

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 956

INTRODUCER: Senator Hays

SUBJECT: Firearms Transactions

DATE: April 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 956 amends Florida law regarding the purchase, trade, or transfer of firearms by Florida residents which occur in other states. By repealing s. 790.28, F.S., the bill eliminates the restriction on Florida residents only being able to purchase shotguns and rifles in contiguous states. The bill's amendment to s. 790.065, F.S., clarifies that a purchase, trade, or transfer of a firearm in another state by a Florida resident is governed by the laws of that state and the federal laws regarding such transactions.

This bill substantially amends section 790.065 and repeals section 790.28 of the Florida Statutes.

II. Present Situation:

Under the provisions of the Federal Gun Control Act (GCA),¹ 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.

Federal GCA Requirements and NICS

The 1968 GCA 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:

¹ 18 U.S.C. 922.

- 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.²

The Act also prohibits transfers of long guns to persons under 18 and most transfers of handguns to persons under 21 years of age.³ The restrictions listed above are the minimum restrictions adopted in most states, although many states have enacted additional prohibiting factors.⁴

Florida Residents Purchasing Shotguns and Rifles in Other States

Among the provisions in the GCA was a section that made it unlawful for a licensed importer, manufacturer, dealer, or collector⁵ to sell or deliver any firearm⁶ to any person who the licensee knew or had reasonable cause to believe did not reside in the state in which the licensee's place of business was located.⁷ The GCA specified that this prohibition did not apply to the sale or delivery of a rifle⁸ or shotgun⁹ to a resident of a state *contiguous* to the state in which the licensee's place of business was located if:

- The purchaser's state of residence permitted such sale or delivery by law;
- The sale fully complied with the legal conditions of sale in both such contiguous states; and

² 18 U.S.C. 922(d)

³ 18 U.S.C. 922(b)(1).

⁴ *Background Checks for Firearm Transfers, 2002*, Department of Justice Report, September 2003.

⁵ The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution. The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution. The term "dealer" means any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define. To be "licensed," an entity listed above must be licensed under the provisions of 18 U.S.C. Ch. 44. *See* 18 U.S.C. § 921.

⁶ 18 U.S.C. § 921 defines the term "firearm" as any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. Such term does not include an antique firearm.

⁷ 18 U.S.C. § 922(b)(3) (1968).

⁸ 18 U.S.C. § 921 defines the term "rifle" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

⁹ 18 U.S.C. § 921 defines the term "shotgun" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shots or a single projectile for each single pull of the trigger.

- The purchaser and the licensee had, prior to the sale of the rifle or shotgun, complied with federal requirements applicable to intrastate firearm transactions that took place at a location other than at the licensee's premises.¹⁰

Subsequent to the enactment of the GCA, several states, including Florida, enacted statutes that mirrored the GCA's provisions that allowed a licensee to sell a rifle or a shotgun to a resident of a state contiguous to the state in which the licensee's place of business was located. Florida's statute, s. 790.28, F.S., entitled "Purchase of rifles and shotguns in contiguous states," was enacted in 1979, and currently provides the following:

A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he or she conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

In 1986, the Firearm Owners' Protection Act (FOPA) was enacted.¹¹ FOPA amended the GCA's "contiguous state" requirement to allow licensees to sell or deliver a rifle or shotgun to a resident of any state (not just contiguous states) if:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.¹²

Subsequent to the enactment of FOPA, many states revised or repealed their statutes that imposed a "contiguous state" requirement on the interstate purchase of rifles and shotguns.¹³ Florida has not revised or repealed its statute.

It should be noted federally-licensed firearms dealers, importers and manufacturers are required by the federal government to collect and submit identifying information from prospective firearm purchasers to the National Instant Criminal Background Check System before transferring the firearm.

III. Effect of Proposed Changes:

Section 790.28, F.S., is repealed by the bill. It is the provision that limits Florida residents to the purchase of rifles and shotguns in contiguous states. A paragraph is added by the bill to s. 790.065, F.S., in order to clarify that a Florida resident's firearm purchase, trade, or transfer in another state is subject only to the federal law and the law of the state wherein the transfer is made. A NICS check is required by the bill prior to the transaction.

¹⁰ 18 U.S.C. § 922(b)(3) (1968).

¹¹ Pub. L. No. 99-308.

¹² 18 U.S.C. §922(b)(3) (1986).

¹³ See, e.g., O.C.G.A. § 10-1-100 (2011), specifying that residents of the state of Georgia may purchase rifles and shotguns in any state of the United States, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the state of Georgia, and of the state in which the purchase is made.

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:

None.

C. Government Sector Impact:

None.

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.