

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 152

INTRODUCER: Judiciary Committee and Senator Steube

SUBJECT: Sale of Firearms

DATE: December 5, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 152 requires the Florida Department of Law Enforcement (FDLE) to provide additional payment options to licensed firearm dealers, importers, and manufactures when paying for criminal history record checks. Currently, the only payment methods authorized by administrative rule are personal checks, money orders, or cashier's checks. The bill requires FDLE to establish, by rule, procedures that permit electronic payment or transmittal by debit cards, credit cards, or electronic funds transfers, but the payment methods are not limited solely to those options.

The bill also expands how firearms dealers may submit requests to FDLE for criminal history record checks. Currently, the law allows a licensed importer, manufacturer or dealer to submit requests by a toll-free telephone call. The bill allows a licensed importer, manufacturer or dealer to submit requests to FDLE by electronic means.

The FDLE indicates that it will absorb the costs it incurs implementing the provisions of this bill by diverting existing staff and resources.

II. Present Situation:

Statutory Procedure for Purchasing a Firearm

Before a potential buyer may purchase a firearm from a licensed importer, manufacturer, or dealer¹ in this state, several statutory requirements must be met.

- The potential buyer must first fill out a background check form² that is produced by the Federal Bureau of Alcohol, Tobacco, and Firearms.
- When the form is completed, the potential buyer must provide to the dealer a \$5 non-refundable processing fee for a criminal history check and also submit a valid government issued form of identification.
- The dealer submits the background information either in a toll-free phone call to an operator at the Florida Department of Law Enforcement Firearm Purchase Program or electronically to the program's website. The Firearm Purchase Program is operational from 9:00 a.m. to 9:00 p.m. each day of the year except Christmas and New Year's Day.
- FDLE makes a determination, based upon the criminal history background check, whether the potential buyer is eligible to purchase the firearm. FDLE must issue a transaction identification number to the dealer and a decision on whether the potential buyer is permitted to purchase a weapon. This dealer must then record that information on the buyer's background check form.³

Multiple weapons may be transferred in a single transaction. Accordingly, it is not necessary for a potential buyer to submit a separate form and pay an additional processing fee for each firearm transfer if several are made at that same time.

FDLE reports that there are currently 3,761 licensed firearm dealers in its database.⁴ Some dealers are large, interstate sporting goods stores, while some are small family businesses.

The \$5 Fee for Processing a Criminal History Background Check

FDLE is permitted to collect a fee of no more than \$8 from the potential buyer to cover the cost of processing the criminal history check.⁵ FDLE currently charges \$5 to process a criminal history check.⁶ Procedurally, FDLE hand processes and mails each licensed firearm dealer an invoice each month stating how much money is due. The dealer then sends a personal check, money order, or cashier's check to the Department of Revenue. There is currently no statutory authorization for a licensed dealer to pay these invoices electronically.

¹ Florida Administrative Rule 11C-6.009(1), *Sale and Delivery of Firearms*, uses the term "federally licensed firearm dealer" to include licensed firearm importers, licensed firearm manufacturers, and licensed firearm dealers. For ease of description in this analysis, the term "dealer" is used to also include importers and manufacturers.

² U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Firearm Transaction Record (ATF F- 4473, Revised October 2016) available at <https://www.atf.gov/file/61446/download>.

³ See s. 790.065(1)(a), F.S., and Florida Department of Law Enforcement, *Firearm Purchase Process*, available at <http://www.fdle.state.fl.us/cms/FPP/FAQs1.aspx> (last visited Nov. 2, 2017).

⁴ Email from Brenda Johnson, FDLE Office of External Affairs (Nov. 1, 2017) (on file with the Senate Committee on Judiciary).

⁵ Section 790.065(1)(a)2., F.S.

⁶ Fla. Admin. Code R. 11C-6.009.

Criminal History Background Checks Performed in Recent Years

FDLE reports that 772,891 background checks were performed between January 2 and October 29, 2017. The table below shows the number of background checks⁷ performed in years 2010-2016.

Annual Background Checks Performed	
Year	Background Checks
2010	531,845
2011	606,655
2012	797,610
2013	869,560
2014	774,363
2015	885,086
2016	1,037,483

Invoices Mailed and Revenue Received

The table below shows the number of invoices mailed and the revenue received by the FDLE Firearm Purchase Program for Fiscal Year 2016-2017.⁸

Firearm Purchase Program Invoices and Revenue - Fiscal Year 2016-2017		
Month	Invoices Mailed	Revenue Received
July	2,071	\$520,092
August	2,050	487,685
September	2,020	442,541
October	2,016	376,299
November	2,069	438,117
December	2,123	336,219
January	2,021	376,710
February	2,043	484,297
March	2,084	373,384
April	2,001	390,330
May	1,999	435,183
June	1,984	462,313
	24,481	\$5,123,170

⁷ Email attachment from Brenda Johnson, FDLE Office of External Affairs (Oct. 31, 2017) (on file with the Senate Committee on Judiciary).

⁸ Email attachment from Brenda Johnson, FDLE Office of External Affairs (Oct. 31, 2017) (on file with the Senate Committee on Judiciary).

III. Effect of Proposed Changes:

This bill authorizes licensed firearm dealers, importers, and manufacturers to electronically submit payments when paying FDLE for criminal history record checks. The payment methods and associated procedures will be established by FDLE rules, but the rules must, at a minimum, allow for payments by debit and credit cards and electronic funds transfers.

The bill also allows firearms dealers to submit requests for criminal history record checks to FDLE by electronic means rather than only by calling the toll-free phone number. FDLE currently accepts the submission of electronic requests, so this statutory authorization essentially ratifies its current practice.

The bill takes effect October 1, 2018.

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:

By allowing licensed firearm dealers to pay their invoices electronically, the dealers will save postage and paper that are currently used for checks and envelopes.

C. Government Sector Impact:

The FDLE has indicated that it will cost \$420,000 and take 13 months to implement the provisions of this bill. However, FDLE states that it can absorb the costs by diverting existing staff and resources. By reassigning resources, existing agency project timelines will be extended.⁹

⁹ Florida Department of Law Enforcement, *2018 FDLE Legislative Bill Analysis, SB 152* (Revised November 9, 2017).

FDLE notes in its bill analysis that it will need additional time to complete the transition to accepting electronic payments and recommends that the effective date of the bill be delayed to April 1, 2019 to accommodate these changes.¹⁰

Many credit and debit card companies charge a vendor a specified percentage for completing each electronic transaction. Unless FDLE passes this convenience cost along to the dealers, FDLE may receive less money per transaction than when checks, money orders, and cashier's checks are used and no merchant fee is charged.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.065 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on November 7, 2017:

The committee substitute allows firearms dealers to submit requests for criminal history record checks to FDLE by electronic means and delays the effective date of the bill by 3 months to October 1, 2018.

- B. **Amendments:**

None.

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

¹⁰ *Id.* at 4.