

By Senator Taddeo

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1 A bill to be entitled
 2 An act relating to the sale and delivery of firearms;
 3 amending s. 790.065, F.S.; prohibiting persons
 4 convicted of misdemeanor hate crime offenses from
 5 purchasing firearms; amending ss. 493.6108, 790.06,
 6 and 943.0583, F.S.; conforming cross-references;
 7 providing an effective date.

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 9 Be It Enacted by the Legislature of the State of Florida:

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 11 Section 1. Paragraph (a) of subsection (2) of section
 12 790.065, Florida Statutes, is amended to read:

13 790.065 Sale and delivery of firearms.—

14 (2) Upon receipt of a request for a criminal history record
 15 check, the Department of Law Enforcement shall, during the
 16 licensee's call or by return call, forthwith:

17 (a) Review any records available to determine if the
 18 potential buyer or transferee:

19 1. Has been convicted of a felony and is prohibited from
 20 receipt or possession of a firearm pursuant to s. 790.23;

21 2. Has been convicted of a misdemeanor crime of domestic
 22 violence~~7~~ and, therefore, is prohibited from purchasing a
 23 firearm;

24 3. Has had adjudication of guilt withheld or imposition of
 25 sentence suspended on any felony or misdemeanor crime of
 26 domestic violence unless 3 years have elapsed since probation or
 27 any other conditions set by the court have been fulfilled or
 28 expunction has occurred; ~~or~~

29 4. Has been convicted of a misdemeanor crime that is

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30 required to be reported as a hate crime under s. 877.19 and,
31 therefore, is prohibited from purchasing a firearm; or

32 5.4. Has been adjudicated mentally defective or has been
33 committed to a mental institution by a court or as provided in
34 sub-sub-subparagraph b.(II), and as a result is prohibited by
35 state or federal law from purchasing a firearm.

36 a. As used in this subparagraph, "adjudicated mentally
37 defective" means a determination by a court that a person, as a
38 result of marked subnormal intelligence, or mental illness,
39 incompetency, condition, or disease, is a danger to himself or
40 herself or to others or lacks the mental capacity to contract or
41 manage his or her own affairs. The phrase includes a judicial
42 finding of incapacity under s. 744.331(6)(a), an acquittal by
43 reason of insanity of a person charged with a criminal offense,
44 and a judicial finding that a criminal defendant is not
45 competent to stand trial.

46 b. As used in this subparagraph, "committed to a mental
47 institution" means:

48 (I) Involuntary commitment, commitment for mental
49 defectiveness or mental illness, and commitment for substance
50 abuse. The phrase includes involuntary inpatient placement under
51 ~~as defined in~~ s. 394.467, involuntary outpatient placement under
52 ~~as defined in~~ s. 394.4655, involuntary assessment and
53 stabilization under s. 397.6818, and involuntary substance abuse
54 treatment under s. 397.6957, but does not include a person in a
55 mental institution for observation or discharged from a mental
56 institution based upon the initial review by the physician or a
57 voluntary admission to a mental institution; or

58 (II) Notwithstanding sub-sub-subparagraph (I), voluntary

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59 admission to a mental institution for outpatient or inpatient
60 treatment of a person who had an involuntary examination under
61 s. 394.463 if, ~~where~~ each of the following conditions have been
62 met:

63 (A) An examining physician found that the person is an
64 imminent danger to himself or herself or others.

65 (B) The examining physician certified that if the person
66 did not agree to voluntary treatment, a petition for involuntary
67 outpatient or inpatient treatment would have been filed under s.
68 394.463(2)(g)4., or the examining physician certified that a
69 petition was filed and the person subsequently agreed to
70 voluntary treatment prior to a court hearing on the petition.

71 (C) Before agreeing to voluntary treatment, the person
72 received written notice of that finding and certification, and
73 written notice that as a result of such finding, he or she may
74 be prohibited from purchasing a firearm, and may not be eligible
75 to apply for or retain a concealed weapon or firearms license
76 under s. 790.06 and the person acknowledged such notice in
77 writing, in substantially the following form:

78 "I understand that the doctor who examined me believes I am a
79 danger to myself or to others. I understand that if I do not
80 agree to voluntary treatment, a petition will be filed in court
81 to require me to receive involuntary treatment. I understand
82 that if that petition is filed, I have the right to contest it.
83 In the event a petition has been filed, I understand that I can
84 subsequently agree to voluntary treatment prior to a court
85 hearing. I understand that by agreeing to voluntary treatment in
86 either of these situations, I may be prohibited from buying
87 firearms and from applying for or retaining a concealed weapons

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88 or firearms license until I apply for and receive relief from
89 that restriction under Florida law.”

90 (D) A judge or a magistrate has, pursuant to sub-sub-
91 subparagraph c.(II), reviewed the record of the finding,
92 certification, notice, and written acknowledgment classifying
93 the person as an imminent danger to himself or herself or
94 others, and ordered that such record be submitted to the
95 department.

96 c. In order to check for these conditions, the department
97 shall compile and maintain an automated database of persons who
98 are prohibited from purchasing a firearm based on court records
99 of adjudications of mental defectiveness or commitments to
100 mental institutions.

101 (I) Except as provided in sub-sub-subparagraph (II), clerks
102 of court shall submit these records to the department within 1
103 month after the rendition of the adjudication or commitment.
104 Reports shall be submitted in an automated format. The reports
105 must, at a minimum, include the name, along with any known alias
106 or former name, the sex, and the date of birth of the subject.

107 (II) For persons committed to a mental institution pursuant
108 to sub-sub-subparagraph b.(II), within 24 hours after the
109 person's agreement to voluntary admission, a record of the
110 finding, certification, notice, and written acknowledgment must
111 be filed by the administrator of the receiving or treatment
112 facility, as defined in s. 394.455, with the clerk of the court
113 for the county in which the involuntary examination under s.
114 394.463 occurred. No fee shall be charged for the filing under
115 this sub-sub-subparagraph. The clerk must present the records to
116 a judge or magistrate within 24 hours after receipt of the

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117 records. A judge or magistrate is required and has the lawful
118 authority to review the records ex parte and, if the judge or
119 magistrate determines that the record supports the classifying
120 of the person as an imminent danger to himself or herself or
121 others, to order that the record be submitted to the department.
122 If a judge or magistrate orders the submittal of the record to
123 the department, the record must be submitted to the department
124 within 24 hours.

125 d. A person who has been adjudicated mentally defective or
126 committed to a mental institution, as those terms are defined in
127 this paragraph, may petition the court that made the
128 adjudication or commitment, or the court that ordered that the
129 record be submitted to the department pursuant to sub-sub-
130 subparagraph c.(II), for relief from the firearm disabilities
131 imposed by such adjudication or commitment. A copy of the
132 petition shall be served on the state attorney for the county in
133 which the person was adjudicated or committed. The state
134 attorney may object to and present evidence relevant to the
135 relief sought by the petition. The hearing on the petition may
136 be open or closed as the petitioner may choose. The petitioner
137 may present evidence and subpoena witnesses to appear at the
138 hearing on the petition. The petitioner may confront and cross-
139 examine witnesses called by the state attorney. A record of the
140 hearing shall be made by a certified court reporter or by court-
141 approved electronic means. The court shall make written findings
142 of fact and conclusions of law on the issues before it and issue
143 a final order. The court shall grant the relief requested in the
144 petition if the court finds, based on the evidence presented
145 with respect to the petitioner's reputation, the petitioner's

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146 mental health record and, if applicable, criminal history
147 record, the circumstances surrounding the firearm disability,
148 and any other evidence in the record, that the petitioner will
149 not be likely to act in a manner that is dangerous to public
150 safety and that granting the relief would not be contrary to the
151 public interest. If the final order denies relief, the
152 petitioner may not petition again for relief from firearm
153 disabilities until 1 year after the date of the final order. The
154 petitioner may seek judicial review of a final order denying
155 relief in the district court of appeal having jurisdiction over
156 the court that issued the order. The review shall be conducted
157 de novo. Relief from a firearm disability granted under this
158 sub-subparagraph has no effect on the loss of civil rights,
159 including firearm rights, for any reason other than the
160 particular adjudication of mental defectiveness or commitment to
161 a mental institution from which relief is granted.

162 e. Upon receipt of proper notice of relief from firearm
163 disabilities granted under sub-subparagraph d., the department
164 shall delete any mental health record of the person granted
165 relief from the automated database of persons who are prohibited
166 from purchasing a firearm based on court records of
167 adjudications of mental defectiveness or commitments to mental
168 institutions.

169 f. The department is authorized to disclose data collected
170 pursuant to this subparagraph to agencies of the Federal
171 Government and other states for use exclusively in determining
172 the lawfulness of a firearm sale or transfer. The department is
173 also authorized to disclose this data to the Department of
174 Agriculture and Consumer Services for purposes of determining

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175 eligibility for issuance of a concealed weapons or concealed
176 firearms license and for determining whether a basis exists for
177 revoking or suspending a previously issued license pursuant to
178 s. 790.06(10). When a potential buyer or transferee appeals a
179 nonapproval based on these records, the clerks of court and
180 mental institutions shall, upon request by the department,
181 provide information to help determine whether the potential
182 buyer or transferee is the same person as the subject of the
183 record. Photographs and any other data that could confirm or
184 negate identity must be made available to the department for
185 such purposes, notwithstanding any other provision of state law
186 to the contrary. Any such information that is made confidential
187 or exempt from disclosure by law shall retain such confidential
188 or exempt status when transferred to the department.

189 Section 2. Subsection (3) of section 493.6108, Florida
190 Statutes, is amended to read:

191 493.6108 Investigation of applicants by Department of
192 Agriculture and Consumer Services.—

193 (3) The department must also investigate the mental history
194 and current mental and emotional fitness of any Class "G" or
195 Class "K" applicant and may deny a Class "G" or Class "K"
196 license to anyone who has a history of mental illness or drug or
197 alcohol abuse. Notwithstanding s. 790.065(2)(a)5.f. ~~s.~~
198 ~~790.065(2)(a)4.f.~~, the Department of Law Enforcement is
199 authorized, for the limited purpose of determining eligibility
200 of Class "G" or Class "K" applicants and licensees under this
201 chapter, to provide the department with mental health and
202 substance abuse data of individuals who are prohibited from
203 purchasing a firearm.

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204 Section 3. Paragraphs (e), (i), and (j) of subsection (2)
205 of section 790.06, Florida Statutes, are amended to read:

206 790.06 License to carry concealed weapon or firearm.—

207 (2) The Department of Agriculture and Consumer Services
208 shall issue a license if the applicant:

209 (e) Has not been:

210 1. Found guilty of a crime under the provisions of chapter
211 893 or similar laws of any other state relating to controlled
212 substances within a 3-year period immediately preceding the date
213 on which the application is submitted; or

214 2. Committed for the abuse of a controlled substance under
215 chapter 397 or under the provisions of former chapter 396 or
216 similar laws of any other state. An applicant who has been
217 granted relief from firearms disabilities pursuant to s.
218 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the law of
219 the state in which the commitment occurred is deemed not to be
220 committed for the abuse of a controlled substance under this
221 subparagraph;

222 (i) Has not been adjudicated an incapacitated person under
223 s. 744.331, or similar laws of any other state. An applicant who
224 has been granted relief from firearms disabilities pursuant to
225 s. 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the law
226 of the state in which the adjudication occurred is deemed not to
227 have been adjudicated an incapacitated person under this
228 paragraph;

229 (j) Has not been committed to a mental institution under
230 chapter 394, or similar laws of any other state. An applicant
231 who has been granted relief from firearms disabilities pursuant
232 to s. 790.065(2)(a)5.d. ~~s. 790.065(2)(a)4.d.~~ or pursuant to the

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233 law of the state in which the commitment occurred is deemed not
234 to have been committed in a mental institution under this
235 paragraph;

236 Section 4. Subsection (3) of section 943.0583, Florida
237 Statutes, is amended to read:

238 943.0583 Human trafficking victim expunction.—

239 (3) A person who is a victim of human trafficking may
240 petition for the expunction of a criminal history record
241 resulting from the arrest or filing of charges for an offense
242 committed or reported to have been committed while the person
243 was a victim of human trafficking, which offense was committed
244 or reported to have been committed as a part of the human
245 trafficking scheme of which the person was a victim or at the
246 direction of an operator of the scheme, including, but not
247 limited to, violations under chapters 796 and 847, without
248 regard to the disposition of the arrest or of any charges.
249 However, this section does not apply to any offense listed in s.
250 775.084(1)(b)1. Determination of the petition under this section
251 should be by a preponderance of the evidence. A conviction
252 expunged under this section is deemed to have been vacated due
253 to a substantive defect in the underlying criminal proceedings.
254 If a person is adjudicated not guilty by reason of insanity or
255 is found to be incompetent to stand trial for any such charge,
256 the expunction of the criminal history record may not prevent
257 the entry of the judgment or finding in state and national
258 databases for use in determining eligibility to purchase or
259 possess a firearm or to carry a concealed firearm, as authorized
260 in s. 790.065(2)(a)5.c. ~~s. 790.065(2)(a)4.e.~~ and 18 U.S.C. s.
261 922(t), nor shall it prevent any governmental agency that is

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262 authorized by state or federal law to determine eligibility to
263 purchase or possess a firearm or to carry a concealed firearm
264 from accessing or using the record of the judgment or finding in
265 the course of such agency's official duties.

266 Section 5. This act shall take effect October 1, 2019.