

# 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/CS/SB 1152

SPONSOR: Judiciary Committee, Criminal Justice Committee, and Senator Peadar

SUBJECT: Firearm Records

DATE: February 18, 2004 REVISED: \_\_\_\_\_

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

## I. Summary:

The bill revises the law governing the regulation of firearms as follows:

- Prohibits any private or governmental person or entity from knowingly and willfully keeping any list, record, or registry of privately owned firearms or firearm owners, and provides 17 separate categories of exceptions to the prohibition.
- Creates a second-degree felony offense which may be imposed on secondhand dealers and pawnbrokers for violating certain statutory prohibitions against firearm records.
- Creates a third-degree felony offense which may be imposed against any person for violating the statutory prohibitions against firearm records.
- Requires the state attorney to investigate and prosecute violations of the statutory prohibitions.
- Authorizes the attorney general to pursue a civil action against a governmental entity or person for violation of the statutory prohibition, punishable by a fine not to exceed \$5 million.
- Requires the destruction of any existing list, record, or registry (presumably of firearms) within 60 days of the effective date of the bill becoming law.

This bill creates a new section of the Florida Statutes: 790.335. It also creates an unnumbered section of law.

## II. Present Situation:

### Records of Firearms

The few laws that Florida has regarding firearm records pertain to firearm ownership and transaction records created or required to be maintained by secondhand and pawnshop dealers, and by law enforcement. A firearm is defined as:

*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. See s. 790.001(6), F.S.*

For example, under chapter 790, F.S., the Florida Department of Law Enforcement (FDLE) can only maintain records of criminal records checks of the National Crime Information Center (NCIC) and Florida Crime Information Center (FCIC) systems for 48 hours when those records are made or collected in connection with a request by a licensed importer, manufacturer, dealer, or collector who is required to obtain an approval or disapproval number prior to a firearm sales or delivery transaction.<sup>1</sup> However, the law allows the FDLE to maintain for two years: 1) The records of the NCIC system transactions as required by federal law and 2) A log of request dates for criminal history checks, approval and nonapproval numbers, license identification numbers, and transaction numbers corresponding to those dates.<sup>2</sup> The law is somewhat unclear, however, in that it subsequently appears to prohibit the State from maintaining records relating to the purchaser's or transferee's name who received unique approval numbers or to maintain records of firearm transactions.<sup>3</sup> It is a third degree felony offense if a law enforcement officer, employee, or agency is found to have maliciously and intentionally violated the law.<sup>4</sup>

Also under chapter 790, F.S., the Florida Department of Agriculture and Consumer Affairs must maintain a list of licensed holders of concealed weapons or firearms.<sup>5</sup> However, there is no specified timeframe in law regarding the retention and destruction of these records.

Under chapter 538, F.S., secondhand dealers (who are registered by the Department of Revenue) are required to maintain transaction<sup>6</sup> records for five years which obviously may include firearm transaction records.<sup>7</sup> These records must be electronically submitted on FDLE-approved forms within 24 hours of acquiring the secondhand goods<sup>8</sup> to local law enforcement agencies (municipal police department or the county sheriff's department if the sale occurred outside

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<sup>1</sup> See s. 790.065, F.S. These public records are deemed confidential and exempt from public disclosure if they pertain to buyers or transferees who are approved for receipt or transfer of a firearm. These requests are done by telephone and usually take only a few minutes.

<sup>2</sup> See s. 790.065(4), F.S.

<sup>3</sup> See s. 790.065(4)(c), F.S.

<sup>4</sup> See s. 790.065(4)(d), F.S.

<sup>5</sup> See s. 790.06(7), F.S.

<sup>6</sup> Transaction means sale, purchase, consignment or pawn of goods.

<sup>7</sup> See s. 538.06(4), F.S.

<sup>8</sup> Firearms are currently included in the definition of 'secondhand goods.' See s. 538.03(1)(g), F.S.

municipal boundaries).<sup>9</sup> Law enforcement may inspect these records anytime during regular business hours to ensure that inventory and records are being maintained and that there is compliance with the 15-day holding period.<sup>10</sup>

Similarly, under chapter 539, F.S., pawnbrokers<sup>11</sup> (who are licensed by the Department of Agriculture and Consumer Services) are required to maintain pawn or purchase transaction records<sup>12</sup> for at least one year and to submit on a daily basis to the *appropriate* law enforcement official the *original* transaction forms. It is not clear from the law whether appropriate law enforcement could mean state in lieu of local law enforcement officials. The law alternatively allows pawnbrokers to submit their information or records electronically but the requirement is contingent upon the existence of software and hardware made available to them by law enforcement. If *appropriate* law enforcement request a copy of the original transaction form, the pawnbroker must provide it within 24 hours. The law does not require that these transactional information or records be transferred or submitted to FDLE. Pawnbrokers are required to hold the goods for 30 days after the transaction and an additional 30 days thereafter if the goods are not redeemed after which the goods are automatically forfeited to the pawnbroker.

Nothing in current law precludes private persons and entities from maintaining their own business and personal records relating to firearms and firearm purchases or transactions.

Federal law requires firearm importers, manufacturers, and dealers to keep a registry of all firearms and to maintain firearm records including sales transactions. *See* 26 U.S.C. s. 5843. The National Firearms Act also requires firearms such as machine guns and short-barreled shotguns to be registered with the Federal Bureau of Alcohol, Tobacco, and Firearms. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), under the Department of Justice, is responsible for enforcing the federal firearms laws and regulating the firearms industry.

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<sup>9</sup> *See* s. 538.04, F.S. Secondhand dealers are persons or entities (other than secondary metals recyclers) who engage in the business of purchasing, consigning, or pawning secondhand goods.

<sup>10</sup> *See* s. 538.05, F.S. A law enforcement officer can extend the 15-day holding period to a maximum 60 days if probable cause exists that the property is stolen. The court can similarly extend the 60-day holding period if it finds probable cause exists that the secondhand goods are stolen and it is necessary to safeguard the property.

<sup>11</sup> Pawnbrokers are actually included in the definition of secondhand dealers under chapter 538, F.S. However, pawnbrokers have been governed by chapter 539, F.S., since it was enacted in 1996 and is cited as the Florida Pawnbroking Act. The Act requires persons who are engaged in the business of pawnbroking to be licensed and otherwise regulated by the Department of Agriculture and Consumer Services under chapter 539, F.S. The definition for pawnbroker in chapter 539, F.S., is not identical to the definition for pawnbroker in chapter 538, F.S.

<sup>12</sup> The law specifically sets forth the requisite information to be included in a pawnbroker transaction form for each transaction. In the case of a transaction involving a firearm, the following information at a minimum must appear on the front of the form: The name and address of the pawnshop; a complete and accurate description of the pledged goods or purchased goods, including the following information, if applicable (Brand name; Model number; Manufacturer's serial number; Size; Color, as apparent to the untrained eye; the type of firearm action, caliber or gauge, number of barrels, barrel length, and finish, and any other unique identifying marks, numbers, names, or letters); the name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the pledgor or seller; the date and time of the transaction; the type of identification accepted from the pledgor or seller, including the issuing agency and the identification number; in the case of a pawn: the amount of money advanced, which must be designated as the amount financed; the maturity date of the pawn, which must be 30 days after the date of the pawn; the default date of the pawn and the amount due on the default date; the total pawn service charge payable on the maturity date, which must be designated as the finance charge; the amount financed plus the finance charge that must be paid to redeem the pledged goods on the maturity date, which must be designated as the total of payments; and the annual percentage rate, computed according to the regulations adopted by the Federal Reserve Board under the federal Truth in Lending Act.

***Development of Statewide Pawnbroker Database***

In 2000, the Legislature appropriated funds (\$1,050,748) for FDLE to develop and implement a statewide pawnbroker database. However, this statewide database has never been fully operational. Although the budget proviso language passed, the substantive bill did not. The substantive bill would have required collection and dissemination of information regarding pawnshop transactions and secondhand-goods acquisition records including records of stolen firearms subject to restrictions on law enforcement's use of those records for official criminal investigative purposes only since some of these transactions might have included stolen firearms or firearms used for other illegal purposes.<sup>13</sup> These pawnshop transactions are deemed confidential records under the law and are required to be submitted by the pawnbroker, most often electronically, to *local* law enforcement agencies pursuant to s. 539.001, F.S. As noted earlier these pawnbroker transactions and secondhand-goods acquisition records are required to be submitted to local law enforcement entities.

FDLE proceeded with the creation of the database, with the advice and assistance of interested parties, which would be 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. Attempts to pass substantive legislation the subsequent 2001 legislative session, however, also failed.<sup>14</sup>

The then commissioner of the FDLE sought an attorney general opinion regarding the appropriateness of local law enforcement submitting their confidential records of pawnbroker transactions to the FDLE for inclusion in a statewide pawnbroker database accessible only by approved law enforcement officers. On July 18, 2001, the Attorney General opined that local law enforcement authorities could do so voluntarily without losing the confidential status of these records. *See* AGO 2001-51. Nevertheless, participation in the database remains voluntary.

***Development and Operation of Local Agency Information-Sharing***

A similar pilot project was developed 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

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<sup>13</sup> SB 1598 (2000). Similar legislation had actually been filed in 1999 but also failed to pass. *See* SB 1820 (1999)

<sup>14</sup> SB 706 (2001)

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. Private entities and persons are similarly prohibited.

A violation of the prohibition is a third degree felony which is punishable by up to five years in prison and by up to a \$5,000 fine. An exception exists for pawnbrokers and secondhand dealers

who violate the specific provisions relating to transfer of records to third party providers for which that act is punishable as a second degree felony. [This is addressed below within the discussion regarding exemptions to the bill.] The bill prohibits the use of public funds (except as those funds may be used to provide an indigent person a public defender or a court-appointed counsel 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 appears to be a civil fine to be enforced by the attorney general in a separate civil action. The state attorney is charged with investigating criminal complaints of probable violations. Violations must be *vigorously prosecuted*. The phrase *vigorously prosecuted* is not defined in the bill nor is it used anywhere in any other statute.

The bill provides 17 categories of qualified exemptions to the prohibition against keeping firearm records. The exemptions, some of which are subject to further restrictions, apply to:

- Records of firearms used in a crime or of any person convicted of a crime.
- Records of firearms that have been reported stolen. (However, such records can not be retained for longer than 10 days but official documentation recording the theft of a recovered weapon can be maintained for the balance of the year entered plus 2 years. It is not clear what information that ‘official documentation recording’ would contain that would not also constitute a record.)
- Records that are federally required to be maintained 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 records of firearms held by secondhand dealers pursuant to chapter 538, F.S. (However, these records can only be kept for 30 days after the purchase of the firearm.)
- Firearm records including paper pawn transaction forms and contracts on firearm transactions, required to be kept by secondhand and pawnshops dealers under chapters 538 and 539, F.S. (However, the electronic version of these records can only be kept for 30 days after the purchase of the firearm by the secondhand dealer, or after the expiration of the loan secured by the firearm, respectively. Additionally, these records can not be electronically transferred to any public or private entity or copied or otherwise transferred for the purpose of creating a list, registry, or database but they can be electronically transferred to law enforcement as required by the existing provisions in chapters 538 and 539, F.S. But then again, law enforcement has to destroy these records within 60 days after receipt of such records. Additionally, despite the prohibition against transferring such records to any public or private entity, secondhand dealers and pawnbrokers can electronically submit firearm records (limited to the following information: the manufacturer of the firearm, the model, the serial number and the caliber of the pawned or purchased firearm) to a third party provider provided that provider is exclusively incorporated, owned, and operated in the United States, restricts access to such information to appropriate law enforcement agencies for legitimate law enforcement purposes, and agrees in writing to comply with the requirements of this new law. This third party provider, however, in turn has to destroy these records within 30 days

- (presumably of the date of receipt. If the pawnbroker or secondhand dealer acts in contravention of these specific provisions, he or she commits a felony of the second degree which is one higher degree felony offense than for other violations under this bill).
- Electronic records of firearms transferred by secondhand dealers and pawnbrokers to appropriate law enforcement entities. (However, these records can only be kept by law enforcement for 60 days after receipt.)
  - FDLE records pertaining to criminal history record checks conducted through the NCIC of the FBI to the extent required by federal law; and a log of dates of requests for criminal history record checks, unique approval and nonapproval numbers, license identification numbers, and transaction numbers corresponding to such dates.
  - Insurer's records against theft or loss of firearms provided such records are 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.)
  - Customers lists of firearm dealers. (However, the lists can not disclose the particular firearms purchased or be sold or commingled with records relating to other firearms, or transferred to another person or entity.)
  - Sales receipts kept 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.
  - Records maintained pursuant to s. 790.06, F.S., related to the issuance of licenses for concealed weapons or 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.)
  - Records of firearms involved in criminal investigations, criminal prosecutions, criminal appeals, and postconviction motions.
  - Paper documents relating to firearms involved in criminal cases, criminal investigations, and criminal prosecutions.

Subsection 2 of the bill states that any list, record, or registry maintained at the time the act becomes effective must be destroyed within 60 days of the effective date. This subsection does not specify that this requisite destruction relates solely to firearms lists, records, or registries.

#### **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:

This bill may allay concerns of some firearm owners and organizations who allege that their privacy rights are being eroded by the collection of personal identifying data by government entities, and that the existence of these lists, records, registry, or databases could compromise the rights of legitimate firearm owners under the Second Amendment.

Secondhand and pawnshop dealers, insurers, firearm dealers, and other businesses or persons dealing with the import, sale, manufacture, sale, transfer, or storage of firearms, will have to change business practices to conform with the new requirements and restrictions for the retention and destruction of firearm records. It is unknown to what extent federal law imposes requirements on the insurance industry, firearm dealers, or other private sellers of firearms to maintain records including the format of the information or records and retention period. To the extent that federal law conflicts with state law, it is presumed that federal law would pre-empt.

C. Government Sector Impact:

Since the bill requires law enforcement agencies to destroy pawn or secondhand dealer transactions relating to firearms and any other list, record, or registry in violation of the new section within 60 days of the effective date of the law, it is unknown to what extent time and costs will be expended to remove any list, record, or registry which contains firearms ownership or transaction information commingled with other records or documents, or to dismantle any existing system that contains such information.

It is also unknown the extent to which this bill may affect law enforcement's ability to comply with the restrictions of this bill and perform its legal duties to prevent and solve crimes including interagency collaboration and coordination. For example, some law enforcement entities have invested time and fiscal resources in the creation of any



electronic database, registry, or data sharing consortium (as described above in the Present Situation section). At a minimum, they will no longer be able to benefit from the efficiencies and cost-effectiveness of their electronic or technological systems. For example, subsection (3)(f)4. of the new s. 790.335, F.S., states that the “agency may not electronically submit such record [firearm records kept by pawnshop dealers and secondhand dealers] 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.

It is also unknown to what extent the prohibitions under the bill may affect law enforcement efforts, particularly coordination and collaboration between local, state, and federal law enforcement agencies. It is also unknown to what extent the prohibitions under the bill may affect federal benefits, if any, contingent upon state law enforcement action under either federal or state law.

Governmental entities are subject to a fine not to exceed \$5 million for violating the provisions of the bill which may be enforced through a civil action by the Attorney General. Under the bill, it appears that governmental entities would be precluded from using public funds to challenge or contest the assessment of the fine. As a governmental entity does not itself risk loss of liberty even in a criminal prosecution, the constitutional right to counsel is not implicated. It appears that a governmental “designee” sued in his or her official capacity who may risk loss of liberty but is not determined to be indigent would probably have to cover the expense of representation in his or her defense initially and if the charges are dismissed or if she or he is determined to be not guilty at trial, then attempt to seek reimbursement later. This presumes the person is entitled to reimbursement from public funds as a matter of law, or agency policy or practice.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

- 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.
- This bill contains a number of legislative findings including that the maintenance of certain firearm records is not a legitimate law enforcement tool or a tool for enforcing terrorism. The Florida Supreme Court<sup>15</sup> has recently stated that “[w]hile courts may defer to legislative

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<sup>15</sup> See *North Florida Women’s Health and Counseling Services, Inc. v. State*, 28 Fla. L. Weekly S549, 28 Fla. L. Weekly S641, --- So.2d ---

statements of policy and fact, courts may do so only when those statements are based on actual findings of fact, and even then courts must conduct their own inquiry. The general rule is that findings of fact made by the legislature are presumptively correct. However, it is well-recognized that the findings of fact made by the legislature must actually be findings of *fact*. They are not entitled to the presumption of correctness if they are nothing more than recitations amounting only to conclusions and they are always subject to judicial inquiry.” Citing to *Moore v. Thompson*, 126 So.2d 543, 549 (Fla.1960) (quoting *Seagram- Distillers Corp. v. Ben Greene, Inc.*, 54 So.2d 235, 236 (Fla.1951)).

- Subsection (3)(e)1. of the new s. 790.335, F.S., cross-references an existing section of law (s. 790.065, F.S.) that is due to sunset on July 1, 2004. Section 790.065, F.S., requires licensed importers, licensed manufacturers, or licensed dealers to satisfy certain requirements prior to the sale or delivery of firearms, including obtaining a criminal background check and approval and nonapproval numbers from FDLE and retaining and destroying firearm records. The cross-reference is made as the basis for one of the exemptions to the prohibition against the creation and retention of firearm records. Therefore, this exemption would no longer be valid. [See page 3, lines 25-29]
- Subsection (3)(f)3. of the new s. 790.335, F.S., appears to contain a conflict in that it states that firearm records kept pursuant to chapters 538 or 539, F.S., can not be electronically transferred to anyone or any entity or copied or transferred for the purpose of a list, registry, or database, except as required by federal law. But in the next subsection (3)(f)4., it states that notwithstanding the previous subsection that these records can be electronically transferred to appropriate law enforcement but those law enforcement agencies can not in turn electronically submit those records to anyone or any other entity. It is not clear whether this provision is then attempting to preclude those transfers even if required by federal law. [See page 4, lines 11-24]
- Duplication may exist between the exemption under subsection (3)(g) of the new s. 790.335, F.S., and the exemption under subsection (3)(e)1. of that same section. These two subsections exempt records of NCIC transactions and a log of dates of requests for criminal history checks, unique approval and nonapproval numbers, and transaction numbers which is permitted under s. 790.065, F.S. However, as noted earlier, s. 790.065, F.S., is due to sunset on July 1, 2004. Additionally, reference is made to NCIC transactions. NCIC is the acronym for the National Crime Information Center. This acronym should be spelled out in the bill since it is not mentioned anywhere else in the bill [See page 4, lines 25-30]
- The exemption under subsection (3)(i) of the new s. 790.335, F.S., relates to lists of customers of a firearm dealer. The term “firearm dealer” is not defined. It is not known whether this section would apply to exempt out customer lists kept by *licensed importers* and *licensed manufacturers* and *licensed dealers* who may sell or deliver firearms but not exclusively.
- Subsection (4) of the new s. 790.335, F.S., governing the prohibition of public funds (except as required constitutionally for representation) in the defense of any person who violates the law is unclear. The subsection also authorizes the assessment of a fine not to exceed \$5 million against a governmental entity or designee. The term “designee” is typically used in

association with someone standing in for an individual, not a governmental entity. The more appropriate term may be “authorized agent or employee.” The bill is also unclear whether the fine against the governmental entity is assessed at a criminal proceeding or in a separate action and what the process is for challenging or collecting the assessment prior to civil cause of action by the Attorney General. [See page 6, lines 4-27]

- This bill limits the period for retaining firearm transactions by secondhand dealers and pawnshop brokers to 30 days. This 30-day period is inconsistent with the 5-year record retention and 1-year record retention periods required under current law in ss. 538.06(4), and s. 539.001(9), F.S., respectively. These two provisions may have to be revised to conform or to reference at least that a different record retention period will now govern transactions involving firearms under chapters 538 and 539, F.S. [See page 4, lines 3-17]
- Section 2 of the bill creates an unnumbered section of law and requires all lists, records, or registries in existence or in construction to be destroyed within 60 days after the bill becomes a law. This section does not have a statutory number nor does it specifically narrow its application to firearms. [See page 7, lines 1-6]

#### **VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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