

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Asencio offered the following:

2
3 **Amendment (with title amendment)**

4 Remove lines 674-677 and insert:

5 Section 11. Present subsection (13) of section 790.065,
6 Florida Statutes, is redesignated as subsection (14), subsection
7 (2) is amended, and a new subsection (13) is added to that
8 section, to read:

9 790.065 Sale and delivery of firearms.-

10 (2) Upon receipt of a request for a criminal history
11 record check, the Department of Law Enforcement shall, during
12 the licensee's call or by return call or electronic means, and
13 in writing, forthwith:

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14 (a) Review any records available to determine if the
15 potential buyer or transferee:

16 1. Has been convicted of a felony and is prohibited from
17 receipt or possession of a firearm pursuant to s. 790.23;

18 2. Has been convicted of a misdemeanor crime of domestic
19 violence, and therefore is prohibited from purchasing a firearm;

20 3. Has had adjudication of guilt withheld or imposition of
21 sentence suspended on any felony or misdemeanor crime of
22 domestic violence unless 3 years have elapsed since probation or
23 any other conditions set by the court have been fulfilled or
24 expunction has occurred; or

25 4. Has been adjudicated mentally defective or has been
26 committed to a mental institution by a court or as provided in
27 sub-sub-subparagraph b.(II), and as a result is prohibited by
28 state or federal law from purchasing a firearm.

29 a. As used in this subparagraph, "adjudicated mentally
30 defective" means a determination by a court that a person, as a
31 result of marked subnormal intelligence, or mental illness,
32 incompetency, condition, or disease, is a danger to himself or
33 herself or to others or lacks the mental capacity to contract or
34 manage his or her own affairs. The phrase includes a judicial
35 finding of incapacity under s. 744.331(6)(a), an acquittal by
36 reason of insanity of a person charged with a criminal offense,
37 and a judicial finding that a criminal defendant is not
38 competent to stand trial.

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39 b. As used in this subparagraph, "committed to a mental
40 institution" means:

41 (I) Involuntary commitment, commitment for mental
42 defectiveness or mental illness, and commitment for substance
43 abuse. The phrase includes involuntary inpatient placement as
44 defined in s. 394.467, involuntary outpatient placement as
45 defined in s. 394.4655, involuntary assessment and stabilization
46 under s. 397.6818, and involuntary substance abuse treatment
47 under s. 397.6957, but does not include a person in a mental
48 institution for observation or discharged from a mental
49 institution based upon the initial review by the physician or a
50 voluntary admission to a mental institution; or

51 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
52 admission to a mental institution for outpatient or inpatient
53 treatment of a person who had an involuntary examination under
54 s. 394.463, where each of the following conditions have been
55 met:

56 (A) An examining physician found that the person is an
57 imminent danger to himself or herself or others.

58 (B) The examining physician certified that if the person
59 did not agree to voluntary treatment, a petition for involuntary
60 outpatient or inpatient treatment would have been filed under s.
61 394.463(2)(g)4., or the examining physician certified that a
62 petition was filed and the person subsequently agreed to
63 voluntary treatment prior to a court hearing on the petition.

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64 (C) Before agreeing to voluntary treatment, the person
65 received written notice of that finding and certification, and
66 written notice that as a result of such finding, he or she may
67 be prohibited from purchasing a firearm, and may not be eligible
68 to apply for or retain a concealed weapon or firearms license
69 under s. 790.06 and the person acknowledged such notice in
70 writing, in substantially the following form:

71 "I understand that the doctor who examined me believes I am a
72 danger to myself or to others. I understand that if I do not
73 agree to voluntary treatment, a petition will be filed in court
74 to require me to receive involuntary treatment. I understand
75 that if that petition is filed, I have the right to contest it.
76 In the event a petition has been filed, I understand that I can
77 subsequently agree to voluntary treatment prior to a court
78 hearing. I understand that by agreeing to voluntary treatment in
79 either of these situations, I may be prohibited from buying
80 firearms and from applying for or retaining a concealed weapons
81 or firearms license until I apply for and receive relief from
82 that restriction under Florida law."

83 (D) A judge or a magistrate has, pursuant to sub-sub-
84 subparagraph c.(II), reviewed the record of the finding,
85 certification, notice, and written acknowledgment classifying
86 the person as an imminent danger to himself or herself or
87 others, and ordered that such record be submitted to the
88 department.

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89 c. In order to check for these conditions, the department
90 shall compile and maintain an automated database of persons who
91 are prohibited from purchasing a firearm based on court records
92 of adjudications of mental defectiveness or commitments to
93 mental institutions.

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

101 (II) For persons committed to a mental institution
102 pursuant to sub-sub-subparagraph b.(II), within 24 hours after
103 the person's agreement to voluntary admission, a record of the
104 finding, certification, notice, and written acknowledgment must
105 be filed by the administrator of the receiving or treatment
106 facility, as defined in s. 394.455, with the clerk of the court
107 for the county in which the involuntary examination under s.
108 394.463 occurred. No fee shall be charged for the filing under
109 this sub-sub-subparagraph. The clerk must present the records to
110 a judge or magistrate within 24 hours after receipt of the
111 records. A judge or magistrate is required and has the lawful
112 authority to review the records ex parte and, if the judge or
113 magistrate determines that the record supports the classifying

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114 of the person as an imminent danger to himself or herself or
115 others, to order that the record be submitted to the department.
116 If a judge or magistrate orders the submittal of the record to
117 the department, the record must be submitted to the department
118 within 24 hours.

119 d. A person who has been adjudicated mentally defective or
120 committed to a mental institution, as those terms are defined in
121 this paragraph, may petition the court that made the
122 adjudication or commitment, or the court that ordered that the
123 record be submitted to the department pursuant to sub-sub-
124 subparagraph c.(II), for relief from the firearm disabilities
125 imposed by such adjudication or commitment. A copy of the
126 petition shall be served on the state attorney for the county in
127 which the person was adjudicated or committed. The state
128 attorney may object to and present evidence relevant to the
129 relief sought by the petition. The hearing on the petition may
130 be open or closed as the petitioner may choose. The petitioner
131 may present evidence and subpoena witnesses to appear at the
132 hearing on the petition. The petitioner may confront and cross-
133 examine witnesses called by the state attorney. A record of the
134 hearing shall be made by a certified court reporter or by court-
135 approved electronic means. The court shall make written findings
136 of fact and conclusions of law on the issues before it and issue
137 a final order. The court shall grant the relief requested in the
138 petition if the court finds, based on the evidence presented

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139 with respect to the petitioner's reputation, the petitioner's
140 mental health record and, if applicable, criminal history
141 record, the circumstances surrounding the firearm disability,
142 and any other evidence in the record, that the petitioner will
143 not be likely to act in a manner that is dangerous to public
144 safety and that granting the relief would not be contrary to the
145 public interest. If the final order denies relief, the
146 petitioner may not petition again for relief from firearm
147 disabilities until 1 year after the date of the final order. The
148 petitioner may seek judicial review of a final order denying
149 relief in the district court of appeal having jurisdiction over
150 the court that issued the order. The review shall be conducted
151 de novo. Relief from a firearm disability granted under this
152 sub-subparagraph has no effect on the loss of civil rights,
153 including firearm rights, for any reason other than the
154 particular adjudication of mental defectiveness or commitment to
155 a mental institution from which relief is granted.

156 e. Upon receipt of proper notice of relief from firearm
157 disabilities granted under sub-subparagraph d., the department
158 shall delete any mental health record of the person granted
159 relief from the automated database of persons who are prohibited
160 from purchasing a firearm based on court records of
161 adjudications of mental defectiveness or commitments to mental
162 institutions.

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163 f. The department is authorized to disclose data collected
164 pursuant to this subparagraph to agencies of the Federal
165 Government and other states for use exclusively in determining
166 the lawfulness of a firearm sale or transfer. The department is
167 also authorized to disclose this data to the Department of
168 Agriculture and Consumer Services for purposes of determining
169 eligibility for issuance of a concealed weapons or concealed
170 firearms license and for determining whether a basis exists for
171 revoking or suspending a previously issued license pursuant to
172 s. 790.06(10). When a potential buyer or transferee appeals a
173 nonapproval based on these records, the clerks of court and
174 mental institutions shall, upon request by the department,
175 provide information to help determine whether the potential
176 buyer or transferee is the same person as the subject of the
177 record. Photographs and any other data that could confirm or
178 negate identity must be made available to the department for
179 such purposes, notwithstanding any other provision of state law
180 to the contrary. Any such information that is made confidential
181 or exempt from disclosure by law shall retain such confidential
182 or exempt status when transferred to the department.

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

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187 (c)1. Review any records available to it to determine
188 whether the potential buyer or transferee has been indicted or
189 has had an information filed against her or him for an offense
190 that is a felony under either state or federal law, or, as
191 mandated by federal law, has had an injunction for protection
192 against domestic violence entered against the potential buyer or
193 transferee under s. 741.30, has had an injunction for protection
194 against repeat violence entered against the potential buyer or
195 transferee under s. 784.046, or has been arrested for a
196 dangerous crime as specified in s. 907.041(4)(a) or for any of
197 the following enumerated offenses:

- 198 a. Criminal anarchy under ss. 876.01 and 876.02.
- 199 b. Extortion under s. 836.05.
- 200 c. Explosives violations under s. 552.22(1) and (2).
- 201 d. Controlled substances violations under chapter 893.
- 202 e. Resisting an officer with violence under s. 843.01.
- 203 f. Weapons and firearms violations under this chapter.
- 204 g. Treason under s. 876.32.
- 205 h. Assisting self-murder under s. 782.08.
- 206 i. Sabotage under s. 876.38.
- 207 j. Stalking or aggravated stalking under s. 784.048.

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209 If the review indicates any such indictment, information, or
210 arrest, the department shall provide to the licensee a
211 conditional nonapproval number.

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212 2. Within 24 working hours, the department shall determine
213 the disposition of the indictment, information, or arrest and
214 inform the licensee as to whether the potential buyer is
215 prohibited from receiving or possessing a firearm. For purposes
216 of this paragraph, "working hours" means the hours from 8 a.m.
217 to 5 p.m. Monday through Friday, excluding legal holidays.

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

222 4. The department shall determine as quickly as possible
223 within the allotted time period whether the potential buyer is
224 prohibited from receiving or possessing a firearm.

225 5. If the potential buyer is not so prohibited, or if the
226 department cannot determine the disposition information within
227 the allotted time period, the department shall provide the
228 licensee with a conditional approval number.

229 6. If the buyer is so prohibited, the conditional
230 nonapproval number shall become a nonapproval number.

231 7. The department shall continue its attempts to obtain
232 the disposition information and may retain a record of all
233 approval numbers granted without sufficient disposition
234 information. If the department later obtains disposition
235 information which indicates:

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236 a. That the potential buyer is not prohibited from owning
237 a firearm, it shall treat the record of the transaction in
238 accordance with this section; or

239 b. That the potential buyer is prohibited from owning a
240 firearm, it shall immediately revoke the conditional approval
241 number and notify local law enforcement.

242 8. During the time that disposition of the indictment,
243 information, or arrest is pending and until the department is
244 notified by the potential buyer that there has been a final
245 disposition of the indictment, information, or arrest, the
246 conditional nonapproval number shall remain in effect.

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249 **T I T L E A M E N D M E N T**

250 Remove line 65 and insert:
251 F.S.; revising requirements for notice from the
252 Department of Law Enforcement when a potential buyer
253 is prohibited from receiving or possessing a firearm;
254 prohibiting a person younger than a certain age

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