

By Senator Farmer

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1                   A bill to be entitled  
2           An act relating to the prohibited recordkeeping of  
3           firearms or firearm owners; repealing s. 790.335,  
4           F.S., relating to the prohibition of registration of  
5           firearms and the treatment of electronic records;  
6           repealing s. 790.336, F.S., relating to lists,  
7           records, or registries required to be destroyed;  
8           amending ss. 409.175 and 790.0625, F.S.; conforming  
9           provisions to changes made by the act; providing an  
10          effective date.

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

13  
14           Section 1. Section 790.335, Florida Statutes, is amended to  
15          read:

16           ~~790.335 Prohibition of registration of firearms; electronic~~  
17          ~~records.—~~

18           ~~(1) LEGISLATIVE FINDINGS AND INTENT.—~~

19           ~~(a) The Legislature finds and declares that:~~

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

23           ~~2. A list, record, or registry of legally owned firearms or~~  
24          ~~law-abiding firearm owners is not a law enforcement tool and can~~  
25          ~~become an instrument for profiling, harassing, or abusing law-~~  
26          ~~abiding citizens based on their choice to own a firearm and~~  
27          ~~exercise their Second Amendment right to keep and bear arms as~~  
28          ~~guaranteed under the United States Constitution. Further, such a~~  
29          ~~list, record, or registry has the potential to fall into the~~

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30 ~~wrong hands and become a shopping list for thieves.~~

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

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

41 ~~(b) The Legislature intends through the provisions of this~~  
42 ~~section to:~~

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

46 ~~2. Protect the privacy rights of law-abiding firearm~~  
47 ~~owners.~~

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

55 ~~(3) EXCEPTIONS. The provisions of this section shall not~~  
56 ~~apply to:~~

57 ~~(a) Records of firearms that have been used in committing~~  
58 ~~any crime.~~

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59       ~~(b) Records relating to any person who has been convicted~~  
60 ~~of a crime.~~

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

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

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

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

84       ~~(f) Firearm records, including paper pawn transaction forms~~  
85 ~~and contracts on firearm transactions, required by chapters 538~~  
86 ~~and 539.~~

87       ~~1. Electronic firearm records held pursuant to chapter 538~~

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88 ~~may only be kept by a secondhand dealer for 30 days after the~~  
89 ~~date of the purchase of the firearm by the secondhand dealer.~~

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

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

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

108 ~~5. Notwithstanding subparagraph 3., secondhand dealers and~~  
109 ~~pawnbrokers may electronically submit limited firearms records~~  
110 ~~consisting solely of the manufacturer, model, serial number, and~~  
111 ~~caliber of pawned or purchased firearms to a third party private~~  
112 ~~provider that is exclusively incorporated, exclusively owned,~~  
113 ~~and exclusively operated in the United States and that restricts~~  
114 ~~access to such information to only appropriate law enforcement~~  
115 ~~agencies for legitimate law enforcement purposes. Such records~~  
116 ~~must be destroyed within 30 days by the third party provider. As~~

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117 ~~a condition of receipt of such records, the third party provider~~  
118 ~~must agree in writing to comply with the requirements of this~~  
119 ~~section. Any pawnbroker or secondhand dealer who contracts with~~  
120 ~~a third party provider other than as provided in this act or~~  
121 ~~electronically transmits any records of firearms transactions to~~  
122 ~~any third party provider other than the records specifically~~  
123 ~~allowed by this paragraph commits a felony of the second degree,~~  
124 ~~punishable as provided in s. 775.082 or s. 775.083.~~

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

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

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

143 ~~(j) Sales receipts retained by the seller of firearms or by~~  
144 ~~a person providing credit for such purchase, provided that such~~  
145 ~~receipts shall not serve as or be used for the creation of a~~

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146 ~~database for registration of firearms.~~

147 ~~(k) Personal records of firearms maintained by the owner of~~  
148 ~~such firearms.~~

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

152 ~~(m) Membership lists of organizations comprised of firearm~~  
153 ~~owners.~~

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

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

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

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

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

184 ~~(4) PENALTIES.—~~

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

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

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

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

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204 ~~Attorney General may bring a civil cause of action to enforce~~  
205 ~~the fines assessed under this paragraph.~~

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

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

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

223 Section 2. Section 790.336, Florida Statutes, is amended to  
224 read:

225 ~~790.336 Lists, records, or registries to be destroyed.—Any~~  
226 ~~list, record, or registry maintained or under construction on~~  
227 ~~the effective date of this act shall be destroyed, unless~~  
228 ~~prohibited by law, within 60 calendar days after this act~~  
229 ~~becomes law. Thereafter, failure to destroy any such list,~~  
230 ~~record, or registry may result in prosecution under this act.~~

231 Section 3. Paragraph (b) of subsection (5) and paragraph  
232 (b) of subsection (9) of section 409.175, Florida Statutes, are



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233 amended to read:

234 409.175 Licensure of family foster homes, residential  
235 child-caring agencies, and child-placing agencies; public  
236 records exemption.—

237 (5)

238 (b) The requirements for the licensure and operation of a  
239 child-placing agency shall also include compliance with the  
240 requirements of s. ss. 63.0422 and ~~790.335~~.

241 (9)

242 (b) Any of the following actions by a home or agency or its  
243 personnel is a ground for denial, suspension, or revocation of a  
244 license:

245 1. An intentional or negligent act materially affecting the  
246 health or safety of children in the home or agency.

247 2. A violation of the provisions of this section or of  
248 licensing rules promulgated pursuant to this section.

249 3. Noncompliance with the requirements for good moral  
250 character as specified in paragraph (5) (a).

251 4. Failure to dismiss personnel found in noncompliance with  
252 requirements for good moral character.

253 5. Failure to comply with the requirements of s. ss.  
254 ~~63.0422 and 790.335~~.

255 Section 4. Paragraph (a) of subsection (6) of section  
256 790.0625, Florida Statutes, is amended to read:

257 790.0625 Appointment of tax collectors to accept  
258 applications for a concealed weapon or firearm license; fees;  
259 penalties.—

260 (6) (a) A tax collector appointed under this section may not  
261 maintain a list or record of persons who apply for or are

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262 granted a new or renewal license to carry a concealed weapon or  
263 firearm. A tax collector who violates this paragraph commits a  
264 felony of the third degree, punishable as provided in s. 775.082  
265 or s. 775.083 ~~violation of this paragraph is subject to s.~~  
266 ~~790.335.~~

267 Section 5. This act shall take effect July 1, 2018.