

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 658

INTRODUCER: Senator Baker

SUBJECT: Sale and Delivery of Firearms

DATE: February 23, 2009 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Cellon | Cannon | CJ | Favorable |
| 2. | _____ | _____ | JA | _____ |
| 3. | _____ | _____ | RC | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The Firearm Purchase Program (FPP) performs criminal record checks on potential firearm purchasers who are making the purchase from licensed firearm dealers in Florida. The background check is required by both federal and Florida law and the purchaser currently pays \$5 for the service. The Florida Department of Law Enforcement administers the FPP. The FPP provides federally licensed Florida firearm dealers a state-based option to the federal National Instant Criminal Background Check System (NICS). The program has been reviewed four times for continuation since its creation in 1989.

Senate Bill 658 essentially eliminates the periodic sunset review of the Firearm Purchase Program by deleting the October 1, 2009 repeal date and making the next review contingent upon any consumer fee increase for the service over the current statutory limit of \$8.

This bill substantially amends section 790.065 of the Florida Statutes.

II. Present Situation:

The FDLE Firearm Purchase Program (FPP)

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.

- collect a fee from the purchaser for processing the criminal history check of the purchaser. 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.
- receive an approval number from FDLE and record the number on the consent form. (s. 790.065(1), F.S.)

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.

Florida law prohibits transfer of a firearm to a person who:

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

The federal Brady Law includes some “voluntary requirements” of the states. Although they are strictly voluntary, grant monies are withheld unless the state complies. For that reason FDLE considers those activities as mandatory. The activities include:

- responding to requests from NICS and other state firearm programs to retrieve Florida disposition information which may appear as incomplete on the face of the record. This must be completed within three working days or the sale proceeds.
- continue to review the records rejected by NICS.
- respond to information-seeking calls from the executive and legislative branches, as well as firearm dealers and purchasers. FDLE estimates approximately 21,000 such calls during the fiscal year 2002-2003.
- process and research appeals from non-approved firearm purchasers where the non-approval is based on a Florida record.

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 a mental 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.

The Act also prohibits transfers of long guns to persons under 18 and most transfers of handguns to persons under 21 years of age. The restrictions listed above are the minimum restrictions adopted in most states, although many states have enacted additional prohibiting factors. *Background Checks for Firearm Transfers, 2002, Department of Justice Report, September 2003.*

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. 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 programs have processed 34,888,777 of those transactions while the NICS section at the FBI has processed 37,208,873. *FBI NICS Operations Report, 2006.*

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. *FBI NICS Operations Report, 2006.*

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. FDLE serves as Florida’s point of contact agency.

It should be remembered that NICS is only as good as the records entered into the system, and the FBI rejects many records submitted by the states. Records are rejected for a variety of reasons including incomplete disposition histories 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, whatever the reason might be. The review and transfer of verified records to the FBI and NICS databases is an on-going process.

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.

As a result of the states contributing records to the NICS databases, over 1,400 firearm purchase transactions by prohibited persons who cross state lines to make the purchase have been denied. Nearly 600 of those purchases were denied in Florida. *FBI NICS Operations Report, 2006.*

During Firearm Purchase Program Reviews and subsequent reenactments in years past, the federal background check system (NICS) was the subject of criticism. However, it is fair to say that in recent years 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.

III. Effect of Proposed Changes:

The bill eliminates the “sunset” of the Firearm Purchase Program on October 1, 2009. Additionally, it requires a review of the program should the current statutory limitation on the fee paid by a consumer for the background check required prior to purchase of a firearm exceed \$8. The fee collected at present is \$5.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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.

C. Government Sector Impact:

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.

FDLE reports that 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, should the FPP be repealed. The tasks include interpreting Florida records for NICS, and retrieving missing or unclear records. Also, FDLE would be expected to continue collecting and forwarding MECOM data to the FBI.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
