

By Senator Book

32-00662-20

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1                   A bill to be entitled

2                   An act relating to sales of ammunition; providing a  
3                   short title; amending s. 790.065, F.S.; requiring  
4                   background checks for the sale or transfer of  
5                   ammunition; providing exceptions; conforming  
6                   provisions to changes made by the act; providing an  
7                   effective date.

8

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

10

11                  Section 1. This act may be cited as "Jaime's Law."

12                  Section 2. Subsections (1), (2), and (3), paragraphs (b),  
13 (c), and (d) of subsection (4), and subsections (6), (11), and  
14 (12) of section 790.065, Florida Statutes, are amended, and  
15 subsections (8), (10), and (14) of that section are republished,  
16 to read:

17                  790.065 Sale and delivery of firearms and ammunition.—

18                  (1) (a) A licensed importer, licensed manufacturer, or  
19 licensed dealer may not sell or deliver from her or his  
20 inventory at her or his licensed premises any firearm or  
21 ammunition to another person, other than a licensed importer,  
22 licensed manufacturer, licensed dealer, or licensed collector,  
23 until she or he has:

24                  1. Obtained a completed form from the potential buyer or  
25 transferee, which form shall have been promulgated by the  
26 Department of Law Enforcement and provided by the licensed  
27 importer, licensed manufacturer, or licensed dealer, which shall  
28 include the name, date of birth, gender, race, and social  
29 security number or other identification number of such potential

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30 buyer or transferee and has inspected proper identification  
31 including an identification containing a photograph of the  
32 potential buyer or transferee.

33       2. Collected a fee from the potential buyer for processing  
34 the criminal history check of the potential buyer. The fee shall  
35 be established by the Department of Law Enforcement and may not  
36 exceed \$8 per transaction. The Department of Law Enforcement may  
37 reduce, or suspend collection of, the fee to reflect payment  
38 received from the Federal Government applied to the cost of  
39 maintaining the criminal history check system established by  
40 this section as a means of facilitating or supplementing the  
41 National Instant Criminal Background Check System. The  
42 Department of Law Enforcement shall, by rule, establish  
43 procedures for the fees to be transmitted by the licensee to the  
44 Department of Law Enforcement. Such procedures must provide that  
45 fees may be paid or transmitted by electronic means, including,  
46 but not limited to, debit cards, credit cards, or electronic  
47 funds transfers. All such fees shall be deposited into the  
48 Department of Law Enforcement Operating Trust Fund, but shall be  
49 segregated from all other funds deposited into such trust fund  
50 and must be accounted for separately. Such segregated funds must  
51 not be used for any purpose other than the operation of the  
52 criminal history checks required by this section. The Department  
53 of Law Enforcement, each year before February 1, shall make a  
54 full accounting of all receipts and expenditures of such funds  
55 to the President of the Senate, the Speaker of the House of  
56 Representatives, the majority and minority leaders of each house  
57 of the Legislature, and the chairs of the appropriations  
58 committees of each house of the Legislature. In the event that

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59 the cumulative amount of funds collected exceeds the cumulative  
60 amount of expenditures by more than \$2.5 million, excess funds  
61 may be used for the purpose of purchasing soft body armor for  
62 law enforcement officers.

63 3. Requested, by means of a toll-free telephone call or  
64 other electronic means, the Department of Law Enforcement to  
65 conduct a check of the information as reported and reflected in  
66 the Florida Crime Information Center and National Crime  
67 Information Center systems as of the date of the request.

68 4. Received a unique approval number for that inquiry from  
69 the Department of Law Enforcement, and recorded the date and  
70 such number on the consent form.

71 (b) However, if the person purchasing, or receiving  
72 delivery of, the firearm or ammunition is a holder of a valid  
73 concealed weapons or firearms license pursuant to ~~the provisions~~  
74 ~~of~~ s. 790.06 or holds an active certification from the Criminal  
75 Justice Standards and Training Commission as a "law enforcement  
76 officer," a "correctional officer," or a "correctional probation  
77 officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or  
78 (9), this subsection does not apply.

79 (c) This subsection does not apply to the purchase, trade,  
80 or transfer of a rifle or shotgun or rifle or shotgun ammunition  
81 by a resident of this state when the resident makes such  
82 purchase, trade, or transfer from a licensed importer, licensed  
83 manufacturer, or licensed dealer in another state.

84 (d) This subsection does not apply to a transfer of  
85 ammunition if the transferor has no reason to believe that the  
86 transferee will use or intends to use the ammunition in a crime  
87 or that the transferee is prohibited from possessing ammunition

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88 under state or federal law, and the transfer takes place and the  
89 transferee's possession of the ammunition is exclusively:

90 1. At a shooting range or in a shooting gallery or other  
91 area designated for the purpose of target shooting; or  
92 2. While reasonably necessary for the purposes of hunting,  
93 trapping, or fishing, if the transferor:

94 a. Has no reason to believe that the transferee intends to  
95 use the ammunition in a place where it is illegal; and  
96 b. Has reason to believe that the transferee will comply  
97 with all licensing and permit requirements for such hunting,  
98 trapping, or fishing; or

99 c. Is in the presence of the transferee.

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

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

105 1. Has been convicted of a felony and is prohibited from  
106 receipt or possession of a firearm or ammunition pursuant to s.  
107 790.23;

108 2. Has been convicted of a misdemeanor crime of domestic  
109 violence, and therefore is prohibited from purchasing a firearm  
110 or ammunition;

111 3. Has had adjudication of guilt withheld or imposition of  
112 sentence suspended on any felony or misdemeanor crime of  
113 domestic violence unless 3 years have elapsed since probation or  
114 any other conditions set by the court have been fulfilled or  
115 expunction has occurred; or

116 4. Has been adjudicated mentally defective or has been

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117 committed to a mental institution by a court or as provided in  
118 sub-sub-subparagraph b.(II), and as a result is prohibited by  
119 state or federal law from purchasing a firearm.

120 a. As used in this subparagraph, "adjudicated mentally  
121 defective" means a determination by a court that a person, as a  
122 result of marked subnormal intelligence, or mental illness,  
123 incompetency, condition, or disease, is a danger to himself or  
124 herself or to others or lacks the mental capacity to contract or  
125 manage his or her own affairs. The phrase includes a judicial  
126 finding of incapacity under s. 744.331(6)(a), an acquittal by  
127 reason of insanity of a person charged with a criminal offense,  
128 and a judicial finding that a criminal defendant is not  
129 competent to stand trial.

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

132 (I) Involuntary commitment, commitment for mental  
133 defectiveness or mental illness, and commitment for substance  
134 abuse. The phrase includes involuntary inpatient placement under  
135 ~~as defined in~~ s. 394.467, involuntary outpatient placement under  
136 ~~as defined in~~ s. 394.4655, involuntary assessment and  
137 stabilization under s. 397.6818, and involuntary substance abuse  
138 treatment under s. 397.6957, but does not include a person in a  
139 mental institution for observation or discharged from a mental  
140 institution based upon the initial review by the physician or a  
141 voluntary admission to a mental institution; or

142 (II) Notwithstanding sub-sub-subparagraph (I), voluntary  
143 admission to a mental institution for outpatient or inpatient  
144 treatment of a person who had an involuntary examination under  
145 s. 394.463, where each of the following conditions have been

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146 met:

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

149       (B) The examining physician certified that if the person  
150 did not agree to voluntary treatment, a petition for involuntary  
151 outpatient or inpatient treatment would have been filed under s.  
152 394.463(2)(g)4., or the examining physician certified that a  
153 petition was filed and the person subsequently agreed to  
154 voluntary treatment prior to a court hearing on the petition.

155       (C) Before agreeing to voluntary treatment, the person  
156 received written notice of that finding and certification, and  
157 written notice that as a result of such finding, he or she may  
158 be prohibited from purchasing a firearm, and may not be eligible  
159 to apply for or retain a concealed weapon or firearms license  
160 under s. 790.06 and the person acknowledged such notice in  
161 writing, in substantially the following form:

162  
163 "I understand that the doctor who examined me believes I am a  
164 danger to myself or to others. I understand that if I do not  
165 agree to voluntary treatment, a petition will be filed in court  
166 to require me to receive involuntary treatment. I understand  
167 that if that petition is filed, I have the right to contest it.  
168 In the event a petition has been filed, I understand that I can  
169 subsequently agree to voluntary treatment prior to a court  
170 hearing. I understand that by agreeing to voluntary treatment in  
171 either of these situations, I may be prohibited from buying  
172 firearms and from applying for or retaining a concealed weapons  
173 or firearms license until I apply for and receive relief from  
174 that restriction under Florida law."

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176       (D) A judge or a magistrate has, pursuant to sub-sub-  
177 subparagraph c.(II), reviewed the record of the finding,  
178 certification, notice, and written acknowledgment classifying  
179 the person as an imminent danger to himself or herself or  
180 others, and ordered that such record be submitted to the  
181 department.

182       c. In order to check for these conditions, the department  
183 shall compile and maintain an automated database of persons who  
184 are prohibited from purchasing a firearm based on court records  
185 of adjudications of mental defectiveness or commitments to  
186 mental institutions.

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

193       (II) For persons committed to a mental institution pursuant  
194 to sub-sub-subparagraph b.(II), within 24 hours after the  
195 person's agreement to voluntary admission, a record of the  
196 finding, certification, notice, and written acknowledgment must  
197 be filed by the administrator of the receiving or treatment  
198 facility, as defined in s. 394.455, with the clerk of the court  
199 for the county in which the involuntary examination under s.  
200 394.463 occurred. No fee shall be charged for the filing under  
201 this sub-sub-subparagraph. The clerk must present the records to  
202 a judge or magistrate within 24 hours after receipt of the  
203 records. A judge or magistrate is required and has the lawful

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204 authority to review the records *ex parte* and, if the judge or  
205 magistrate determines that the record supports the classifying  
206 of the person as an imminent danger to himself or herself or  
207 others, to order that the record be submitted to the department.  
208 If a judge or magistrate orders the submittal of the record to  
209 the department, the record must be submitted to the department  
210 within 24 hours.

211 d. A person who has been adjudicated mentally defective or  
212 committed to a mental institution, as those terms are defined in  
213 this paragraph, may petition the court that made the  
214 adjudication or commitment, or the court that ordered that the  
215 record be submitted to the department pursuant to sub-sub-  
216 subparagraph c.(II), for relief from the firearm disabilities  
217 imposed by such adjudication or commitment. A copy of the  
218 petition shall be served on the state attorney for the county in  
219 which the person was adjudicated or committed. The state  
220 attorney may object to and present evidence relevant to the  
221 relief sought by the petition. The hearing on the petition may  
222 be open or closed as the petitioner may choose. The petitioner  
223 may present evidence and subpoena witnesses to appear at the  
224 hearing on the petition. The petitioner may confront and cross-  
225 examine witnesses called by the state attorney. A record of the  
226 hearing shall be made by a certified court reporter or by court-  
227 approved electronic means. The court shall make written findings  
228 of fact and conclusions of law on the issues before it and issue  
229 a final order. The court shall grant the relief requested in the  
230 petition if the court finds, based on the evidence presented  
231 with respect to the petitioner's reputation, the petitioner's  
232 mental health record and, if applicable, criminal history

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233 record, the circumstances surrounding the firearm disability,  
234 and any other evidence in the record, that the petitioner will  
235 not be likely to act in a manner that is dangerous to public  
236 safety and that granting the relief would not be contrary to the  
237 public interest. If the final order denies relief, the  
238 petitioner may not petition again for relief from firearm  
239 disabilities until 1 year after the date of the final order. The  
240 petitioner may seek judicial review of a final order denying  
241 relief in the district court of appeal having jurisdiction over  
242 the court that issued the order. The review shall be conducted  
243 de novo. Relief from a firearm disability granted under this  
244 sub-subparagraph has no effect on the loss of civil rights,  
245 including firearm rights, for any reason other than the  
246 particular adjudication of mental defectiveness or commitment to  
247 a mental institution from which relief is granted.

248 e. Upon receipt of proper notice of relief from firearm  
249 disabilities granted under sub-subparagraph d., the department  
250 shall delete any mental health record of the person granted  
251 relief from the automated database of persons who are prohibited  
252 from purchasing a firearm based on court records of  
253 adjudications of mental defectiveness or commitments to mental  
254 institutions.

255 f. The department is authorized to disclose data collected  
256 pursuant to this subparagraph to agencies of the Federal  
257 Government and other states for use exclusively in determining  
258 the lawfulness of a firearm sale or transfer. The department is  
259 also authorized to disclose this data to the Department of  
260 Agriculture and Consumer Services for purposes of determining  
261 eligibility for issuance of a concealed weapons or concealed

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262 firearms license and for determining whether a basis exists for  
263 revoking or suspending a previously issued license pursuant to  
264 s. 790.06(10). When a potential buyer or transferee appeals a  
265 nonapproval based on these records, the clerks of court and  
266 mental institutions shall, upon request by the department,  
267 provide information to help determine whether the potential  
268 buyer or transferee is the same person as the subject of the  
269 record. Photographs and any other data that could confirm or  
270 negate identity must be made available to the department for  
271 such purposes, notwithstanding any other provision of state law  
272 to the contrary. Any such information that is made confidential  
273 or exempt from disclosure by law shall retain such confidential  
274 or exempt status when transferred to the department.

275 (b) Inform the licensee making the inquiry either that  
276 records demonstrate that the buyer or transferee is so  
277 prohibited and provide the licensee a nonapproval number, or  
278 provide the licensee with a unique approval number.

279 (c) 1. Review any records available to it to determine  
280 whether the potential buyer or transferee has been indicted or  
281 has had an information filed against her or him for an offense  
282 that is a felony under either state or federal law, or, as  
283 mandated by federal law, has had an injunction for protection  
284 against domestic violence entered against the potential buyer or  
285 transferee under s. 741.30, has had an injunction for protection  
286 against repeat violence entered against the potential buyer or  
287 transferee under s. 784.046, or has been arrested for a  
288 dangerous crime as specified in s. 907.041(4)(a) or for any of  
289 the following enumerated offenses:

290 a. Criminal anarchy under ss. 876.01 and 876.02.

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- 291           b. Extortion under s. 836.05.  
292           c. Explosives violations under s. 552.22(1) and (2).  
293           d. Controlled substances violations under chapter 893.  
294           e. Resisting an officer with violence under s. 843.01.  
295           f. Weapons and firearms violations under this chapter.  
296           g. Treason under s. 876.32.  
297           h. Assisting self-murder under s. 782.08.  
298           i. Sabotage under s. 876.38.  
299           j. Stalking or aggravated stalking under s. 784.048.

300  
301 If the review indicates any such indictment, information, or  
302 arrest, the department shall provide to the licensee a  
303 conditional nonapproval number.

304         2. Within 24 working hours, the department shall determine  
305 the disposition of the indictment, information, or arrest and  
306 inform the licensee as to whether the potential buyer is  
307 prohibited from receiving or possessing a firearm or ammunition.  
308 For purposes of this paragraph, "working hours" means the hours  
309 from 8 a.m. to 5 p.m. Monday through Friday, excluding legal  
310 holidays.

311         3. The office of the clerk of court, at no charge to the  
312 department, shall respond to any department request for data on  
313 the disposition of the indictment, information, or arrest as  
314 soon as possible, but in no event later than 8 working hours.

315         4. The department shall determine as quickly as possible  
316 within the allotted time period whether the potential buyer is  
317 prohibited from receiving or possessing a firearm or ammunition.

318         5. If the potential buyer is not so prohibited, or if the  
319 department cannot determine the disposition information within

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320 the allotted time period, the department shall provide the  
321 licensee with a conditional approval number.

322 6. If the buyer is so prohibited, the conditional  
323 nonapproval number shall become a nonapproval number.

324 7. The department shall continue its attempts to obtain the  
325 disposition information and may retain a record of all approval  
326 numbers granted without sufficient disposition information. If  
327 the department later obtains disposition information which  
328 indicates:

329 a. That the potential buyer is not prohibited from owning a  
330 firearm or ammunition, it shall treat the record of the  
331 transaction in accordance with this section; or

332 b. That the potential buyer is prohibited from owning a  
333 firearm or ammunition, it shall immediately revoke the  
334 conditional approval number and notify local law enforcement.

335 8. During the time that disposition of the indictment,  
336 information, or arrest is pending and until the department is  
337 notified by the potential buyer that there has been a final  
338 disposition of the indictment, information, or arrest, the  
339 conditional nonapproval number shall remain in effect.

340 (3) In the event of scheduled computer downtime, electronic  
341 failure, or similar emergency beyond the control of the  
342 Department of Law Enforcement, the department shall immediately  
343 notify the licensee of the reason for, and estimated length of,  
344 such delay. After such notification, the department shall  
345 forthwith, and in no event later than the end of the next  
346 business day of the licensee, either inform the requesting  
347 licensee if its records demonstrate that the buyer or transferee  
348 is prohibited from receipt or possession of a firearm or

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349       ammunition pursuant to Florida and federal law or provide the  
350       licensee with a unique approval number. Unless notified by the  
351       end of said next business day that the buyer or transferee is so  
352       prohibited, and without regard to whether she or he has received  
353       a unique approval number, the licensee may complete the sale or  
354       transfer and shall not be deemed in violation of this section  
355       with respect to such sale or transfer.

356               (4)

357               (b) Notwithstanding ~~the provisions of~~ this subsection, the  
358       Department of Law Enforcement may maintain records of NCIC  
359       transactions to the extent required by the Federal Government,  
360       and may maintain a log of dates of requests for criminal history  
361       records checks, unique approval and nonapproval numbers, license  
362       identification numbers, and transaction numbers corresponding to  
363       such dates for a period of not longer than 2 years or as  
364       otherwise required by law.

365               (c) Nothing in this chapter shall be construed to allow the  
366       State of Florida to maintain records containing the names of  
367       purchasers or transferees who receive unique approval numbers or  
368       to maintain records of firearm or ammunition transactions.

369               (d) Any officer or employee, or former officer or employee,  
370       of the Department of Law Enforcement or a law enforcement agency  
371       who intentionally and maliciously violates ~~the provisions of~~  
372       this subsection commits a felony of the third degree, punishable  
373       as provided in s. 775.082 or s. 775.083.

374               (6) Any person who is denied the right to receive or  
375       purchase a firearm or ammunition as a result of the procedures  
376       established by this section may request a criminal history  
377       records review and correction in accordance with the rules

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378 promulgated by the Department of Law Enforcement.

379       (8) The Department of Law Enforcement shall promulgate  
380 regulations to ensure the identity, confidentiality, and  
381 security of all records and data provided pursuant to this  
382 section.

383       (10) A licensed importer, licensed manufacturer, or  
384 licensed dealer is not required to comply with the requirements  
385 of this section in the event of:

386           (a) Unavailability of telephone service at the licensed  
387 premises due to the failure of the entity which provides  
388 telephone service in the state, region, or other geographical  
389 area in which the licensee is located to provide telephone  
390 service to the premises of the licensee due to the location of  
391 said premises; or the interruption of telephone service by  
392 reason of hurricane, tornado, flood, natural disaster, or other  
393 act of God, war, invasion, insurrection, riot, or other bona  
394 fide emergency, or other reason beyond the control of the  
395 licensee; or

396           (b) Failure of the Department of Law Enforcement to comply  
397 with the requirements of subsections (2) and (3).

398       (11) Compliance with ~~the provisions of~~ this chapter shall  
399 be a complete defense to any claim or cause of action under the  
400 laws of any state for liability for damages arising from the  
401 importation or manufacture, or the subsequent sale or transfer  
402 to any person who has been convicted in any court of a crime  
403 punishable by imprisonment for a term exceeding 1 year, of any  
404 firearm or ammunition which has been shipped or transported in  
405 interstate or foreign commerce. The Department of Law  
406 Enforcement and, its agents and employees shall not be liable

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407 for any claim or cause of action under the laws of any state for  
408 liability for damages arising from its actions in lawful  
409 compliance with this section.

410 (12) (a) Any potential buyer or transferee who willfully and  
411 knowingly provides false information or false or fraudulent  
412 identification commits a felony of the third degree,\_ punishable  
413 as provided in s. 775.082 or s. 775.083.

414 (b) Any licensed importer, licensed manufacturer, or  
415 licensed dealer who violates ~~the provisions of~~ subsection (1)  
416 commits a felony of the third degree,\_ punishable as provided in  
417 s. 775.082 or s. 775.083.

418 (c) Any employee or agency of a licensed importer, licensed  
419 manufacturer, or licensed dealer who violates ~~the provisions of~~  
420 subsection (1) commits a felony of the third degree,\_ punishable  
421 as provided in s. 775.082 or s. 775.083.

422 (d) Any person who knowingly acquires a firearm or  
423 ammunition through purchase or transfer intended for the use of  
424 a person who is prohibited by state or federal law from  
425 possessing or receiving a firearm or ammunition commits a felony  
426 of the third degree, punishable as provided in s. 775.082 or s.  
427 775.083.

428 (14) This section does not apply to employees of sheriff's  
429 offices, municipal police departments, correctional facilities  
430 or agencies, or other criminal justice or governmental agencies  
431 when the purchases or transfers are made on behalf of an  
432 employing agency for official law enforcement purposes.

433 Section 3. This act shall take effect October 1, 2020.