

By the Committee on Criminal Justice; and Senator Crist

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1                   A bill to be entitled  
2       An act relating to firearms transactions; amending s.  
3       790.335, F.S.; clarifying that violations of  
4       provisions prohibiting keeping any list, record, or  
5       registry of privately owned firearms or any list,  
6       record, or registry of the owners of those firearms  
7       may be committed by entities as well as individuals;  
8       requiring that secondhand dealers and pawnbrokers who  
9       electronically submit certain firearm transaction  
10      records to law enforcement agencies submit specified  
11      information in the coding of the Florida Crime  
12      Information Center; providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16       Section 1. Section 790.335, Florida Statutes, is amended to  
17       read:

18       790.335 Prohibition of registration of firearms; electronic  
19       records.—

20       (1) LEGISLATIVE FINDINGS AND INTENT.—

21       (a) The Legislature finds and declares that:

22       1. The right of individuals to keep and bear arms is  
23       guaranteed under both the Second Amendment to the United States  
24       Constitution and s. 8, Art. I of the State Constitution.

25       2. A list, record, or registry of legally owned firearms or  
26       law-abiding firearm owners is not a law enforcement tool and can  
27       become an instrument for profiling, harassing, or abusing law-  
28       abiding citizens based on their choice to own a firearm and  
29       exercise their Second Amendment right to keep and bear arms as

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30 guaranteed under the United States Constitution. Further, such a  
31 list, record, or registry has the potential to fall into the  
32 wrong hands and become a shopping list for thieves.

33 3. A list, record, or registry of legally owned firearms or  
34 law-abiding firearm owners is not a tool for fighting terrorism,  
35 but rather is an instrument that can be used as a means to  
36 profile innocent citizens and to harass and abuse American  
37 citizens based solely on their choice to own firearms and  
38 exercise their Second Amendment right to keep and bear arms as  
39 guaranteed under the United States Constitution.

40 4. Law-abiding firearm owners whose names have been  
41 illegally recorded in a list, record, or registry are entitled  
42 to redress.

43 (b) The Legislature intends through the provisions of this  
44 section to:

45 1. Protect the right of individuals to keep and bear arms  
46 as guaranteed under both the Second Amendment to the United  
47 States Constitution and s. 8, Art. I of the State Constitution.

48 2. Protect the privacy rights of law-abiding firearm  
49 owners.

50 (2) PROHIBITIONS.—No state governmental agency or local  
51 government, special district, or other political subdivision or  
52 official, agent, or employee of such state or other governmental  
53 entity or any other person, public or private, shall knowingly  
54 and willfully keep or cause to be kept any list, record, or  
55 registry of privately owned firearms or any list, record, or  
56 registry of the owners of those firearms.

57 (3) EXCEPTIONS.—The provisions of this section shall not  
58 apply to:

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59 (a) Records of firearms that have been used in committing  
60 any crime.

61 (b) Records relating to any person who has been convicted  
62 of a crime.

63 (c) Records of firearms that have been reported stolen that  
64 are retained for a period not in excess of 10 days after such  
65 firearms are recovered. Official documentation recording the  
66 theft of a recovered weapon may be maintained no longer than the  
67 balance of the year entered, plus 2 years.

68 (d) Firearm records that must be retained by firearm  
69 dealers under federal law, including copies of such records  
70 transmitted to law enforcement agencies. However, no state  
71 governmental agency or local government, special district, or  
72 other political subdivision or official, agent, or employee of  
73 such state or other governmental entity or any other person,  
74 private or public, shall accumulate, compile, computerize, or  
75 otherwise collect or convert such written records into any form  
76 of list, registry, or database for any purpose.

77 (e)1. Records kept pursuant to the recordkeeping provisions  
78 of s. 790.065; however, nothing in this section shall be  
79 construed to authorize the public release or inspection of  
80 records that are made confidential and exempt from the  
81 provisions of s. 119.07(1) by s. 790.065(4)(a).

82 2. Nothing in this paragraph shall be construed to allow  
83 the maintaining of records containing the names of purchasers or  
84 transferees who receive unique approval numbers or the  
85 maintaining of records of firearm transactions.

86 (f) Firearm records, including paper pawn transaction forms  
87 and contracts on firearm transactions, required by chapters 538

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88 and 539.

89 1. Electronic firearm records held pursuant to chapter 538  
90 may only be kept by a secondhand dealer for 30 days after the  
91 date of the purchase of the firearm by the secondhand dealer.

92 2. Electronic firearm records held pursuant to chapter 539  
93 may only be kept by a pawnbroker for 30 days after the  
94 expiration of the loan that is secured by a firearm or 30 days  
95 after the date of purchase of a firearm, whichever is  
96 applicable.

97 3. Except as required by federal law, any firearm records  
98 kept pursuant to chapter 538 or chapter 539 shall not, at any  
99 time, be electronically transferred to any public or private  
100 entity, agency, business, or enterprise, nor shall any such  
101 records be copied or transferred for purposes of accumulation of  
102 such records into lists, registries, or databases.

103 4. Notwithstanding subparagraph 3., secondhand dealers and  
104 pawnbrokers may electronically submit firearm transaction  
105 records to the appropriate law enforcement agencies as required  
106 by chapters 538 and 539; however, the law enforcement agencies  
107 may not electronically submit such records to any other person  
108 or entity and must destroy such records within 60 days after  
109 receipt of such records.

110 5. Notwithstanding subparagraph 3., secondhand dealers and  
111 pawnbrokers may electronically submit limited firearms records  
112 consisting solely of the manufacturer, model, serial number, and  
113 caliber of pawned or purchased firearms to a third-party private  
114 provider that is exclusively incorporated, exclusively owned,  
115 and exclusively operated in the United States and that restricts  
116 access to such information to only appropriate law enforcement

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117 agencies for legitimate law enforcement purposes. Such records  
118 must be destroyed within 30 days by the third-party provider. As  
119 a condition of receipt of such records, the third-party provider  
120 must agree in writing to comply with the requirements of this  
121 section. Any pawnbroker or secondhand dealer who contracts with  
122 a third-party provider other than as provided in this act or  
123 electronically transmits any records of firearms transactions to  
124 any third-party provider other than the records specifically  
125 allowed by this paragraph commits a felony of the second degree,  
126 punishable as provided in s. 775.082 or s. 775.083.

127 (g) Records kept by the Department of Law Enforcement of  
128 NCIC transactions to the extent required by federal law and a  
129 log of dates of requests for criminal history record checks,  
130 unique approval and nonapproval numbers, license identification  
131 numbers, and transaction numbers corresponding to such dates.

132 (h) Records of an insurer that, as a condition to providing  
133 insurance against theft or loss of a firearm, identify such  
134 firearm. Such records may not be sold, commingled with records  
135 relating to other firearms, or transferred to any other person  
136 or entity. The insurer may not keep a record of such firearm  
137 more than 60 days after the policy of insurance expires or after  
138 notification by the insured that the insured is no longer the  
139 owner of such firearm.

140 (i) Lists of customers of a firearm dealer retained by such  
141 dealer, provided that such lists do not disclose the particular  
142 firearms purchased. Such lists, or any parts thereof, may not be  
143 sold, commingled with records relating to other firearms, or  
144 transferred to any other person or entity.

145 (j) Sales receipts retained by the seller of firearms or by

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146 a person providing credit for such purchase, provided that such  
147 receipts shall not serve as or be used for the creation of a  
148 database for registration of firearms.

149 (k) Personal records of firearms maintained by the owner of  
150 such firearms.

151 (l) Records maintained by a business that stores or acts as  
152 the selling agent of firearms on behalf of the lawful owner of  
153 the firearms.

154 (m) Membership lists of organizations comprised of firearm  
155 owners.

156 (n) Records maintained by an employer or contracting entity  
157 of the firearms owned by its officers, employees, or agents, if  
158 such firearms are used in the course of business performed on  
159 behalf of the employer.

160 (o) Records maintained pursuant to s. 790.06 by the  
161 Department of Agriculture and Consumer Services of a person who  
162 was a licensee within the prior 2 years.

163 (p) Records of firearms involved in criminal  
164 investigations, criminal prosecutions, criminal appeals, and  
165 postconviction motions, civil proceedings relating to the  
166 surrender or seizure of firearms including protective  
167 injunctions, Baker Act commitments, and sheriff's levies  
168 pursuant to court judgments, and voluntary surrender by the  
169 owner or custodian of the firearm.

170 (q) Paper documents relating to firearms involved in  
171 criminal cases, criminal investigations, and criminal  
172 prosecutions, civil proceedings relating to the surrender or  
173 seizure of firearms including protective injunctions, Baker Act  
174 commitments, and sheriff's levies pursuant to court judgments,

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175 and voluntary surrender by the owner or custodian of the  
176 firearm.

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

186 (4) PENALTIES.—

187 (a) Any person who, or entity that, violates a provision of  
188 this section commits a felony of the third degree, punishable as  
189 provided in s. 775.082 or s. 775.083.

190 (b) Except as required by the provisions of s. 16, Art. I  
191 of the State Constitution or the Sixth Amendment to the United  
192 States Constitution, no public funds shall be used to defend the  
193 unlawful conduct of any person charged with a violation of this  
194 section, unless the charges against such person are dismissed or  
195 such person is determined to be not guilty at trial.

196 Notwithstanding this paragraph, public funds may be expended to  
197 provide the services of the office of public defender or court-  
198 appointed conflict counsel as provided by law.

199 (c) The governmental entity, or the designee of such  
200 governmental entity, in whose service or employ a list, record,  
201 or registry was compiled in violation of this section may be  
202 assessed a fine of not more than \$5 million, if the court  
203 determines that the evidence shows that the list, record, or

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204 registry was compiled or maintained with the knowledge or  
205 complicity of the management of the governmental entity. The  
206 Attorney General may bring a civil cause of action to enforce  
207 the fines assessed under this paragraph.

208 (d) The state attorney in the appropriate jurisdiction  
209 shall investigate complaints of criminal violations of this  
210 section and, where evidence indicates a violation may have  
211 occurred, shall prosecute violators.

212 (5) ELECTRONIC RECORDS.—Secondhand dealers and pawnbrokers  
213 who electronically submit firearms transaction records to the  
214 appropriate law enforcement agencies as required by chapters 538  
215 and 539 shall submit the name of the manufacturer and caliber of  
216 the firearm in the coding of the Florida Crime Information  
217 Center, and shall also include the model and serial number of  
218 each firearm.

219 (6) ~~(5)~~ CONSTRUCTION.—This section shall be construed to  
220 effectuate its remedial and deterrent purposes. This section may  
221 not be construed to grant any substantive, procedural privacy  
222 right or civil claim to any criminal defendant, and a violation  
223 of this section may not be grounds for the suppression of  
224 evidence in any criminal case.

225 Section 2. This act shall take effect July 1, 2009.