

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1003

Sale and Delivery of Firearms

SPONSOR(S): Drake

TIED BILLS:

IDEN./SIM. BILLS: SB 658

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	8 Y, 0 N	Kramer	Kramer
2)	Criminal & Civil Justice Policy Council	12 Y, 0 N	Kramer	Havlicak
3)	Criminal & Civil Justice Appropriations Committee		McAuliffe	Davis
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

Section 790.065, F.S., governs the steps that licensed dealers of firearms must take prior to selling a firearm. This section also establishes Florida Department of Law Enforcement’s (FDLE) Firearm Purchase Program which performs a background check on a person seeking to purchase a firearm when requested by a licensed dealer. The statute contains a list of factors that the program considers when determining whether a person is disqualified from being able to purchase a firearm.

The bill removes statutory language which would repeal section 790.065, F.S., effective October 1, 2009. This will have the effect of eliminating the “sunset” of FDLE’s Firearm Purchase Program on October 1, 2009, and retaining current Florida law governing who is disqualified from purchasing a firearm from a licensed dealer. The bill also provides that section 790.065, F.S., must be reviewed by the Legislature and approved for continuation before the limit of \$8 on the fee established by FDLE for the criminal history check under s. 790.065(1)(b), F.S., may be increased.

Absent this bill, FDLE will yield a loss of approximately \$2 million in revenues during the next fiscal year. The department would be further required to perform these functions for the federal government, thus incurring expenditures of approximately \$437,000 of which there is currently no alternative revenue source.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Federal "Brady Law" Requirements and NICS**

The Brady Act (the Federal Gun Control Act, 18 U.S.C. 922) required that a National Instant Criminal Background Check System (NICS) be established in November 1998, for the purpose of checking available records on persons who may be disqualified from purchasing firearms. The federal Act prohibits transfer of a firearm to a person who:

- is under indictment for, or has been convicted of, a crime punishable by imprisonment for more than one year,
- is a fugitive from justice,
- is an unlawful user of, or is addicted to, any controlled substance,
- has been adjudicated as mentally defective or committed to a mental institution,
- is an illegal alien or has been admitted to the United States under a nonimmigrant visa,
- was discharged from the U.S. Armed Forces under dishonorable conditions,
- has renounced U.S. citizenship,
- is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child, or
- has been convicted in any court of a misdemeanor crime of domestic violence.<sup>1</sup>

The Act also prohibits transfers of long guns to persons under 18 and most transfers of handguns to persons under 21 years of age.<sup>2</sup> The restrictions listed above are the minimum restrictions adopted in most states, although many states have enacted additional prohibiting factors.<sup>3</sup>

Under the Brady provisions anyone purchasing a firearm from a licensed dealer or redeeming a pawned firearm must first undergo a background check through either the FBI or the state in which the purchase is being made.<sup>4</sup> From its inception through December 2006, a total of 72,097,650 transactions have been processed through the shared NICS system. States that maintain their own

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<sup>1</sup> 18 U.S.C. 922(d)

<sup>2</sup> 18 U.S.C. 922(b)(1).

<sup>3</sup> *Background Checks for Firearm Transfers, 2002*, Department of Justice Report, September 2003.

<sup>4</sup> 18 U.S.C. 922(t)

programs have processed 34,888,777 of those transactions while the NICS section at the FBI has processed 37,208,873.<sup>5</sup>

NICS provides full service to federal firearms licensees in 29 states and territories. Eight states are currently sharing responsibility with NICS by conducting background checks for handguns only, while the long-gun transfer checks are done by NICS.<sup>6</sup>

Thirteen states have agencies that act in a point of contact (POC) capacity, Florida being one of those states. Point of contact agencies conduct their own federal and state background checks for the licensees in their state. The Florida Department of Law Enforcement (FDLE) serves as Florida's POC contact agency.

### **The FDLE Firearm Purchase Program (FPP)**

Section 790.065, F.S., governs the steps that licensed dealers of firearms must take prior to selling a firearm. This section also governs FDLE's Firearm Purchase Program which performs a criminal history check on those seeking to purchase a firearm when requested by a licensed dealer. According to this section, at the time of a firearm sale, all federally licensed firearm dealers, manufacturers, or importers who sell firearms in Florida to persons (who are not also federally licensed) must, under current Florida law:

- obtain a completed form which provides the purchaser's identification information and verify identification by inspecting a photo ID.<sup>7</sup>
- collect a fee from the purchaser for processing the criminal history check of the purchaser.<sup>8</sup> The current fee, set forth in Administrative Rule, is \$5.00. (Rule 11C-6.009, F.A.C.)
- contact FDLE by means of a toll-free telephone number to request that FDLE conduct a criminal history check in the Florida Crime Information Center and National Crime Information Center (FCIC/NCIC) systems and other databases available through the FBI.<sup>9</sup>
- receive an approval number from FDLE and record the number on the consent form.<sup>10</sup>

The Firearm Purchase Program is operational and accessible via telephone 12 hours a day, 7 days a week, 363 days a year. FDLE reports that the average duration of an inquiry phone call by a dealer is around a minute and a half.

Section 790.065, F.S., prohibits transfer of a firearm to a person who:<sup>11</sup>

- has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.,
- has been convicted of a misdemeanor crime of domestic violence,
- has had an adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred,
- has been indicted or has had an information filed against her or him for an offense that is a felony under state or federal law,
- has had an injunction for protection against domestic violence entered against him or her under s. 741.30, F.S.,
- has had an injunction for protection against repeat violence entered against him or her under s. 784.046, F.S.,
- has been arrested for a dangerous crime as specified under s. 907.041(4)(a), F.S., or

<sup>5</sup> FBI NICS Operations Report, 2006. [http://www.fbi.gov/filelink.html?file=hq/cjisd/nics/ops\\_report2006/ops\\_report2006.pdf](http://www.fbi.gov/filelink.html?file=hq/cjisd/nics/ops_report2006/ops_report2006.pdf)

<sup>6</sup> <http://www.fbi.gov/hq/cjisd/nics.htm>

<sup>7</sup> S. 790.065(1)(a), F.S.

<sup>8</sup> S. 790.065(1)(b), F.S.

<sup>9</sup> S. 790.065(1)(c), F.S.

<sup>10</sup> S. 790.065(1)(d), F.S.

<sup>11</sup> S. 790.065(2), F.S.

- has been adjudicated mentally defective or has been committed to a mental institution by a court.

FDLE's Firearm's Purchase Program was created in 1989 and was originally intended to expire when a federal law providing access to national criminal history information was enacted. The repeal date has since been extended several times. During previous Firearm Purchase Program legislative reviews and subsequent reenactments, the federal background check system (NICS) was the subject of criticism. It is generally acknowledged that the federal system has implemented significant improvements including an E-Check process by which federally licensed firearm dealers can initiate a NICS search prior to a firearm sale by using the Internet rather than the telephone. This service has been made available to the licensees in the POC states that maintain their own programs. The FBI has also installed some database enhancements and computer-related workstation enhancements for the employees of the NICS program in an effort to process background checks more efficiently.

The federal Brady Law includes some "voluntary requirements" for the states to follow. Although they are strictly voluntary, grant monies are withheld unless the state complies. For that reason FDLE considers those activities as mandatory. Among these activities are the following:

- *review of records rejected by FBI:* The accuracy of background checks conducted through NICS depends on the accuracy and completeness of the records entered into the system. The FBI rejects many records submitted by the states for a variety of reasons including incomplete history regarding the disposition of the criminal case and smudged or illegible fingerprints. FDLE reports that approximately 400 fingerprint cards are rejected by the FBI monthly. FDLE routinely reviews Florida criminal histories rejected by the NICS system. The review and transfer of verified records to the FBI and NICS databases is an on-going process.
- *responding to requests from the federal National Instant Criminal Background Check System (NICS) and other state firearm programs:* FDLE assists in retrieving information regarding the disposition of criminal cases which may appear as incomplete on the face of the record. This must be completed within three working days or the sale will proceed.
- *respond to information-seeking calls:* FDLE responds to request for information from firearms dealers and purchasers
- *process and research appeals:* A person can appeal being denied the ability to purchase a firearm. FDLE researches cases in which firearms purchases are non-approved where the non-approval is based on a Florida record. During 2007, there were 2,400 appeals of non-approvals.

In addition, FDLE maintains the MECOM (Mental Competency) database which identifies persons who are prohibited from purchasing firearms based on court adjudications of mental defectiveness or commitments to mental institutions. To date approximately 20,000 such records have been passed on to the NICS Prohibited Persons Index.

*Effect of HB 1003:* The bill removes statutory language which would repeal section 790.065, F.S., effective October 1, 2009. This will have the effect of eliminating the "sunset" of FDLE's Firearm Purchase Program on October 1, 2009, and retaining current Florida law governing who is disqualified from purchasing a firearm from a licensed dealer.

The bill also provides that section 790.065, F.S., must be reviewed by the Legislature and approved for continuation before the limit of \$8 on the fee established by FDLE for the criminal history check under s. 790.065(1)(b), F.S., may be increased.

The bill provides an effective date of July 1, 2009.

## B. SECTION DIRECTORY:

Section 1. Amends s. 790.065, F.S.; relating to sale and delivery of firearms.

Section 2. Creates an unnamed section relating to legislative review of the fee in s. 790.065, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Absent this bill, FDLE will lose approximately \$2 million in the next fiscal year. See fiscal comments for additional detail.

#### 2. Expenditures:

See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If this bill passes and section 790.065, F.S., does not sunset, the private sector will continue to pay the \$5 fee for a background check prior to purchase of a firearm from a federally-licensed dealer. Additionally, the bill reinforces the statutory maximum of an \$8 fee amount by requiring a review of the FDLE Firearm Purchase Program should that amount be exceeded by the department.

It should be noted that if Florida no longer maintains the Firearm Purchase Program and a licensed firearm dealer utilizes the FBI NICS program for the required background check, the cost to the purchaser is eliminated as there is currently no fee charged by the FBI.

### D. FISCAL COMMENTS:

The federal Brady Act and rules promulgated thereunder provide that point of contact states such as Florida, are authorized to charge a fee for the background check required before purchase of a firearm. The Florida Legislature approved up to an \$8 fee, but currently Florida dealers collect a \$5 fee and forward it to FDLE. The fee was reduced December 1, 2000, from \$8 to the current \$5.

The \$5 fee raised approximately \$2 million dollars during fiscal year 2007-2008. The costs associated with the FPP are covered by the fee collected. In other words, the FPP is a self-sufficient, user fee-based program.

If section 790.065, F.S., were to be repealed, there would be no state law regulating actions which must be taken by a licensed firearm dealer prior to transferring a firearm or who would be authorized to purchase a firearm from a licensed dealer. In such case, federal law would govern these issues. FDLE would not have the authority to charge for the background checks that it currently conducts. Although it would not be obligated to perform background checks for firearms purchases, FDLE reports that it would still be obligated to perform functions as the FBI's point of contact for the state or risk losing federal funding. FDLE indicates that if s. 790.065, F.S., were to be repealed, in order to perform the tasks required by federal law, it will need to retain 8 FTE at a recurring cost of \$437,285, to continue its tasks as the FBI's point of contact for the state. The current source of funding for this operation - the fees for the background checks - would no longer be available.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**