

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1152
SPONSOR: Criminal Justice Committee and Senator Peaden
SUBJECT: Firearm Records
DATE: January 22, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1152 prohibits any state, regional, or local governmental entity from knowingly and willfully keeping, or causing to be kept, any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of such firearms. The bill applies the same prohibition against private persons and entities. The bill provides certain exemptions to the prohibition.

A violation of the prohibition is a third degree felony. The state attorney is specially charged with investigating and vigorously prosecuting criminal violations of the prohibition in their respective jurisdictions.

The bill provides that a governmental entity, or their designee, may be fined, in a civil action, up to \$5 million, if a list, record, or registry is compiled in violation of the prohibition and a court finds that the information was compiled with the knowledge of the management of the entity. The attorney general may bring a cause of action to pursue a fine against a governmental entity.

Any records prohibited by the bill, in existence at the time the act becomes law, must be destroyed within 60 calendar days of the effective date.

This bill creates a new section of the Florida Statutes: s. 790.335.

II. Present Situation:

Florida maintains very few records related to firearms. Section 790.001(6), F.S., defines the term "firearm" to mean:

any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

Pursuant to s. 790.065, F.S., the Florida Department of Law Enforcement (FDLE) performs criminal history record checks through the National Crime Information Center (NCIC) of the Federal Bureau of Investigations (FBI) when a licensed importer, licensed manufacturer, licensed dealer, or licensed collector attempts to sell a firearm to another person. FDLE must destroy the record of the criminal history check within 48 hours after the day it delivers a response to the licensee's request. These requests are done by telephone and usually take only a few minutes.

Private persons and entities are generally free to maintain their business and personal records relating to firearms and firearm purchases. Federal firearm dealer regulations require firearm dealers to keep certain information relating to transactions. As part of the National Firearms Act, certain types of firearms such as machine guns and short-barreled shotguns must be registered with the Federal Bureau of Alcohol, Tobacco, and Firearms. The Florida Department of Agriculture and Consumer Affairs issues licenses to carry concealed weapons and firearms pursuant to s. 790.06, F.S.

There are concerns among owners of firearms that their privacy rights are being eroded by the collection of data by government entities which includes the identity of the owner. There is also a concern that the data could become compromised and target the legitimate firearm owners in a way that would controvert the intent of the Second Amendment.

Development of Statewide Pawnbroker Database

In Attorney General Opinion 2001-51, issued on July 18, 2001, the Attorney General opined that local law enforcement authorities could submit confidential records of pawnbroker transactions, on a voluntary basis, to FDLE for inclusion in a statewide pawnbroker database which only is accessible by approved law enforcement officers.

These confidential records are required to be submitted by the pawnbroker, most often electronically, to local law enforcement agencies pursuant to s. 539.001, F.S., which regulates pawnbroker transactions. Secondhand dealers submit purchase transaction records in the same fashion. The secondhand dealer and pawnbroker transaction records include transactions involving firearms used to secure a loan from pawnbrokers.

While the Attorney General's opinion concluded that records submitted to the statewide database would maintain their confidential status, this statewide database has never been created. The 1999 Legislature considered but failed to pass a bill creating a statewide database for certain pawn transaction information to be accessed by law enforcement.

There was substantive legislation filed and considered during the 2000 Session which was a package addressing the creation and implementation of the database and restrictions on the use of the information gathered for the database, as well as an effort to make the court system more

“user friendly” for victims of property crimes whose property is located in a pawnshop, as outlined above. Although the substantive legislation passed out of the Senate Criminal Justice Committee and Judiciary Committee, it died on the Calendar. Proviso language in the budget provided funds (\$1,050,748) for FDLE to use to develop and implement the statewide database contemplated by the substantive bill.

Because the substantive legislation did not pass, there was some discomfort among the pawnbroker industry spokespeople about the database being implemented without the restrictions on the use of the information gathered set forth in the 2000 bill. Industry officials had concerns about the privacy rights of their clientele which were protected by the proposed restrictions on the use of the information gathered. Then-Commissioner Moore met with industry officials and law enforcement during the interim and those concerns were allayed through a Memorandum of Understanding, signed by all parties.

This Memorandum of Understanding set forth the intention of all parties to seek the passage of substantive legislation during the 2001 Session, and to work together in the interim to go forward with the creation and implementation of the database, with the restrictions to the use of the information gathered as set forth in the 2000 bill in place.

The database was created by FDLE, with the advice and assistance of the interested parties, which provided a statewide system for collecting and accessing pawnshop ticket and secondhand dealer information on items pawned, bought, sold, or traded. The database was dubbed “SPARS” (Statewide Property Automated Recovery System). It was a collection-point of data received from law enforcement agencies to be used to identify, track, and recover stolen or misappropriated property. The database never became operational, however, because substantive legislation was not passed during the 2001 Session.

Development and Operation of Local Agency Information-Sharing

In spite of, or perhaps because the FDLE statewide database did not come to fruition, a somewhat similar pilot project is currently operating. Rather than creating a statewide database, some local law enforcement agencies access each other’s databases through a switching network. The project is called the Law Enforcement Data Sharing Consortium.

The Consortium is a collaborative effort between law enforcement agencies and the University of Central Florida. The data shared by the agencies is not stored in a centralized database, but is shared from individual agency data accessible by Consortium members through a secure connection transfer utilizing FDLE’s CJNet. A non-profit arrangement with the University of Central Florida provides a cost-effective approach to developing and implementing the program. Students and faculty working on the technical projects and assistance required by the Consortium do not have access to any law enforcement software or computers, therefore do not have access to CJNet.

The Consortium and the University have an agreement outlining their cooperative effort to support the Public Safety Technology Center effective until September 30, 2006. The Center is located on the University Campus and exists to develop the technology needed to share information between agencies. The Agreement has a 90-day notice of termination clause.

The initial project of the Consortium was to implement information sharing of pawn transactions. As of December 8, 2003, the ability to make queries of the system related to persons and vehicles was added to the program. It is expected that agencies belonging to the Consortium will save many man-hours currently spent seeking interagency information by telephone. (*Law Enforcement Data Sharing Consortium Information Guide*)

As of the end of October 2003, five sheriff's departments had fully functioning access to the shared information available as a result of the work of the Consortium. Municipal police departments within those county sheriffs' jurisdictions either had access or were planning access through their sheriff's server. Although many of the law enforcement agencies have the ability to access information from other agencies within their particular jurisdictions, the program developed by the Consortium provides access to information across jurisdictional lines.

The November Consortium newsletter cites an example of how the system operates: The Hillsborough County Sheriff's Office located stolen property in an Orange County pawn shop – the property had been taken some five days earlier in a Hillsborough County auto burglary. (Law Enforcement Data Sharing Consortium Newsletter, November 2003, <http://druid.engr.ucf.edu/datasharing/Newsletter1110033/index1.html>).

III. Effect of Proposed Changes:

The bill provides legislative findings that:

- the right to keep and bear arms is guaranteed under the state and federal constitutions;
- a list, record, or registry of legally owned firearms or firearm owners is not a law enforcement tool and could be used to harass citizens who choose to own a firearm and could possibly be used by thieves;
- a list, record, or registry of legally owned firearms or firearm owners is not a tool for fighting terrorism and could be used as a means to profile and harass citizens who choose to bear firearms; and
- firearm owners whose names are illegally on a list, record, or registry deserve redress.

The bill provides that the Legislature intends to:

- protect the rights of individuals to bear arms; and
- protect the privacy rights of firearm owners.

The bill prohibits any state, regional, or local governmental entity from knowingly and willfully keeping, or causing to be kept, any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of such firearms. The bill applies the same prohibition against private entities.

The bill provides that electronic records of secondhand dealer and pawnbroker transactions relating to firearms may only be kept by secondhand dealers, pawnbrokers, or law enforcement agencies for thirty days.

A violation of the prohibition is a third degree felony punishable by up to five years in prison and by up to a \$5,000 fine. The bill prohibits the use of public funds (except those funds used to provide an indigent person an attorney pursuant to their constitutional right to counsel) in the defense of any person charged with violating this section, unless the charges are dismissed or the person is found not guilty.

The bill provides that a governmental entity, or their designee, may be fined not more than \$5 million, if a list, record, or registry is compiled in violation of the prohibition and a court finds that the information was compiled with the knowledge of the management of the entity. This is a civil fine to be enforced by the attorney general. The state attorney is charged with investigating criminal complaints of violations of the prohibition in their jurisdiction. Violations must be vigorously prosecuted.

The bill provides certain exemptions to the prohibition. The exemptions are:

- firearms used in a crime, any person convicted of a crime, or records of a stolen firearm (however, these records must be destroyed within 30 days after the stolen firearm is recovered);
- federally required records by firearm dealers (however, these records may not be converted into any form of list, registry, or database);
- records related to the criminal history background check provisions of s. 790.065, F.S.;
- electronic copies of firearm records required to be kept by secondhand dealers pursuant to ch. 538, F.S., may be kept for thirty days after the purchase of the firearm. Electronic copies of firearm records required to be kept by pawnbrokers pursuant to ch. 539, F.S., may be kept until thirty days after the expiration of the loan secured by the firearm. Law enforcement agencies may keep electronic copies of firearm records received from secondhand dealers and pawnbrokers for thirty days from receipt of such records;
- FDLE records pertaining to criminal history record checks through the NCIC of the FBI to the extent required by federal law;
- records by insurers against theft or loss of firearms provided such list is not sold, commingled with records relating to other firearms, or transferred to another person or entity (however, the insurer must destroy these records within 60 days after the policy expires or the insured notifies the insurer that the insured no longer owns the firearm);
- a list of customers of a firearm dealer, provided the list does not disclose the particular firearms purchased (however, such list may not be sold, commingled with records relating to other firearms, or transferred to another person or entity);
- sales receipts by sellers of firearms or a person providing credit for the purchase of firearms (however, the receipts may not be used for the creation of a database for the registration of firearms);
- personal records maintained by the owner of firearms;
- records of a business which stores or acts as a selling agent for the lawful owner of firearms;
- membership lists of firearm owner organizations;
- records maintained by an employer or vendor of the firearms owned by its officers, employees, or agents if the firearms are used in the course of the employer's or vendor's business; and
- records maintained pursuant to s. 790.06, F.S., related to the issuance of licenses to carry concealed weapons or concealed firearms by the Department of Agriculture and Consumer

Services (however, the Department may only keep such records on an individual who was a licensee within the prior two years).

Any list, record, or registry maintained at the time the act becomes effective must be destroyed within 60 days of the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The application of the records prohibition on private persons and entities arguably may violate First Amendment free speech rights.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the provisions in Section 1 of the bill, at page 6, lines 1-7, are interpreted literally, it appears that the data kept by individual law enforcement agencies related to pawn or secondhand dealer transactions must be destroyed within 30 days of receiving the data from the pawnshop or secondhand dealer. Further, the bill states that the “agency may not electronically submit such record to any other person or entity.” It could be argued that if an agency participating in the Data Sharing Consortium (described above, in the *Present Situation* section) receives a query during the 30-day time period within which the agency has possession of a pawn transaction record, and that record is “submitted” to the querying agency via the Data Sharing Server utilized by the Consortium’s member-agencies, it would be a violation of the new law by the agency in possession of the records.

Although this bill does not adversely effect the agencies fiscally in the future, if the bill's provisions are interpreted as discussed above, the law enforcement agencies that have made investments of time and fiscal resources in the Consortium will not realize the entire expected benefit of their data sharing program.

The bill provides for a possible fine to be assessed against governmental entity violators of up to \$5 million.

While the bill does create a new third degree felony, it is unranked on the offense severity chart in s. 921.0013, F.S. Unranked third degree felonies rarely result in jail or prison time. The Criminal Justice Estimating Conference routinely classifies new third degree felony penalties as having no fiscal impact or insignificant fiscal impact. The Conference has yet to consider this particular bill, however.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.