be used for any purpose other than the operation of the
51 criminal history checks required by this section. The Department
52 of Law Enforcement, each year prior to February 1, shall make a
53 full accounting of all receipts and expenditures of such funds
54 to the President of the Senate, the Speaker of the House of
55 Representatives, the majority and minority leaders of each house
56 of the Legislature, and the chairs of the appropriations
57 committees of each house of the Legislature. In the event that
58 the cumulative amount of funds collected exceeds the cumulative

HB 1769

2004

59 amount of expenditures by more than \$2.5 million, excess funds
 60 may be used for the purpose of purchasing soft body armor for
 61 law enforcement officers.

62 (c) Requested, by means of a toll-free telephone call, the
 63 Department of Law Enforcement to conduct a check of the
 64 information as reported and reflected in the Florida Crime
 65 Information Center and National Crime Information Center systems
 66 as of the date of the request.

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

70
 71 However, if the person purchasing, or receiving delivery of, the
 72 firearm is a holder of a valid concealed weapons or firearms
 73 license pursuant to the provisions of s. 790.06 or holds an
 74 active certification from the Criminal Justice Standards and
 75 Training Commission as a "law enforcement officer," a
 76 "correctional officer," or a "correctional probation officer" as
 77 defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), the
 78 provisions of this subsection do not apply.

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

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

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

HB 1769

2004

86 2. Has been convicted of a misdemeanor crime of domestic
87 violence, and therefore is prohibited from purchasing a firearm;
88 or

89 3. Has had adjudication of guilt withheld or imposition of
90 sentence suspended on any felony or misdemeanor crime of
91 domestic violence unless 3 years have elapsed since probation or
92 any other conditions set by the court have been fulfilled or
93 expunction has occurred.

94 (b) Inform the licensee making the inquiry either that
95 records demonstrate that the buyer or transferee is so
96 prohibited and provide the licensee a nonapproval number, or
97 provide the licensee with a unique approval number.

98 (c)1. Review any records available to it to determine
99 whether the potential buyer or transferee has been indicted or
100 has had an information filed against her or him for an offense
101 that is a felony under either state or federal law, or, as
102 mandated by federal law, has had an injunction for protection
103 against domestic violence entered against the potential buyer or
104 transferee under s. 741.30, has had an injunction for protection
105 against repeat violence entered against the potential buyer or
106 transferee under s. 784.046, or has been arrested for a
107 dangerous crime as specified in s. 907.041(4)(a) or for any of
108 the following enumerated offenses:

- 109 a. Criminal anarchy under ss. 876.01 and 876.02.
- 110 b. Extortion under s. 836.05.
- 111 c. Explosives violations under s. 552.22(1) and (2).
- 112 d. Controlled substances violations under chapter 893.
- 113 e. Resisting an officer with violence under s. 843.01.
- 114 f. Weapons and firearms violations under this chapter.

HB 1769

2004

- 115 g. Treason under s. 876.32.
- 116 h. Assisting self-murder under s. 782.08.
- 117 i. Sabotage under s. 876.38.
- 118 j. Stalking or aggravated stalking under s. 784.048.

119
 120 If the review indicates any such indictment, information, or
 121 arrest, the department shall provide to the licensee a
 122 conditional nonapproval number.

123 2. Within 24 working hours, the department shall determine
 124 the disposition of the indictment, information, or arrest and
 125 inform the licensee as to whether the potential buyer is
 126 prohibited from receiving or possessing a firearm. For purposes
 127 of this paragraph, "working hours" means the hours from 8 a.m.
 128 to 5 p.m. Monday through Friday, excluding legal holidays.

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

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

136 5. If the potential buyer is not so prohibited, or if the
 137 department cannot determine the disposition information within
 138 the allotted time period, the department shall provide the
 139 licensee with a conditional approval number.

140 6. If the buyer is so prohibited, the conditional
 141 nonapproval number shall become a nonapproval number.

142 7. The department shall continue its attempts to obtain
 143 the disposition information and may retain a record of all

HB 1769

2004

144 approval numbers granted without sufficient disposition
145 information. If the department later obtains disposition
146 information which indicates:

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

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

153 8. During the time that disposition of the indictment,
154 information, or arrest is pending and until the department is
155 notified by the potential buyer that there has been a final
156 disposition of the indictment, information, or arrest, the
157 conditional nonapproval number shall remain in effect.

158 (3) In the event of scheduled computer downtime,
159 electronic failure, or similar emergency beyond the control of
160 the Department of Law Enforcement, the department shall
161 immediately notify the licensee of the reason for, and estimated
162 length of, such delay. After such notification, the department
163 shall forthwith, and in no event later than the end of the next
164 business day of the licensee, either inform the requesting
165 licensee if its records demonstrate that the buyer or transferee
166 is prohibited from receipt or possession of a firearm pursuant
167 to Florida and Federal law or provide the licensee with a unique
168 approval number. Unless notified by the end of said next
169 business day that the buyer or transferee is so prohibited, and
170 without regard to whether she or he has received a unique
171 approval number, the licensee may complete the sale or transfer

HB 1769

2004

172 and shall not be deemed in violation of this section with
 173 respect to such sale or transfer.

174 (4)(a) Any records containing any of the information set
 175 forth in subsection (1) pertaining to a buyer or transferee who
 176 is not found to be prohibited from receipt or transfer of a
 177 firearm by reason of Florida and federal law which records are
 178 created by the Department of Law Enforcement to conduct the
 179 criminal history record check shall be confidential and exempt
 180 from the provisions of s. 119.07(1) and may not be disclosed by
 181 the Department of Law Enforcement or any officer or employee
 182 thereof to any person or to another agency. The Department of
 183 Law Enforcement shall destroy any such records forthwith after
 184 it communicates the approval and nonapproval numbers to the
 185 licensee and, in any event, such records shall be destroyed
 186 within 48 hours after the day of the response to the licensee's
 187 request.

188 (b) Notwithstanding the provisions of this subsection, the
 189 Department of Law Enforcement may maintain records of NCIC
 190 transactions to the extent required by the Federal Government,
 191 and may maintain a log of dates of requests for criminal history
 192 records checks, unique approval and nonapproval numbers, license
 193 identification numbers, and transaction numbers corresponding to
 194 such dates for a period of not longer than 2 years or as
 195 otherwise required by law.

196 (c) Nothing in this chapter shall be construed to allow
 197 the State of Florida to maintain records containing the names of
 198 purchasers or transferees who receive unique approval numbers or
 199 to maintain records of firearm transactions.

HB 1769

2004

200 (d) Any officer or employee, or former officer or employee
 201 of the Department of Law Enforcement or law enforcement agency
 202 who intentionally and maliciously violates the provisions of
 203 this subsection commits a felony of the third degree punishable
 204 as provided in s. 775.082 or s. 775.083.

205 (5) The Department of Law Enforcement shall establish a
 206 toll-free telephone number which shall be operational 7 days a
 207 week with the exception of Christmas Day and New Year's Day, for
 208 a period of 12 hours a day beginning at 9 a.m. and ending at 9
 209 p.m., for purposes of responding to inquiries as described in
 210 this section from licensed manufacturers, licensed importers,
 211 and licensed dealers. The Department of Law Enforcement shall
 212 employ and train such personnel as are necessary expeditiously
 213 to administer the provisions of this section.

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

219 (7) It shall be unlawful for any licensed dealer, licensed
 220 manufacturer, or licensed importer willfully and intentionally
 221 to request criminal history record information under false
 222 pretenses, or willfully and intentionally to disseminate
 223 criminal history record information to any person other than the
 224 subject of such information. Any person convicted of a violation
 225 of this subsection commits a felony of the third degree
 226 punishable as provided in s. 775.082 or s. 775.083.

227 (8) The Department of Law Enforcement shall promulgate
 228 regulations to ensure the identity, confidentiality, and

HB 1769

2004

229 security of all records and data provided pursuant to this
 230 section.

231 (9) This section shall become effective at such time as
 232 the Department of Law Enforcement has notified all licensed
 233 importers, licensed manufacturers, and licensed dealers in
 234 writing that the procedures and toll-free number described in
 235 this section are operational. This section shall remain in
 236 effect only during such times as the procedures described in
 237 subsection (2) remain operational.

238 (10) A licensed importer, licensed manufacturer, or
 239 licensed dealer is not required to comply with the requirements
 240 of this section in the event of:

241 (a) Unavailability of telephone service at the licensed
 242 premises due to the failure of the entity which provides
 243 telephone service in the state, region, or other geographical
 244 area in which the licensee is located to provide telephone
 245 service to the premises of the licensee due to the location of
 246 said premises; or the interruption of telephone service by
 247 reason of hurricane, tornado, flood, natural disaster, or other
 248 act of God, war, invasion, insurrection, riot, or other bona
 249 fide emergency, or other reason beyond the control of the
 250 licensee; or

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

253 (11) Compliance with the provisions of this chapter shall
 254 be a complete defense to any claim or cause of action under the
 255 laws of any state for liability for damages arising from the
 256 importation or manufacture, or the subsequent sale or transfer
 257 to any person who has been convicted in any court of a crime

HB 1769

2004

258 punishable by imprisonment for a term exceeding 1 year, of any
 259 firearm which has been shipped or transported in interstate or
 260 foreign commerce. The Department of Law Enforcement, its agents
 261 and employees shall not be liable for any claim or cause of
 262 action under the laws of any state for liability for damages
 263 arising from its actions in lawful compliance with this section.

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

268 (b) Any licensed importer, licensed manufacturer, or
 269 licensed dealer who violates the provisions of subsection (1)
 270 commits a felony of the third degree punishable as provided in
 271 s. 775.082 or s. 775.083.

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

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

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

HB 1769

2004

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

288 Section 2. For the purpose of incorporating the amendment
 289 to section 790.065, Florida Statutes, in references thereto,
 290 subsection (6) of section 493.6121, Florida Statutes, is
 291 reenacted to read:

292 493.6121 Enforcement; investigation.--

293 (6) The department shall be provided access to the program
 294 that is operated by the Department of Law Enforcement, pursuant
 295 to s. 790.065, for providing criminal history record information
 296 to licensed gun dealers, manufacturers, and exporters. The
 297 department may make inquiries, and shall receive responses in
 298 the same fashion as provided under s. 790.065. The department
 299 shall be responsible for payment to the Department of Law
 300 Enforcement of the same fees as charged to others afforded
 301 access to the program.

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