LEGISLATIVE ACTION

Senator Rodriguez moved the following:

**Senate Amendment (with title amendment)**

Between lines 409 and 410

insert:

Section 9. Section 790.335, Florida Statutes, is amended to read:

790.335 Prohibition of registration of firearms; electronic records.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds and declares that:

1. The right of individuals to keep and bear arms is
guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.

2. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution. Further, such a list, record, or registry has the potential to fall into the wrong hands and become a shopping list for thieves.

3. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a tool for fighting terrorism, but rather is an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution.

4. Law-abiding firearm owners whose names have been illegally recorded in a list, record, or registry are entitled to redress.

(b) The Legislature intends through the provisions of this section to:

1. Protect the right of individuals to keep and bear arms as guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.

2. Protect the privacy rights of law-abiding firearm owners.

(2) PROHIBITIONS. No state governmental agency or local government, special district, or other political subdivision or
official, agent, or employee of such state or other governmental
entity or any other person, public or private, shall knowingly
and willfully keep or cause to be kept any list, record, or
registry of privately owned firearms or any list, record, or
registry of the owners of those firearms.

(3) EXCEPTIONS.—The provisions of this section shall not
apply to:

(a) Records of firearms that have been used in committing
any crime.

(b) Records relating to any person who has been convicted
of a crime.

(c) Records of firearms that have been reported stolen that
are retained for a period not in excess of 10 days after such
firearms are recovered. Official documentation recording the
theft of a recovered weapon may be maintained no longer than the
balance of the year entered, plus 2 years.

(d) Firearm records that must be retained by firearm
dealers under federal law, including copies of such records
transmitted to law enforcement agencies. However, no state
governmental agency or local government, special district, or
other political subdivision or official, agent, or employee of
such state or other governmental entity or any other person,
private or public, shall accumulate, compile, computerize, or
otherwise collect or convert such written records into any form
of list, registry, or database for any purpose.

(e) 1. Records kept pursuant to the recordkeeping provisions
of s. 790.065; however, nothing in this section shall be
construed to authorize the public release or inspection of
records that are made confidential and exempt from the
provisions of s. 119.07(1) by s. 790.065(4)(a).

2. Nothing in this paragraph shall be construed to allow
the maintaining of records containing the names of purchasers or
transferees who receive unique approval numbers or the
maintaining of records of firearm transactions.

(f) Firearm records, including paper pawn transaction forms
and contracts on firearm transactions, required by chapters 538
and 539.

1. Electronic firearm records held pursuant to chapter 538
may only be kept by a secondhand dealer for 30 days after the
date of the purchase of the firearm by the secondhand dealer.

2. Electronic firearm records held pursuant to chapter 539
may only be kept by a pawnbroker for 30 days after the
expiration of the loan that is secured by a firearm or 30 days
after the date of purchase of a firearm, whichever is
applicable.

3. Except as required by federal law, any firearm records
kept pursuant to chapter 538 or chapter 539 shall not, at any
time, be electronically transferred to any public or private
entity, agency, business, or enterprise, nor shall any such
records be copied or transferred for purposes of accumulation of
such records into lists, registries, or databases.

4. Notwithstanding subparagraph 3., secondhand dealers and
pawnbrokers may electronically submit firearm transaction
records to the appropriate law enforcement agencies as required
by chapters 538 and 539; however, the law enforcement agencies
may not electronically submit such records to any other person
or entity and must destroy such records within 60 days after
receipt of such records.
5. Notwithstanding subparagraph 3., secondhand dealers and pawnbrokers may electronically submit limited firearms records consisting solely of the manufacturer, model, serial number, and caliber of pawned or purchased firearms to a third-party private provider that is exclusively incorporated, exclusively owned, and exclusively operated in the United States and that restricts access to such information to only appropriate law enforcement agencies for legitimate law enforcement purposes. Such records must be destroyed within 30 days by the third-party provider. As a condition of receipt of such records, the third-party provider must agree in writing to comply with the requirements of this section. Any pawnbroker or secondhand dealer who contracts with a third-party provider other than as provided in this act or electronically transmits any records of firearms transactions to any third-party provider other than the records specifically allowed by this paragraph commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(g) Records kept by the Department of Law Enforcement of NCIC transactions 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.

(h) Records of an insurer that, as a condition to providing insurance against theft or loss of a firearm, identify such firearm. Such records may not be sold, commingled with records relating to other firearms, or transferred to any other person or entity. The insurer may not keep a record of such firearm more than 60 days after the policy of insurance expires or after notification by the insured that the insured is no longer the
owner of such firearm.

   (i) Lists of customers of a firearm dealer retained by such dealer, provided that such lists do not disclose the particular firearms purchased. Such lists, or any parts thereof, may not be sold, commingled with records relating to other firearms, or transferred to any other person or entity.

   (j) Sales receipts retained by the seller of firearms or by a person providing credit for such purchase, provided that such receipts shall not serve as or be used for the creation of a database for registration of firearms.

   (k) Personal records of firearms maintained by the owner of such firearms.

   (l) Records maintained by a business that stores or acts as the selling agent of firearms on behalf of the lawful owner of the firearms.

   (m) Membership lists of organizations comprised of firearm owners.

   (n) Records maintained by an employer or contracting entity of the firearms owned by its officers, employees, or agents, if such firearms are used in the course of business performed on behalf of the employer.

   (o) Records maintained pursuant to s. 790.06 by the Department of Agriculture and Consumer Services of a person who was a licensee within the prior 2 years.

   (p) Records of firearms involved in criminal investigations, criminal prosecutions, criminal appeals, and postconviction motions, civil proceedings relating to the surrender or seizure of firearms including protective injunctions, Baker Act commitments, and sheriff’s levies.
pursuant to court judgments, and voluntary surrender by the
owner or custodian of the firearm.

(q) Paper documents relating to firearms involved in
criminal cases, criminal investigations, and criminal
prosecutions, civil proceedings relating to the surrender or
seizure of firearms including protective injunctions, Baker Act
commitments, and sheriff’s levies pursuant to court judgments,
and voluntary surrender by the owner or custodian of the
firearm.

(r) Noncriminal records relating to the receipt, storage or
return of firearms, including, but not limited to, records
relating to firearms impounded for storage or safekeeping,
receipts proving that a firearm was returned to the rightful
owner and supporting records of identification and proof of
ownership, or records relating to firearms impounded pursuant to
levies or court orders, provided, however, that such records
shall not be compiled, sorted, or otherwise arranged into any
lists, indexes, or registries of firearms or firearms owners.

(4) PENALTIES.—

(a) Any person who, or entity that, violates a provision of
this section commits a felony of the third degree, punishable as
provided in s. 775.082 or s. 775.083.

(b) Except as required by the provisions of s. 16, Art. I
of the State Constitution or the Sixth Amendment to the United
States Constitution, no public funds shall be used to defend the
unlawful conduct of any person charged with a violation of this
section, unless the charges against such person are dismissed or
such person is determined to be not guilty at trial.

Notwithstanding this paragraph, public funds may be expended to
provide the services of the office of public defender or court-appointed conflict counsel as provided by law.

(c) The governmental entity, or the designee of such governmental entity, in whose service or employ a list, record, or registry was compiled in violation of this section may be assessed a fine of not more than $5 million, if the court determines that the evidence shows that the list, record, or registry was compiled or maintained with the knowledge or complicity of the management of the governmental entity. The Attorney General may bring a civil cause of action to enforce the fines assessed under this paragraph.

(d) The state attorney in the appropriate jurisdiction shall investigate complaints of criminal violations of this section and, where evidence indicates a violation may have occurred, shall prosecute violators.

(5) ELECTRONIC RECORDS.—Secondhand dealers and pawnbrokers who electronically submit firearms transaction records to the appropriate law enforcement agencies as required by chapters 538 and 539 shall submit the name of the manufacturer and caliber information of each firearm in Florida Crime Information Center coding, and shall include the model and serial number of each firearm.

(6) CONSTRUCTION.—This section shall be construed to effectuate its remedial and deterrent purposes. This section may not be construed to grant any substantive, procedural privacy right or civil claim to any criminal defendant, and a violation of this section may not be grounds for the suppression of evidence in any criminal case.

Section 10. Section 790.336, Florida Statutes, is amended
to read:

    790.336 Lists, records, or registries to be destroyed. Any list, record, or registry maintained or under construction on the effective date of this act shall be destroyed, unless prohibited by law, within 60 calendar days after this act becomes law. Thereafter, failure to destroy any such list, record, or registry may result in prosecution under this act.

Section 11. Section 790.339, Florida Statutes, is created to read:

    790.339 Registration of firearms.—

    (1) It is the intent of the Legislature to keep our communities and schools safe. The Legislature believes that a step toward that objective is knowing who owns a firearm in our state and knowing the quantity and type of firearms owned by each person.

    (2) The Department of Law Enforcement shall implement and administer a registry of all firearms sold in the state through a licensed importer, licensed manufacturer, or licensed dealer and create procedures through which such firearm sellers must report to the department, on a form approved by the department, the following information related to the sale, including, but not limited to:

    (a) The buyer’s and seller’s full legal names.

    (b) The seller’s business name and business address.

    (c) The driver license or identification card number of the buyer.

    (d) The date and time of the sale.

    (e) The serial number of the firearm.

    (f) The make and model of the firearm.
(3) The Department of Law Enforcement shall adopt rules to administer this section.

Section 12. Paragraph (b) of subsection (5) and paragraph (b) of subsection (9) of section 409.175, Florida Statutes, are amended to read:

409.175 Licensure of family foster homes, residential child-care agencies, and child-placing agencies; public records exemption.—

(5)

(b) The requirements for the licensure and operation of a child-placing agency shall also include compliance with the requirements of ss. 63.0422 and 790.335.

(9)

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.

2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

3. Noncompliance with the requirements for good moral character as specified in paragraph (5)(a).

4. Failure to dismiss personnel found in noncompliance with requirements for good moral character.

5. Failure to comply with the requirements of ss. 63.0422 and 790.335.

Section 13. Paragraph (a) of subsection (6) of section 790.0625, Florida Statutes, is amended to read:

790.0625 Appointment of tax collectors to accept
applications for a concealed weapon or firearm license; fees; penalties.—

(6)(a) A tax collector appointed under this section may not maintain a list or record of persons who apply for or are granted a new or renewal license to carry a concealed weapon or firearm. A tax collector who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 violation of this paragraph is subject to s. 790.335.

--------- T I T L E A M E N D M E N T ---------
And the title is amended as follows:

Between lines 58 and 59 insert:

repealing s. 790.335, F.S., relating to the prohibition of registration of firearms and the treatment of electronic records; repealing s. 790.336, F.S., relating to lists, records, or registries required to be destroyed; creating s. 790.339, F.S.; providing legislative intent; requiring the Department of Law Enforcement to implement and administer a firearms registry of all firearms sold in the state through a licensed importer, a licensed manufacturer, or a licensed dealer; requiring the department to create procedures through which such firearm sellers must report, on a form approved by the department, specified information; requiring the department to adopt rules; amending ss. 409.175 and 790.0625, F.S.; conforming provisions to changes made by the act;