

By Senator Polsky

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1 A bill to be entitled
2 An act relating to the sale or transfer of ammunition;
3 providing a short title; amending s. 790.065, F.S.;
4 requiring background checks for the sale or transfer
5 of 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 "I understand that the doctor who examined me believes I am a
163 danger to myself or to others. I understand that if I do not
164 agree to voluntary treatment, a petition will be filed in court
165 to require me to receive involuntary treatment. I understand
166 that if that petition is filed, I have the right to contest it.
167 In the event a petition has been filed, I understand that I can
168 subsequently agree to voluntary treatment prior to a court
169 hearing. I understand that by agreeing to voluntary treatment in
170 either of these situations, I may be prohibited from buying
171 firearms and from applying for or retaining a concealed weapons
172 or firearms license until I apply for and receive relief from
173 that restriction under Florida law."

174 (D) A judge or a magistrate has, pursuant to sub-sub-

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175 subparagraph c.(II), reviewed the record of the finding,
176 certification, notice, and written acknowledgment classifying
177 the person as an imminent danger to himself or herself or
178 others, and ordered that such record be submitted to the
179 department.

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

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

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

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204 of the person as an imminent danger to himself or herself or
205 others, to order that the record be submitted to the department.
206 If a judge or magistrate orders the submittal of the record to
207 the department, the record must be submitted to the department
208 within 24 hours.

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

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

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

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

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

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

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

- 288 a. Criminal anarchy under ss. 876.01 and 876.02.
289 b. Extortion under s. 836.05.
290 c. Explosives violations under s. 552.22(1) and (2).

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- 291 d. Controlled substances violations under chapter 893.
292 e. Resisting an officer with violence under s. 843.01.
293 f. Weapons and firearms violations under this chapter.
294 g. Treason under s. 876.32.
295 h. Assisting self-murder under s. 782.08.
296 i. Sabotage under s. 876.38.
297 j. Stalking or aggravated stalking under s. 784.048.

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

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

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

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

316 5. If the potential buyer is not so prohibited, or if the
317 department cannot determine the disposition information within
318 the allotted time period, the department shall provide the
319 licensee with a conditional approval number.

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320 6. If the buyer is so prohibited, the conditional
321 nonapproval number shall become a nonapproval number.

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

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

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

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

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

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

354 (4)

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

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

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

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

377 (8) The Department of Law Enforcement shall promulgate

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378 regulations to ensure the identity, confidentiality, and
379 security of all records and data provided pursuant to this
380 section.

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

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

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

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

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407 compliance with this section.

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

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

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

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

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

431 Section 3. This act shall take effect October 1, 2022.