

By the Committee on Criminal Justice

591-04029-08

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1 A bill to be entitled

2 An act relating to the revocation or suspension of  
3 concealed weapon and firearm licenses held by licensees  
4 who are adjudicated incapacitated or committed to a mental  
5 institution; amending s. 790.065, F.S.; authorizing the  
6 Department of Law Enforcement to provide data collected  
7 from court records to the Department of Agriculture and  
8 Consumer Services for purposes of determining whether a  
9 license should be revoked or suspended under s.  
10 790.06(10), F.S.; providing an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Paragraph (a) of subsection (2) of section  
15 790.065, Florida Statutes, is amended to read:

16 790.065 Sale and delivery of firearms.--

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

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

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

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

26 3. Has had adjudication of guilt withheld or imposition of  
27 sentence suspended on any felony or misdemeanor crime of domestic  
28 violence unless 3 years have elapsed since probation or any other

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29 | conditions set by the court have been fulfilled or expunction has  
30 | occurred; or

31 |         4. Has been adjudicated mentally defective or has been  
32 | committed to a mental institution by a court and as a result is  
33 | prohibited by federal law from purchasing a firearm.

34 |         a. As used in this subparagraph, "adjudicated mentally  
35 | defective" means a determination by a court that a person, as a  
36 | result of marked subnormal intelligence, or mental illness,  
37 | incompetency, condition, or disease, is a danger to himself or  
38 | herself or to others or lacks the mental capacity to contract or  
39 | manage his or her own affairs. The phrase includes ~~shall include~~  
40 | a judicial finding of incapacity under s. 744.331(6)(a), an  
41 | acquittal by reason of insanity of a person charged with a  
42 | criminal offense, and a judicial finding that a criminal  
43 | defendant is not competent to stand trial.

44 |         b. As used in this subparagraph, "committed to a mental  
45 | institution" means involuntary commitment, commitment for mental  
46 | defectiveness or mental illness, and commitment for substance  
47 | abuse. The phrase includes ~~shall include~~ involuntary inpatient  
48 | placement as defined in s. 394.467, involuntary assessment and  
49 | stabilization under s. 397.6818, and involuntary substance abuse  
50 | treatment under s. 397.6957, but does ~~shall~~ not include a person  
51 | in a mental institution for observation or discharged from a  
52 | mental institution based upon the initial review by the physician  
53 | or a voluntary admission to a mental institution.

54 |         c. In order to check for these conditions, the department  
55 | shall compile and maintain an automated database of persons who  
56 | are prohibited from purchasing a firearm based on court records  
57 | of adjudications of mental defectiveness or commitments to mental

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58 | institutions. Clerks of court shall ~~are required to~~ submit these  
59 | records to the department within 1 month after the rendition of  
60 | the adjudication or commitment. Reports may be submitted in an  
61 | automated format. The reports must, at a minimum, include the  
62 | name, along with any known alias or former name, the sex, and the  
63 | date of birth of the subject. The department shall delete any  
64 | mental health record from the database upon request of an  
65 | individual when 5 years have elapsed since the individual's  
66 | restoration to capacity by court order after being adjudicated an  
67 | incapacitated person under s. 744.331, or similar laws of any  
68 | other state; or, in the case of an individual who was previously  
69 | committed to a mental institution under chapter 394, or similar  
70 | laws of any other state, when the individual produces a  
71 | certificate from a licensed psychiatrist that he or she has not  
72 | suffered from disability for at least 5 years prior to the date  
73 | of request for removal of the record. When ~~where~~ the department  
74 | has received a subsequent record of an adjudication of mental  
75 | defectiveness or commitment to a mental institution for such  
76 | individual, the 5-year timeframe shall be calculated from the  
77 | most recent adjudication of incapacitation or commitment.

78 |       d. The department is authorized to disclose the collected  
79 | data to agencies of the Federal Government and other states for  
80 | use exclusively in determining the lawfulness of a firearm sale  
81 | or transfer. The department is also authorized to disclose any  
82 | ~~applicable~~ collected data to the Department of Agriculture and  
83 | Consumer Services for purposes of determining ~~determination of~~  
84 | eligibility for issuance of a concealed weapons or concealed  
85 | firearms license and for determining whether a basis exists for  
86 | revoking or suspending a previously issued license pursuant to s.

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87 790.06(10) ~~upon receipt of an applicant fingerprint submission~~  
88 ~~forwarded pursuant to s. 790.06(6)(a).~~ When a potential buyer or  
89 transferee appeals a nonapproval based on these records, the  
90 clerks of court and mental institutions shall, upon request by  
91 the department, provide information to help determine whether the  
92 potential buyer or transferee is the same person as the subject  
93 of the record. Photographs and any other data that could confirm  
94 or negate identity must be made available to the department for  
95 such purposes, notwithstanding any other provision of state law  
96 to the contrary. Any such information that is made confidential  
97 or exempt from disclosure by law shall retain such confidential  
98 or exempt status when transferred to the department.

99 Section 2. This act shall take effect July 1, 2008.