

STORAGE NAME: h0535.jo.doc
DATE: April 11, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 535
RELATING TO: Sale or Transfer of Firearms at Gun Shows
SPONSOR(S): Representative Rich
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
 - (2) CRIME PREVENTION, CORRECTIONS, & SAFETY
 - (3) AGRICULTURE & CONSUMER AFFAIRS
 - (4) SMARTER GOVERNMENT
 - (5)
-

I. SUMMARY:

HB 535 provides for background checks on persons who purchase guns at gun shows. The bill requires that a gun show vendor not sell or transfer a firearm at a gun show or attempt to sell or transfer a firearm at a gun show until the vendor has conducted a background check pursuant to s. 790.065, F.S.

The bill requires a licensed gun dealer who obtains a criminal history background check on a prospective transferee at a gun show to record the transfer and retain the record of the transfer. Any individual who gives false information in connection with the making of such records commits a misdemeanor of the first degree.

The bill requires a gun show promoter to arrange for the services of one or more licensed gun dealers to be on the premises for the purposes of obtaining background checks and requires the promoter to post signs setting forth the requirement of background checks created by the bill. The notice is to be created by the Florida Department of Law Enforcement.

A licensed dealer, gun show vendor, or gun show promoter who transfers or attempts to transfer a firearm at a gun show without complying with the provisions regarding background checks commits a third degree felony. A potential buyer or transferee who willfully provides false information or fraudulent identification with respect to a sale or transfer commits a third degree felony.

The bill takes effect October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill requires citizens to take actions, ensuring that criminal background checks are performed and keeping specified records, which are not currently required by state law.

B. PRESENT SITUATION:

The Florida Constitution on the Regulation of the Sale of Firearms

Article I, section 8, of the Florida Constitution, guarantees the people the right to “keep and bear arms in defense of themselves and of the lawful authority of the state...except that the manner of bearing arms may be regulated by law.” Art. I, s. 8(b), Fla. Const., requires a mandatory waiting period of three days, excluding weekends and holidays, between the purchase and delivery at retail of any handgun. Holders of a concealed weapons permit are exempt from this provision.

Article VIII, section 5(b), of the Florida Constitution provides that counties may require a criminal history records check and a 3-5 day waiting period in connection with the sale of any firearm occurring within the county in any part of the transaction is conducted on property in which the public has a right to access. Holders of a concealed weapons permit are exempt from this provision.

As of January, 2000, ten counties had implemented ordinances relating to gun shows.¹

State Law Regulating the Sale and Delivery of Firearms

Section 760.065, F.S., governs the sale and delivery of firearms in Florida. Under the statute, a licensed importer, licensed manufacturer, or licensed dealer may not sell or deliver from her or his inventory at her or his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until she or he has:

- (a) Obtained a completed form from the potential buyer or transferee, which form shall have been promulgated by the Department of Law Enforcement and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee and

¹See Katherine Fenandez Rundle and Paul Mendelson, *Closing the Deadly Loopholes in the Firearms Laws: The History and Impact of Amendment 12*, 52 University of Florida Law Review 2, 469-470, April 2000.

has inspected proper identification including an identification containing a photograph of the potential buyer or transferee.²

(b) Collected a fee from the potential buyer for processing the criminal history check of the potential buyer. The fee shall be established by the Department of Law Enforcement and may not exceed \$8 per transaction.

(c) Requested, by means of a toll-free telephone call, the Department of Law Enforcement to conduct a check of the information as reported and reflected in the Florida Crime Information Center and National Crime Information Center systems as of the date of the request.

(d) Received a unique approval number for that inquiry from the Department of Law Enforcement, and recorded the date and such number on the consent form.

See s. 790.065(1), F.S.

If the person purchasing, or receiving delivery of, the firearm is a holder of a valid concealed weapons or firearms license or is a law enforcement officer, correctional officer, or a correctional probation officer, the background check provisions do not apply. See s. 790.065(1), F.S.

Section 790.065(2), F.S., requires the Florida Department of Law Enforcement, upon receipt of a request for a criminal history record check, to:

(a) review criminal history records to determine if the potential buyer or transferee (1) has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23³; (2) has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm; or (3) has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred.

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

(c) review any records available to it to determine whether the potential buyer or transferee has been indicted or has had an information filed against her or him for an offense that is a felony under either state or federal law, or, as mandated by federal law, has had an injunction for protection against domestic violence entered against the potential buyer or transferee under s. 741.30, has had an injunction for protection against repeat violence entered against the potential buyer or transferee under s. 784.046, or has been arrested for a dangerous crime as specified in s. 907.041(4)(a) or other specified offenses.⁴ If the review indicates any such indictment, information, or arrest, the department shall provide to the licensee a conditional nonapproval number. The statute provides procedures if the department is unable to immediately determine the disposition of any indictment or information.

The statute provides that in the event of scheduled computer downtime, electronic failure, or similar emergency beyond the control of the Department of Law Enforcement, the department shall

² This form is retained by the dealer pursuant to federal regulations.

³ This statute prohibits possession of a firearm by a convicted felon.

⁴ Offenses include weapons violations, controlled substances violations, extortion, and other offenses set forth in s. 790.065(2)(c)1, F.S.

immediately notify the licensee of the reason for, and estimated length of, such delay. After such notification, the department shall either inform the requesting licensee if its records demonstrate that the buyer or transferee is prohibited from receipt or possession of a firearm pursuant to Florida and Federal law or provide the licensee with a unique approval number. Unless notified by the end of the next business day that the buyer or transferee is so prohibited, the licensee may complete the sale or transfer.⁵

The statute requires the department to establish a toll-free telephone number which shall be operational 7 days a week with the exception of Christmas Day and New Year's Day, for a period of 12 hours a day beginning at 9 a.m. and ending at 9 p.m., for purposes of responding to inquiries.⁶

The statute provides for certain conditions under which background checks are not required.⁷ It further provides that compliance with the chapter is a complete defense to any cause of action arising from the importation or manufacture, or subsequent sale or transfer to any person convicted of a felony.⁸

Pursuant to section 790.065(12), any potential buyer or transferee who willfully and knowingly provides false information or false or fraudulent identification commits a third degree felony.

C. EFFECT OF PROPOSED CHANGES:

HB 535 provides for background checks on persons who purchase guns at gun shows. The bill defines gun show as:

an event or function that is sponsored to facilitate, in whole or in part, the purchase, sale, offer for sale, or collection of firearms at which: (a) Twenty-five or more firearms are offered or exhibited for sale, transfer, or exchange; or (b) Not less than three gun show vendors exhibit, sell, offer for sale, transfer, or exchange firearms. The term includes the entire premises provided for the gun show, including, but not limited to, parking areas for the gun show.

HB 535 requires that a gun show vendor⁹ not sell or transfer a firearm at a gun show or attempt to sell or transfer a firearm at a gun show until the vendor has:

- (1) obtained a completed form from the buyer or transferee required by s. 790.065(1)(a), F.S.;
- (2) collected a fee, set by the Florida Department of Law Enforcement not to exceed \$10, from a potential buyer or transferee;
- (3) requested that a criminal history background check of the prospective buyer or transferee be conducted by the Florida Department of Law Enforcement in accordance with s. 790.065, F.S.

⁵ Section 790.065(3), F.S.

⁶ Section 790.065(5), F.S.

⁷ Section 790.065(10), F.S.

⁸ Section 790.065(11), F.S.

⁹ The bill defines "gun show vendor" as "any person who exhibits, sells, offers for sale, transfers or exchanges any firearm at a gun show, regardless of whether the person arranges with a gun show promoter for a fixed location from which to exhibit, sell, offer for sale, transfer, or exchange any firearm."

- (4) obtained a unique approval number for the background inquiry from the Florida Department of Law Enforcement and recorded the date and approval number in accordance with s. 790.065, F.S.

These provisions apply if any part of a firearm transaction takes place at a gun show.

The bill requires a licensed gun dealer who obtains a criminal history background check on a prospective transferee at a gun show to record the transfer and retain the record of the transfer. Any individual who gives false information in connection with the making of such records commits a misdemeanor of the first degree.

The bill requires a gun show promoter to arrange for the services of one or more licensed gun dealers to be on the premises for the purposes of obtaining background checks and requires the promoter to post signs setting forth the requirement of background checks created by the bill. The notice is to be created by the Florida Department of Law Enforcement.

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The bill takes effect October 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Department of Law Enforcement estimates additional revenues of \$48,000 per year.

2. Expenditures:

The Florida Department of Law Enforcement requests 1 additional FTE (Senior Criminal Justice Information Technician) to handle the additional workload. The Department estimated it would receive 500 additional phone calls per month. The estimated cost of the position would be \$40,423.72 in the first year and \$38,923.72 each year thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could affect gun shows. Requiring the parties to the sale to engage the services of a third party to conduct a background check could increase the costs of guns purchased at gun shows.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or cities to spend funds or take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that cities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with cities or counties.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article VIII, section 5(b), of the Florida Constitution provides that counties may require a criminal history records check and a 3-5 day waiting period in connection with the sale of any firearm occurring within the county in any part of the transaction is conducted on property in which the public has a right to access. This provision would include gun shows as described in the bill. Since the constitutional provision does not mention state government, it can be argued that this provision preempts the state from making laws in this area. However, Art. VIII, ss. 1(f), (g), Fla. Const., state that a county may not enact an ordinance that is inconsistent with a state statute. The meaning of article VIII, section 5(b) and its relation to article VIII, sections 1(f) and (g) has not been argued in Florida courts so it is unclear how the courts might rule if faced with such an issue.

In addition, Art. VIII, s. 5(b), Fla. Const., exempts holders of a concealed weapons permit from the provisions of the subsection. The bill does not provide a similar exemption for holders of a concealed weapons permit.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Some provisions of this bill are tied to section 790.065, F.S. Section 790.065(14), F.S., provides that the section is repealed effective June 1, 2002. If this bill becomes law, it will have to be revisited next session to make changes to reflect the repealed statute.

Currently, a person who has a concealed weapons permit can purchase guns from a dealer that is not at a gun show without a background check. See s. 760.065(1), F.S. There is not a similar exception under this bill. Therefore, dealers who sell at gun shows will be treated differently from dealers who sell at other locations.

Section (2)(b) of the bill provides that any "individual who gives false information in connection with the making of such records commits a misdemeanor" while section (7) provides that a potential buyer or transferee who willfully and knowingly provides false information commits a felony. In certain cases, these sections would provide differing penalties for the same acts. For example, a buyer who provided false information would be guilty of misdemeanor under (2)(b) and a felony under (7). Section 2(b) also criminalizes potentially innocent conduct. Since the section says "any individual who gives false information" is guilty of a crime, and does not have a requirement of willfulness, it would make the licensed dealer who performs the ministerial act of calling the Department of Law Enforcement to perform the background check guilty of a crime if any of the information given to the department was false.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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