

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1223 Minimum Age for Firearm Purchase or Transfer

**SPONSOR(S):** Payne and others

**TIED BILLS:** IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 5 N	Padgett	Hall
2) Judiciary Committee	15 Y, 6 N	Padgett	Kramer

**SUMMARY ANALYSIS**

Both state and Federal law regulate the purchase of firearms, which can either be made through a federal firearms licensee (FFL) or through a private sale. Generally, the minimum age required to purchase a firearm varies depending on the type of firearm purchased and whether the seller is an FFL or a private citizen. The sale of a firearm by an FFL is generally subject to greater restrictions than those imposed on a sale by a private citizen.

An FFL may not sell or deliver a firearm to any person if the purchase or possession by the firearm purchaser would be in violation of any state law where the sale or delivery will occur. Thus, if a state imposes requirements for the purchase or possession of a firearm which are *greater* than Federal law, an FFL may not sell or deliver a firearm to a prospective purchaser unless he or she satisfies the more restrictive state requirements. If a state imposes requirements on the purchase or possession of a firearm that is less restrictive than Federal law, Federal law applies. In sum, Federal law relating to the purchase and sale of a firearm acts as the “floor,” but states may impose more restrictive requirements if they choose to do so.

In 2018, Florida raised the minimum age to purchase a firearm from 18 to 21. Prior to 2018, the minimum age to purchase a long gun was 18 and the minimum age to purchase a handgun was 21, consistent with Federal law. Under current law, s. 790.065(13), F.S., generally prohibits, punishable as a third degree felony:

- A person younger than 21 years of age from purchasing a firearm, which includes both a long gun and a handgun.
- A licensed importer, licensed manufacturer, or licensed dealer (i.e. an FFL) from facilitating any sale or transfer of a firearm to a person younger than 21 years of age.

HB 1223 amends s. 790.065(13), F.S., to reduce the minimum age requirement to purchase a firearm from 21 to 18, which applies to purchases from either an FFL or a private seller. The bill also reduces from 21 to 18 the minimum age of a purchaser to which an FFL may make or facilitate a sale or transfer of a firearm.

Under the bill, a person who is 18 years of age or older and who is not otherwise prohibited from purchasing a firearm may purchase a long gun from either an FFL or a private seller.

Since the sale of a handgun by an FFL to a person under 21 years of age remains prohibited under Federal law, a person under the age of 21 would *not* be able to purchase a handgun from an FFL in Florida. Under the bill, a person who is 18 years of age or older may purchase a handgun from a private seller.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2024.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Purchase and Sale of Firearms

##### *Federal Firearms Licensee*

A person may not engage in the business of importing, manufacturing, or dealing in firearms unless he or she is licensed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).<sup>1</sup> A federal firearms licensee (FFL) must comply with both state and Federal law when selling a firearm, including verifying that a prospective purchaser meets the minimum age requirement to purchase a firearm and verifying that a prospective purchaser is not prohibited from purchasing a firearm by completing a background check to ensure the person purchasing the firearm is not prohibited from doing so.<sup>2</sup>

Under 18 U.S.C. s. 922(g), a person is disqualified from purchasing a firearm if the person:

- Is convicted of a crime punishable by imprisonment exceeding one year;
- Is a fugitive from justice;
- Is an unlawful user or addicted to any controlled substance as defined in 21 U.S.C s. 802;
- Has been adjudicated as a mental defective or has been committed to any mental institution;
- Is an illegal alien;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced his or her U.S. citizenship;
- Is subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner; or
- Has been convicted of a misdemeanor crime of domestic violence.

Section 790.065(2), F.S., disqualifies a person from purchasing a firearm if the person:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.;
- Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;
- Has had a withhold of adjudication or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other court set conditions have been fulfilled or an expunction has occurred;
- Has been adjudicated mentally defective, or has been committed to a mental institution by a court or by voluntary admission to a mental institution after having been involuntarily examined where additional criteria are met;
- Has been indicted or had an information filed against her or him for a felony offense;
- Has had an injunction for protection against domestic violence under s. 741.30, F.S., entered against him or her;
- Has had an injunction for protection against repeat violence under s. 784.046, F.S., entered against him or her;
- Has been arrested for a dangerous crime as specified in s. 907.041(4)(a), F.S.; or
- Has been arrested for any of the offenses enumerated in s. 790.065(2)(c)1., F.S.

##### *Private Transaction*

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<sup>1</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>2</sup> 18 U.S.C. § 922(t).

A person may also purchase a firearm through a private transaction (i.e. purchasing a firearm from a person who is a private citizen and *not* an FFL). Many of the requirements that apply to the sale of a firearm by an FFL do not apply to a private transaction. A seller in a private transaction is not explicitly required to verify a purchaser's age<sup>3</sup> or required to complete a background check<sup>4</sup> prior to transferring a firearm to a purchaser.

### Minimum Purchase Age

An FFL may not sell or deliver a firearm to any person if the purchase or possession of the firearm by the purchaser would be in violation of any state law where the sale or deliver will occur.<sup>5</sup> Thus, if a state imposes requirements for the purchase or possession of a firearm which are *greater* than Federal law, an FFL may not sell or deliver a firearm to a prospective purchaser unless he or she satisfies the more restrictive state requirements. If a state imposes requirements on the purchase or possession of a firearm that is less restrictive than Federal law, Federal law applies. In sum, Federal law relating to the purchase and sale of a firearm acts as the "floor," but states may impose more restrictive requirements if they choose to do so.

#### *Federal Law*

#### **Sale or Delivery of a Firearm – Purchase from a Federal Firearms Licensee**

Type of Firearm	Minimum Age to Purchase <sup>6</sup>
Long Gun <sup>7</sup>	18
Handgun	21

#### **Sale or Delivery of a Firearm – Purchase from a Private Seller**

Type of Firearm	Minimum Age to Purchase
Long Gun	No minimum age
Handgun	18 <sup>8</sup>

#### *Florida Law*

#### **Purchase of a Firearm**

In 2018, Florida raised the minimum age to purchase a firearm from 18 to 21.<sup>9</sup> Prior to 2018, the minimum age requirement to purchase a long gun from an FFL was 18 and the minimum age to purchase a handgun from an FFL was 21, consistent with Federal law. Under current law, s. 790.065(13), F.S., generally prohibits:

<sup>3</sup> A private seller is prohibited from selling, delivering, or otherwise transferring a handgun to a person who the transferor knows or has reasonable cause to believe is under 18 years of age. 18 U.S.C. §922(x)(1)(A).

<sup>4</sup> A private seller may not sell or dispose of a firearm to any person who the seller knows, or has reasonable cause to know, is prohibited from purchasing a firearm due to his or her prior criminal history, immigration status, or mental condition. 18 U.S.C. § 922.

<sup>5</sup> 18 U.S.C. § 922(b)(2).

<sup>6</sup> 18 U.S.C. § 922(b)(1).

<sup>7</sup> A "long gun" includes firearms other than a handgun, such as a rifle or shotgun. See 18 U.S.C. § 922(b)(1).

<sup>8</sup> 18 U.S.C. § 922(x)(1)(A). There are exceptions for the temporary transfer and possession of handguns for specified activities, including employment, ranching, farming, target practice and hunting. 18 U.S.C. § 922(x)(3).

<sup>9</sup> Ch. 2018-3, Laws of Fla.

- A person younger than 21 years of age from purchasing a firearm,<sup>10</sup> which includes both a long gun or a handgun.
- A licensed importer, licensed manufacturer, or licensed dealer (i.e. an FFL) from facilitating any sale or transfer of a firearm to a person younger than 21 years of age.<sup>11</sup>

A person who violates this prohibition commits a third degree felony.<sup>12</sup>

Under Florida law, it is not a crime for a private party to *sell or transfer* a firearm to a person who is 18 years of age or older but less than 21 years of age.

### **Furnishing Firearms to Minors**

Section 790.17(2), F.S., prohibits a person from knowingly or willfully selling or transferring a firearm to a minor under 18 years of age without the permission of the minor's parent or guardian, a violation of which is punishable as a third degree felony.

### **Possession of Firearms by a Minor**

Section 790.22, F.S., prohibits a minor under 18 years of age from possessing a firearm, other than an unloaded firearm at his or her home unless:

- The minor is engaged in a lawful hunting activity and:
  - Is at least 16 years of age; or
  - Under 16 years of age and supervised by an adult.
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and:
  - Is at least 16 years of age; or
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from a lawful hunting or recreational shooting event.

A first violation is punishable as a first degree misdemeanor.<sup>13</sup> A second or subsequent violation is punishable as a third degree felony.<sup>14</sup>

### *Other States*

The states that require a person to be 21 years of age or older to purchase a long gun are reflected in blue in the map below.<sup>15</sup> The states in green require a person to be 21 or older to purchase a semi-

<sup>10</sup> This restriction applies only to the *purchase* of a firearm by a person under 21 years of age. A person under 21 years of age may legally possess a firearm he or she receives as a gift or by other lawful means *other* than a purchase.

<sup>11</sup> A person who is a law enforcement officer, correctional officer, or servicemember may purchase a rifle or shotgun from a licensed importer, licensed manufacturer, or licensed dealer, or a private seller. S. 790.065(13), F.S.

<sup>12</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>13</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083.

<sup>14</sup> S. 790.22(5)(b), F.S.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the number of people who are eligible to purchase a firearm by lowering the minimum purchase age for a firearm from 21 to 18. To the extent that people who are newly eligible to purchase a firearm under the bill choose to purchase a firearm, the bill may have a positive fiscal impact on businesses engaged in the sale of firearms and firearm-related products.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

Florida increased the minimum age requirement to 21 to purchase all firearms in 2018. The National Rifle Association challenged the law, alleging the increased minimum age requirement violated the Second and Fourteenth Amendments to the United States Constitution. On March 9, 2023, the United States Court of Appeals for the Eleventh Circuit ruled in favor of Florida, holding that prohibiting a person under 21 years of age from purchasing a firearm was consistent with the historical tradition of firearm regulation at the time the Fourteenth Amendment, which makes the Second Amendment applicable to the states, was ratified in 1868. The court also found the prohibition on a person under 21 years of age from purchasing a firearm was analogous to historical statutes from other states that were in effect when the Fourteenth Amendment was ratified, was no more restrictive than those statutes, and was enacted with the same goal of improving public safety. *Nat'l Rifle Ass'n. v. Bondi*, 2023 WL 2416683 (11th Cir. 2023). However, on July 14, 2023, the Eleventh Circuit granted a motion for a rehearing en banc and vacated the opinion. A decision in the case remains pending.

### B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**